

Children's Right to Water as a Contested Domain: Gendered reflections from India

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ABSTRACT Nandita Singh and her colleagues look at children's right to water in India. They argue for the exercise of the right by children by analyzing the universal normative-legal framework and its difference to the local socio-culturally defined framework. They suggest that defining problems and designing actions only within the normative-legal framework can obscure understanding the critical realities at the right-holders' end. They suggest that interventions at various levels, such as through policy and targeted programmes, have at best provided an 'enabling environment', but the process of implementation of children's rights at the right-holders' end is to date an incomplete socio-cultural process.

KEYWORDS children; human rights instruments; water; community

Children's right to water: A universal normative-legal framework

Children have long been identified within the normative-legal framework of human rights as deserving special consideration on a number of grounds – a critical time for survival and development, a phase of relative marginalization and nature of childhood being a time of evolving capabilities. Although the human rights principles established through the International Bill of Human Rights apply as much to children as they do to adults, children are mentioned explicitly in many of the human rights instruments where special needs concerning their development have been specifically recognized. Water is a basic need, the availability of which in adequate quantity and appropriate quality is indispensable for life, physical survival and holistic development of children. Considering the centrality of the resource in their life, water has been recognized as a human right for this group and seen as a prerequisite to the realization of a number of their other rights.¹

A normative framework has been constructed internationally to promote the attainment of this universal legal standard. Consequently, children's right to water has been enshrined as a 'provision right'. They have been recognized as a special group that has traditionally faced difficulties in exercising this right and therefore the need to ensure that they are not prevented from enjoying their human rights due to the lack of adequate water in households or through the burden of collecting water. The human right to water entitles every child, girl or boy, to sufficient, safe, acceptable, physically accessible

and affordable water for personal and domestic use. It is acknowledged that while the adequacy of water may vary according to different conditions, the factors of 'availability', 'quality' and 'accessibility' are universally applicable (CESCR, 2002).²

The question of right to water is seen as holding special significance for girls, primarily because in the developing world they start shouldering the responsibility of domestic water management at an early age – a role they often face difficulties with due to problems of quantity and quality of water and availability of resources, leading to problems in realizing of their other rights. Consequently, the right to water of girl children has been provided additional protection under human rights instruments concerning women.³

Within the normative construct on children's right to water envisaged under the various human rights instruments, the responsibility for implementing the right has been entrusted to the nation states that have a constant and continuing duty to move as expeditiously and effectively as possible towards the full realization of the right. They are obliged to respect, protect and fulfil the right 'to the maximum of the available resources'. Fulfilling of the right is to be achieved through facilitation, promotion and provision. Since right to water is categorized under economic, social and cultural rights, it is to be implemented through appropriate actions within political and legal systems of nation states, preferably by way of legislative implementation, adoption of national water strategy and plan of action to realize the right, and facilitating improved and sustainable access to water through adoption of comprehensive and integrated strategies and target-based programmes. It is a 'core obligation' of the nation states to ensure the right of access to water and water facilities and services on a non-discriminatory basis, especially for disadvantaged and marginalized groups. Besides, access to effective judicial or other appropriate remedies is to be provided to persons or groups who have been denied their right (CESCR, 2002). Many nation states have initiated actions within the scope of the normative-legal construct on children's right

to water, some of these being in place since decades, for example, through targeted water supply programmes.

The relevance of context in implementing children's right to water

It is arguable that implementation of any normative-legal framework, such as children's right to water, needs to be seen as a process where both actors and the context are important. In this case, the actors are at two levels: on the one hand are the international- and national-level agencies responsible for formulation and implementation of the norms and their monitoring, while on the other hand are children as right-holders at the local level. The context can be seen as situated at the cutting edge between the state and the local communities where the rights of the right-holders are to be actually realized. This cutting edge exhibits dynamism as well as pluralism, being variable from one community to the other, or even within communities.

One of the significant grounds of contextual variability is the existing socio-cultural milieu in the community where the right is being implemented. Anthropological discourse on human rights has focused on the connections between 'rights' and 'culture'. At one extreme is the formulation that 'opposes' culture and human rights while at the other extreme is the view that the pursuit of human rights be approached as itself a 'cultural process' that impinges on human subjects and subjectivities in multiple and contradictory ways. More specifically, the latter seeks to explore the extent to which the concept of 'culture' could be useful as an 'analytical' tool to identify and think more productively about the specificities of, and differences and relations between (a) local or group-specific, (b) nation-state and (c) supra-national concepts, institutions and processes concerning rights (Cowan *et al.*, 2001). This is undoubtedly extremely important because concerns in the local context continue to shape how universal categories of rights are implemented and transformed, leading to tensions between local and global formulations of the rights and their enjoyment.

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From the sociology of law perspective, law is to be seen in a social context, here the concern being with the normative-legal framework on human rights and their implementation in local communities. The question to be explored is how does the 'written law' relate to the 'living law' in the community? According to the Swedish school of thought, there is a need to focus on 'norms' as a central factor in implementation of legal frameworks (Hydén, 2002). The 'norm' defined as 'action directive' or 'action direction' (Wickenberg, 2004) is believed to have three main dimensions: (a) knowledge, (b) will and value and (c) systemic conditions (Hydén, 1998). Referred to as the 'norm triad', this concept can be used as an instrument to analyze, interpret and understand the contextual factors – norm-supporting as well as norm-hindering – that influence the human rights norms in terms of global and local formulations and their exercise in society (Wickenberg, 2004).

Given these arguments based upon the importance of context and environment of human rights implementation, it may be contested that the global normative-legal construct on children's right to water may not be perceived to be the same when implemented at the level of local communities where children as individuals are the intended beneficiaries. How is this invaluable globally conceived right perceived at the local level? Is it perceived and practised as a universal right or is it variable for different individuals? Based upon an interdisciplinary gender-based actor-oriented analysis using empirical evidence from India, these questions are explored at length in the paper. It also offers thoughts on how the learning from the actor-oriented analysis can be integrated into the contemporary state initiatives so as to promote justice for children and their interest in water.

Children's right to water in India: State versus local constructions

As a signatory to the different human rights instruments, there have been consistent efforts on the part of the state in India to ensure universal access to the right. Constitutionally the right is guaranteed as a part of the right to protection of

level provision of adequate safe drinking water facilities is recognized as one of the priority areas for action (MWR, 1987, 2002). Also, national- and state-level policies warrant special attention to the needs of women and girl children in the provision of safe drinking water within the accessible reach of households, especially in rural areas (DWCD, 1997, 2001).

For translating the policy guidelines into action, a number of target-oriented programmes have been implemented for more than five decades.⁴ Special initiatives have been taken for tackling the problem of severe water shortage (in arid zones) and that of groundwater quality (in areas with high fluoride and arsenic). Gender concern in these interventions also exists with an early concern for women and girl children as the focal target group.

India has the largest child population in the world, with a figure of approximately 400 million constituting nearly 40 percent of the total population. Of these, nearly 213 million are girls (DWCD, 2005). Water supply programmes in rural parts of the country show a coverage of 79 percent (HDR, 2003). However, despite the extent of coverage, the health and education indicators of children are quite contrarily placed. For example, infant mortality due to water-borne diseases (primarily diarrhoea and typhoid) continues to exceed 4 percent, while in habitations where treatment plants for mitigating water quality problems (fluoride and arsenic) have been provided, field observations show a good number of children with clinical symptoms of fluorosis and arsenicosis. Similarly, regarding education, figures from the field show a higher dropout rate for girls than for boys at all stages of schooling, that for girls being as high as 70 percent. Out of the several possible reasons, field observations show that children, especially girls, tend to invest a lot of time in fulfilling the water needs of their families. In that case, the pertinent question is: why should their right to health or education continue to be adversely affected even after provision of safe drinking water sources in their vicinity?

Children are almost universally regarded as 'incomplete human beings' rather than 'full social beings' (Mason and Fattore, 2005). Therefore, rather than being seen as independent

decision-making individuals who have self-identities, they are perceived as dependants upon their immediate social milieu in more than one sense. Notable in the milieu are the family and the larger community/social group, in the Indian context, the latter being caste or ethnic group. How exactly does social perception about children as members of their local community influence the universal exercise of right to water by them is illustrated in the remaining part of the section.

Children as family members

As family members, the needs, roles and responsibilities of children regarding water are defined, the latter being classified along gender lines. Their water needs are further defined within a framework relevant for the family as a whole, these largely concerning five basic purposes, namely, drinking and cooking, washing and cleaning, bathing, sacred and therapeutic. While fulfilment of these water needs may be essentially linked to the availability of water sources and adequate supply of water, field observations indicate that these are actually guided by the consideration of certain primary water qualities defined within the framework of local cosmologies. Consideration of water qualities may then be coupled with additional criteria like distance, accessibility and convenience.

In case of water meant for drinking and cooking, four different physical properties generally regarded as critical are colour, smell, taste and freshness. Good quality water for these purposes is generally expected to be colourless, odourless, sweet and fresh, and these qualities, in turn, are seen as closely related to the local concepts of purity, health and hygiene. In a sample of 18 villages, with 55 handpumps installed under the water supply programme in Madhya Pradesh (MP), Bihar and Jharkhand, as many as 24 were largely rejected by mothers for drinking and cooking on one or more of the above grounds. In these villages, children were observed to help procure domestic water for the purpose from traditional sources, largely wells, the 'safety' of the latter being doubtful. Only in three instances was dependence recorded on known safe sources though distant, these being tubewells meant for

irrigation. Problems with the use of water for drinking from the arsenic and fluoride removal plants in West Bengal and MP, respectively, and even from treated surface water supplied through taps in the former were also recorded during field study, the most common reasons being change in taste and smell and unsuitability of the water for cooking.

In all such instances, enjoyment of the right to water by children in families where the mother or father or elders hold on firmly to traditional beliefs and values regarding suitability of water, the right remains ineffectively exercised because even when physical access to the sources supplying safe water is provided by the state under its normative-legal obligations, and knowledge regarding safe water also exists with children as drawn from their school education, consumption of safe water by them is not ensured, leading to several water-borne diseases among children.

Similarly, field observations in different rural and urban pockets indicate that despite the special protection provided by the state for safeguarding the right of water access for girl children, the exercise of their right keeps getting hampered. This happens because due to the water-related role differentiation in the family and the cosmological framework concerning water quality and appropriateness of sources, girl children continue to be involved in drawing water from multiple sources that may be distant and difficult to be approached. Consequently, not only their right to water gets hampered but also their right to education and health among others remains unrealized.

Children as community members

At the larger level, children's social identity is determined by membership of the social group in which they are born. In the Indian context, especially in the rural setting, affiliation to caste, class or ethnic group is critical.⁵ The caste system lays down well-defined rules of social interaction among the different castes that, in turn, define patterns of residence and sharing of resources, including space and water, guided by notions of purity and pollution. Consequently, castes of similar ranking alone are entitled to share localities and water resources. The water supply

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programme guidelines in the country do not consider the social patterning of resource ownership, access and use but have set only a numerical criterion for selecting installation site – one safe water source for a population of 250.

Implementation of this guideline has led to a situation where even when children belonging to underprivileged sections (such as scheduled castes, scheduled tribes or ethnic minorities) are seen by the state as prioritized beneficiaries and consequently provided 'coverage' with safe public water sources in their vicinity, they are unable to exercise their right because their social group is not socially entitled to draw water from a public source located in an upper caste or dominant group's locality.⁶ In fact, the worst to suffer in this case are women and children, who are commonly domestic water collectors in the case of underprivileged sections, being either forced to collect water from unsafe sources or face hardships on account of distance and inadequacy of the resource.⁷

An early study of 99 villages across the country showed that although 80 percent of the water points were 'public' in location, only 16 percent were actually located in poor areas that made up one-third of all localities in the villages (Planning Commission 1980). Data from the present study reiterate the continued existence of such a situation. Out of 44 public handpumps installed in the villages of MP and Bihar, only nine were found to be actually located within the localities of various backward sections, thereby implying the plight of the intended child beneficiaries from these sections. Efforts at providing access to safe drinking water in fluoride- and arsenic-affected areas show similar results.

Conclusions

Children are members in societies that operate within a framework of social norms and cultural beliefs and practices. These factors in turn influence the construction of the right to water when moving from the global/state level to the level of local community. Globally and at the state level, children are visualized as full human beings characterized by homogeneity of interests and entitlements, and hence their right is essentially perceived as universal. Using the model of norm

triad, it can be seen that political will, concern with humanitarian values, knowledge of global commitments and the administrative systems in place for facilitating social development positively influence formulation of the legal norms and promote their implementation at the state level.

On the contrary, at the local level, children's identities are essentially perceived as incomplete and heterogeneous, dependent upon family needs and interests and differentiated along the lines of the social group in which they claim their membership. This perception is gendered and impacts on rights as interests and entitlements of the children are re-interpreted in accordance with the contextual framework provided by the socio-cultural matrix. From the perspective of norm triad, the norms regarding child rights in the local community are reconstructed due to the influence of factors like the 'will' and 'power' exercised by influential members/segments, concern with upholding cultural values and traditional social norms, indigenous knowledge regarding social identities of children and adults, etc. All these factors are contrarily placed in relation to the legal norms defined at the state level and actually act as norm-hindering factors in the process of implementation of the former.

The exercise of the right to water by children is a contested domain where construction of the right by the state – in terms of the universal normative-legal framework – is much different from the local socio-culturally defined framework. It further demonstrates that defining problems and designing actions only within the normative-legal framework can obscure understanding critical realities at the right-holders' end. In this case, the study provides the learning that interventions at various levels, such as through policy and targeted programmes, have at best provided an 'enabling environment' but the process of implementation of children's rights at the right-holders' end is actually a socio-cultural process.

There is a need to ensure that a beginning for the universal realization of the right be made from a proper understanding of the contested domain. First of all, a proper understanding of the very nature of children's rights in general and their right to water in particular needs to be developed.

Second, the cultural beliefs and values and social norms and practices that are counter-productive to the normative-legal framework must be identified and analyzed in order to make all actors on all levels conscious of the contested norms. Thereafter means must be devised for addressing the specific issues underlying the

contestations. This is important not only for ensuring universal translation of the normative-legal framework into practice today but also for ensuring justice to all children in the future, as children in any community grow up as carriers of the prevailing social principles and practices, customs and knowledge systems.

Notes

- 1 Convention on Rights of the Child, 1989.
- 2 Convention on the Elimination of All Forms of Discrimination against Women (CESCR), 2002.
- 3 The dimensions of 'accessibility' include physical accessibility, economic accessibility, non-discrimination and information accessibility.
- 4 The oldest and most widespread programme implemented in the country has been the Accelerated Rural Water Supply Program (ARWSP) (MRD, 2002).
- 5 Caste system represents a hierarchical arrangement of several castes that share a system of mutual interdependence, involving social, economic and ritual aspects. Castes are ranked, named and endogamous social groups, membership in which is determined by birth (Beteille, 1996).
- 6 The social dynamics among different castes in local community are influenced by the principle of 'dominance', the basic criteria for which include higher position in caste hierarchy, numerical preponderance and sizeable ownership of village land (Srinivas, 1959). Thus, the dominant caste exercises control over the use and management of space and resources in its village and influences decisions affecting the lives of all the resident castes. Social patterns based on the principle of dominance also have an important bearing on inter-ethnic situations in mixed villages in this regard, determining the social entitlements of ethnic groups like tribals and other religious groups like Muslims and Christians.
- 7 In MP, Bihar and Gujarat, women from the upper castes, notably the Brahmins and Rajputs, are not expected to fetch water from public water sources; this is seen as a responsibility of the men.

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