

# Water Question in Jharkhand

## Present Law and Policy Context

*This article looks at the emerging policy context on irrigation and drinking water supply in Jharkhand, the position of water rights in state legislation, the importance of water user groups, the critical issues of access to water for both the rural and the urban poor and the legal implications.*

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**T**his paper explores the questions of water rights and related legal issues as it impacts both the rural and the urban poor in the state of Jharkhand, but first puts these in the context of present-day policy directions emerging from the state.<sup>1</sup>

### I The Emerging Policy Context and Water

The Jharkhand Vision 2010 commits the state to provide all villages with sustained access to potable drinking water and environment sanitation. The vision document also says that all necessary physical infrastructure like water supply, sewerage and solid waste management in urban areas will be developed to enable citizens to lead a healthy life in a clean environment.<sup>2</sup> Further there is a commitment to increase the irrigated area in the state from the present 8 per cent to 25 per cent. A note of the water resources department, in pursuance of the Vision 2010 points out, “involving the users in the management of their common resources is the best way of ensuring effective local management. Recognising this, the state shall endeavour to consolidate its efforts to create water users associations (WUAs). Through these WUAs the stakeholders are involved in the maintenance and management of irrigation systems. WUAs will be created at the primary level, and distributary committees and project level committees at the primary, distributary and project level respectively”. These words are significant pointers to the way the government of Jharkhand is thinking in terms of the institutional structures at the village level for giving effect to participatory irrigation management. The indication by the water resources department that the farmers organisations for participatory irrigation management (PIM) would be at the three levels, i.e., primary, distributary and project levels, suggests that it is opting for more or less the same institutional structure that has been brought into force by some other states through specific legislations creating water users associations.<sup>3</sup>

The water resources department of the state of Jharkhand has planned a major programme called Gram Bhagirathi Yojana (GBY) for development of the minor surface irrigation system in the entire state. This is to be done through rejuvenation of all existing schemes and construction/repair of ponds, “ahars” and check dams in all blocks throughout the state. The major thrust of the GBY is thus to develop irrigation potential in all the districts of the state. As an essential prelude to the programme the department has been able to generate extensive data and information districtwise on water resources integrated with other collateral data for use in future developmental planning activities.<sup>4</sup> A state level review committee (SLRC) to be chaired

by the minister of water resources has been suggested for the GBY. This committee is the apex organisation at the state level for monitoring this project work and is supposed to take all actions on problems that may come up during the execution of this scheme. The SLRC is to be supported by a district level review committee (DLRC) headed by the district collector and is responsible for reviewing and monitoring the progress of the implementation of GBY in the districts on a monthly basis. Notwithstanding these “official” bodies at the district and state levels the GBY scheme intends to introduce PIM in all its schemes. The GBY would have to rely on an elaborate network of WUAs created in each district. For example, for East Singhbhum district alone 970 minor surface irrigation schemes (706 new schemes and 264 old schemes that would be upgraded) have been proposed for execution of the GBY in the district. Significantly, the GBY initiative envisages that a WUA would be established for each of the schemes suggested.

### II Review of Legislations that Impact Water Rights

The Jharkhand Panchayati Raj Act, 2001 vests the right of ownership over minor water bodies in panchayat samitis and zilla parishads in scheduled areas. However, it is the state government that will prescribe the area within which this right can be exercised. Significantly, the act says that the powers of the panchayats in both (scheduled and non-scheduled areas) shall not affect the acts and rules framed by the present government. In this context Section 3 of Bihar Irrigation Act, 1997 is notable. In that it vests “all rights in the water of any river, natural stream or natural drainage channel, natural lake or other natural collection of water” in the state government (subject to the provisions of Article 262 of the Constitution and entry 56 of the list 1).<sup>5</sup> The term “natural collection” of water is broad enough to include all minor water bodies. Also note that the Jharkhand Panchayati Raj Act does not classify the duties of the PRIs as obligatory or discretionary. All the duties of the PRI have been made subject to the “availability of funds” with the respective institution. In some other states like Tripura, the duties of panchayats are of two types, mandatory and discretionary and “supply of drinking water” typically falls under the purview of obligatory duties. A natural consequence in Jharkhand is that the PRIs can easily escape any of these duties, in the guise of unavailability of funds.

The Bihar Irrigation Act, 1997 was passed to consolidate the law relating to irrigation, embankment, drainage, levy and assessment of water rates, better contribution and other connected

matters. Under the law the divisional canal officer can regulate, in respect of any irrigation work, “the time for letting out water for irrigation, the period of supply, the quantity of supply and the areas to be supplied at different times.” The canal officer, in certain circumstances, may also stop the supply of water to any channel, or to any person. Further, no claim shall be made against the state government for compensation in respect of “loss caused by failure or stoppage of water from an irrigation work”. Besides, the Bihar Emergency Cultivation and Irrigation Act, 1955 applicable now in Jharkhand empowers the collector to settle any such culturable land “that was lying fallow continuously for a period of two years with a person who has, *in his opinion*, the means to cultivate it and is willing to do so”. Also note that the act (Section 8(1)) says “Notwithstanding any entry in the record-of rights or anything contained in any other law... if the collector is satisfied, after such inquiry as he thinks fit, that a certain land is likely to be benefited by any irrigation work, he may make an order that such land shall be irrigated from such work, on such terms, and subject to such conditions as he thinks fit.” Similar provisions resonate in other irrigation laws in the state. Whether the collector should have such wide powers is questionable today especially in the light of the new policy language of participatory irrigation management.

Some provisions of the The Santhal Parganas Tenancy (Supplementary Provisions) Act 1949 are also noteworthy. The act lays down that the “bandhs”, “ahars”, tanks and other water reservoirs or channels, which are used either for the purposes of protection from flood or for irrigation, bathing, washing or drinking, shall not be settled or converted to any other purpose without the consent of the “raiya” and the village headman or “mulraiya” or the landlord in a “khas” village and the approval of the deputy commissioner. No one shall bring under cultivation any such water reservoir or channel. Further, no proprietor or landlord shall be entitled to levy any charge for the use of water reservoirs and channels mentioned in subsection (1) for irrigation, bathing, washing or drinking purposes (Section 35). On the other hand the act empowers a raiya to construct or excavate on his own holding or on the land settled with him bandhs, ahars, tanks, wells, and the like, water reservoirs and channels in a reasonable manner and to the extent required for drinking or other domestic purposes and the purposes of irrigation. This the raiya can do without the permission of the landlord provided no injury is caused to others by such construction or excavation (Section 16).

### III

#### Water User Groups and the Legal Policy Frame: Some Concerns

The suitability of lift irrigation for undivided Bihar had long been recognised in principle by the state government. To be sure, the state government tried to promote lift irrigation schemes in the past but most became defunct. The poor performance of state owned surface lift irrigation schemes prompted the Ranchi district administration to invite Professional Assistance for Development Action (PRADAN) to promote community owned lift irrigation schemes in the district with funds from various poverty alleviation schemes of the government [Satpathy 2002]. The initial success of these schemes prompted the state to plan for expansion under the Bihar plateau development projects (BPDP). The BPDP was a World Bank funded project implemented in 67 tribal dominated blocks in Jharkhand during 1993 to 2000. Interactions in the

minor irrigation department in Ranchi suggested that the scheme has largely failed to deliver the goods.<sup>6</sup> The fate of the BPDP project has to be seen in the larger context of other state-owned surface lift irrigation schemes, which have not worked well in the past. This includes the 394 schemes implemented by the Bihar Hilly Area Lift Irrigation Corporation (BHALCO) out of which only 60 are reported to be functioning. The government of Jharkhand is pumping in a few crores beginning the financial year 2001-02 to revive some of the schemes under the new name of Jharkhand Hilly Area Lift Irrigation Corporation (JHALCO).

The experience thus far clearly suggests that while the state governments need to draw up special plans to introduce lift irrigation on a large scale, the collaboration of NGOs needs to be under the aegis of a well thought out policy directive. The point has to be seen in the larger context of the proliferation of a number of water user groups including WUA primarily for lift irrigation schemes and village water shed committees that have largely been precipitated by NGO interventions in various parts of the state.<sup>7</sup> Here more questions beg for an answer: why is there a need to make separate formal water user societies in scheduled areas in light of the fact that the PRA empowers the panchayat to manage water bodies in these areas?<sup>8</sup> How would the water user societies be linked up with the village, block and district level panchayats once they are in place?

Finally, the bye-laws of water users cooperative societies made under the World Bank-aided BPDP project makes for interesting reading. One of the objects of the society as laid down in the bye-laws emphasises that “The Society is non-political and above politics”. The point that water user societies should stay away from “functions of political nature” speaks of a mindset that has significant policy implications. The fascination with water user associations for donors, policy-makers and bureaucrats could be that they provide models that are “predictive, apolitical and localising”. However, it has been pointed out that such understandings “take little cognisance of the fact that social action in the context of common or public resources is markedly political and that relations of power underlie rule conformity...” [Mosse 2003]. Apart from this it is wrong to presume that WUAs and their constitution has nothing to do with the politics of the area. In fact, under the new laws created for PIM all across the country the managing committees of the WUAs at the primary, distributory and the project levels are to be constituted by electoral polls similar to that of panchayats.

Research conducted by the Participatory Education Action Research Learning (PEARL), Shramjivi Unnayan on the efficacy of the Million Wells Scheme in the state throws up important findings. The scheme had envisaged that the panchayat samiti was to decide the villages where the wells were to be located. The beneficiaries for the village were to be decided in a general meeting of the gram sabha. As against this, the study found that the normal practice has been that the “mukhiya”/an influential village level leader along with the block development officers (BDOs) decides the beneficiaries. No gram sabha meeting was held in the sample villages for selection under the programme. Also note that as opposed to some inappropriate government interventions in making of water harvesting structures, there have been some local studies suggesting that when it comes to creation of ponds and ahars, it is the village people themselves who can do the best job.<sup>9</sup>

In the above context the new national rural water supply scheme – “Swajaldhara” – needs to be seen for its specific applicability to the state of Jharkhand. While the scheme intends to be a

demand-driven and people-oriented one, there are critical gaps in the institutional mechanism that are envisaged under it [Upadhy 2003]. Information received from the public health and engineering department (PHED) in Ranchi suggests that the swajaldhara programme had been launched in late 2003 in Maura village in Bahargora block in East Singhbhum district. Experiments on a variant of the scheme on pilot basis have also been done in Mosabani block in the East Singhbhum district.<sup>10</sup>

Any participatory water management regime in the state cannot escape from the fact that the state doesn't have elected panchayat bodies. Thus, wherever the schemes are being tried out, it is the BDO at the block level and officials at the district level and not the elected panchayat functionaries who would be discharging the functions of technical and financial approval of the proposed water supply schemes. In this light it would be difficult to refer to them as demand-driven, people-oriented or participatory schemes.

#### IV

### Water, Urban Poor and the Law in Jharkhand

Access to water for the urban poor living in the towns and cities of Jharkhand is also a major issue that needs to be addressed. The Ranchi municipal corporation concedes that it is difficult to assess the actual percentage of present coverage of piped water supply in the Ranchi municipal area. However, it assumes that with the present distribution network the average percentage coverage is between 60-70 per cent of the total population within the Ranchi municipal area. Even by this guess, close to 40 per cent of the population in the state capital would not have any access to piped water supply. Visits to some of the slum areas in Ranchi present a more horrific picture. In Islam Nagar mohalla within the city, there are over 60 families and approximately 600 people living in slums who between all of them, share only one hand pump! People there said that they get drinking water from pipe supply roughly two km away and they do not even use the solitary hand pump water for drinking purposes because of bad water quality. The entire locality has only three public toilets, which obviously by no stretch of imagination, can suffice for a population of nearly 600 people. Women in particular bear the brunt of this near total absence of physical infrastructure within the locality.<sup>11</sup>

The situation would be more or less the same for other urban towns in the state. For example, the statistics made available by the PHED and taken from the district water and sanitation mission, East Singhbhum district showed that in the "steel city" of Jamshedpur there are 135 slum bastis where more than one lakh people reside and where almost the entire population is below the poverty line, the literacy rate "is not pleasing" and no safe drinking water is available, along with the fact that there is not enough open space and almost no toilets surrounding the bastis. Studies conducted by Jharkhand Resource Centre and Society for Participatory Research in Asia throw further light on the dismal state of towns when it comes to water supply.

### The Dhanbad Case on Water Supply

The failure to ensure potable water to the urban poor raises an important issue in water rights. Take a case from Patna High Court that can throw more light on the matter. In early 2000, the high court ordered that "supply of drinking water to all the consumers (of Dhanbad municipality) should be maintained for at least six hours in a day in two phases, i e, three hours in the

morning and three hours in the evening". The order was based on two considerations: (a) "The supply of drinking water being an essential requirement of the society there cannot be any compromise in this regard"; and (b) the municipal agencies "are responsible under the law to provide drinking water as well as other basic amenities to the citizens of Dhanbad".

Four months later, however, the court was constrained to observe that its directions had not been complied with. The argument before the court was lack of financial resources with the agencies. But since the matter was before the court all the government agencies were made to act fast culminating in an undertaking by the PHED that it would supply water six hours a day. At the same time, the state government was made to direct all the authorities to immediately pay their dues to the municipality with a special officer made responsible for submitting a list to the court, of the agencies which owed the municipalities its dues. The categorical directions of the court energised the entire state machinery gripped by inertia till then and the concerned departments were made to cooperate with each other for the specific objective of six hours supply of drinking water to the citizens of Dhanbad and its periphery. Most critically, however, the courts saw through the standard plea of unavailability of resources while making authorities believe and admit before the court as to how the resources could be marshalled for the purpose.<sup>12</sup>

There are other questions in law too. The municipal bodies in Jharkhand operate as per the provisions of the Bihar and Orissa Municipal Act, 1922 which is largely seen as an outdated law, specially after the enactment of the 74th amendment of the Constitution of India. The problem gets further compounded when seen with the fact that there are towns where the municipal elections have not even been conducted for a long time. For example, in Dumka, the municipal board comprising 20 ward commissioners (16 of them directly elected through public voting) was dissolved in 1995 and there is a specific reconnaissance study of Dumka town that points out that while the last election took place in 1988, after the dissolution of municipal board in 1995 "the Municipality has not tried to involve the local community in any of the municipal functions or urban affairs planning, except few unsuccessful sporadic efforts".<sup>13</sup>

To conclude, the above review throws up important lessons on the emerging policy context, the position of water rights in state legislation, the need to place water user groups in the policy and legal map of the state and addresses critical issues of access to water for both the rural and the urban poor with their legal implications. [4]

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### Notes

- 1 For detailed information on these issues as well as customary law in water and the impact of interstate water disputes see Upadhyay (2004).
- 2 The Vision document also states that the state compares favourably as regard safe drinking water coverage, compared to the national average, but does not provide the relevant statistics and figures to support this claim.
- 3 In Jharkhand too formal backing to the WUAs is available in some sense. The Bihar Irrigation Act, 1997, which also applies to Jharkhand clearly says that government may transfer any government distributary, minor or water course to the water users association(s) formed by the beneficiaries or to a group of persons who may be considered fit by the government to be owner of the said channels for their maintenance and operation. Discussion with senior officials in Ranchi revealed that the provision has not been operationalised on the ground.

- 4 The database has been prepared for the water resource department, government of Jharkhand through remote sensing data.
- 5 Article 262 talks about adjudication of disputes relating to waters of interstate rivers or river valleys.
- 6 In the context of the BPDP scheme another point is of relevance here. The BPDP authorities made a beginning in the right direction by issuing directives to DCs of all the BPDP districts to involve *PRADAN* in irrigation and agriculture development programmes. It also urged the DCs to sign a formal MOU with *PRADAN*. However, as has been pointed "the BPDP directive was merely suggestive and it was eventually left to the discretion of DCs to take a decision in the matter". For more details on these aspects see Gupta (1999).
- 7 User committees for regulation and management of local water sources is a phenomenon that was repeatedly seen during the field visits. For example, in village Baladih an NGO, Gramin Vikas Trust, has enabled the people to form two-user committees, comprising 30 and 15 families respectively who are in charge of regulating and maintaining lift irrigation pumps. The members of the committee pay a specified sum for the use of these pumps on an hourly basis. On the other hand in Dhubatamba village an inclusive committee comprising all the villagers manages a local lift irrigation unit. Tarkuang Ita and Dhaludih villages also have user associations charging users a specified fee while maintaining the lift irrigation unit.
- 8 As aforesaid the Panchayati Raj Act, 2001 vest the right of ownership over minor water bodies in panchayat samitis and zilla parishads in scheduled areas.
- 9 Thus, for example, in Singhari village in Tati panchayat in Angara block in Ranchi district, a small village of 2,000 people, the people themselves have been able to put in place as many as 18 ponds. See Pal (2003).
- 10 There WATSAN committees (water supply and sanitation committee) have been created at the village level and they are sought to be integrated with the block and district level committees (BWSC and DWSC). Because of the project, it is believed that while in 1999 among the 800 villages under the project area there were only 37 per cent of hand pumps

that were functional now after the intervention through this project around 95 per cent of the same have become functional. At the heart of this success story is the effort of women folk who have been made primarily responsible for operation and maintenance of these hand pumps. The efforts of SEEDS, an NGO, has been critical in effecting this positive intervention.

- 11 They are the ones who invariably fetch the water early in the mornings, and they are the ones who suffer diseases because of inability to access the toilets especially during the daytime. One can only hope that the municipal corporation honours the claim that it makes today: that almost 90-95 per cent of the total population under the Ranchi municipal corporation will be covered by piped water supply during the next one and half year! (at the time of printing this the time has run out!)
- 12 To the author the verdict showed that the resource basket can be augmented and can indeed be shaken to prioritise funding in areas which are more fundamental to our existence.
- 13 Arjumend 2003.

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