

ARICKAL, DASH & GOSLING

38th WEDC International Conference, Loughborough University, UK, 2015**WATER, SANITATION AND HYGIENE SERVICES BEYOND 2015:
IMPROVING ACCESS AND SUSTAINABILITY****Human rights to water and sanitation in India:
voices from the people and accountability of duty bearers***B. Arickal, M. Dash, & L. Gosling (India)***BRIEFING PAPER 2106**

The recognition of Human rights to water and sanitation are widely understood to provide a basis for effective demand for services from communities, and greater accountability from duty bearers. This paper describes insights drawn from WASH projects in India that have used a human rights based approach. The projects suggest that communities show a broad understanding of the concept of human rights to water and sanitation as essential for a dignified and healthy life. Overall there is a wide appreciation of the components of the rights, the importance of access for all, and the concomitant responsibilities and accountabilities to realise the rights. While duty bearers generally also acknowledge their responsibilities, and there are mechanisms for accountability and participation in the national, district and local government institutions, in reality the accountability mechanisms are fragmented and dysfunctional. The civil society organizations can play a role in strengthening these, but must negotiate this role with care.

Introduction

There is growing evidence that strong demand for services and effective accountability are both critical ingredients in achieving universal and sustainable access to WASH. Where water and sanitation are understood to be human rights this implies that all people, including those who are marginalised or vulnerable, can claim their rights and that providers - especially government, can be held to account for meeting their obligations to protect, respect and fulfil those rights.

The recognition of water and sanitation as human rights in 2010 by the United Nations General Assembly has provided an international framework within which to work. According to the official definition (Right to Water website, n.d.) the human rights to water and sanitation entitle everyone without discrimination to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic use. The human right to sanitation entitles everyone without discrimination to physical and affordable access to sanitation, in all spheres of life, which is safe, hygienic, secure, socially and culturally acceptable, which provides for privacy and ensures dignity. Sanitation in this context is defined as a system for the collection, transport, treatment, disposal or reuse of human excreta and associated hygiene.

WaterAid, an International NGO, has been developing its experience in programmes that explicitly use the concept of human rights to strengthen both demand and accountability (Gosling, 2014). This paper describes learning from recent projects in India that have worked systematically through a rights based approach to empower and enable those who are marginalised to use all available means to hold duty bearers to account; and to raise awareness of rights and responsibilities amongst the duty bearers: The child rights and WASH project in partnership with Samarthan in Madhya Pradesh, (B. Arickal, 2014) and the ongoing Human Rights Based Approach Action Learning Initiative project in which WaterAid is working with two partners: MGSA and MPSSS in 30 panchayats in Madhya Pradesh offer rich insights on this. WaterAid has also been supporting a campaign around the right to water and sanitation (RTWS) in India to develop a broad consensus on Rights amongst NGOs, civil society organisations (CSOs), as well as politicians, bureaucrats, academics and media persons (Forum for policy dialogue on Water Conflicts in India, 2013).

This paper highlights insights from these projects into what people in communities think and say about WASH and rights, and the realities of trying to make duty bearers accountable. It highlights some key challenges and hurdles encountered and concludes with some critical questions to address going forward.

What people think and say about WASH and rights

This section summarises what people representing the most marginalized and excluded communities and those working with them in rural and urban India say about the role of WASH for a dignified and equal life. It summarises arguments that have emerged from consultations held across India in past 2.5 years with a diverse set of people as part of the RTWS campaign. These are expressed through many ideas, articulations and in many languages. In summarising the views for this paper, we have inevitably lost some of this variety and richness. In many places, there were divergent views expressed mainly around the strategies to address the rights to water and sanitation but there was a broad consensus on much larger and more comprehensive definitions on right to water and sanitation than the ‘official’ definitions that are in use at the national and international levels. The right to water and sanitation are presented separately below.

Right to water

The underlying principle of right to water is often expressed “to ensure a social minimum to all”. The diagram in Figure 1 indicates the perceived components of right to water. As a basic minimum people believe that the right should ensure access to water to fulfil basic needs required to lead a healthy life, which is affordable and equally accessible. This figure is based on the articulations from a compendium of case studies on conflicts around domestic water supply (Joy, 2014).

This social minimum is not defined in a technical sense, but moves away from the concept of ‘one size fits all’. It applies norms that are sensitive to socio-cultural-economic exclusions and derived through community interactions, subject to geographical dimensions, livelihood patterns, and cultural sensitivities.

Laying down minimum quantity, quality and physical accessibility norms give state governments and local bodies the freedom to adopt more stringent norms. In many places people have contested official definitions and have come up with expressions like lifeline and lifeline+ articulations that includes water for livestock, emphasising the critical interdependence of people and animals in many communities and the fact that this also involves women fetching water. This ensures that lifeline water is provided free of cost with lifeline plus water to be provided at lower tariff or tariff be applied after a certain limit that is decided through appropriate public consultations.

Water as a right implies that provision should be decentralised, with a bottom-up approach, and the government position is that the primary unit of planning is the ‘*gram sabha*’ or village council. It should be inclusive of all (irrespective of gender, caste, ethnicity, religion, disability, age, citizenship and territorial). It also incorporates the sense that rights involve duties, responsibilities and participation for the people involved.

There is an expectation that recognition of the rights to water and sanitation will ensure delivery of justice, and bring certain critical questions like obligation of the government, setting priorities, identifying common minimum standards and allocations and will help in distinguishing rights from provisioning and services.

Appropriate institutional changes and changes in the attitudes of people are needed. Local bodies need to be provided with adequate autonomy and finances to ensure provisioning of water and sanitation. Appropriate systems of grievance registering and redressal need to be in place.

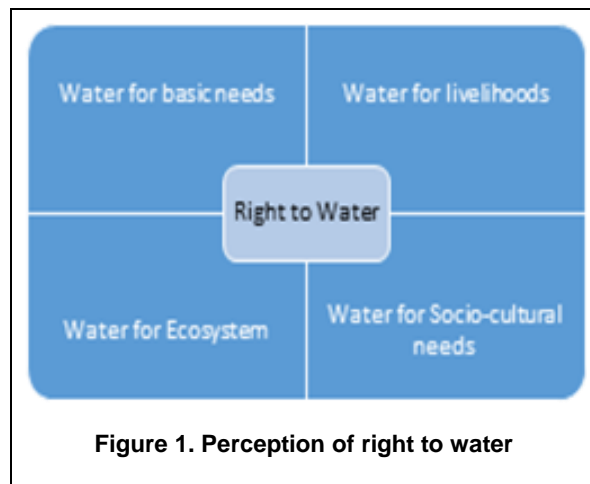


Figure 1. Perception of right to water

Right to sanitation

Consultations around the RTWS campaign show that people recognise that sanitation is essential for human dignity, health and development, and is instrumental for other human rights such as water, health and education.

A definition of right to sanitation has evolved through the right to sanitation campaign launched in 2013 and has been debated and accepted by the collective (Forum for policy dialogue on water conflict in India, 2014), as *'a process of regeneration of the environment to be fit for human habitation, disposal and management of human waste (excreta) ensuring that no human being comes into contact with human excreta, ensuring health and environmental safety, includes infrastructure and resources for all, everywhere, at all times, sensitive to specific needs of different sections of society and their life cycles. Sensitive means inclusive and sensitive design, availability of required water and personal hygiene inclusive of menstrual hygiene management, feasible technologies, gender, age and cross-disability friendly and removes stigma and is culturally accepted'*.

All governments party to the International Covenant on Economic, Social and Cultural Rights (Right to Water website, n.d.) have recognised the right to sanitation. In India and Bangladesh the Supreme Courts have held that access to sanitation is part of the right to life and the Government of India has been a signatory to the commitments made in SACOSAN III, IV & V that recognised sanitation as a right. In India, sanitation is referred to in other legislation and Bills such as Right to Food 2009 and Food Security Bill 2013. The Manual Scavenging Bill was also amended in September 2013 which deals with the issue from the perspective of people engaged in manual scavenging and sanitation workers.

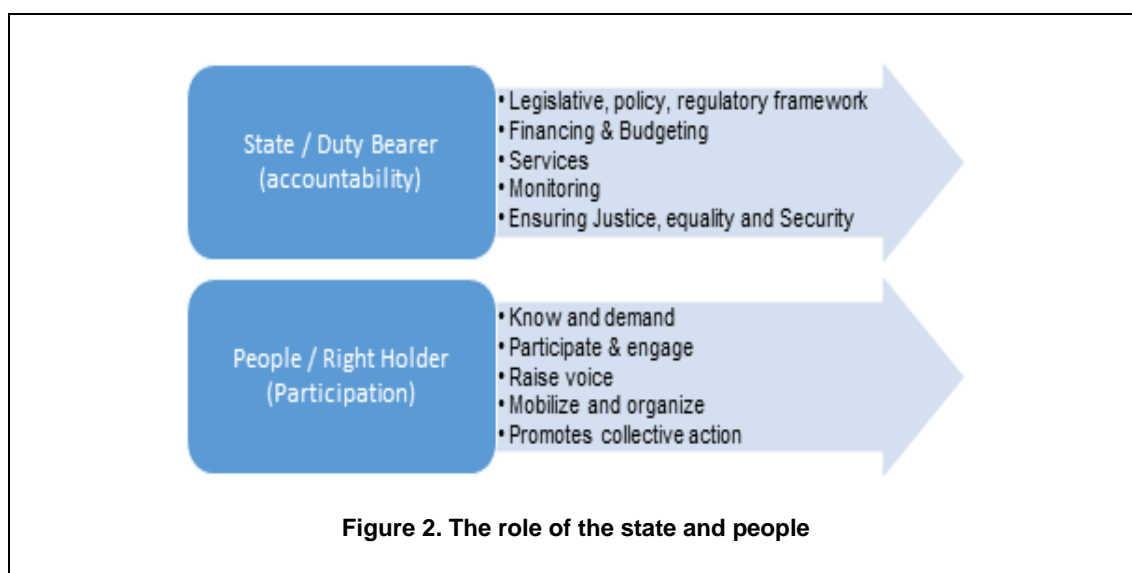


Figure 2. The role of the state and people

The right to sanitation provides not only a legal framework for holding States accountable for delivering these services, but also a set of principles that assist States in prioritising where resources should be dedicated, using the principles of participation and non-discrimination to ensure access for all. It entitles everyone to sufficient quantities of safe water and sanitation services that are affordable, accessible, culturally acceptable, delivered in a participatory, accountable and non-discriminatory manner. It mandates that governments are obliged to ensure that everybody gains access to these services within a timeframe, through adopting appropriate legislation, policies, programmes and ensuring that these are adequately resourced and monitored.

The role of the state and people is summarised in Figure 2. The next section explores emerging experience from the application of this understanding about rights and the relationship between people and the state as duty bearer.

Strengthening the accountability of duty bearers for WASH rights

Our experience in India shows that efforts on making the duty bearers accountable does make a substantial difference in peoples' access to WASH rights. When we talk about accountability of duty bearers, we look at it on three different levels:

- Accountability of the state as the duty bearer
- Accountability of the local governance institutions as a duty bearer
- Accountability of members within the household who are responsible for the rights of others

Despite the 73rd constitutional amendment in 1992 for empowering the *panchayats* (local government institution) for taking up social and economic development at local level, the State level institutions have kept the funds and functionaries with themselves while delegating some functions to the panchayats. In Madhya Pradesh rural drinking water has been juggled between the Public Health Engineering Department (PHED) and panchayats on a few occasions on the premise that panchayats are not capable of handling 'technical aspects' of rural drinking water supply. This has left the panchayats with a limited role of operation and maintenance of the water supply system through a loosely defined tax collection system. Similarly in sanitation, panchayats are presently playing the role of a sub-contractor to the government for constructing toilets, drains and solid waste management infrastructure. There is practically no role for the elected representatives in the three tier Panchayati Raj system – despite the guidelines specifically mentioning roles of these representatives in decision making. The lack of accountability of the state by not empowering the panchayats becomes a major barrier to access the right to WASH by communities.

Even at village level, various government programmes have helped in forming grassroots committees with the hope that these will ensure community participation and collective decision making. Important committees like health committee, school management committee, village water and sanitation committee, nutrition and food committee etc. should ideally play a crucial role in inclusive planning, implementation and monitoring of developmental schemes. However efforts to strengthen these committees are abysmal and have not actually led to any change in the decision making process. Whatever little decision making power is available at grassroots largely rests with the few power centres such as the *Sarpanch* (Head of Panchayat), the Secretary of the Gram Panchayat, and Member of Legislative Assembly (MLA). Often the other members of the elected council are not engaged in decision making by the panchayats and the committees formed to ensure WASH rights to the citizens.

At the household level as well, there are numerous examples and ways in which rights are denied. Very often children and women's rights to WASH are overlooked by families which are controlled by adult men. This has resulted in a lot of drudgery for women and children, especially around WASH, within the families. They very rarely have any opportunity to share their concerns and what they want in terms of WASH rights. Similarly, older and disabled persons are also marginalised and excluded within the family set up.

In order to ensure sustainable WASH access to the communities it is important to make the duty bearers accountable. Often rights and entitlements are deprived to the most marginalised because of the lack of accountability of duty bearers. In the context of our work in Madhya Pradesh, the duty bearers are mainly the elected bodies/persons like panchayat, representatives of panchayats, and various committees at village and panchayat level, the Members of Parliament/MLAs, the government departments/ institutions and those with responsibilities for rights of others within the families. In order to make them accountable we have focused one component of our rights based work on the following:

Making governments accountable

We have focused on ensuring the existing legal mechanisms are used to hold duty bearers accountable to the communities. Right to Information, government help line, Public hearings etc. have been extensively used and these provided platform for the citizens to debate and demand WASH rights. For example the sanitation guidelines in Madhya Pradesh had some references on how to bring about behavioural change for ensuring sustainable sanitation which were derogatory especially to women, Scheduled Caste, Scheduled Tribes and children. The issue was raised and the government department was challenged to review the guidelines. This challenged the power relations between the government and the civil society on policy formulation.

Legislative advocacy is also being used as a powerful tool to make governments accountable. Recently, under this intervention, questions were raised in the legislative assembly on the missing toilets in Badh panchayat from Karhal block of Sheopur district (Madhya Pradesh) which resulted in the government collating information on identifying such cases from across the state.

Accountability of local government bodies

The constitution has vested a lot of power to the village council – the gram sabha, and we work with them to increase participation and make their meetings more inclusive. After intensive discussions with the most

marginalised, we convinced and ensured that they participated in the gram Sabhas and also raised demands from the Panchayats for different entitlements and rights. In January 2014, in Karhal block of Sheopur district and Pali block of Umaria district, 80 resolutions pertaining to provisioning of hand pumps, construction of toilets, and wage payment under National Rural Employment Guarantee Scheme (NREGS) were raised. These interventions have also ensured that the panchayats become accountable to the communities.

The projects have also supported the grassroots village and panchayat level committees for health, education, and WASH (described above) by providing them with information and handholding support in conducting meetings and taking decisions. This along with district level advocacy in Sheopur district has resulted in the district administration issuing orders to all government schools in the district to discuss sanitation and hygiene on a daily basis and observe one day in each month as 'sanitation day'.

Accountability of families

Families are also looked at as a unit in the intervention - especially from the point of view of addressing the issues of marginalisation of vulnerable family members like children, adolescent girls, women, older and disabled persons. Decision-makers within the household are also identified as holding critical responsibilities for which they need to be made accountable for the marginalised members within the family. One to one discussions with the family members and collective discussions around the issues of marginalisation make people aware of each member's rights.

In Sehore district of Madhya Pradesh, we used child rights and child survival as the trigger for ensuring that the families adopt safe WASH practices. This also had a bearing on the other duty bearers like the gram panchayat, the School Management Committee (SMC) and the gram sabhas as they took decisions for ensuring better WASH facilities for the children.

The children within the families were almost never consulted for their opinion on WASH related decisions. In order to address this, we identified youth who had access to the children and to their families and invested in sensitizing and capacitating them so that they could advocate the issues with the parents.

Hurdles and challenges

The rights based approach work requires significant investment in terms of time and capacity building of a wide range of stakeholders. Often in the timelines for the implementation of 'projects' this investment is not made adequately. This would remain the biggest challenge in the government run programmes which are strictly target driven.

In India, drinking water and sanitation is a subject that is dealt by the state governments. The voluntary sector has stepped in as it realised that there are critical gaps in the way state is going about implementing the WASH 'schemes'. Government would accept to engage with NGOs as partners, which essentially mean NGOs working as sub-contractor to the government. NGOs do not always accept this limited role and the power struggle between government and non-government organisations is leading to greater mistrust between each other and dwindling space for the voluntary sector.

The role of household heads as gate keepers and with responsibilities for the rights of marginalised members of households has also become very clear. Engaging household heads and wider communities to ensure better inclusion of the most marginalized must be a key element of work on the realization of rights to water and sanitation.

In some of the villages where we are intervening, we have also realised that there are chances of another set of power dynamics emerging unless one is extremely careful about this throughout. The facilitators in the NGOs carry the potential to become power centres who start acting on behalf of the community. There is a need to invest a lot to ensure the facilitators understand rights based approaches, else we will create another power centre within the community whom the marginalised have to deal with.

Governance challenges - in terms of very limited space for the community to be involved in public decision making (including WASH related policies), a top down approach towards planning, lack of involvement of panchayats and a practically defunct gram sabha are also significant barriers for the communities' access to WASH services and WASH rights.

Conclusions

Experience suggests that the recognition of water and sanitation as human rights in India by the state and by people can help to strengthen demand for sustainable and universal access to services. It also has the potential to improve accountability mindset and mechanisms.

In practice, ensuring accountability for WASH rights is challenging due to a lack of clarity about roles and responsibilities between duty bearers at state and local levels, the weakness of existing mechanisms for community participation through which people should be able to hold duty bearers to account, and the difficulties in challenging power relations between the people and the state. But the experience of the project shows that it is possible to strengthen accountability through sustained support for marginalized groups to participate and use accountability mechanisms; whilst also working to develop greater accountability with duty bearers.

NGOs engaged in this kind of work are moving from a role as subcontractors for service delivery to a new space as facilitator between government and people. Within the dwindling space for the voluntary sector in India this role needs to be negotiated with care.

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