
WaterLex country mapping: India

WaterLex is currently undertaking a significant piece of work which seeks to provide a comprehensive view of the legal and policy water governance framework of India within the context of the human rights to water and sanitation (HRWS).

The human rights to water and sanitation (HRWS) have been recognised by the international community through resolutions and conventions at both the international and regional levels. In 2015, a specific goal on water was also adopted as part of the UN's 2030 Agenda for Sustainable Development. A multitude of actions will be needed to reach this goal by 2030, and one of the key challenges will be implementation. For one, the creation of an enabling environment will be needed, which is also needed for the progressive realisation of the HRWS. The national legal framework is one of the key components that characterise such an environment, since, while adequate regulation can contribute to the realisation of human rights as well as SDGs, gaps in the national framework can hinder them.

WaterLex conducts legal and policy country mapping which seeks to demonstrate how the national legal and policy framework of a given country reflects the normative content of the HRWS and related human rights principles, and how those rights are protected. The studies provide baseline information to support governance and legal reforms, prepare targeted capacity-building activities and support other aspects of WaterLex's work in these countries.

Water Governance Framework

The Constitution articulates the responsibilities in relation to water through the 7th Schedule which specifies the responsibilities that



fall under either the Union or the States, or both. List I declares that the Union shall have domain over the regulation and development of inter-state rivers and river valleys where Parliament has declared by law that such is in the public interest.

Although the Constitution does not provide the Union with explicit responsibilities with respect to water and sanitation (notwithstanding development and disputes concerning inter-state rivers or river valleys), the Executive Cabinet (Council of Ministers) is indeed comprised of ministries directly related to water and sanitation.

The Union Executive activity in water governance operates primarily from a policy perspective as the legal framework for drinking water and sanitation in India roots the responsibility at the state and local level. Pursuant to the Constitution, states are to have control of "...water supplies, irrigation and canals, drainage and embankments, water storage and water power..." in India. Notably, the Constitution stipulates that states may by law delegate powers and

“Water is vital for life and the human rights to water, sanitation, food and health reflect its importance.”

authority to panchayats and municipalities to function as institutions of self-government and provides a non-exhaustive list of subject-matters over which such authority may be exercised.

Drinking water, minor irrigation, water management and watershed development for panchayats (local rural councils); whereas water supply for domestic, industrial and commercial purposes forms part of the list for municipalities.

As responsibilities concerning drinking water provision were delegated to sub-local governing bodies and differ from state to state; it is necessary to review legislation of individual states to grasp in detail how such roles have been allocated.

International water and sanitation frameworks applicable to India

India's accession to human rights treaties

India acceded to many of the core human rights treaties which relate to access to water and sanitation. States parties to guarantee the right of everyone, without discrimination, to different rights, including the rights to housing and health. The CERD Committee has addressed water and sanitation by linking them to those two rights in its concluding observations on States parties' periodic reports. Since 1979, India is also Party to the International Covenant on Economic, Social and Cultural Rights (ICESCR) and to the International Covenant on Civil and Political Rights (ICCPR).

Rights to water and sanitation strengthened through jurisprudence

While the Constitution does not explicitly confirm the right to water and sanitation, article 21 of the Constitution guarantees the **Right to Life** which has been progressively interpreted by the courts of India (Supreme and High) to include the rights to water and sanitation. As the highest court in the Indian judicial system, the decisions and law declared by the Supreme Court are binding to all the courts of India, and its decrees are enforceable in the whole territory of India already in 1968.

Public interest litigation

Public Interest Litigation (PIL) is a very useful tool to enforce HRWS before Indian courts. PIL can be filed before the Supreme Court under Article 32 of the Constitution, before High Courts under Article 226 of the Constitution and before the Court of Magistrate under Article 133 of the Code of Criminal Procedure. PIL is a legal procedure that aims to protect public interests and is accessible to a wide range of complainants and thus, aligned with the judiciary system principles of equality of opportunities and free access to justice.

Crucial draft legislation

Ground water is the main source of drinking water in India, particularly in rural areas, where it accounts for 85%. Historically, the property owner has been entitled to ground water rights with the ability to extract unlimited amounts, which has exacerbated water scarcity in some areas and led to conflicts. Only a few states have enacted ground water legislation; thus serving as a potential hindrance in progressing the curtailment of over extraction.

Act for Protection Conservation Regulation and Management of Groundwater, (Model Bill 2016) seeks to strengthen integrated water resources management and enshrine the public trust doctrine principle wherein ground water is

held in trust by the State for public use. Most importantly, Model Bill 2016 articulates explicitly the right to water, reiterating Supreme Court findings to that point, prohibiting ground water use in a way that negatively impacts another person's right to safe water for life.

National Water Framework Bill 2016 currently in draft form, proposes a national water legal framework to encompass *principles for protection, conservation, regulation and management of water*. The *Right to Water for Life* is a chapter in the draft legislation and therein the State's responsibility to ensure every person's right to safe water is confirmed.

Other examples of reports from WaterLex's country mapping activities:

Benin:

Towards a framework of decentralized cooperation for water and sanitation in Benin 2014

Uganda:

The Status of Implementation and Monitoring of the Human Right to Water and Sanitation 2015

Mexico:

Access to Water and Sanitation - Analysis of the Mexican legal framework from a human rights perspective 2017

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About WaterLex

WaterLex is a non-governmental organization based in Geneva, Switzerland. Its aim is to secure the human rights to water and sanitation (HRWS) through law and policy reform. Sustainable water resources management at basin level is key to the realisation of the HRWS. Water governance is therefore seen as a contribution to securing sustainable use and access to safe water and sanitation for all. WaterLex has become the "catalysing link" between UN agencies, governments, human rights protection mechanisms, academic institutions and development agencies. The credibility of the organization is enshrined in its unique legal skills; focused expertise; ground-breaking research; and the realisation of sustainable water governance legal policy frameworks.