



India WASH Forum

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This Issue: Rights, RBA and RTWS

We have attempted to bring together perspectives on Rights and Right to Water and Sanitation that are missed in the mainstream discourse specially the NGO and developmental sector.

The article by Radha D Souza on Understanding Rights, offers clarity on Rights in a historical and contemporary perspective. The author highlights the origins of Rights, and its limitations when applied to “communities of interest groups” in the developmental sector.

The paper is very useful for the Right to Water and Sanitation work. It clarifies a core conceptual issue. According to the rights based approach in water and sanitation, people coming in the forefront and demanding their right to water and sanitation is the highest form of practice of RBA. Hence if people are not coming out to struggle demanding their rights then either it is not such an important issue for the people to make them fight for it as a right or the NGOs have not done enough to help affected communities articulate the demand for sanitation as a right. By employing this logic, the rights approach reduces people to the category of “communities as interest groups” and not “people in places”, who can take up single issue based demands as rights demands. Once we believe in this, we can forever blame either the communities for not being ready to struggle for their rights and the NGOs for

not doing enough to support and prepare the communities to struggle for their rights.

People(people in places) come together and question the power of the state when they are demanding justice for a larger cause and not for one or two development demands. Interest groups on the other hand already exist in the form of consumer rights groups, trade unions and teachers and other associations and they assert their demands in the language of rights. NOGs as rights advocates have therefore lead most of the developmental interest based initiatives in India including Right to Information, Right to Education, Right to Food, Domestic Violence Against Women, Forest Dwellers Rights, Unorganised Workers Social Security, etc.

The paper Rights Based Approach and Right to Water and Sanitation, situates the rights based approach in the way the professional Indian NGOs have evolved to show that a false dichotomy about rights based work and non rights based work, and a rights developmental ideology, is being created. This is occurring against the backdrop of a shakeout in the Indian NGOs(for funding and autonomy reasons). RBA as a developmental ideology and a programming framework, is being implemented in this changed context that is often overlooked. Recent experience of NGOs in RBA can provide some lessons on what not to do in blindly adopting a RBA in programming. Priorities for Right to Water and Sanitation as a legal and constitutional enactment revolve around developing the content on the RTWS campaign in terms of identifying the norms that we need to struggle for, and an alliance leadership that is able to bring together a large spectrum of activists and NGOs.

A “Statement of Shared Intent” by four organizations that met in Aug 2009 to work on developing a joint strategy to actualize a constitutional enactment on Right to Water and Sanitation, is included alongwith excerpts from an article by Philippe Thorsten on Drinking Water supply programme(Swajaldhara) and its implications on Right to water.

We are also conscious that Rights are not divisible. We stand in solidarity with democratic struggles of people in Chattisgarh against oppression. Vanvasi Chetna Ashram, a Gandhian NGO in Chattisgarh, was virtually made to stop its developmental work in early 2009 for its rehabilitation work on the adivasis evicted from the homelands. Mr. Himanshu and his team were harassed for exposing the brutal face of repression in the state. He and his team made visits to Delhi, Bangalore and several other cities to share the plight of the adivasis in Chattisgarh and the land grab for mining that is happening in the state.

Proceedings of the Global Sanitation Fund India Launch Workshop and Right to Water and Sanitation Workshop Report can be downloaded from www.wsscc.org .



There are several web portals and websites that give news and updates on WASH. The Solution Exchange website gives a question-answer facility. We had great journals like Down to Earth and Water Governance Project, among others.

There is an information overload and yet an absence of analytical discussion oriented themes based web newsletters on water and sanitation. India WASH Forum aims to fill this gap. It can only do so with your active involvement and contribution.

We invite readers of to send in their comments and any original material for the India WASH Forum Updates. We will give priority to good quality people centered analytical commentaries for inclusion in our Update. Please send in your commentaries in a max of 300 to 500 words if possible. Please share with us any bibliography of important studies and reports on the water-sanitation-hygiene issues for India.

Understanding Rights:

Radha D Souza

Article reproduced from the newsletter Seedlings of Oct 2007, with permission of the author.

Radha D'Souza teaches law at the University of Westminster, UK. She is a social justice activist from India, where she worked in labour movements and democratic rights movements, first as organiser and later as activist lawyer. Radha is a writer, critic and commentator, and has worked with solidarity movements in the Asia-Pacific region.

Before we look at the problems associated with "rights" it is important to understand what the word means, not least because it means different things to different people at different times. "Rights" are commonly understood to mean entitlements to do or not do something, and for others to respect that entitlement. Social justice activists often believe that the corollary of "rights" is obligations and responsibilities, and that social injustices exist not because of problems with the concept of "rights" as such but because the concomitant of "rights" – "obligations" and "responsibilities" – have been erased from our thinking and from debates about "rights". These beliefs are based on misunderstandings of the real nature of "rights". The misunderstandings arise partly because "rights" are a philosophical, political and juridical idea, and the concept and its meanings in philosophy, political theory and law are not the same. Confusions arise because the three overlapping fields are used interchangeably in different contexts.

In part, misunderstandings about "rights" persist within social justice movements because they have forgotten the history of "rights" and the critique of "rights" by revolutionary thinkers of the late nineteenth and early

twentieth centuries, and the political programmes of the successful movements for socialism and national liberation struggles to alter the nature of "rights". As a result, social movements, instead of learning from and developing those revolutionary experiences, have discarded the history of struggles against "rights" and feel frustrated that "rights" do not work, but have nothing to offer beyond "rights". If we wish to move forward, it is important therefore to grasp the concept of "rights", its history and the critique of "rights" by radical movements of working people in the past.

It may be noted that the concept of "rights" is peculiar to Greco-Roman civilisations, but its history need not concern us here except to note that the philosophical concept was an objective concept associated with ethical and moral ideas of what is right or wrong. As all human beings are required to do "right" and abstain from doing "wrong", the philosophical concept was supposed to guide people in "right" actions.

Philosophers of capitalism

The philosophers of capitalism in the eighteenth and nineteenth centuries radically transformed the classical idea of "rights" into a subjective political idea attached to individuals who became "right bearers" vis-à-vis the state and society. The idea of "rights" was transformed into "freedom from state" and social constraints. As such, the corollary of "rights" is "freedom", "choice" and absence of restraint. Today, the philosophical idea of "rights" exists at best as a moral ideal because the political philosophers of capitalism have put rights on a different institutional and juridical foundation. When social justice activists speak of "rights" they have in mind this classical ideal, but often it is forgotten that the institutional and legal basis for objective "rights" do not exist any more.

Capitalism developed the idea of "rights" to new levels by introducing two components that radically altered the nature of "rights". First, philosophers of capitalism introduced the novel idea that property was a natural and inalienable right attached to every person in the same way as life, and the conditions that sustain life: air, water and food. Second, "rights" were articulated as negative juridical concepts, in that "rights" only guarantee the possibility of something, not the actual thing. Thus the right to collective bargaining creates the possibility of a living wage but does not guarantee a living wage; the right to property makes it possible to own a home but does not promise everyone a house to live in.

It is therefore wrong to think that through default, somehow, "rights" have come to be equated with property rights. "Rights" in its modern form and as a political idea owes its very existence to property rights, and is inseparable from it; and the concomitant idea of freedom is about freedom to own and accumulate property without interference from the state. Circumscribing property rights

for social purposes does not take away its primacy in the political and legal order. Capitalism will be impossible if property rights are taken out of the scope of “rights”.

The revolutionary critique

Revolutionary social movements of the early twentieth century advanced three main philosophical criticisms against “rights”, which are still valid. First, the “empty shell” argument: liberal rights are negative endowments that promise the possibility of, but do not create the conditions for, their fulfilment. Second, that any talk of “rights” in politics must be backed by an economic system that facilitates it, and capitalist individualism, commodity production and market economy do not create the conditions for freedom from want and other freedoms; to the contrary they create bondage and oppression. Third, the “means to an end” argument: “rights” free labouring people from feudal obligations and old forms of oppression (caste, gender, and so on) and allow limited political space for organised dissent, which is useful not for its own sake but only if people actually organise themselves to create the conditions for real freedoms.

Socialist revolutions of the early twentieth century extended the philosophical critique to the political arena and removed property from the idea of “rights” and tried to infuse the idea of “rights” with positive substance, so that the right to a job meant that everyone should have a job, not just the possibility of finding a job; the right to education meant that schools should be free so that every child could go to one, and not just the possibility of education for those who could afford it, or those supported by charities.

Given this backdrop, is fighting for “rights” the road to follow? To say yes is effectively to go backwards in history or to argue, as some modern-day philosophers of capitalism such as Francis Fukuyama argue, that there is no alternative to liberalism in philosophy, politics and law, the foundations of which stand on the idea of “rights”. For emancipatory social movements, a more useful way of understanding the question of “rights” would be to interrogate critically the return of the “rights” discourse in the contemporary context of neo-liberalism. The socialist and national liberation struggles articulated and attempted to achieve “human emancipation” and “liberation” from oppression, not “rights”. Neo-liberalism claims legitimacy on the grounds that this aspiration can no longer be fulfilled because socialism has been defeated. The real question then is: are we willing to concede the hope of human emancipation to “empty shell” possibilities of “rights” based on the primacy of property, which very few possess? Are we ready to concede that liberation from oppression is not possible because the economic system cannot be changed?

Limits of statute law

Turning to law, legal theorists, following in the footsteps of political theorists of capitalism, developed legal principles and innovated institutional mechanisms that sustain capitalism. The most significant legal development was the idea of statute law, by which we mean different Acts of legislature on different social issues enforced by a court system backed by police powers. This form of law, which most people today think is “natural”, as if that is how law has always been, came into existence only with capitalism, and is far from being “the way law has always been”. Under statute law, each aspect of social life is cast into a distinct legislation or statute which makes it difficult to envisage the social whole. What one statute gives another can take away. For example, a statute may provide for a minimum wage, but if prices go up as a result and cancel out the wage gains, that is not an issue that can be addressed within the scope of the minimum-wage legislation. A statute may grant the “right” to education, but treasury and fiscal management rules may simultaneously require cuts in spending. “Choice” then is limited to whether we allow budget cuts to affect the “right” to education or some other “right”, like health for example.

Socialist movements, while strong on philosophical critique and political action, were weakest in legal development and institutional innovation. If we wish to advance, and not go backwards, we need to rethink how we can recover the gains made by liberation struggles, what the weaknesses of those struggles were, why working people everywhere lost, and how we can regain the ground and consolidate the gains when they are recovered. Those who say there is no alternative to “rights” do so by forgetting the history of struggles against “rights”, and implicitly deny the possibility of emancipation and liberation.

Five themes

Social justice movements need to reflect on five broad themes in relation to “rights”. The first and most important is what may be called the “colonial question”. Neither liberal theory, nor politics, nor law extended “rights” to colonial subjects in the colonial era. Although based on liberal ideas and “rights” talk, the power structures of the post World Wars world privileged the victors, primarily the Allies, whether it be through the United Nations Security Council veto, or the weighted voting rights in the World Bank and the International Monetary Fund, or the dispute resolution mechanisms in organisations like the World Trade Organisation. The UN Charter by institutionalising and privileging the “rights” of the Allies and the victors in the Second World War, has perpetuated neo-colonialism, poverty and wars. Without challenging the constitution of the UN, any “rights” talk at nation-state level today is a non-starter. The “colonial question” in the neo-liberal era is a philosophical and political question, and it is not possible to find a juridical solution to a more fundamental problem

of our times, as many social justice movements try to do when they advocate “rights” as the solution. Besides, the legal systems in “Third World” countries by and large were created by colonial powers and remain neo-colonial institutions. To speak of juridical ideas of “public goods” and “commons” and “community” without evaluating how their social substance has been warped by imperialism past and present is to insist on confusing appearance with reality.

Second, the impulse for “rights” talk today is largely driven by environmental questions, and is primarily about extending private property regimes to aspects of nature and natural resources, something that was impossible before but made possible today by technology. For example, water was attached to land rights until technology made it possible to separate water from land and deliver it across continents, a development that required legal and institutional innovation.

Third, while the political idea of “rights” promotes the idea of equal opportunities for all, the juridical idea rests on the foundational myth that the “corporate person” stands on the same footing as the “natural person”. The size and reach of corporations today are vastly different from what they were in the eighteenth or nineteenth centuries, and make the legal myth of the corporate person an absurdity. The real issue is whether “rights” claimed for the natural person can be extended to corporations. Cracking the juridical myth on which modern society is founded is a task that needs to be taken more seriously and fleshed out programmatically in politics.

Fourth, capitalism has transformed the structure of communities. Communities too are formed on market principles based on common “interests” in the marketplace, and not allegiance to “people in places”. For example, a person joins a trade union because of common interest with others in the labour market, and joins a consumer organisation because of common interest in commodity prices, and joins a “water rights” movement because of interest in water, and so on. Interest-based communities alter the character of “rights” in fundamental ways. As each interest is governed by a different statute law enforced by a different set of institutions, it is no longer possible to find institutional and legal recognition of “people-in-places”, whose well-being requires the convergence of several interests.

It is sometimes argued that, notwithstanding all of the above, it is possible to create parallel enclaves where indigenous communities and knowledge flourish. This may be possible in the short term, but not in the long term, because imperialism is capitalism plus militarism, and both are by their very nature expansionist. Customs and traditions grow from economic and production relations. Colonialism arrogated to itself power over economic relationships and allowed “freedom” for cultural practices

whether in the economy or society, as if tradition could exist without economic foundations. By doing that, imperialism appropriated the productivity and social stability following from the space provided for customary knowledge and practices. To insist on “customary rights” without considering the imperialist context and colonial history within which it survives is only to insist on being blind.

Fifth, there are three interrelated battlegrounds on which movements desirous of human emancipation must fight: the philosophical, the political and the economic. Each of these involves very different types of struggle, and yet emancipation is impossible without fighting on all three fronts. Of the three, economic struggles were prominent in the Cold War era; the end of the Cold War has seen the return of political struggles, and on both fronts emancipatory movements have gained considerable experiences and successes everywhere. On the philosophical front, emancipatory movements have more or less abandoned the field; and the conundrum of “rights” exemplifies this failure. Dismissed by social justice movements as “too academic” or irrelevant or simply talkshops, and sometimes, sadly, with contempt for people’s intellectual capabilities – evidenced by arguments like “ordinary people will not understand philosophical issues” – abandoning this field of struggle is an important reason why emancipatory movements have become stuck in conceptual grooves. This is a problem in its own right for those who wish to get to the bottom of the “rights” conundrum.

Rights Based Approach and Right to Water and Sanitation: Learning from the past, looking to the future

Depinder Kapur

Rights discourse in development programming has emerged in the last decade in many professional international and national NGOs in India and elsewhere. Many activists engaged with movements in India, have also been analyzing government policies and engaging in formulation of constitutional Acts.

This paper deals with some problems in the current discourse and practice of rights based approach in general and in the recent initiatives on right to water and sanitation (RTWS). The “NGOisation of Rights” in development projects is identified as a problem. A false dichotomy about rights based and non rights based work could be at the root of the problem and needs to be unraveled by studying the evolution of NGO work in India, within which rights based approach has achieved the

status of a development ideology. This has important lessons for both the rights based programming approach in NGOs and the larger right to water and sanitation initiative.

This paper relies on the learnings from recent initiative taken towards building a national coalition for securing right to water and sanitation as a constitutional enactment and the invaluable insights by Rajesh Ramakrishnan and Viren Lobo in understanding the theory and practice of rights and rights based approach, based on our shared experience of working with NGOs in the past twenty years. The work by Radh D Souza has been of much help in understanding the complexity of RBA programming in India.

Understanding context in which NGO structures have evolved in India

The early and mid 1980s saw the emergence of formal and registered professional NGOs in India. Till then the terrain was exclusively dominated by faith based (church based and RSS) national and international NGOs, and gandhian groups, that were supported by some state grants. Professional NGOs had access to funding resources that was initially utilized for piloting new technologies, micro investments in asset creation and in creating organizations of local community groups that could manage the newly created resources. For example the first review of AKRSP India strategy in 1988 had identified the end of the “asset creation” phase and the time to move into “asset utilization” phase.

Common property resources were identified as the last resort of the landless and marginal farmers, fisherfolk and forest dwelling tribal communities, and their improved productivity and management as a solution for improving their livelihoods. Emergence of micro credit and micro finance was a logical outcome, from the mid 1990s when the potential of the first phase of professional NGO work was exhausted. Credit for agriculture as well as non farm livelihoods was identified on the models of Bangladesh experience.

The 1998 nuclear tests and refusal of India to seek development aid from many developed countries (except the top five), signaled the closure of a liberal funding stream for many NGOs as well as independent researchers. Some of the largest funded NGOs now undertake multiple number of projects and many other smaller NGOs struggle to cope with very small grants and end up becoming service delivery arms of the government programmes or micro credit institutions. Middle level and senior positions in most NGOs were reduced or redefined to make them more managerial in their tasks, with a focus on developing good ToRs for tasks that could be given out to consultants to deliver. Knowledge and learning priorities including higher level intellectual work (research,

documentation, evaluations and new proposal writing) were given to consultants and not NGO staff.

Bigger “mother NGOs” channeling funds to other smaller NGOs and therefore exerting influence on the agenda of smaller NGOs emerged.

Sadly this situation continues today and explains to a great degree why many professional NGOs in India today are unable to analyse their own work and the need for new frameworks for their programming.

False dichotomy between rights based work and non rights based work

The structural limitations of high landlessness and low employment opportunities was the basis for the social and political movements in the 1950-70s period, did not disappear. In the 1980s professional NGOs created space for small experimentation and innovations by making small improvements within the given limitations, for development of livelihoods and social development. Some of the NGOs and activists combined this grant based development work with empowerment objectives. Without ever needing to classify their work as rights based work

To cite a few examples, the Womens Development Programme in Ajmer in early 1990s where rural women came together in a programme to reclaim their identities as women and subsequently as workers of the state supported programme. The bringing out of excellent field manual “Taking Sides” for para health workers on understanding why the poor people do not change their behavior practices still remains one of the best manuals. The first citizens report on environment by CSE in 1981 was another example of high quality work without the need to label it as rights based or non rights based.

Other development projects by bringing in capital investments (as small development grants), in areas that did not receive capital investment or state funding in the 1980s, were able to demonstrate that productivity, resource conservation, afforestation and water conservation – could be brought about with the inputs of capital investment and professional management. They combined elements of empowerment, building pressure groups to secure legitimacy and funding from the government, again without the need to follow any developmental framework.

By the mid 1990s it became apparent that NGOs access to financial resources (grants) was limited. Foreign funding was not significant to address the gaps and national funding through government institutions to NGOs was mired with leakages. Focus of professional development NGOs expanded to supporting “peoples institution building”, working on cross cutting themes like Gender, Environment, Urban, Youth, working with marginal social groups (dalit communities, urban poor and pavement



dwellers, minorities, etc.). Working on influencing policies and changing the legal and constitutional framework for provisioning of legal entitlements to the most marginal groups, became the focus of many development professionals and others associated with movements.

The 9% a year GDP growth rate in the most part of the last decade and the media hype on a large affluent middle class in India - created further momentum for calls of reducing overseas development aid to India. The trickle of development aid became more strained. Notwithstanding the fact that there was no appreciable decline in poverty and malnutrition rates, farmer suicides for the first time at a massive scale happened in the last 15 years, and the estimate of 77% Indians living at less than Rs.20/day (Arjun Sengupta Report 2007).

Several smaller NGOs in India today face a severe funding crunch. Getting attached to government service delivery programmes that reduce the role of the NGO to a mere incentive based pro rata deliverer of services, is now a reality for a large number of NGOs in India. Many NGOs have to rely on commercial operations including micro credit programming to survive.

Rights based discourse in development work nowadays, creates a fetish of its origin in the development sector. It fails to highlight the conditions and the context in which it has arisen. The role of development aid as small capital for investment that was very much a part of humanist giving in the west and which gave birth to professional development NGOs is not appreciated and instead was shown as a detrimental to empowerment objective.

A false dichotomy is being created in rights based and non rights based approach in development programming. This false dichotomy is a result of the structural shakeout in the funding and structural operations of NGOs in India. Each NGO can only do a certain kind of programming, based on its own context, history and resources. Rights based approach is emerging as a developmental sector ideology that ignores this context.

Rights based work in theory and practice

The earliest work in policy research and budget analysis in Gujarat (Mr. Madhusudan Mistry), was a forerunner to the emergence of specialist professional NGOs working exclusively on advocacy work in India.

India has had a tradition of activists and individuals and movements like Narmada Bachao Andolan, Womens movement, environmentalists and recently campaigns against SEZs and corporate land grabbing. Some international funding organizations have supported activists with "fellowship grants". International funding organizations have a dilemma of supporting activist work on the one hand and having to show beneficiaries and

"outputs and impacts" to short term funded projects for the donors as well.

Funding support to local NGOs on rights based programming therefore remains confined within a range of small grants for activists as fellowships on the one hand, and the emergence of local NGOs that said they adopted a rights based programming approach infact becoming large operational NGOs with some of the biggest budgets and staff (like any other NGOs).

Another feature of the early rights based programming in NGOs was that in order to deliver a rights programme, the NGOs were forced to look into their own internal structures, their management and decision making processes and work culture. Programming on rights based approach was not seen as a new programming framework but also demanded accountable leadership and an enabling internal working culture conducive for securing justice and respect for all.

The early RBA discourse (by the professional trainers of RBA) in development work in late 1990s, was almost evangelist in its zeal of trying to make international and national NGOs change their operations away from exclusive thematic programming (livelihoods, education, environment, gender, etc.) and support grassroots groups and policy research.

Now the RBA discourse in development work is saying that you can do anything under a rights based approach including emergency relief, development projects, research and struggle based work (earlier it was said that certain types of development work had very low potential of a rights based approach and one needs to gradually move away from needs based to rights based approach, doing everything was not considered feasible as it risked contradictions).

Restructuring the internal management systems of NGOs to reflect a more transparent and accountable culture, that promotes rights based work, is also not given as much emphasis nowadays.

In the 1970s-80s, much before the RBA emerging as a development ideology, democratic and non hierarchal functioning in NGOs, was at the core of professional development NGOs work. Now with more contracted income project funding, more structured hierarchical staff operations and systems, have replaced the earlier culture. Rights based programming is now becoming just another programming approach in NGOs.

Manuals are being written for the governments, to make them understand that rights, and more recently even Right to Water and Sanitation (RTWS) is not about confronting the governments and asking for free services. One such Manual on RTWS (published by COHRE, UN Habitat et al; 2008), tries to define myths and clear confusions but sadly

ends up creating more. Instead of preparing the governments(sensitizing government functionaries of the human rights commitments and respecting popular struggles that are likely to go beyond simply water and sanitation), this manual tries to assure the government(s) that the right to water and sanitation do not impose obligations on the governments to deliver free water and sanitation services for all.

In India, some advocates of rights based work cite as victories the Forest Dwellers Rights Act, the Right to Information Act, the Prevention of Domestic Violence Act, the Right to Education Act, the Unorganised Workers Social Security Act among others. The reality is that most of these Acts exist only on paper and serve no useful purpose.

In a meeting held recently in Delhi on struggles of Adivasis, the activists and NGO representative bemoaned that we have the Forest Dwellers Rights Act that has all good sounding laudable aims but we also have a ruthless repression of tribal people in almost all areas where they reside. In Chattisgarh, West Bengal and Orissa today – where their very existence is being threatened by a state backed armed incursion in the name of fighting naxalism, that serves corporate land grab for mining. It has become impossible for citizens independent fact finding missions to visit and assess what is happening in Chattisgarh and Orissa. What Rights approach can be employed in such conditions in water and sanitation in these states?

We also have a Mineral Policy that completely negates rights of forest dwellers and the Forest Rights Act. What one Act gives is taken away by the other.

Why then do we have laudable Acts being passed in India on the one hand and their blatant violation or denial in implementation as well as other contrary laws and policies formulated to negate them? It seems that we are heading for a future where the government will pass some Acts that are purely decorative in value while other Acts, administrative and policy instruments will deny people of their basic human rights. Will Right to Water and Sanitation also risk such a fate?

Risks of a mechanical implementation of rights in water and sanitation as a programming approach

According to the rights based approach in water and sanitation, people coming in the forefront and demanding their right to water and sanitation is the highest form of practice of RBA. Hence if people are not coming out to struggle demanding their rights then either it is not such an important issue for the people to make them fight for it as a right or the NGOs have not done enough to help affected communities articulate the demand for sanitation as a right. By employing this logic, the rights approach reduces people to the category of “communities as interest groups” and not “people in places”, who can take up single issue

based demands as rights demands. Once we believe in this, we can forever blame either the communities for not being ready to struggle for their rights and the NGOs for not doing enough to support and prepare the communities to struggle for their rights.

History teaches us that people(people in places) come together and question the power of the state when they are demanding justice for a larger cause and not for one or two development demands. Interest groups on the other hand already exist in the form of consumer rights groups, trade unions and teachers and other associations and they assert their demands in the language of rights.

RTWS initiative today has lessons from the education, health, food, domestic violence, unorganized works social security and right to information. As well as various peoples movements that have come up in the last decade without international or national NGO sponsorship - Narmada Bachao Andolan, struggles against SEZs, land grab in adivasi areas of Chattisgarh(Dantewada) and Orissa(Narayanpatna) grassroots and several other social and political movements. Larger movements, even when focusing on a particular problem, are not single issue based struggles for one development entitlement but are organized along a larger agenda for justice.

It will be counterproductive if NGOs that were engaged in struggles on a combination of local peoples issues(police atrocities, corruption in public distribution system and other welfare schemes, food, livelihoods, land, etc.) are made to undertake exclusive RTWS based programming work.

How many professional NGOs will allow for or encourage an engagement of their staff in understanding and internalizing the values that these struggles practice, as a basis for rights based approach in development work including RTWS?

Limitations of constitutional legal enactments.

Economic and social Rights in the constitutions of capitalist countries are at best “empty shell rights”. Meaning that very often these are not backed by the ability of the governments to deliver them. For example the right to work cannot be met by the government in a capitalist economy as it does not create jobs(at best it can give trainings or unemployment allowance, and as in the case of India the NREGA).

Secondly, what one Right gives, can be taken away by other measures. For example a Minimum Wage Act can guarantee(not secure) the provision of minimum wages in formal paid employment, but if there is price rise, this Minimum Wages Act is rendered useless.

This is not to say that it is not worth fighting for constitutional enactments of rights. But to highlight the enabling environment that NGOs have to provide to both their staff and their partner NGOs in engaging with the

struggles. Not getting confused with rights based and non rights based programming approaches and finally for the senior managements of NGOs accepting failures that may be viewed as project failures by donors.

Developing the content of the RTWS. An NGO that works in a remote tribal area and helps bringing water and sanitation to the remote tribal communities by securing the interest of the communities and funding from government programmes, what does it need to do in order to orient its work as a rights based approach? If it is delivering water and sanitation on a significant scale with government funds, it cannot jeopardise it by any actions that may cut off the funding stream. The NGO may say that we are first trying to demonstrate the viability of a certain level of service provision that the government should then provide. Content for a rights based programming approach for a particular NGO is therefore rooted in each NGOs contextual and historical setting and resources and cannot be implanted from above.

In several other developmental rights based initiatives(education, health, livelihoods, unorganized workers social security), the dichotomy of rights based talk and rights based practice is evident. Every NGO wants to do something to secure policy, legal and constitutional change but when it comes to developing the content of what change is desired, there are often disagreements and the issue of leadership comes to the fore.

It was observed in some instances where the larger well funded national and international NGOs did get into working on policies and acts to support certain constitutional rights – some of the smaller NGOs and activists discovered the way the government engaged with one group of the NGOs or another group and then the final product that came out(Policy or Bill or Act), was not acceptable. Yet the larger NGOs saw this is a significant achievement or a “foot in the door” progress.

Developing the content of RTWS therefore is linked with leadership issue. Taking everyone along requires not only financial resources but also developing effective plans and processes and a genuine effort to facilitate this.

Leadership of RTWS movement at different levels. Ideally the leadership should wrest with some grassroots NGOs(not perhaps the largest water and sanitation NGO) or a coalition of organizations and individual activists that are best suited for taking an independent leadership position. This is how some international and national NGOs have worked. Most bigger NGOs are now implementing large government projects. Their ability to stand up to district administration(leave alone to challenge the state government and the larger entity of a state), is limited.

The bigger national and international NGOs would therefore need to give up their role as the direction setters

of the RTWS initiative and invest their resources in identifying and supporting genuine grassroots NGOs, groups, activists and individuals – to create a coalition that assumes leadership of RTWS and develops the content of what needs to be done.

The support/funding NGOs role even as rights advocates, should not be a leading role.

Rights based programming content for an NGO. While objectively, rights based approach in programming may seem reasonable and desirable, if implemented without a concrete understanding of the water and sanitation situation in its thematic, technical and socio-economic context, RBA as a general programming approach may actually dis-empower the staff of the donor as well as implementation NGOs in making any strategic change. A criticism that was rightly made of the participatory appraisal techniques(RRA) in the late 1980s(that relied more on simplified tools of assessment and not on higher level of analysis and empowerment).

There is a further risk that what can be achieved in the current programming framework, in terms of rights based work, may be given up for some abstract and generic aims and ideals about a rights approach. Any organization going the RBA route will need to ask itself if it has exhausted the potential of its current programming work and what is new that it wants to achieve in its programming. What change it has to make in its organizations structures and systems of decision making to facilitate this change. If these questions cannot be answered, then a rights approach may not be required or is already in place.

Conclusion

False dichotomies are being propagated about rights based work and non rights based work. The overall context, including the historical context and organisational context, determines what organisations can do. In earlier work, there was much learning by doing by small organisations with a definite, even if modest vision of empowerment.

The origin of these false dichotomies is the training programmes on RBA. These programmes are creating the dominant ideology for development work. The empirical reality on the basis of which this ideology is being shaped is a shakeout in the development sector in India, with small organisations struggling for funds and depending on large ones. The large NGOs have become the vehicles for rights-talk (RBA), which they use as a programming tool that small NGOs have to conform to regardless of the latter's own history and context.

The core of RBA theory is that it defines human rights standards and through RBA creates a conducive



environment for people to struggle for justice as active agents in their own right. Equally importantly, it trains the searchlight inwards on development organisations, on their own accountability, their own internal democratic practices. But RBA in practice is taking the shape of a few large organisations setting the agenda for many small and struggling ones without adequate autonomy for the latter. Some NGO staff in both small and large organisations are able to see this clearly, but their attempts to question the status quo are squelched. Consequently, RBA in practice portends the risk of neither succeeding in making communities active agents in their own right, nor in enhancing the internal democracy and accountability of development support/funding organisations.

The practical way out is to recognise this, for large organisations to consciously adopt a non-leading role and allow RBA to evolve according to local contexts and histories.

It is true that in the coming years, the denial of basic services in terms of access and affordability, for basic water and sanitation for both livelihoods and household needs, is bound to become a major problem. The justification for working towards securing right to water and sanitation as a constitutional right with norms and standards of service delivery that justify access to water and sanitation as a human right, therefore exists. The challenge is defining a road map for working towards this and developing a coalition and genuine leadership to lead this.

New Policy Framework for Rural Drinking Water Supply: Swajaldhara Guidelines 2009

Excerpts from the article that highlight the sector reform principles as going against the right to drinking water

Phillipe Cullet Economic and Political Weekly Dec 12,2009.

<http://epw.in/epw/uploads/articles/14242.pdf>

“The government implemented for several decades drinking water supply policies that reflected an understanding that it was under a duty to realise the human right to water for all rural residents of the country. In this context, ongoing reforms are a study in contrast. Principles for reforms are, to a large extent, in direct opposition to the principles that guided governmental action for the previous several decades.....The new policy principles conceive water as an economic good, contemplate imposing on each individual community an

increasingly important burden of their own water supply, and generally, conceive of a reduced role for the government and a concomitant increase of the role of the private sector in delivering drinking water. The implementation of these new policies will lead to outcomes that are at least in some cases unacceptable from the point of view of established measures of equity and will directly or indirectly lead to violations of the human right to water.

While the demand-led paradigm benefits a segment of the rural population, it affects the poorest by bypassing them, it creates increased inequalities in access to water, and in the long run, the imposition of operation and maintenance costs to each village individually will lead to reduced access to water in villages less well-endowed with water. Such policies need to be reversed because water is far too fundamental for human life. The imposition of operation and maintenance costs on rural communities does not seem to be based on rational justifications.”

Right to Water and Sanitation: Our Shared Statement of Intent

We the undersigned have come together to pitch in our efforts for developing a shared understanding and learning from recent efforts made by other coalitions and alliances towards securing justiciable Rights for Education, Health, Food and Work. This shared statement of our intent is aimed at developing our understanding and commitment towards jointly working for and securing Water and Sanitation – as a justiciable Right through an Act. This statement we believe will serve as our benchmark for guiding action when we build a national alliance/campaign on Right to Water and Sanitation.

We had come together on the 5th Aug 2009 for a workshop on “Right to Water and Sanitation: Moving Towards a Constitutional Guarantee”. The workshop was helpful in developing our perspective, it presented us with the following directions to work;

1. Working towards securing justiciable Right involves three principle actors;
 - a. **Rights Claimants** : the affected people
 - b. **Rights Advocates** : those who may include the affected but also those who play the advocacy role on behalf of the Rights Claimants
 - c. **Duty Bearers**: the bureaucracy or Utilities and Authorities

For each one of us who is partnering in this initiative, we must be clear in which category we see ourselves. This has an important bearing on the roles we should be playing. We as NGOs see our role as Rights Advocates and we need to

make a special effort to bring Rights Claimants to the forefront of the leadership of a Right to Water and Sanitation Alliance.

2. **Role of private sector.** What was once a sole responsibility of the government to provide for its citizens, water and sanitation services are being provided by a large number of private agencies. The Alliance for Right to Water and Sanitation will have to take this into account.
3. **We believe the campaign/alliance will need to define its theoretical/political anchor and scope of engagement with Right to Water and Sanitation.** Would the RTWS campaign/alliance position itself within the realm of the immediate practical priorities or will it also be willing to question the larger power relations and structural barriers? This will determine who will be our allies and partners in the alliance. Some critical areas to develop clarity are on;
 - a. Build a larger social-political constituency for itself beyond the NGO discourse?
 - b. Basic Rights to Water and Sanitation vs. "Third generation rights" as was the case in Health.
 - c. Structural issues that exacerbate poverty and exclusion including neo liberal market policies. Will we look at these in developing our Rights Claims?
4. **We will track how water is positioned by international bodies, national and international NGOs and other influential institutions.** To understand and counter them if these go against the principles of Right to Water and Sanitation.
5. We are conscious that the alliance/campaign may succeed in getting a Right into a **justiciable Act/Law but if this is not backed by adequate resources in the Act** (funding commitments for new entitlements, putting in place clear institutional systems, staff and mechanisms for its enforcement) for the Act to become operational at the level of state governments and centre government – the justiciable Act/Law remains on paper.
6. We realise that working towards establishing claims of right to water and sanitation as justiciable Act will be difficult, **given the particular character of water use and for sanitation.** We have to be careful for the following;
 - a. Water and Sanitation are subjects in the "State List". Many critical issues are left to the Water Policy of the states. The RTWS alliance/campaign may have to work towards including all relevant issues that are not considered justiciable right now. This challenge of expanding the Rights mandate in the water Policy is very big. Also, if the Law is enacted then the campaign may need to work in States to endure that states adopt the Act.
 - b. Address loopholes in the existing Acts.
 - c. Ensure Customary Community Rights on water are not taken away by a legislation/Act.
 - d. Creation of quasi judicial bodies as state regulatory authorities is changing the political and administrative terrain. These impact on the Rights based alliance/campaign strategy.
 - e. Practical efforts that provide solutions in short term, are important while we build a coalition/alliance for the longer term Right to Water and Sanitation.
 - f. Providing Costing scenarios/implications of Right to Water and Sanitation, with which we can go to the government and policy makers.
 - g. Developing Norms where none exist: specially for urban sanitation, revising existing norms
 - h. Understanding the counters and what we mean by right to sanitation, from a community perspective.
 - i. Addressing contradictions with other approaches that currently dominate the Drinking water and sanitation discourse. Eg. CLTS approach is focussed on behaviour change and not on resources and government as Duty Bearer, demand Driven Approach that puts all responsibility on citizens, etc.
7. We believe there are **certain clear enabling contexts for Right to Water and Sanitation;**
 - a. Almost every Policy document of India on water or rural and urban development, refers to drinking water priority use above all other uses of water and for providing safe living conditions and livelihoods. However, these are non-binding statements that are not enforceable and are non-justiciable.
 - b. Right to Life as A Fundamental Right in the Indian Constitution
 - c. Several court judgements have expressed concern for violations of right to water and of poor people's access to water and sanitation under Article 21.

- d. Water User Associations, Village Water and Sanitation Committees and other Rights Claimants organisations exist.
- e. Norms for drinking water are developed
- f. Several grassroots movements have worked on right to water for a long time including securing entitlements for the land less(over water), can be potential alliance partners.
- g. Other grassroot movements working on other rights such as gender, health, education can also be potential alliance partners.

8. We believe that campaign/alliance building will include the following challenges;

- a. **Developing a common understanding amongst us as the signatories of this statement, on defining what we want to achieve as a coalition/alliance/campaign.**
Developing alliance decision making processes that are transparent and effective in decision making. This statement of Intent is the first step in this direction.
- b. Expanding the alliance with more **Right Holders in leadership position** of the campaign alongwith Rights Advocates. Lessons from Education, NREGA, others.
- c. **Securing Resources.** Developing an alliance structure including some dedicated staff to support the alliance functioning, securing time of experts and volunteers for providing intellectual inputs in developing coalition campaign demands and analysis of alternative budgetary allocations.
- d. **Developing Synergy with other Alliances,** organised bodies of Trade Unions, Farmer Associations, Slum Dwellers, Academic institutions, Media, political constituencies, etc.
- e. **Set up twp working groups;**
 - i. One working from the drinking water and sanitation perspective of Rights
 - ii. Another working from the larger perspective of “water security” as a basic Right for livelihoods, including drinking water and sanitation.

Press Release - Police threat to jan sunwai in Dantewada

Association for India's Development (AID) 6th Jan, 2010, Hyderabad

Police Intimidation of Adivasi witnesses, Journalists, Students and Social Workers Ahead of Public Hearing (Jan Sunwai) in Dantewada, Chattisgarh One day before the Jan Sunwai (public hearing) planned for 6th and 7th Jan to bring out Adivasis' concerns in Dantewada, Chattisgarh, the police has unleashed a campaign to intimidate and silence key Adivasi witnesses as well as visiting journalists, students and activists.

Even as eminent Gandhian Himanshu Kumar of Vanavasi Chetana Ashram (VCA) broke his fast on the 10th day, the Ashram was surrounded by armed police and Special Police Officers (SPOs). Journalists Satyen Bordoloi and Priyanka Borpujari from Mumbai, Suresh Deepala, law student and AID volunteer from Hyderabad, and Nishtha, a visiting student from Tata Institute of Social Sciences were forcibly prevented from leaving, placing them under virtual house arrest for a few hours. They were assaulted and their cameras taken away. After public pressure forced the administration to let them free, they were then detained again at the police station on false charges of assaulting journalists. They have been released now and are back at VCA.

About 25 to 30 Adivasi villagers who had come to VCA for the Jan Sunwai have been taken away by the police to an unknown location on 5th January. Even as eminent social activists, journalists and concerned citizens, including Medha Patkar and Sandeep Pandey, are reaching Dantewada on 6th January for the Jan Sunwai, the administration has adopted increasingly repressive and violent tactics to prevent or scuttle the Jan Sunwai and cover up the excesses going on for the past two years.

Sodi Sambo, a 28 year old Adivasi woman from village Gompad was shot in her leg on 1st Oct, 2009 by the security forces. She is an important witness in the 1st Oct incident in which 9 Adivasis, including an 8-year old girl, were killed by the security forces. She is one of the petitioners of Writ Petition (Criminal) No. 103 of 2009 in the Supreme Court. She was stopped by the police on 3rd Jan, 2010, as she was on her way to Delhi in very ill health for the treatment of her wounded leg and malaria. She is being held in isolation in the Jagdalpur Hospital where neither journalists nor social workers can meet her. Further, the hospital cannot offer the treatment she needs.

Intimidation and harassment of VCA volunteers has been going on for over a year in spite of the fact that Himanshu Kumar and VCA have consistently opposed Maoist violence. Volunteer Kopa Kunjam was arrested on false



charges on 10th Dec, 2009 along with a lawyer from Human Rights Law Network. Although the lawyer has been released, Kopa continues to be in custody where, according to him, he was tortured by being hung upside down and beaten severely. He has been threatened several times to not work with VCA. At the behest of the police and the administration, the landlord of Himanshu asked him to vacate his house despite having signed an agreement for a year. Nandini Sundar, a Professor of Anthropology in Delhi, was refused a room in all the hotels in Dantewada and her car driver threatened, eventually compelling her to abandon her visit.

We demand that the rights of civilians in the region be restored; the media have free access to the region and report on the goings on, and the civil society be allowed in the region for the Jan Sunwai. We urgently request NHRC, various human rights group and the Home Minister P Chidambaram and Chhattisgarh Chief Minister to ensure the safety of Sodi Sambo, Kopa Kunjam, Himanshu Kumar, the Adivasis of Dantewada, and all the visiting journalists, students, social workers and human rights activists. We demand an end to the abuse of power by the state in Chhattisgarh and by the Operation Green Hunt throughout India and demand that the Centre and State be held accountable for every life that has been lost so far.

Contacts: Kirankumar Vissa, AID-Hyderabad +91-9701705743, kiranvissa@gmail.com Tathagata Sengupta, AID-Kolkata, +91-9903462567, tsengupta@gmail.com Somnath Mukherji, AID-Boston, +001-732-423-6662, mukherji.somnath@gmail.com

News and information update

1. The Department of Drinking Water Supply has put up a format for District Drinking Water Security Plan on their website. ***This is open for comments – Visit the site and give your comments*** - [http://www.ddws.nic.in/popups/District Water Security Plan.doc](http://www.ddws.nic.in/popups/District_Water_Security_Plan.doc)
2. End Water Poverty is a global coalition of over 150 organisations campaigning to end the water and sanitation crisis. ***To draw attention to the global sanitation crisis, a world's longest toilet queue is being planned across the world AROUND World Water Day, preferably between March 20-22, 2010.*** With participation from all across the globe, they hope to enter into the Guinness book of world records for the longest toilet queue. For details visit - <http://www.worldtoiletqueue.org/eng/>
3. ***WSSCC has released its December newsletter.*** Read about Global WASH Coalition

updates and other news and other happenings at http://www.wsscc.org/fileadmin/files/pdf/newsletter/WSSCC_Newsletter_December_2009.pdf

4. ***Contamination of soil and water inside and outside the Union Carbide India Limited, Bhopal*** - Read the study and findings carried out by Centre for Science and Environment (CSE) - http://www.downtoearth.org.in/webexclusives/pdf/Bhopal_lab_report.pdf
5. A ***UN 'Human Rights Based Approaches' Portal*** – The HRBA Practitioner's Portal for guides, resources and learning materials has just been launched. Visit the portal at - <http://www.hrbaportal.org/>

Media Alerts

- ***Soot and dust damaging Himalayas: NASA*** - <http://www.deccanherald.com/content/41573/soot-dust-damaging-himalayas-nasa.html>
- ***Now Cities to be rated on sanitation*** - <http://timesofindia.indiatimes.com/india/Now-cities-to-be-rated-on-sanitation/articleshow/5346114.cms>.
- ***JNNURM needs private help as state funding dries up*** - <http://economictimes.indiatimes.com/news/economy/infrastructure/JNNURM-needs-private-help-as-state-funding-dries-up/articleshow/5349852.cms>
- ***River-linking project may affect Panna tiger reserve*** - <http://economictimes.indiatimes.com/env/ironment/flora-fauna/River-linking-project-may-affect-Panna-tiger-reserve/articleshow/5333505.cms>
- ***Green energy fund planned*** - <http://www.hindu.com/2009/12/19/stories/2009121952710300.htm>

Upcoming Events

- ***Hygiene Practitioners Workshop; WSSCC; at BRAC Training Center 1-4th Feb 2010***
- ***Understanding EIA: From screening to decision making - Feb. 22 - 26, 2010*** - CSE's five-day hands-on training programme on various aspects of environmental impact assessment (EIA) which will help participants understand



- the process better. For details visit - <http://www.cseindia.org/aagc/eia.asp>
- Call for Papers, Conference on "**The Right to Water**" **Maxwell School of Public Policy and Citizenship Syracuse University**, Syracuse, NY, USA March 29-30, 2010. <http://www1.maxwell.syr.edu/waterconference.aspx>
 - **Aquatech India 2010** - The first edition of Aquatech India will be taking place 3-5 February 2010 in New Delhi and will focus on drinking water, process water and wastewater. A conference on innovative technologies in water sustainability will be running alongside the event, as well as a Utility Leadership Forum. www.india.aquatechtrade.com
 - **IRC Training Course: Preventing Corruption in Water** - Apply for the next 'Prevention Corruption'-Training course offered by IRC – International Water and Sanitation Centre in The Hague, Netherlands from 6-8 September 2010. <http://www.waterintegritynetwork.net/page/3187>

About India WASH Forum

Trustees of India WASH Forum

Ms. Nafisa Barot: nafisa.utthan@gmail.com

Mr. Ramisetty Murali: mariwgl@gmail.com

Mr. Subhash Chand Jain: scjain@afpro.org

Mr. Ashok Jaitly (Chair): ajaitly@teri.res.in

Mr. Bunker Roy: bunker@ndb.vsnl.net.in

Dr. Pawan Kumar Jha: sulabhpkjha@vsnl.net

Mr. Darryl D'Monte: darryldmonte@gmail.com

Ms. J. Geetha: gramalaya@hotmail.com

Mr. Ashoke K Chatterjee: ashchat@prabhatedu.org

Mr. Ravi Narayanan (Vice Chair):
ravinarayanan1@gmail.com

Mr. SS Meenakshisundaram:
meenakshi54@hotmail.com

Dr. Joe Madiath: joe@gramvikas.org

Mr. Depinder S Kapur (National Coordinator):
kapur.depinder@gmail.com

India WASH Forum is a registered India WASH Forum is a Registered Indian Trust. It is affiliated to the WSSCC Geneva and is a membership based coalition of Indian organizations and individuals working on water, sanitation and hygiene.

A unique feature of IWF is its non-hierarchical set up. The organisation is a coalition and its Trustees are on the IWF as individuals and not representing the organisations they are associated with. The agenda and activities that India WASH Forum are determined at the initiative of the Trustees and Members and support from organisations and individuals. We receive a very small operations grant from WSSCC.

Our Charter includes the following commitments;

- **Promoting knowledge generation** through research and documentation which is linked to and supported grassroots action in the water-sanitation-hygiene sectors. Special emphasis is given to **sector-specific and cross-cutting thematic learnings**.
- **Supporting field-based NGOs and networks in their technical and programmatic work**. The IWF would also consistently highlight gender and pro-poor considerations, and provide a national platform for interest groups working in the sector to come together.
- **Undertaking policy advocacy and influence work** through
 - Monitoring and evaluations
 - Media advocacy and campaigns, and
 - Fact finding missions
- **Undertaking lobbying and networking to promote common objectives** in the sector.

Registered office of India WASH Forum: K-U, 6 Pitampura, Delhi-110034

kapur.depinder@gmail.com;

romitsen@wateraid.org