

Beyond the Buzz: Panchayats, Water User Groups and Law in India With Specific Studies on Participatory Irrigation Management, Rural Water Supply, and Watershed Development

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WORKING PAPER SERIES

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BEYOND THE BUZZ: PANCHAYATS, WATER USER GROUPS AND LAW IN INDIA

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INTRODUCTION

Globalization and decentralization are often seen as two parallel phenomena of modern times ‘hollowing out’ the State from both above and below. However, the two sometimes come together too and, arguably, in India this has been most obvious in creation of a nationwide regime of User Associations.¹ In India today there are a large number of village level user groups formed under various development programmes of the State Governments most of which function independently of the Panchayati Raj Institutions (PRIs) but on the subjects assigned to them under the Constitution. These user groups include Water Users Associations, Watershed Development Committees, Village forest Committees/ Forest Protection Committees, and Self-Help Groups, amongst others. The emergence and proliferation of these bodies especially in their present form as legal and policy backed entities has taken place since early 1990s and is a phenomenon running parallel with the evolution and growth of PRIs as Constitutional bodies following

¹ Although the impact of globalization on policy and lawmaking that has supported the proliferation of user groups is an interesting area of enquiry, this is not been the mandate of the present paper.

the 73rd Amendment. Among other factors, these ‘parallel bodies’ have been widely seen as a reason behind the ineffective legal mandate of the Panchayats and a widespread realization that that while the 73rd Amendment promised much to Panchayats, it has delivered little.

These ‘parallel bodies’ sharing functions of PRIs, while working at the same time at the same village level, can be a major reason behind surfacing of inter-institutional conflicts that can grow more in future. The tendency of one institution to acquire dominance over the other, of the leaders of these institutions to acquire power positions, competition over management and control and disputes over benefit sharing could be the factors behind such conflicts.² However at the heart of the problem is the fact that there exists no effective coordination between the two different legal and administrative frameworks for the PRIs on one hand and the user groups on the other.

In this context some of the decisions following the establishment of the Congress led government at the Centre in mid 2004 were especially noteworthy. In a Round Table of State Ministers of Panchayati Raj in August 2004 Ministers-in-charge of Panchayati Raj and their representatives, agreed to recommend to their respective Governments, for joint acceptance by the Centre and the States, the following points of action on Parallel Bodies:

1. Devolution of functions, functionaries and finances, based on activity mapping is required by the Constitution (Article 243G) to be devolved to only the Panchayats and not to any parallel body.
2. If, for reasons of institutional constraints, parallel bodies have been setup or are to be set up, these must be mingled into an organic, symbiotic relationship with the PRI, at the

² These factors were identified by Centre for Development Support (*Samarthan*), Bhopal under a recent field based study on Anatomy of Village Institutions in the Bundelkhand Region. These findings were confirmed by the Executive Director of the Organisation in the course of personal interactions with the Author.

appropriate level so that PRIs are fully involved with the work of parallel bodies.

3. To the extent possible, parallel bodies should be established only where indispensable, and invariably in consultation with and with the collaboration of PRI at an appropriate level.
4. By law, parallel bodies should be required to report periodically to the Gram Sabha(s) so that community as a whole is kept informed of the activities of parallel bodies.

The Central and State Governments may evolve their mechanism for granting permission to parallel bodies, including those established by the foreign and multilateral donor agencies, so that there is mutual benefit between the institutions of self-government and the parallel bodies.

The second point above is most important especially for the purposes of the present paper. Indeed there is a widespread agreement now that wherever parallel bodies exist they 'must be mingled into an organic, symbiotic relationship with the PRI, at the appropriate level.' However, this generally worded proposition may be easy to formulate but is difficult to execute on the ground. Close observers especially in the water and forestry sector point out that as organisations may not fit well within the system of local governance and 'linking them Panchayats may undermine their independence and effectiveness.'³ Evolving effective interrelationship between existing user groups and Panchayats is a difficult terrain to tread and this provides the immediate context and motivation for the present work

The Emergence of a Parallel Legal Mandate

The 73rd Amendment has cast a Constitutional imperative on all the State Governments to come up with appropriate a Panchayati

³ For example, see Mark Poffenberger and Chhatrapati Singh, *Communities and the State: Re-establishing the Balance in Indian Forest Policy*, in Mark Poffenberger and

Raj Act detailing a meaningful democratic devolution of functions, functionaries and funds. Specifically, it empowers States to endow Panchayats with such powers and authority to enable them to function as institution of self-government.⁴ Clearly if Local Self-Governance is one of the destinations envisaged by the 73rd Amendment, PRIs have been identified as the vehicle to perform the journey towards it. However, more than ten years on, the vehicle is faced with many roadblocks. The most important of this being the States' failure to take defined constitutional mandate to the ground. There are a number of reasons behind this beginning with the way the States themselves have adopted the law. There have been problems of formulation as well as implementation of the law. The subjects that have been vested with the Panchayats under the Constitution have been very broadly and generally worded and the State laws have continued to put them in similar words. Besides when an activity mapping of what these functions could mean is done, it will inevitably overlap with the activities presently being carried out by the User groups. These aspects would be closely seen in subsequent sections. Let it be noted here that typical legislative drafting of Constitutional provisions, followed in letter by the State Panchayat Acts, overlaying the specific powers and functions existing with user groups has been a major reason behind an uncoordinated legal framework.

Besides there is now a definite legal mandate emerging for the user groups like the Water Users Association (WUAs) and the Joint Forest Management Committees (JFMCs). The WUAs—though mostly still under Government and Policy Resolutions—are now being created through enabling laws. For instance the States of Andhra Pradesh, Madhya Pradesh, Rajasthan and Tamil Nadu have enacted

Betsy McGean (eds) *Village Voices, Forest Choices: Joint Forest management in India*. Delhi: OUP.

⁴ Article 243-G of the Constitution.

separate laws, namely, *The Farmers (Management of Irrigation Systems) Acts* providing for constitution of Farmers Organisations including WUAs. The JFMCs have been constituted under the initiative of Joint Forest Management (JFM) formally recognized and accepted in 1990. Likewise, even though most JFM orders continue to be Government Resolutions, they are beginning to be founded under the provisions of the Indian Forest Act 1927.⁵ If JFMCs are seen as giving effect to JFM, WUAs are operationalising PIM both which in terms of their essential principles, now command almost universal appeal as national objectives. As these groups are formed or exist at the village level one can see an obvious overlap of membership where the same persons in a village could be part of more than one group entity. This would be in addition to the overlap of functions suggested above. This emerging regime with overlapping jurisdictions is bound to be a critical concern for all those having a stake in decentralized natural resource management.

Objective and Scope of the Present Work

In the above context the present study aims at exploring possible functional linkages between the Gram Sabha/Gram Panchayat with the water and forest user groups and their implications in law. It hopes to suggest some ways ahead for effective coordination between the two different legal frameworks for PRIs on one hand and the formal user groups for forestry and water management on the other. With this objective the first part of the study carries rigorous examination of the Constitution of India and the relevant Central and State laws to identify the national legal mandate for decentralized natural resource management in categorical terms. This includes a historical analysis relating to contesting conceptions on Panchayats. Besides there is a close examination of some of the perceptions on suitability of PRIs

⁵ Section 28 or 80 and 81 of the Indian Forest Act, 1927.

vis-a-vis other formal village level user groups for the purposes of forest and water management.

The study then closely examines the question in the context of some important ongoing national level initiatives and programmes relating to management of natural resources. In doing so the study locates its central concerns essentially in the States of Andhra Pradesh (A.P), Madhya Pradesh (M.P), Rajasthan, and Maharashtra. Notably while looking at the existing and possible interface of the Panchayats with the User Groups the focus has been on the village level and not the levels above i.e. the Block and the District levels. Further it needs to be clarified here that user groups relevant for the study are the Government promoted/created/assisted village institutions. Informal village institutions including largely the Community initiated institutions and in some cases the NGO promoted Institutions are outside the purview of the present work. This is primarily because the objective is to achieve a streamlined devolution of functional responsibilities within the existing formal legal regime.

THE PANCHAYATS, THE CONSTITUTION AND NATURAL RESOURCE MANAGEMENT

Contesting Conceptions, Parallel Perceptions

It is interesting to note that the Draft Constitution did not have any provision on village Panchayats. However, revised Draft Constitution under Article 31(A)⁶ provided that the State shall take steps to organize village Panchayats and endow them with such powers and privileges as may be necessary to enable them to function as unit of self-government. The legendary Constitutional Law expert, the late H.M. Seervai notes that the inclusion of Article 40 in the Constitution of India appears to have been a sop for those who held

⁶ Anon; 1999 (Reprint) Constitution Assembly Debates (Book No. 2) ;Pg 520–527; Lok Sabha Secretariat—

that the Constitution should be founded on village as a unit.⁷ It is interesting and relevant to briefly discuss the debates on Panchayats in Constituent Assembly around that time. The discussion below seeks to bring forth the undercurrent of how the concepts and understandings on Panchayats have been contested in the past, and how perceptions on their role run parallel to each other which together provide a strong reason in history behind the current debate on the efficacy of the Panchayats *vis-à-vis* User Groups.

The ‘Utterly Decentralized’ Gandhian Constitution and the Panchayats

If the father of the nation, Mahatma Gandhi, were to have his say, he would have based the Constitution on the village and its Panchayat—and erecting upon them a superstructure of indirect, decentralized Government.⁸ Perhaps the clearest pointer to this was the Draft Gandhian Constitution for Free India, drafted by one of his followers Sriman Narayan Aggarwal. As Austin (1966) points out Gandhi found in the draft nothing that ‘jarred’ him or was ‘inconsistent with what he would like to stand for’.

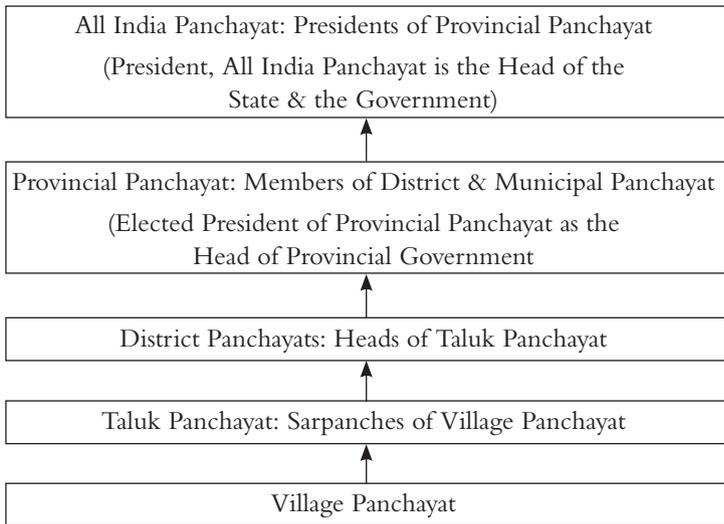
However the above diagram should not give an impression that the Gandhian conception of Panchayats had a hierarchical structure. Gandhiji himself clarified that the Panchayat System was not to take the shape of a ‘pyramid’.⁹ Some aspects of this Gandhian

⁷ *H.M. Seervai, Constitutional Law of India, 4th ed., Vol. II* (Bombay: N.M. Tripathi, 1993).

⁸ This was clear from the two plans submitted by Mahatma Gandhi in January 1946 and on 30 Jan 1948—the day of his death—to the Committee charged with revising the Congress Constitution. Through these plans the Indian National Congress was to be disbanded as ‘a propaganda vehicle and a parliamentary machine’ and turned into a social service organisation based on a nationwide network of Panchayats. Austin Granville, *The Indian Constitution: Cornerstone of a Nation*, OUP, 1966.

⁹ The point is best put in his own words: ‘Independence must begin from the bottom. Thus every village will be a republic or Panchayat having full powers ... In

Figure 1 The Gandhian Constitution for ‘Free India’



Constitution *vis-a-vis* Resource Management is noticeable. The primary political unit of the village-based systems and Constitution, the Village Panchayat, was to assess and collect land revenue, supervise cooperative farming, irrigation and other industries. The Provincial Panchayats’ responsibilities included irrigation as well as natural resources. The All India Panchayat was to be responsible for coordination of provincial economic development plans. The ideals of grass root democracy with the ‘benevolent panchayats’ at the helm appealed to Constituent Assembly members, yet the

this structure composed of innumerable villages there will be ever widening, never ascending circles. Life will not be a pyramid with the apex sustained by the bottom. But it will be an oceanic circle whose center will be the individual always ready to perish for the village, the latter ready to perish for the circle of villagers, till at last the whole becomes one life composed of the individuals, never aggressive in their arrogance but ever humble, sharing the majesty of the oceanic circle of which they are integral units.’ (M.K. Gandhi cited in Stephen Hayed *Sources of Indian Tradition*, Volume II, Second Edition, New Delhi: Penguin).

Gandhian alternative was too radical and so ‘utterly decentralized’ that it was liable to be rejected. It was not a surprise therefore that ‘the word Panchayat did not once appear in the draft constitution’ (see Austin 1966:34).

Power to Panchayats: Constitutional Obligation— Feeble and Vague

By the end of 1948 it was clear that the Panchayats were to be ‘relegated’ to the Directive Principles. A few members submitted amendments to the Draft Constitution, decried the total absence of Panchayats from it, favoured development of Panchayats as form of local self-government but none of them attempted to make Panchayats the base for an indirect system of government.¹⁰ But as Austin (1966) pointed out, ‘more importantly these amendments were to be non-justiciable Directive Principles of State Policy; their intent was hortatory ... they only made it the duty of the state to encourage the development of Panchayats.’ That duty took the shape of Article 40 of the present Constitution: A duty that was not be an enforceable legal obligation.

That was only one amongst the two factors behind an obligation that was constitutional yet not categorical. The other factor was also important and deserves a brief context. The absence of Panchayats in making of the constitution had prompted President Rajendra Prasad to write to the Constitutional Advisor, BN Rau that ‘I like the idea of making the Constitution begin with the village and go to the center,’ adding further, ‘I strongly advocate the idea of utilizing the adult franchise only for the village Panchayat and making the village Panchayats, the electoral college for electing representatives to the provinces and the

¹⁰The sole exception to this was Shri Ram Narayan Singh who said ‘the greatest measure of power should vest in village republics and then in provinces and then in the Centre.’ Constitution Assembly Debates V 4, 92.

centre.’ While rejecting Prasad’s suggestion on the ground that the Constitution Assembly had decided on direct election of lower houses both at the Centre and the Provinces, B.N. Rau also said that writing into the Constitution all the details of local government would make it impossibly long and the details of such plan should be left to ‘auxiliary legislation.’

These two points—that Panchayats was to be part of Directive Principles alone and that Constitution would not have space for detailing local governance—has ensured that the Constitutional obligation for village based Panchayat system remained both feeble and vague. As will be seen later, the 73rd amendment and the dawn of Constitutional Panchayats has solved the problem apparently, not really, and largely on paper, not on the ground.

The Genesis of Non-Political Panchayats

It has been suggested above that while there was ‘a romantic chorus of regret that the draft Constitution had made not even a bow toward ‘the heart of India’ the village’, the Assembly failed to come up with an alternative village based Constitutional philosophy. The reason, as Austin conjectures, was that their demand was not political but administrative. The reconciliation between the visions of Gandhi and Nehru—to put simply, not very precisely—was to be achieved ‘by providing for a degree of administrative decentralization below the level of provincial government, while politically, Indian cooperative federalism operated from the provincial government upwards.’

The explanation for the fact that the Assembly wanted that the Panchayats to be apolitical and that they should have administrative nature lies in the widespread belief that empowering Panchayats politically, and entrenching them constitutionally, would mean that India would remain a primarily agricultural, village nation. There was also a fear that they could be consumed by party politics which was perhaps best expressed by N M Rau who said

‘throwing the village Panchayats in the whirlpool of party politics’ could destroy ‘once and for all their usefulness as agencies of village administration’¹¹

Thus since the beginning of 1950s the plan was to come up with a network of administrative Panchayats whose development was to be undertaken by the State Governments with the Union Ministry of Community Development being the coordination and major fund source. Therefore when Panchayat Raj was introduced as part of Community Development Programme in 1959, it was conceived as a ‘non-political’ developmental agency.¹² It was therefore not surprising that a Report of a Committee appointed by the Ministry of Community Development and Cooperation recommended in 1963 ‘every effort should be made to keep as far as PRIs are concerned, political parties out of elections to focus attention of the people on the social basis of Panchayat Raj movement rather than to draw the same on its political fabric’.¹³ Thus, following the Balwant Rai Mehta Committee recommendation that ‘public participation in community works should be organized through statutory representative bodies’ first Rajasthan, then by 1959 all other States, had passed Panchayat Acts putting in place ‘first generation’, non-political Panchayats.

However, things went wrong with the PRIs, broadly speaking, from mid sixties onwards and though there were many reasons for this which were succinctly brought out by the Ashok Mehta committee while carrying out the post-mortem of ‘first generation’ Panchayats one of its critical recommendation had far reaching implications. The Committee stated:

¹¹ See Constituent Assembly Debates VII at 386.

¹² As Morris Jones pointed out the Panchayat Raj was dominated by the ‘saintly idioms’ of Indian politics represented by Mahatma Gandhi, Vinoba Bhave and Jai Prakash Narayan.

¹³ Diwakar Committee Report 1963, Report of the study team on the position of Gram Sabha on Panchayat Raj Movement, Government of India.

[Panchayati Raj] is an inevitable extension of democracy to the grass roots which in turn makes it a base of the democratic pyramid in the country. The extension should encourage a two way system of political linkages from bottom upwards through the state to national levels and *vice versa* with built-in potential for reinforcing the responsiveness and accountability of the representatives to the people on one hand, and encouraging mobility, circulation and broad basing of the political and ruling elite on the other.

The central thrust of converting existing Panchayats as development organisation at the local level into political institutions was accepted by West Bengal, Karnataka, A.P. and Jammu & Kashmir, which either revised their existing Panchayat Acts or passed new ones, thus announcing the dawn of 'second generation' Panchayats. Political parties began officially participating in local elections using PRIs as 'opportunity structures' which helped the State leaders consolidate their popular base and political parties to dominate the state level politics.¹⁴ The high percentage of voting in local elections in these States seemed to vindicate the Ashok Mehta Committee's recommendation. The 73rd amendment has further crystallized the emergence of PRIs as political bodies, recognizing that electoral democracy is at the heart of it.

The national level acceptance and the consequent Constitutional recognition of Panchayat as political institutions of local self-government, does not necessarily mean that the view that Panchayats should be outside politics has died a natural death. It is an important lesson for the purposes of the present study. The fascination with the user groups today is largely built on a contemptuous disregard of political bodies seeking to perform development functions. The thesis that was behind the first generation Panchayats, that politics would inevitably lead to factional squabbles, partisan considerations and divisive tendencies which will rock any community development

¹⁴ Leaders like Y B Chavan in Maharashtra and Jyoti Basu in West Bengal are best-known examples in this regard.

initiative is very much alive and kicking in some quarters. That explains a continuing fascination with the development and resource based user groups in certain influential policy circles.

Village Institutions or Government's Arm?

The other major reason that forces people to see red when it comes to Panchayats when or local development functions is because these are seen more as agencies of the government apparatus and less as representatives of the local people. This perception also has a long history. For example the village headman in the British also had two faces and as Mountstuart Elphinstone said, 'though generally the agent of the government, he is now regarded equally the representative of the ryots, and is no less useful in executing the orders of the government, than in asserting the rights or at least making known the wrongs of the people.' Even today the question lingers in most heads: To what extent does the Gram Panchayat merely execute the orders of the government and how far does it assert the rights of the people?

The History of Parallel Programmes

While Panchayati Raj was introduced in 1959 as a supplement to the Community Development Programme (CDP), S N Jha points out that the CDP itself 'advanced a structure of integrated administration, especially at the block level, emphasizing horizontal coordination of different activities.' As he adds further 'in course of time, horizontal coordination gave way to vertical line control of government departments' with emphasis on special programme aimed at specific target groups 'bypassing the CDP network'. George Mathew saw in this a 'hidden agenda' to discard the Panchayati Raj (because its ascendancy was feared) and traces it to 1960 when the government launched an Intensive Agricultural Development Programme (IADP) by passing the Community Development Programme. On this tendency, the Jayprakash Narayan Committee of 1960 said that

having accepted Panchayat Raj 'there is no longer any valid reason for the continuing individual allocations subject wise even to serve as a guide.' Notwithstanding this the trend continued relentlessly with schemes like Small Farmers Development Agency (SFDA); the Drought Prone Areas Programme (DPAP) and the Integrated Tribal Development Programme (ITDP) as they were all outside the purview of elected Zila Parishads. The Ashok Mehta Committee provided a possible explanation behind this pattern in these words:

The bureaucracy had probably its own role in dissociating the PRI's from the development process. Several factors seemed to have conditioned their perception. The system of line hierarchy would find favor with them as an organisational principle. The officers would feel that they are primarily accountable for results and financial propriety to the State Government.

Whatever may be the reasons behind 'the hidden agenda', one thing is clear and very relevant for the present purposes. Administrative and even quasi-legal initiatives at the local level and on subjects assigned to Panchayats have had the uncanny ability to find their way outside the Panchayati Raj framework for a long time now. However with the 73rd amendment, there is an additional factor. Respecting the reach of the Panchayati Raj frame and recognizing the exact room in the frame is now, not only a matter of policy, or not only a legal obligation, but also an inescapable constitutional obligation following the 73rd Amendment.

Suitability of PRIs and User Groups

Some studies in the recent past have questioned the need, or the value, of engaging the PRIs in management of natural resources.¹⁵ There is

¹⁵ For example Dr. N.C. Saxena observes, on the basis of a field study from Rajasthan and MP, that 'at present there appears to be greater satisfaction among the people

a general perception that ultimately PRIs are administrative units and may not be suitable organisations for vesting of sole responsibilities for specific resource management activities in a geographically demarcated area. Besides one cannot ignore the political context in which they operate. Further, they are perceived to be generally 'too far removed from the grass roots to be effective agents for good natural resource management'¹⁶. This is because a village has several hamlets and Panchayat usually cover several villages¹⁷. In fact, there have been instances where Panchayats have been in conflict with new village level institutions on the basis of which it is frequently held that PRIs contribute to factionalism and parochialism in the administration.¹⁸ This has prompted people to argue that each settlement must have its own institution to manage its common resources, which cannot be provided by elected Panchayats, which cover several settlements. It has also been authoritatively pointed out that the forest Panchayats in Utaranchal are examples of successful community action because they have been typically actual user associations, managing their own small area with clearly defined boundaries.¹⁹ This provides the explanation in principle for a general affinity towards the smaller user groups compared to the larger PRIs.

from user committee based administration than with the Panchayats.' Personal interactions with the faculty of Indian Institute of Forest Management (IIFM), Bhopal, which is carrying out a study on village level institutions in Karnataka, also indicated the need to keep the PRIs out of the management of natural resources.

¹⁶ For an elaboration of this point see Anil Aggrawal and Sunita Narain, 1989, *Towards Green Villages: A Strategy for Environmentally Sound and Participatory Rural Development*, Centre for Science and Environment.

¹⁷ For example in Assam there are 29 villages per Gram Panchayat while in Orissa and West Bengal there are 11 villages per Gram Panchayat. This led Aggrawal, and Narain to conclude that 'the surpanch is almost as far removed as the district magistrate'. *Ibid*

¹⁸ This is also concluded by Jacob, Alice and S. N. Singh. 1972. *Law Relating To Irrigation: The Role of Irrigation Panchayats*, Delhi: Indian Law Institute.

¹⁹ For further details on this see Chambers R., N. C. Saxena and Tushar Shah. 1989. *To The Hands of The Poor: Water and Trees*. Oxford and IBH.

However these arguments for small, apolitical user groups can be presumptuous in many cases. The argument on size, for example, hastily presumes that the legal regime on the PRIs do not provide space for smaller specialized local groups which can be utilized for vesting of powers for management of resources, and this may not be necessarily true. Further, the contentions for user groups (and for not involving the PRIs) do not address the inescapability of the legal mandate or concerns for legal sustainability of these user groups itself. Besides even though these user groups are, technically speaking, non-political they tend to be heavily controlled and managed by the Line Departments, as also funded, monitored and guided by the orders of the State Department Officials. This also accounts for the fact that officials generally prefer the government promoted/created/assisted user groups than the PIs.

Box 1 Panchayat versus User Groups: Some Common Perceptions

- Panchayats are statutory bodies, User Groups are short-lived
- Panchayats interact with many departments, User Groups only with funding department
- Panchayats give representation to women/SCs/STs, user groups may not
- Bureaucracy favours User Groups as they are more amenable to bureaucratic controls than the Panchayats
- Panchayats cover many villages and ignore small villages
- Panchayats are interested in patronage, not participation
- Panchayats are based on conflict, whereas development requires consensus
- User Groups create a broader leadership base and provide an opportunity for more people to be involved in decision making
- Social capital in either case is hardly with the poor.

Source: National Workshop on Community Driven Management and Decentralisation, December 2000, New Delhi

Divergent Perceptions of the Central Ministries

The problem of concepts around the Panchayats being contested and perceptions running parallel to each other is further aggravated by divergent perceptions of the Central Ministries on the question of management of natural resources at the village level. For example the Union Ministry of Environment and Forests—and the Forest Departments under them—doesn't seem to address any legal claims of PRI's for the management of forest resources.²⁰ On the other hand the Union Ministry of Rural Development (MoRD) argues for greater devolution of functions to the Panchayats including the entire gamut of forestry related functions. It is not a surprise that it was the Task Force of the MoRD that has recommended vesting of all powers to the three tiers of the PRIs in relation to forest and water management. Further, while the MoRD, the State Panchayati Raj Departments and even the Prime Minister's Office argues against setting up parallel village bodies in water management or putting them under the authority of the PRIs, the bureaucracy under the Union Ministry of Water Resources and Irrigation departments doesn't seem comfortable with the idea. These parallel streams of thought coming from the Center as well as the State Departments further compounds the problem of an uncoordinated legal framework.

FORMAL USER GROUPS FOR WATER MANAGEMENT AND THE PANCHAYATI RAJ INSTITUTIONS

The great need for a *decentralized people oriented and demand driven* water management as opposed to a *centralized, government oriented and*

²⁰The Recent Guidelines on JFM issued by the Ministry in December 2002 however mentions the Panchayats saying that their organisational and political authority could be strategically utilized by the JFMCs though their non-political status and authority should be preserved.

supply driven regime continues to be repeatedly emphasized. However beyond these buzzwords there is a need to think through institutional mechanism and the enabling legal framework that can facilitate the sustainability of such a regime. In this regard the present section seeks to bring forth the developing prospective on participatory water management, reviews some of the major policy initiatives that have been taken in this regard before outlining some critical legal issues that needs to be urgently addressed.

Participatory Irrigation Management (PIM) in India

Several states in the recent past have come up with major policy and legal initiatives that have transferred some responsibilities of Irrigation Management from government agencies to the Water Users Associations (WUAs). The formation of these associations is now generally seen as the most effective strategy for ensuring farmer/users participation in management of water for irrigated agriculture. A brief review of the factors that has shaped this thinking would be in order here.

Some Underlying Bases of PIM

Since the late 1970s a number of field studies of the users–managed resource systems have suggested that the Government’s strong presence in irrigation management is not necessarily the best option. Non irrigated fields because of undependable water flows, indiscriminate use of water by head-enders depriving the same to the tail-enders, inequitable distribution and resulting conflicts created a situation where farmers participation was beginning to be seen as an answer. The WUAs was seen as a lasting response to such systemic inadequacies. Nevertheless a shift in thinking from the Government managed system as the only—and the best—option, was in the face of prevalent perceptions of that time that particularly in areas like irrigation the creation and maintenance of large-scale irrigation works would be beyond the capacity of local groups or

private entities. However India has had a long history of farmer managed irrigation systems with as number of examples from the *Kuhls* of Himachal to the tanks of South India.²¹ Though the success of traditional community managed systems cannot be said to be the immediate motivation for shaping new policies involving local people for managing irrigation.

Beginning in the 1980s, there have been large-scale programs to turn over irrigation management from Government Agencies to organized Water User Associations in a number of countries such as Philippines, Indonesia, Senegal, Madagascar, Columbia and Mexico²². This trend has been seen interestingly as the result of convergence of a number of global policy trends including decentralization, privatization, participation and democratization²³. A result of this has been ‘rolling back of the boundaries of the state’ within the irrigation sector. Participatory Irrigation Management (PIM) therefore refers to the programs that seek to increase farmers’ direct involvement in system management, either as a compliment or as a substitute for the state role.

Like the Joint Forest Management, the donor pressures have had an impact in shaping the adoption of policies of PIM—both internationally and in India. It is relevant to note here that the World Bank and the Asian Development Bank (ADB) in early 90s also came up with policy papers pushing for greater stakeholder participation in water resources management²⁴. Further, it has been

²¹ For a detailed review on these aspects see The Four Citizens Report. 1997. *Dying Wisdom* Centre for Science and Environment.

²² Douglas, Vermillion (ed.). 1996 *The Privatization and Self-Management of Irrigation*. Final Report. Colombo, Sri Lanka: International Irrigation Management Institute.

²³ For further comment on this aspect see Joshi, Hooja Rakesh. 2000 (ed.) *Participatory Irrigation Management: New Paradigms for 21st Century*, Rawat Publications.

²⁴ World Bank, 1993 *Water Resources Management*. World Bank Policy Papers, Washington D.C.

pointed out that serious fiscal crisis have been an impetus behind the most sweeping internal adoption of irrigation management transfer programs. Examples of Senegal and Mexico are cited in this regard²⁵. Incidentally, an initial comparison of the approaches of the Indian State to PIM also brings forth this point and it has been pointed out that most dramatic changes were proposed by the state of Bihar where again severe fiscal crisis had precipitated a clear breakdown of the government's ability to deliver irrigation service.

The fascination with WUAs for donors, policy makers and bureaucrats could be because they provide models that are predictive, apolitical and localizing. However, it has been pointed out that such understanding 'take little cognizance 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.'²⁶ Apart from this it is wrong to presume that WUAs and their constitution have nothing to do with the politics of the area. In fact, under the new laws created for PIM the managing committees of the WUAs at the primary, distributory and the project levels are to be constituted by electoral politics similar to that of Panchayats.

A recent study points out some underlying basis of PIM in India including the fact that it is shaped by multiple institutions with different interests and policy agendas, that the PIM programmes are backed by a theory (if not practice) which accepts the need for vesting communities with clear rights and legal authority and that the PIM discourse involve new principles of democracy and equity. However, it has been rightly observed that a striking aspect of India's PIM programmes is the little attention that is given to water rights²⁷.

²⁵ Joshi, Hooja Rakesh (ed.) *Participatory Irrigation Management: New Paradigms for 21st Century*, Rawat Publications, 2000.

²⁶ Mosse David. 2003. *The Rule of Water, Statecraft, Ecology, and Collective Action in South India*. Delhi: Oxford University Press.

²⁷ Raju, K.V., Ruth Meinzen-Dick, and Ashok Gulati. 2000. 'Policy Trends in Participatory Irrigation Management in India', in L.K. Joshi and Rakesh Hoja (eds),

It has meant that the governments right to water are unchallenged, while its obligations to deliver water to WUAs (in canal systems) is rarely legally binding. This is because most PIM experiments have taken place in advance of legal changes. The result has been that the government may have lost little control over irrigation resources, and arguably, in establishing registered WUAs has retained its rights and also acquired a new mechanism to extend its influence in rural society²⁸.

The Nature and Functions of the Water Users Associations

It has been pointed out that any effective WUA or Farmers' Organisation should have the following characteristics: support of farmers under local leadership, structured role to play in management of the irrigation system, authority to make and implement decisions at appropriate levels and responsibility to raise its funds and manage its affairs. It would be useful to keep these parameters in mind while examining specific State legislations that have been enacted for constituting, and providing a formal legal backing to the WUAs. While most of these WUAs have been founded under government resolutions, some states have done so through enabling laws. (These include the States of A.P, M.P, Rajasthan, Tamil Nadu, Karnataka and Maharashtra). For example, Andhra Pradesh has enacted the AP Farmers Management of Irrigation Systems Act, 1997 that provides for constitutions of Farmers' Organisations and transfers the management of irrigation systems to them. Under the Act the irrigation projects have been classified as minor/medium/major projects and accordingly the structures of farmers' organisations have been classified as WUAs at the primary level

Participatory Irrigation Management: Paradigm for the 21st century, Jaipur and New Delhi: Rawat Publications, vol. 1.

²⁸ Mosse, David. 2003. *The Rule of Water: Statecraft, Ecology, and Collective Action in South India*; Delhi: Oxford University Press.

covering minor and medium irrigation, Distributory Committee at the distributory level and Project Committee at the apex level. The Act also provides for appointment of competent authorities, which are made responsible for implementation of all decisions taken by the farmers' organisation. Some States like Goa have provided for farmers' association by amending their Command Area Development Acts. Other states have adopted the principle of Participatory Irrigation Management through government resolutions and orders.²⁹

The WUA provides the farmers a forum to come together and work, as a group with the concerned irrigation authorities so that, as a group they are able to serve individual farmers' needs better. Typically the functions of WUA could include—acquisition and distribution of water, maintenance and repairs, fixation and collection of water charges, punishing defaulters within the areas of the WUA and resolving disputes among water users in the area of operation.³⁰ While in some states fixing of water charges have been still kept outside the purview of the WUAs, in other states like Gujarat the 'WUA has full freedom to decide the water rates and role of water charging from the beneficiary farmers.'³¹ The Rajasthan law creating WUAs in the State is closely seen in a subsequent section.

²⁹ For example a Government Order of Gujarat Government passed in 1995 adopts this principle and lays down a Memorandum of Understanding between its Water Resources Department and Farmers Associations.

³⁰ Note here that the extent of powers and functions vested with the WUAs by different states is a good indicator of extent of participation that the state desires in water management. For some more details on WUAs see OIKOS, India and International Institute of Rural Reconstruction (IIRR) and Y.C. James Yen Center, Silang, Cavite, Philippines / information@iirr.org DFID-UK, 2000

³¹ The Gujarat G. O. dated 22.11.95 as quoted by NCFIWRDP, 1999. Notably the order also provided that farmers of WUA would be given crop compensation, if the department failed to deliver the agreed quantity of water.

Box 2 Provision on Minor Irrigation in State Panchayat Laws: A Sample

The provisions relating to minor irrigation forms an important part of the water management and distribution provisions of the Panchayat Acts. The Panchayat System of administration being a three-tier system, the functions relating to minor irrigation (in a majority of cases) are allocated to the intermediary tier.

- For instance under the Karnataka Panchayat Raj Act 1993, it is the TalukPanchayats (under sec 145) that has been given the function of ‘assisting the government and ZilaPanchayat in the construction and maintenance of minor irrigation works.’
- Under the Tripura Panchayats Act 1993, ‘minor irrigation, water management and watershed development’ are functions, which have been allocated to the PanchayatiSamiti (sec 91(D)).
- However, in some cases it is also the Gram Panchayats that have been made responsible for minor irrigation, but in such cases the area of usage of such projects are delimited.
- Under the Rajasthan Panchayat Raj Act 1994 (Sec 50) the functions of the Gram Panchayat, include ‘control and maintenance of tanks irrigating up-to 50 meters.’
- Similarly the Kerala Panchayat Act 1994, incorporates within the performance of functions by Gram Panchayat the ‘construction and maintenance of minor irrigation schemes and lift irrigation schemes benefiting up-to 5 hectares within the Panchayat’ (Sec 166(8)(d)).

Watershed Management in India

Apart from the WUAs, Watershed Associations may also be briefly looked at for the kind of participatory structures they have created.

Watersheds operationalize the concept of Integrated Water Resource Management in India.³² In an integrated approach to water resource development, the development of water resources is just one amongst the other multifarious activities that include aspects of soil conservation, irrigation, agriculture, forestry, flood control, horticulture and animal husbandry. The approach of treating all these resources in isolation is discarded for an integrated approach, which takes all these resources together with specific geo-physical units of the area represented by well-defined watersheds. Accordingly, the central thrust of the watershed programme is enhancing productivity of land and water resources on the basis of scientifically defined watershed that connotes a geographical unit rather than an economic or administrative unit. The programme caters to the need for protecting livelihoods in fragile ecosystems while encompassing a wider, holistic strategy for development of agriculture in dry land or rain fed areas³³.

³² Integrated Water Resource Development can mean addressing interactions between water, land and the environment with recognition that changes in any one of the resources may have consequences for the others. The broadest interpretation of the concept would mean approaching integrated water resources management with reference to interrelationship between water and land resources with the social and economic development. It is this approach—which is most liberal and extensive and reconciles economic necessities with ecological imperatives—that has to be kept in mind while understanding the legal and institutional issues associated with Integrated Water Resource Management in India.

This enlargement of purpose of the Watershed programme has been described as the *Watershed Plus* by Anil C. Shah in *Eloquent Silent Revolution*, Development Support Centre, Ahmedabad.

³³ The revised guidelines for Watershed Development 2001 in fact lays down that one of the objectives of Watershed Development Projects will be encouraging village community for: (a) Sustained community action for the operation and maintenance of assets created and further development of the potential of the natural resources in the watershed (b) Simple, easy and affordable technological solutions and institutional arrangements.

The 2003 *Haryali* Guidelines

The Indian Prime Minister in the year 2002 launched a new nationwide Water Shed Development Programme named *Haryali*.³⁴ Significantly, he said that the programme is to be implemented by Panchayati Raj Institutions (PRIs) and saw this as part of a new trend under which the center is giving Panchayats the responsibility for implementation of schemes. Indeed the *Haryali* initiative came close on the heels of another national level scheme for rural water supply called the *Swajaldhara* where again Panchayats are the implementation agents. The launch of *Haryali* further affirms that participatory watershed development through the PRI's is now an accepted national strategy. However an agreed common approach to it remains to be worked out, primarily because watershed programmes today are being carried out by different Union Ministers with different approaches and differing institutional mechanisms. Hitherto the District Rural Development Agency and the Block Development Officer were implementing the rural watershed programmes under the Ministry of Rural Development. The Agricultural Ministry implements the programme through its Soil Conservation Department, while the Ministry of Environment and Forest implements it through Joint Forest Management Committees under the 'control' of Divisional Forest Officer. Each Ministry believes that its approach is the best and therefore an agreement on common guidelines for Watershed Development remains elusive. There were recent reports that the Centre proposes to consolidate all watershed programmes under a single ministry. However we still await a decision in this regard.

The time for decision has however come. Decisively thinking through the institutional structures and implementing mechanisms

³⁴ Launching the initiative he said that under Water Shed Management, villagers can take up many small works to conserve water for drinking, irrigation, fisheries & afforestation which, to him, would not only add to '*Haryali*' to the rural landscape but also create new employment opportunities.

should precede the launch of *Haryali* in all the states. This is also critical because as a recent working group of the Planning Commission points out, ‘time has come when Watershed Development should become a mass movement for accelerated pace of progress, while pointing out that ‘old habits die hard and hangovers tend to continue’ the group adds that Watershed Development Programme must become a people’s programme with government support and should not remain a government programme for the people.’ That is where the empowerment of PRIs for giving to Participatory Watershed Development makes sense. As Pari Baumann puts it the question is not whether PRIs should take over functions of Watershed Development. Rather it is about *how*, and *how rapidly*, this should be done.

However when it comes to the role of PRIs in these programmes there is more confusion than clarity. Over the years notwithstanding the constitutional requirement of empowering Panchayats for Watershed Development. (under the 73rd Amendment), there has been a proliferation of user groups and informal village associations carrying out Watershed management at the local level. The guidelines for Water Shed Development issued by the Union Ministry of Rural Development (MoRD) in 2001 while granting the significance of involving the PRIs and conceding that they have ‘very important role’ and that they ‘shall be fully involved’, failed to suggest as to how this role could be precisely determined both for village level implementation and district level monitoring of the Watershed Development Programme. The Guidelines issued in 2003 for *Haryali* also doesn’t clear confusions in this regard. It says that the ‘Projects will be implemented mainly through the Zila Parishad (ZPs)/District Rural Development Agencies (DRDAs). However, wherever it is expedient in the interest of the programme, the Projects can be implemented through any department of the State Government or an autonomous agency of the Central Government/ State Government with the approval of the Department of Land Resources, Government of India.’ At the village level however, the

Gram Panchayats will execute the works under the guidance and control of the Gram Sabha.³⁵ The Gram Panchayat shall carry out the day today activities of the Project and shall maintain a separate account for the Water Shed Project and all receipts from the ZP/DRDA will be credited to this account. Further 'the Gram Sabha will meet, at least twice a year to approve/improve the Water Shed Development Plan, monitor and review its progress, approve the statement of accounts, form User Groups/Self-help Groups, resolve differences/disputes between different User Groups, Self-help Groups or amongst members of these groups, approve arrangements for collection of Public/Voluntary donations and contributions from the community and individual members, lay down procedures for due operations and maintenance of assets created and approve the activities that can be taken up with the money available in the Water Shed Development Fund.' Indeed there is a clear attempt to put all these works under the control of the Gram Sabha.

Besides the Guidelines add, 'the Gram Panchayat shall also constitute User Groups (UGs) in the watershed area with the help of WDT. These Groups shall be homogenous groups of persons most affected by each work/activity and shall include those having land holdings within the watershed areas. Each UG shall consist of landholders who are likely to derive direct benefits from a particular watershed work or activity. The UGs shall be responsible for the operation and maintenance of all the assets created under the project through which they derive direct or indirect individual benefits.'³⁶

The guideline for Haryali has its grey areas. However, it makes one thing very clear with respect to User Groups in the watershed area and its equation with the Gram Sabha and Gram Panchayat. The User Groups can be constituted by both the Gram Sabha and

³⁵ In States where there are Ward Sabhas (Palli Sabhas etc.) and the area to be treated is within that Ward, the Ward Sabha may perform the duties of the Gram Sabha

³⁶ See Guidelines For Haryali, Department of Land Resources, Ministry of Rural Development, Government of India, 2003.

the Gram Panchayat, the Gram Sabha is to resolve the differences between the User Groups and it follows that the User Groups are responsible to both the Gram Sabha and the Gram Panchayat.

Finally, the appropriate institutional mechanisms that are compatible with the legal mandate can be devised. However the challenge here is to muster a collective will to work on it. So far the Watershed institutions were ultimately responsible to the District Administration and the tendency of the collector to shape decision-making for watershed development programme has been cited in some past studies. Further at the state level, the MLAs themselves are identified as the biggest sources of opposition to Panchayati Raj. A steering committee of the Planning Commission for the tenth five year plan has recently pointed out that instances have come to light where elected member of Panchayat who were not associated with Water Shed Development Project have become instrumental in sabotaging the project. Democratic decentralization for Watershed Development Programme—and otherwise—can only happen when the centralizing tendencies of the vested groups can be curbed.³⁷

Box 3 Watershed management provisions in the Panchayat Laws: A Sample

The watershed provisions are similar to minor irrigation in as much as, in most cases the functions relating to this are to be performed by the Zilla parishad or the Panchayat Samitis. Thus the provisions relating to minor water bodies are mostly vested at the higher or at the intermediate level of administration.

³⁷ States are also recognizing the need to involve Panchayats in Watershed Development. For example, the Rajasthan Government's notification of early 2000 requires 'the full involvement of PRIs in works pertaining to Watershed development (and to accord first priority to PRIs for implementation of such works)'. It has been further decided by the State Government to make the Gram Panchayat as the PIA for Watershed works 'as much as possible'.

- Under the Haryana Panchayat Raj Act 1994 (sec 75(iv)), one of the duties of the Panchayat Samiti is that of ‘minor irrigation, water management and watershed development’.
- In the case of the Panchayat Raj Act 1994 (Rajasthan) watershed development is a function of both the Panchayat Samiti and the Zila parishad (sec 51 & 52). However unlike in the case of minor irrigation, where the functions have been specifically identified, nothing has been specified in this case.
- The Tripura Panchayat Act 1993 seems an exception to the rule in the sense that watershed development has been incorporated within the ‘other duties’ of the Gram Panchayat.

RURAL WATER SUPPLY AND THE PANCHYATS

The Swajaldhara Scheme

A National Level Rural Water Supply scheme, named ‘Swajaldhara’, has been extended to most of the States of the country. As opposed to 50:50 (centre to state) funding earlier of such rural water supply projects, the new guidelines for the scheme proposed that the centre funds the scheme suggested by the Panchayat by 90% and the Panchayat proposing the scheme will foot remaining 10%. Experiments in the pilot phase of the Scheme in some States suggest that the institutional mechanism envisaged by the Scheme has a village level water supply committee as its cornerstone, which would be generating the demand for specific water supply scheme while being responsible for its implementation. Here there is need to guard against creation of institutional bodies parallel to the Gram Panchayat. If such a Committee has to be integrated with the Panchayati Raj Framework, how precisely this could be done needs to be thought out. The legal status of such a village entity needs to be made clear. Whether it has to be a committee of Gram Sabha, Gram Panchayat or otherwise has to be worked out.

Besides while the technical and administrative clearance of the Scheme proposed at the village level is to be granted by the Zila Parishad (ZP), here again there is a need to have a close eye on the equation that develops between the President ZP and the CEO. The powers need to be vested with the President ZP, because unlike the CEO who is an official functionary, the President ZP is an elected office, integral to the PRI mechanism and is required under the State laws to ‘exercise administrative supervision and control over the CEO’. The Scheme also needs to be sure on how the existing Water Supply Committee of the ZP can be involved. Apart from the above, the fact that a nationwide scheme empowering Panchayats in water management would have no role assigned for the intermediate tier of PRI the Panchayat Samitis at the Block level—could be potentially destabilizing in the long run.

Box 4 Provisions on Rural Water Supply in the State Panchayat Laws: A Sample

A majority of the provisions relating to drinking water are similar sounding.

- Thus under the Karnataka Panchayat Raj Act 1993 the functions of the Gram Panchayat as specified includes ‘construction, repairs and maintenance of drinking water wells, tanks and ponds’(sec 58(1)).
- Similarly under the Assam Panchayat Act 1994, one of the functions of the Gaon Panchayat (sec 19(1)) is ‘construction, repair and maintenance of drinking water wells, tanks and ponds and tube wells.’
- Also under the Haryana Panchayat Raj Act 1994, within the sphere of drinking water, the functions of the Gram Panchayat include ‘construction, repairs and maintenance (hereinafter referred to as CRM) drinking of water wells, tanks and ponds’.

The other kind of provisions relating to water are prohibitive in character. Thus under the A.P. Panchayat Raj Act 1994, section 81(1) (a) reads ‘the Gram Panchayat may in the interests of public health regulate and prohibit the washing of animals or of clothes or other articles or fishing in any public spring, tank or well or in any public water course ... and may set apart any such place for drinking or for bathing or for washing animals or clothes or any other specified purpose.’ Quite in the same way, the Karnataka Panchayat Raj Act 1993, section 77(2) & (3) states that ‘the Gram Panchayat may by order set apart any such place for the supply of water to the public for drinking or culinary purposes, moreover it may prohibit bathing, washing of clothes and animals or other acts likely to pollute the said place’.

The Gram Panchayat may also ‘contract with any person for the supply of water’, [section 77(1) (d) of the Karnataka Panchayat Act 1993]. This is a fairly unique provision that enables the Panchayat to enter into a contractual agreement with any third party for ensuring water supply. The Karnataka Panchayat Act is also unique in the sense that under section 78, the Gram Panchayats have been given the power to make the bye—laws regarding the provisions of water supply (though the power is ‘subject to such rules as the government may make on this behalf’).

There are other questions. How would the *Swajaldhara* Scheme ensure that what is proposed at the village level binds the prescribed authority to act on it within a limited timeframe? Further, while the 90:10 funding formula might work when the assets for water supply are put in place, the fact that whole of the Operation and Maintenance (O&M) costs would be the responsibility of the Panchayats, should not be lost sight of. Most of the past rural water supply schemes have failed because of the poor O&M provisions. The Panchayats’ financial capacity and willingness to bear the expenses in this regard need to be clearly ascertained. This is more so because close on the heels of *Swajaldhara*, the Government of India has announced the *Haryali* Programme for water harvesting

and conservation through Watersheds, to be taken up again by the Panchayats and with the same funding formula. It is thus crucial to have a close understanding of all institutional and financial aspects of the proposed schemes without further delay. In this background, the Rural Water Supply Scheme proposed for the State of Maharashtra throws some interesting insights and this is discussed in detail in a subsequent section.

PARTICIPATORY IRRIGATION MANAGEMENT AND LAW IN RAJASTHAN

Introduction: Towards Irrigation Reforms in Rajasthan

The Government of Rajasthan constituted a High Level Committee on Participatory Irrigation Management (PIM) in February 1994 to suggest ways and means for increasing effective participation of farmers in the 'Water Distribution Committees' constituted at various levels for better use of available water for irrigation. The committee made a detailed study of a few projects in different regions of the State. It was observed that in the State, over the years, the availability of the funds for operation and maintenance have been far less than required, leading to poor or practically zero maintenance and consequent deterioration of the irrigation systems. Apart from this, the water charges are less than 20% of the expenditure needed for proper operation and maintenance.³⁸ The current practices have led

³⁸ It was pointed out that the last time the irrigation fees in the State were revised is 1983. As elsewhere in the country, these fees are a small fraction of the O&M costs of the systems and an even smaller fraction of the actual costs of private lift irrigation with diesel pumps. The highly subsidized irrigation fee structure has helped establish a low-level equilibrium. Farmers are unwilling to demand improved maintenance and service from the ID lest it might result in higher irrigation fees. The ID staff justify lack of maintenance and poor O&M on low irrigation fees. One consequence of this low-level equilibrium has the productivity of irrigation infrastructure. Another is the lukewarm response of farmers to assume the responsibility of O&M of the irrigation system, because this would increase their costs.

to endemic problems of irrigation management, having drawbacks viz. inequity on water dissemination, low efficiency of water use etc. In view of all this there was a strong need for strengthening and restructuring irrigation management in the State. The areas, which need greater attention included:

- (a) Rationalization of use of water, saving water and using it to irrigate larger areas or to improve the quality of irrigation in tall reaches. (b) Bring equity in water distribution (c) Improve resource availability for maintenance, and (d) Improve system for collection of water charges.

To overcome the aforesaid problems, it was decided that as a part of the State Policy, irrigation management should be transferred to Water Users Associations (WUAs) in stages. The WUAs shall take over maintenance of all works of the minor and below the minor. Collection of irrigation charges from the concerned cultivators at the rate prescribed by the Government from time to time shall be the responsibility of the WUAs, 50% of which shall be given to them, subject to the following conditions:

- i) No expenditure on operation and maintenance of the transferred minors/channels will be borne by the department and ii) The staff deployed for maintenance and collection of revenue on channels being transferred to WUAs would be withdrawn gradually.³⁹

The policy decision emphasized farmers participation in water distribution and collection of water charges through: evaluating results of on-going pilot projects where farmers participation has been introduced; giving priority of funds of rehabilitation and modernization of irrigation projects to those projects where farmers

³⁹These points have been taken from the Circular of the Irrigation Department of Government of Rajasthan.

are willing to organize into WUAs; seeking the assistance of voluntary agencies in educating the farmers in efficient water use and water management and finally, introducing changes in legislation for fostering users' participation in irrigation.

The Law for Farmers' Participation in Irrigation Management

The relevant changes in the law for enabling farmers' participation in Irrigation management occurred through the enactment of The Rajasthan Farmers' Participation in Management of Irrigation Systems Act in the year 2000. The Act empowers the 'Project Authority' to delineate every command area under each of the irrigation systems on a hydraulic basis, which may be administratively viable and declare it as Water Users' area. Every Water Users' area is to be divided into territorial constituencies being not less than four and not more than ten. It provides for establishing a Water User Association (WUA) for every Water Users area. Every WUA is to consist of all water users who are landowners in such Water User area as members. All the members constitute the general body of the WUA. There has to be a Managing Committee for every WUA and the Project Authority is responsible for election of President and members of the Managing Committee of the WUA by direct election from among its members by the method of secret ballots. Further the Project Authority may also delineate every command area comprising two or more water users area as a Distributory Area. All the presidents of WUAs constitute the general body of the Distributory Committee. The general body of the Distributory Committee also elects the President and the members of the Managing Committee of the Distributory Committee. Likewise, the government may delineate any command area to be a Project Area while requiring it to form a Project Committee for every project area. All the Presidents of the Distributory Committee constitute the general body of the Project Committee. The Managing Committee for every Project Committee

shall be a nine-member body elected by the members of the general body of the Project Committee.

The WUAs at the primary level, the Distributory Committee at the secondary level and Project Committee at the project level are together referred to as Farmers Organisation under the law. There is also a liberty for the Managing Committee of a Farmers Organisation to constitute subcommittees to carry out their functions. Besides the government is empowered to (a) form a new Farmers' Organisation by separating the area from any Farmers' Organisation; (b) increase the area of any Farmers' Organisation; (c) diminish the area of any Farmers' Organisation; and (d) alter the boundaries of any Farmers' Organisation.

Finally, the functions of Water Users Association under the law include (a) to prepare and implement a Warabandi schedule for each irrigation season, (b) to prepare a plan for the maintenance, extension, improvement, renovation and modernization of irrigation system, (c) to regulate the use of water among the various outlets under its area of operation, (d) to maintain a register of landowners as published by the revenue department, (e) to monitor flow of water for irrigation, (f) to resolve the disputes if any, between its members and water users in its area of operation. The Act also empowered the State Government to make rules for carrying out the purposes of the Act that the State government finally did last year.

In pursuance of the 2000 Act The Rajasthan Farmers' Participation in Management of Irrigation system Rules, 2002 (Hereafter the 2002 Rules) came into being in October 2002. They stipulate that every water users area shall be divided into such number of territorial constituencies as given below:

The Rules further require that the map/sketch of each water users area showing the boundaries of territorial constituencies shall be prepared with the project authority and then they need to be published by affixing them on the notice board of the office of the Project Authority and notice board of the concerned Panchayat, Water

**Table 1 WUAs and Their Territorial Constituencies
in Rajasthan**

<i>Area of Water Users Association</i>	<i>Number of territorial constituencies</i>
Up to 1000 hectares	Four
From 1001 to 1500 hectares	Six
From 1501 to 2000 hectares	Eight
More than 2000 hectares	Ten

Users Association, Distributory Committee for information of water users who are land owners⁴⁰. The Tehsildar of the area is required to prepare list of water users who are landowners and renew them every year during the month of January on the basis of record of Land Rights. Notably the Farmers Organisation is required to conduct a social audit at the end of each crop season. The social audit shall be for both water utilisation against the water budgeting and expenditure incurred for the maintenance and construction, improvement of the system with reference to the funds available to each of the Farmers' Organisation⁴¹ A significant feature of these new rules in Rajasthan is that, they enable the farmers organisation including the WUA to constitute subcommittees to carryout specific functions assigned by the President and on the recommendation of the Managing Committee.⁴² Thus there could be Administration, Finance and Resources Sub-committee, Works Sub-Committee for Water User Association, Water Management and Agriculture Sub-Committee, Monitoring, Evaluation and Training

⁴⁰ See clause 3 of the 2002 Rules.

⁴¹ The social audit shall cover: Equity in water distribution; Increase in production; Increase in productivity; Crop diversification; Multiple cropping; Water use efficiency; Utilisation of the resources for the execution of Works; Type and nature of the work for maintenance & repair of the system; Methodology/procedure followed in the execution of the works on distribution and drainage system; Improvement in the cultivated area of the Farmers' Organisation compared to previous season; and Quality of works undertaken.

⁴² See clause 53 of the 2002 rules.

Sub-Committee and *Chak Samiti*. The Managing Committee may constitute 'chak' wise *Chak Samitis* for efficient distribution of water and to implement decision taken by general body meeting within the chak concerned. The *Chak Samiti* shall consist of three farmer members of the concerned chak nominated by the President/Chairperson of the Farmers Organisation. The provision needs to be kept in mind for the case studies given below.

Case Study No. 1: The Kharad Irrigation Project and Its Canals

The Kharad Irrigation Project is one of the oldest Irrigation project in Rajasthan and was completed in the year 1887. There is one main canal namely Kharad main canal off-taking from pick up weir of Kharad dam. The main canal is 6.95 km long. The system has three branch canals also.⁴³ The Irrigation Department has carried out a study on these Canal systems which points out that there is near total lack of farmer's participation in management and water distribution though Water User's Association at minor level.⁴⁴ Under Rajasthan Water Sector Restructuring project after a detailed traversing and survey, various deficiencies in the system were identified and probable solutions were thought out for redesigning of canal section, removal of un-authorized outlets and improvement of canal section and to provide lining. Apart from these structural measures it is also recognized that there is a need to develop awareness among the farmers for efficient use of water through forming of WUA's, thus improving overall management practices in the command. WUA

⁴³ These include the Patalbas branch canal: 6.10 km long; Tholai branch canal: 4.91 km long and Samore branch canal: 3.81 km long. The system has 4 minors also, two minors off taking from Tholai branch and two from Samore branch canal.

⁴⁴ It further points out that there is no organisation of farmers for proper distribution handling and application of canal water to their fields and dispute resolution tendency is totally missing. Farmers even do not hesitate to damage canal structures for getting water out of turn and in excess of their requirement

will also take up the work of annual maintenance and fixing of assessment and recovery of water charges and penalties etc. It is also believed that by implementing the improvements suggested above, the performance of the system is likely to enhance on account of following factors—reduction in seepage losses, equitable and proportionate supply to all chaks and undisputed timely supply to all beneficiaries through organized system of WUA’s.

Ascertaining the Overlap of WUA with Panchayats

A Water User Association has been constituted for the Kharad Irrigation Project. This has been done in pursuance of The Rajasthan Farmers’ Participation in Management of Irrigation Systems Act described above. Even though the Act requires that the WUAs be created by an electoral process, here the WUA presidents have all been elected unopposed in the second half of the year 2002. For the purposes of the present study it is important to see what constitutes the Water User Association in the Kharad Irrigation Project and what Revenue Villages are covered within the Water Users Area. This can be seen in the following Table:

Table 2 WUAs and the Revenue Villages within the Area of WUAs

<i>The Names of Water User Associations</i>	<i>Revenue Villages within the Area of WUA</i>
Patalwas WUA	Daantli/Pawta, Chakdantli, Sankotda Patalwas
Tholai WUA	Kharad, Saipur, Aandhi, Tholai
Saipur WUA	Saipur, Aandhi, Gopalawas
Aandhi WUA	Aandhi, Birasana
Birasana WUA	Tholai, Gopalawas, Birasana, Kanwarpura, Chak Kanwarpura, Bhondakheda
Footalav WUA	Footalav, Rampurwas Thli, Dagarwada, Sankotda

It can be seen above that the entire Kharad Irrigation Project aims at beneficiaries in eighteen revenue villages. A closer look at WUA's made around the branch canals under the Project would be useful here. As the table above shows, the Patalwas WUA has beneficiaries from five revenue villages, namely, Dantili, Bhawari, Chakdantiti, Sankotda and Patalwas. Significantly of these five the first three are within the Gram Panchayat Bhawani while the last two are part of the Patalwas Gram Panchayat. Note that the total number of beneficiaries under the Patalwas branch canal is 275 persons only, which consist of all water users who are landowners in designated water user area. As per the 2000 Act, every Water users area has to be divided into territorial constituencies (not less than four and not more than ten). The Patalwas WUA also has four territorial constituencies. Also note that every WUA has to have a managing committee headed by the President who is elected by the general body of the WUA. In addition, one member each from each of the territorial constituency is also to be elected. Patalwas WUA has thus four 'elected' members representing the four territorial constituencies and a President who is from the village Dantili. It is important to note that while the five villages, under two different Gram Panchayats where water user Area of the Patalwas WUA runs through, has a population of over 5000 the number of beneficiaries of the Patalwas branch canal is only 275 people. Like-wise another WUA under the Kharad Irrigation Project, the Aandhi WUA overlays two revenue villages—Aandhi and Birasana—who are part of two different Panchayats. The Aandhi WUA also has four territorial constituencies and is headed by a President from the Village Aandhi. Both of the WUA Presidents—as all the other WUA elected heads—have been elected unanimously in August 2002.

Talk of Linkages between WUA and Panchayats

There was no evidence of any existing—or brewing—conflict between the Sarpanch and the 'elected' WUA Presidents, both in the

Patalwas and Aandhi Water user areas. The single biggest reason for this is that there has not been a drop of water in the Patalwas branch Canal and the Birasna minor over the last ‘few years’! As the Aandhi WUA President said, ‘*Hum log bina fite ke Thanedar hain*’. (Literally: we are officers without badges!) What is the point of being a *Pani Samiti Adhyakshya* (Water Association Committee President) when there is no *Pani* (Water) anywhere’, he lamented. Because of this the WUAs, which were constituted in August 2002, continue to be dysfunctional today. This has obviated any possibility of any inter-institutional conflict between the Gram Panchayat and the WUA, or any personality clash between the Sarpanch and the President WUA thus far. However, the Aandhi WUA President had strong views on what his role should be in future. Firstly he said that being the *Pani Samiti* of the area, management of two *Anicuts* (*check-dam*) and three *Talabs* (Ponds) should be their responsibility. Secondly, he was not aware of the decision of the Rajasthan Government by which all the Minor Irrigation works with CCA upto 90 has been transferred under the control of Gram Panchayat/Panchayat Samiti. When the irrigated area by a—tank covers two or more than two Gram Panchayat, such tanks are to be handed over to the Panchayat Samiti. The Cabinet decision rules out the possibility of what the WUA head said. However, the transfer to Gram Panchayat—of all such minor irrigation works—becomes effective only when the concerned Gram Panchayat passes a resolution for taking over the control of these tanks. And out of five water tanks in Dantili and Aandhi villages, there is only one tank adjacent to the village Dantili in respect of which the Gram Panchayat has passed a resolution—the only tank, which the Panchayat believes can bring immediate returns by issuing licenses for fixed prices for fishing purposes.

Talks in Jaipur on the question were instructive. Senior officials in the Irrigation Department informed that the Minister was of the clear view that the Panchayat representatives should be kept out of the WUAs in the State. This was primarily because of their ‘divisive’ political nature. On pointing out that the PIM law itself creates a

parallel political process for the WUAs, it was said that this aspect requires a closer understanding. On the other hand, the Secretary of the Panchayat Raj Department said that there was a definite need to involve the Panchayats in the WUAs being created in the State. In fact he stated that in his earlier assignment with one of the pilot initiatives for Participatory Irrigation Management in the Kota Command Area in the State, he had suggested in official capacity that the Sarpanch/Up-Sarpanch should be part of the WUAs. The two views were affirmation of the fact that the stand one takes on an issue can really depend on where one sits!

Case Study 2: Chak Samitis of the IGNP

The IGNP and Its Objectives

The Rajasthan Canal Project (RCP) renamed in 1984 as the Indira Gandhi Nahar Pariyojna (IGNP) was conceived in 1948 by Shri Kanwar Sain, the then Chief Engineer of the Bikaner State.⁴⁵ It represents one of the most ambitious endeavors by the post Independence modern Indian State to bring in Himalayan Waters to the vast stretches of the dominantly dune covered arid and hyper arid regions of the Indian Thar.⁴⁶ The objectives of IGNP as mentioned in a review report include the following: drought proofing of the area and improvement of living conditions, provision of essential and developmental needs of water for drinking and industrial use, provision of irrigation facilities in the area in order to develop the vast area and resources to meet the growing demand for agricultural products, creation of employment opportunities in the rural sector, settlement of thinly populated areas with a view to easing pressure on land due to population increase in other parts of the State,

⁴⁵ After the inter-state agreement of 29h January 1955, the administrative sanction was accorded in July 1957 to flag off the project in March 1958.

⁴⁶ See Ghai Rahul, *Whither Commons: State and Land Use in the Canal Command Area in the Pugal Region, Bikaner*, March 2002.

fulfillment of the demand for drinking water, fodder and forage for the vast animal population of the region, checking the spread of desertification and improvement of the ecosystem through large scale afforestation, and provision of opportunities for overall development of the area through creation of infrastructure for exploitation of natural resources, development of industries etc.⁴⁷

The Coming of Chak Samitis to the IGNP

In IGNP the Command Area Development Authority (CADA) took the initiative in forming Chak Samities for inducing farmers participation. A *Chak* is an outlet command, which in CAD-IGNP has a culturable command area of 200–400 ha. Senior CADA and Irrigation department officials point out that at many places the Chak Samities were formed even before the construction so that they could be involved in the Planning process. In such process the Irrigation Wing of CAD was the Nodal Agency for forming the Chak Samities and later on after construction, the same Chak Samities were recognized and used for participation of farmers by CADA for its various activities. In other cases, such Chak Samities were formed after construction by Agriculture extension wing of CAD. Significantly according to them the ‘Chak Samities are only formed where chairman and members can be selected unanimously to avoid development of frictions within the farmers in a Chak which could be caused if elections were to be held’. Further on their own admission these efforts at use of Chak Samities have not been very successful as their involvement is not up to desired or envisaged extent. The constitution of Chak Samities in the stage II of the IGNP began in 1996 with these Chak Samities being called the Nahri Kshetra Vikas Samiti (NKVS). This was done on the initiative of

⁴⁷ Indira Gandhi Nahar Project—Mission Findings and Recommendations By J. Schwarz, M. Harai, Z. Herman; Mashav & CINDACO, Govt. of Israel in Collaboration with USAID, April 1994; p. xiv.

CADA and these NKVS were registered as legal entities under section 28 of the Rajasthan Societies Registration Act. The legal status of these NKVS as well as their objectives was decided by the CADA.⁴⁸ The NKVS's Deed of Registration, under the Societies Registration Act mentions the following objectives for the NKVS:⁴⁹

1. [to] create conditions for social and economic development of the Chak abadi (population).
2. to carry out study and analysis of the various aspects of development of the abadi and then create development projects in accordance with the problems of the local community as well as implementing the projects with the full participation of the community and
3. to take the primary role in development, management and protection of natural resources while devising a distributory mechanism for sustainable use of these resources.

The minimum members of the Chak Samities was kept at 15. It was also made clear that at the time of transfer of Irrigation system minimum 51% of the total membership of the Chak Samiti should stand, of which at least 50% members should be from the lower reaches of the Canal systems. Eight years down the line some of the major problems of these Chak Samities face today are: an acute shortage of water in the Minors, the bad physical conditions of watercourses, Pattas being not issued to the residents of these Chaks, severe shortages of basic amenities compounded by the non-recognition of Chak abadis as revenue villages and finally, despite repeated prayers, interactions and correspondences with the

⁴⁸ As was pointed out to the author that the Registration of the NKVS was done 'enthusiastically' by the CADA by coming up with temporary camps at respective local places where the officials and the Registrars for the Societies Registration were also present.

⁴⁹ Translation by the Author from the original document in Hindi.on file with the Author

concerned departments for alleviations of their problems, no action has been taken.

Problems Faced by the Chak Samitis

The problems of the Chak Samitis or the Nehri KshetraVikas Samits (NKVS) may be enumerated as follows:

1. NKVS was created for local development purposes, including but not limited to Natural Resource Management, but seven years down the line, they have been left redundant.
2. The Chak Abadi has not been brought under the coverage of revenue villages and neither has the Samiti been given a footing under the new PIM law. The possible impact of beneficial/welfare legislation has totally escaped them over these years.
3. While they are registered legal entities, NKVS today does not come under any of the policy or legislative scheme envisaged by the state of Rajasthan.
4. No water in their minors, 30% of their land reversed and no longer in Command area, Agricultural land due to them not allotted, 100% drought declared villages among them. Faced with all this the formation of village level groups (NKVS) has not helped at all as it has not been able to assert its rights in absence of desired legal backing. They are a living example of formally constituted groups with no legal rights whatsoever.
5. During their existence the chak samities were promised different things by different government departments. Even though none of these promises have been fulfilled, the samities have been helpless in enforcing them.
6. Despite having the mandate of *Nahri Vikas*, they have been totally unaware of present and proposed water distribution system, schedule of delivery of Irrigation water etc.
7. Despite having the mandate and a legal constitution, it is inexplicable as to why NKVS should be deprived of the advantage that the spirit of the new PIM law brings in

the State. Despite PIM being introduced in these areas in 1996 with the constitution of the Samitis, now when it has found a legal backing in the State these very areas have been overlooked. PIM in the State would be a misnomer if it doesn't apply to the IGNP Command area.

8. In various forum for over the years, they have articulated their demands but with very little success.

Box 5 Compilation of Extracts from some Gram Panchayat Resolutions in Bhulari Showing the Linkage between Chak Samitis and the Panchayat (Translated from Original in Hindi)

1. *Dated 2nd October'2002: Mahendra Singh Mati, Sarpanch, Gram Panchayat Bhulari.*

Those present at the Gram Sabha are of the view that that development programs should be carried out by the NKVS. So that the work is good in quality, it is economical and is fully completed. These kinds of agencies should be given preference by the government and non-governmental organizations so that the area can be developed in its true sense.

2. *Dated 2nd October'2002: Mahendrasingh Mati, Sarpanch, Gram Panchayat Bhaluri.*

The proposal was made for the construction of a bridge over Gokul Minor (R.D. No 91/2), the financial proposal for which has already been made, however due to paucity of funds it is impossible to go forward with the project. The Ward Sabha has taken a decision that the Gram Panchayat with the help of its own resources will construct the bridge.

3. *Undated: JFM officer.*

As per the orders of the forest department a coop forest management society has been constituted in 2 GM,

documents of which has been sent to you for registration. We hope that you have already completed the formalities. If not then kindly deal with the matter promptly.

4. *Dated: 26th January 2003. Kushalsingh, gram sevak*
A proposal submitted to gram panchayat bhaluri, involving the cutting, covering, desilting, etc of the canals and NKVS has been identified as the implementation agency.
5. *Dated: 26th January 2003, Mahendrasingh Mati, Sarpanch, Gram Panchayat Bhaluri.*

The population of the revenue village Bandli, including the chaks 1–4 GM, !-2 BM, 6 MKD is 1800 and therefore it should be included within the purview of the PM Sadak Yojana.

6. *Dated: Dated: 26th January 2003, Mahendrasingh Mati, Sarpanch, Gram Panchayat Bhulari.*

Proposal has been made for concretization of Bandli tank through the use of the funds available under the swajaldhara scheme. The villagers are willing to contribute 10% share for the project.

7. *Dated: Dated: 26th January 2003, Mahendrasingh Mati, Sarpanch, Gram Panchayat Bhulari.*

Ward Panch Laxman Singh has proposed that in 21RD Gokul Minor does not have bridge and it is creating a problem for the residents of the chaks and villages. The Govt dept has been unable to do the work and therefore it should be completed by the gram Panchayat.

8. *Dated: Dated: 26th January 2003, Mahendrasingh Mati, Sarpanch, Gram Panchayat Bhulari.*

In order to—and—of the 4MKD canal funds from the MLA quota and the drought relief fund should be used. For this purpose NKVS 2 GM should be used as the implementation agency.

9. *Dated: 26th January 2003. Kushalsingh, gram sevak*

In order to desilt, cover and repair the 9 MKD channel, it is proposed that NKVS should be the implementation agency.

10. *Undated: Kushalsingh, gram sevak*

It is proposed that in order to undertake desilting channels 1,3GM and 5MKD the funds under the “apna gaon apna kam yojna” should be utilized. The proposal has been discussed with and has been approved by 2GM.

11. *Undated: Kushalsingh, gram sevak*

Proposal for the employment of women in the Swarn Jayanti Plan. The approval for this proposal has been taken from 2GM samiti.

Development Committees of Panchayats or Water User Associations?

As the above box shows, the Gram Panchayat resolutions are seen to assess the nature of interface between the Panchayat bodies and the Chaks Samitis in the area. These resolutions throw some much needed light on the issue. One of the resolutions seem to clearly suggest that NKVS are envisaged more or less as the Village Development Committees under the control of Gram Panchayat while recording clearly that ‘the Gram Sabha is of the view that development programmes should be carried out by the NKVS.’ Another resolution shows that the Gram Panchayat identifies the NKVS as the Implementing agency for cutting, covering and desilting of canals. This is followed by another Gram Panchayat resolution that identifies the NKVS to do canal related works as the implementing agency while itself utilizing the funds under the MLA quota for this purpose. The Gram Panchayat also seems to be looking to the needs of the Chaks and in one case was sanctioning its own funds to construct a ‘Pulia’ (a local bridge) in a Chak abadi.

The resolutions of the Gram Panchayat Bhulari seem to suggest clearly that the NKVS (Chak Samities) are in overall control and supervision of the Gram Panchayat. However, organisations supporting Chak Samitis in this area frequently invoke the new Participatory Irrigation Management law and appear to be of the view that the Chak Samities be recognized as the WUA under the Rajasthan Farmers Participation In Management of Irrigation Systems Act 2000.⁵⁰ Indeed the history of Chak Samities has been largely intertwined with the evolution of Participatory Irrigation Management in the IGNP area and thus this perception is not without reason. In fact, the new rules made under the 2000 Act called the Rajasthan Farmers Participation and Management of Irrigation System Rules 2002 seem to strengthen this view. The 2002 rules provides for appointment of Project Authorities for the purpose of the Act and one of the appointees mandated under the rules is the Commissioner, CAD, Bikaner for the IGNP Command area.⁵¹ Besides the rules also empower the management committee of a Farmers organisation (the WUA's or Distributory Committee or Project Committee) to 'constitute chakwise Chak Samiti for efficient distribution of water and to implement decisions taken by the general body meeting within the Chak concerned. Chak Samiti shall consist of three farmer members of the concerned Chak nominated by the President/Chair Person of the Farmers Organisation (WUA)'⁵² Notwithstanding these provisions the trouble with accepting the Chak Samitis as the Water User Association under the new law is that it would then substantially restrict the nature and functions of the Chak Samities. Importantly, the NKVS is not a *Nahri Vikas Samiti* (literally Canal Development Committee) but a *Nahri Kshetra*

⁵⁰ Interactions on this topic were carried out with members of the Arid Zone Environmental and Research Centre (AZERC) Urumul Trust, Bikaner and Shanti Maitri Sansthan, Pugal.

⁵¹ See clause 15 and 56 of the 2002 rules.

⁵² See clause 53 of the 2002 rules.

Vikas Samiti (literally Canal Area Development Committee), which is responsible for the overall social-economic development of the Chak abadi. Indeed as the document registering the Chak Samitis as Societies under the Rajasthan Societies Registration Act show, they have larger role to play than mere water distribution, delivery and monitoring. Whether these Chak Samitis are development committees or Water User Association is at the heart of their problem of a severe identity crisis today.

RURAL WATER SUPPLY, PANCHAYATS AND LAW IN MAHARASHTRA

Introduction: Village Water Supply Committee (VWSC), Panchayats and Its State Context

A recent resolution of the Water Supply and Sanitation Department, Government of Maharashtra reads:

A Policy decision to make revised guidelines issued by the Government of India applicable to Accelerated Rural Water Supply Programme of Central Government and Minimum Needs Programme of State Government has been taken by the State Government vide Government Resolution dated 27th July, 2000 ... According to the Resolution, the Rural Water Supply programme will be implemented on 'Demand driven and Community Participative principles'. Accordingly, choice, design, planning, implementation, operation and maintenance of the scheme are required to be done by the beneficiaries.⁵³

The said Government Resolution formally announced the beginning of critical reforms under way for the Rural Water Supply programme of the State of Maharashtra. The Resolution itself laid

⁵³ Government Resolution No. RWS-1001/CR-190/WS-07 and dtd. 3.9.2001, Water Supply and Sanitation Department, Government of Maharashtra.

down in clear terms the constitutional context for the reforms while making a Village Water and Sanitation Committee (VWSC) the cornerstone of the proposed demand driven and decentralized Drinking Water Supply Scheme in the rural areas of the State. In fact one of the important—and explicit—objective of the Government Resolutions (GRs) seeking to usher in a demand driven rural water supply scheme is to empower the Panchayats in the process. The 3rd September 2001 State GR recognizes this need while clearly saying, ‘After 73rd Amendment to the Constitution, the subject of drinking water has completely been brought under the authority of the Panchayat Raj Institutions in accordance with the 11th Schedule of the Constitution’.⁵⁴ The GR also said that (a) Government has decided to delegate as much power and authority as possible to the lowest tier of PRIs; and (b) Accordingly, wherever possible, powers has been given to the Gram Sabha. It helps incorporate the principle of direct democracy in the water supply policy of the State. That being so at least the intention of the Rural Water Supply and Sanitation (RWSS) Programme in the State cannot be faulted. It seeks to give effect to an important principle of democratic devolution of powers:—Anything that can be done at a given; level—Gram Sabha, Gram Panchayat, Panchayat Samiti or Zila Parishad—should be done at that level and not at the higher level.⁵⁵

While seeking to vest power and authority to possibly the lowest tier of PRIs the GR says that this could be the ‘Gram Panchayat or other similar institutional entities functioning at the village level’.⁵⁶ However, whether empowerment is done of the Gram Panchayat or another institutional entity makes a crucial difference. As pointed out in a preceding section, there is a need to guard against creation of parallel institutional bodies at the village level. The GRs constitutes

⁵⁴ *ibid*

⁵⁵ *ibid*

⁵⁶ *ibid*

Village Water and Sanitation Committee (VWSC) for implementation of the scheme. As per the Resolution, the composition of the VWSC is a decision 'totally within the competence and discretion of the Gram Sabha' subject only to at least 50% women members and also adequate number of backward class representatives.⁵⁷ Likewise, the decision to appoint Sarpanch or any other person as the chairman of the VWSC should also be taken by the Gram Sabha only. Besides, the GR says 'VWSC will have status and authority of a committee of Gram Panchayat for all actions'.⁵⁸ However, such a status can have certain legal consequences. For example a committee of Gram Panchayat would mean that the Panchayat 'may at any time withdraw the delegation or assignment of powers duties or functions' as per the Bombay Village Panchayat Act 1958. Whether such a result is envisaged under the RWSS is, however, not clear. These aspects are explored further in subsequent sections.

The State Panchayat Law Regime and Water Management

For a better understanding of the recent water sector reforms in the State of Maharashtra, it is first important to appreciate the existing legal framework that operates in this sector in the State. The Panchayat Raj Institutions in Maharashtra are primarily governed by two separate legislations. While Bombay Village Panchayat Act, 1958 governs the Gram Sabha and the Village Panchayat, the Zila Parishad and Panchayat Samiti are governed by the Maharashtra Zila Parishad and Panchayat Samitis Act, 1961. Since the Government Resolutions on the RWSS provided for the creation of the Village Water Supply and Sanitation Committee (VWSC) and grants it the status of Sub Committee of the Gram Panchayat, some of the provisions of the Bombay Village Panchayat Act of 1958 become

⁵⁷ *ibid*

⁵⁸ *ibid*

immediately relevant. The Act empowers the Gram Panchayat to form one or more committees of its members and entrust to each committee certain duties and functions, if the Panchayat so decides. The formation of each committee (which may even include a water supply committee), duties and functions delegated to it shall be done by the resolution of the Panchayat. Significantly the Panchayat has power to dissolve any such committees and withdraw powers and duties of any such committees.

The Gram Panchayat is also empowered by the Act to levy (a) a general water rate which may be imposed in the form of rate assessed on buildings and lands; (b) a special water rate for the water supply by the Panchayat through pipes which may be imposed in any form including that of charges for such water supplied; (c) a fee for supply of water from wells and tanks vesting in the Panchayat for purposes other than domestic use and for cattle; and (d) a special sanitary cess upon private latrines, premises or compounds cleaned by the Panchayat Agencies. It is also relevant to note here that 'if in the opinion of the Panchayat Samiti the income of the panchayat falls below what is necessary for the proper discharge of the duties specified to it, the Panchayat Samiti may require the panchayat to take steps within six months, to increase its income to such extent as the Panchayat Samiti considers necessary. If the panchayat fails to take adequate steps to increase its income to the required extent the Panchayat Samiti may require it to levy any of such taxes and fees as found necessary by the Samiti'.

Some of the provisions of the Maharashtra Zila Parishad and Panchayat Samitis Act, 1961 are also significant. The Panchayat at Zila Parishad Level is to be headed by the President, Zila Parishad which shall 'exercise administrative supervision and control over the CEO' for securing implementation of the resolution or decisions of the Zila Parishad, Standing Committee, Subject Committee and the Panchayat Samiti. By an Amendment in 1993 to the 1961 Act it has been made clear that every Zila Parishad shall appoint a Water Conservation and Drinking Water Supply Committee. This

Committee shall consist of the President as the *ex-officio* Chairman and Chairmen of the Agricultural Committee, the Finance Committee and the Works Committee. Apart from 5 Elected Councilors the committee also has the CEO as *ex-officio member* but having no right to voting. Besides the general powers and functions of the Zila Parishad include sanctioning works or development schemes within the District apart from doing all things necessary for proper discharge of its functions and duties under the Act. The powers and functions of the Panchayat Samitis under the 1961 Act include preparation of overall plan of works and development schemes to be undertaken in the blocks and also from the block grants with a view to utilizing local resources in the block to the maximum possible extent.

Case Study No. 3: The Rural Water Supply Scheme in Villages in Satara

To assess the initial impact and to appreciate better the local context for the applicability of the Rural Water Supply and Sanitation Scheme (RWSS) in the State, field visits were made to two different villages (Dare and Degaon) in the District Satara where a pilot of the scheme has already been undertaken. Some relevant notes from these villages are presented below.

Dare Village, Taluka: Mahabaleshwar, District: Satara

The Village Dare is a part of Gram Panchayat consisting of three villages viz. Jawali, Dare & Haroshi. The economy is mainly based on agriculture. The numbers of households in Dare are 32 (population approx. 177 with 73 below the poverty line). There are 7 elected Gram Panchayat members. The Gram Panchayat has 5 sub-committees. These Committees are in: Education, Health, Tax collection, Social Welfare and Construction. Further, the Gram Panchayat has a total sanctioned staff of one. The Gram Sevak, reporting to the BDO, is responsible for communicating government schemes to villagers, keeping records, compiling accounts, reporting of activities to BDO

office, etc. The Gram Sevak is the only government employee in the Gram Panchayat and is appointed by Zila Parishad.

At the time of the visit there was no existing water supply scheme in the village. However, the Gram *sevak* informed that a Piped Water Supply Scheme has been proposed by the Village which will bring water to the Village from a Pond at a little over three Kilometers distance. A decision to form a Village Water Supply Committee (VWSC) had been taken though it had not yet been formed. However, during the visit a Resolution of Zila Parishad, Satara was seen laying down clearly that for the village Dare there would be an 18 member Village Development Committee (and not VWSC!) with the Sarpanch necessarily being the Vice Chairman. The decision seemed to be taken without even taking into confidence the Gram Sabha and could thus be seen to be in contravention of the Government resolutions for the RWSS Programme.

Degaon Village, Taluka and District: Satara

The village economy is mainly based on agriculture. The numbers of households reported by Gram Panchayat are 875 (population approx. 4373) with 119 households below the poverty line (BPL). There are 7 elected Gram Panchayat members. The Gram Panchayat has constituted the following 5 sub-committees namely a Health Committee, Education Committee, Tax Recovery Committee, Social Welfare Committee and a Construction Committee. There is a piped water supply scheme in the Degaon Village. There are 5 borewells and except one the remaining bore wells were not functioning. It was also worth noting that out of 10 hand pumps in the village while two were seasonal the remaining were not in working condition. The Panchayat also informed that there were 25 individual taps in the village. The Gram Panchayat also levies water charges. Bills are raised on yearly basis. For individual water supply connections, bills are raised on annual basis (individual connection @ Rs. 30/—per month & common tap @ 5/—per month per family). The water tax recovery was said to around 70% largely due to irregular supply of water.

A Village Water Supply Committee (VWSC) was formed by the Gram Sabha on 25th July 2002 after receiving Government Resolution to this effect. The VWSC consists of 11 members elected by the Gram Sabha. Two of the Gram Panchayat members are also members of the VWSC. However the VWSC was yet to take a decision with respect to a new scheme till the end of the year. There was a new Government Resolution (GR) on adoption of Rain Water Harvesting in every village but the VWSC is yet to adopt the GR. Villagers are not clear as to whether a separate VWSC is to be formed or the existing VWSC can take decision in regard to rain harvesting. Finally, no Gram Panchayat Committee member had received any type of training related to water supply.

A Field Based Critique of Government Resolutions on Water Supply and Panchayats

A review of the Government Resolutions laying down the Rural Water Supply and Sanitation Scheme in the State of Maharashtra was done with the experience gained in the villages in Satara and with interactions with some key officials in Mumbai. Some of the key findings in law and policy are briefly discussed below:

Non-Involvement of Panchayat Samiti.

One of the glaring omissions in the GRs on RWSS has been that the intermediate tier of the Panchayat—the Panchayat Samitis at the block level—has not been assigned any specific role. If the present scheme has to go beyond the project phase and be accepted as a statewide initiative on water sector reform this omission has to be addressed. Officials of the Rural Development Department and Water Supply and Sanitation Department of the State agree with this view. It was also pointed out that whether the GR's specifically stipulate a definite role of Panchayat Samiti or not—and in view of their substantial presence in the state—their involvement in the scheme cannot be escaped.

CEO ZP and President ZP: Their Equation

The Resolutions passed by the Gram Sabha for demanding drinking water supply scheme in the village should be submitted by the VWSC to the Chief Executive Officer, Zila Parishad (CEO, ZP). The criterion for determining the priority for approval of the scheme is also to be evolved by the CEO. The CEO ZP is the authority, which should be giving the technical and administrative sanction to this scheme. It is only if the CEO himself is responsible for delay in granting the approval that an approval could be deemed to have been taken with the approval of the President of the ZP. It is clear from the way the scheme has been envisaged that the role of the Chief Executive officer (CEO), is primary at the Zila Parishad level. It has been pointed out before that in keeping with the need for empowering the Panchayati Raj Institutions, the Maharashtra Zila Parishad and Panchayati Samitis Act, 1961 requires that the President of ZP shall exercise administrative supervision and control over the CEO for securing implementation of the decision of the Zila Parishad. As the CEO is an official functionary while the President of the ZP is an elected office and integral to the PRI mechanism, the significance of this provision cannot be missed. Further the scheme also does not envisage how a legally created subject committee of the Zila Parishad, namely, Water Conservation and Drinking Water Supply Committee, can play a role in ensuring the rural water supply in the state. It will be best if these existing legal institutions can be integrated into the scheme because keeping them dysfunctional especially when they have a legal mandate could be unsustainable over a long term.

The Role of the District Planning Committee (DPC)

Another institution for which there is a law and a legal mandate as per the 74th Amendment but which continues to be largely dysfunctional in the State is the DPC. The schemes like RWSS needs to be integrated with the larger planning process that is envisaged by the 74th Amendment. Some other states provide examples of the nature of the role that DPCs can play. For example, in Kerala the

DPC is the only statutory committee that integrates the plans of the three tiers of Panchayat. Significantly these committees have the powers to approve schemes drawn up by the Panchayat. Likewise in Madhya Pradesh the District Planning Committee is also empowered to provide bureaucratic sanction and approval of projects upto 50 lakhs. The precise mandate of the DPCs in Maharashtra needs to be ascertained especially as it is now almost four years since the law constituting the DPC in the State was enacted.

Placing Mechanism for Accountability of the Higher Tier to the Lower Tier

Under the existing RWSS there could be a possibility that what is proposed by the VWSC from the village level may undergo change at the Zila—Panchayat level. It needs to be ensured that once the VWSC submits a proposed scheme for its sanction, it should be binding upon the prescribed authority to take some concrete action on the proposal within a limited time frame. To be fair the Government Resolution dated the 28th September 2001 takes into account the fact that if there is unreasonable delay from the CEO ZP, then the VWSC may proceed further by presuming that the scheme has been given administrative and technical approval. However, it is not clear that if the *de-facto* approval is not granted, how the disbursement of funds could be achieved in a timely manner. Therefore there is a need to make this aspect clear by making it mandatory that the prescribed authority should take definite action on the scheme proposed and inform the decision taken to the concerned VWSC within a stipulated time period.

The lack of accountability of the VWSC towards the Gram Panchayat can also result in problems in future, as there could be a rise in inter-institutional conflicts at the village level. Besides, the lack of accountability of the Gram Panchayat itself to the Gram Sabha and the recommendation of the Gram Sabha not being binding upon the Gram Panchayat and the VWSC could lead to biases in development efforts. The Government Resolutions recognizes the need to put in place such mechanisms to ensure accountability but

does not provide exact means to facilitate it. In keeping with the legal mandate of the 73rd Amendment the VWSC needs to be made accountable to the Gram Sabha in addition to the made accountable to the Gram Panchayat.

The Status of VWSC and Some Other Questions

Finally, in the States' RWSS scheme the technical and financial approval of water supply project proposed by the user committee (being given the legal status of a Gram Panchayat sub committee) has to be done by the Zila Parishad. There are a number of varying perceptions on what can be the legal status of the Village Water Supply and Sanitation Committee proposed under the scheme. Visits to some of the villages where the scheme was being worked out in its pilot phase, it was evident that while the Gram Sabha was to constitute the village level water supply committee in its 'total discretion', it was the Zila Parishad CEO who was deciding the composition of the committee. Safeguards against such violations of the spirit of the demand driven scheme also needs to be developed. As the scheme stands while there is definitive role for the gram panchayat and the Zila parishad there seems to be no role charted out for the mandal panchayat. Some such critical legal and institutional issues were identified in the field visit in satara district in the state, which would have to be carefully addressed in near future. The success, stability and sustainability of the scheme is contingent on proper thrashing out of all such questions before they precipitate conflicts on the ground.

**WATERSHED MANAGEMENT AND VILLAGE GROUPS IN
MADHYA PRADESH**

It has been argued that the objectives of the Panchayati Raj and the guidelines for watershed development are based on fundamentally different notions of decentralization. While the guidelines do not recognize the importance of democratic politics in deciding the development priorities, the logic of Panchayati Raj system supposes

that democracy and development are intertwined. Granting that these differences exist, it has to be said that there are ways to work around them. Ultimately both Panchayat and village level Water Shed Development Organisations seek collective action for development purposes and in many cases comprise the same people—who are both members of village level Watershed Committee and the Gram Sabhas.

There are other differences that are more in the mind that may not necessarily reflect in practical terms. A major reason given by people for not involving Gram Panchayat is that they are too big for Watershed Development. However it is possible to have smaller entities as Committees of Gram Panchayat or of Gram Sabha at the village Level for Water Shed Development purposes. Almost all State Panchayat laws provide for creation of such Committees. It is also said that Watersheds are based on ecological boundaries unlike Panchayats. However here again it is possible to closely look at these ecological boundaries from the standpoint of their administrative viability. In fact a working group of Planning Commission have recently pointed out that the earlier Water Shed Development Programme including the ‘Drought Prone Area Programme’ (DPAD) and ‘Desert Development Programme’ (DDP) treated development block as one unit and because of the largeness of this unit the programme might have proceeded at a very slow rate. The working group had recommended the unit for delineation of working area of different central ministry for Water Shed Development Programme should be the area of Panchayat, in place of block with the same cost norms. With these preliminary remarks a closer look at the Rajiv Gandhi Mission for Watershed Development in M.P can provide further details.

Case Study No. 4 Rajiv Gandhi Mission for Watershed Development (RGMWD) in M.P.

The Madhya Pradesh Government launched the Rajiv Gandhi Mission in Jhabua in 1994. A decentralized and time bound mission,

it started with the objective of improving 1.2 mha by the year 2000 over several watersheds, with each watershed project finishing within four years. The Rajiv Gandhi Mission for Watershed Development (RGMWD) is funded both by the Centre and the State. A training manual brought out by the Madhya Pradesh Government on the RGMWD points out that it would be logical and proper to keep the Village as the basis for selecting a Watershed. It adds that keeping this in view the Mission has taken 500 to 1000 hectares as the appropriate area for designating a Watershed. The Mission calls this size of Watershed as the *Micro Watershed*. The Mission believes that it is proper to keep ten Micro Watershed of this size under the administrative authority of one Project Officer and the Mission has called keeping this in mind an area of 5000 to 10000 hectares as the Milli Watershed.

The Village Watershed Committee in the RGMWD

At the village level, the responsibility for planning and implementation of programme activities is entrusted to Village Watershed Committees (VWC). A VWC is formed for every micro-watershed. The VWC is intended to draw membership from User Group (UG), Self Help Group (SHG) and Thrift and Credit Group (WTCCG) representatives, besides those of the Panchayat (see Box below). At least one-third members of the Watershed Committee have to be women. If there is a shortfall, the Gram Sabha nominates the remaining women members. As the Mission manual points out two or three members of the Gram Panchayat area to be represented in the VWC. As has been pointed out by a research study on the Mission 'While the membership of Panchayat members in the VWC provides an interface between the VWC and the Panchayat in theory, Panchayat members have no extra powers in practice other than those of ordinary VWC members, who, in turn have no countervailing powers over the PIA.' In theory again it is intended that 'the Gram Sabha functions as the general body and the Watershed Committee functions as its executive body for watershed development under the overall supervision and

control of the Gram Sabha⁵⁹. This seems to be the village level manifestation of the one of the objectives of the Mission as per its guidelines i.e. ‘involving people’s representatives and members of Panchayati Raj Institutions.’

Box 6 Village Watershed Committees: Roles and Responsibilities

The VWC are registered with the DRDA and are required to have 10–15 members, including 2–3 Panchayat Members and representatives from various groups formed in the village. A third of the VWC Member is to be women. The VWC Members need to be at least 18 years of age and can be removed only by a major decision of the VWC. The Gram Sabha and Project Implementation Agency (PIA) may also remove a VWC Member without effecting programme continuation. The Gram Sabha and the VWC following an agreement with the PIA can induct additional member. Each VWC Member enjoys a single vote with PIA Member provided the privilege of a decisive vote.

The VWC is responsible for the following:

- Preparation of Action Plan
- Sanction of Action Plan through the Panchayat, Gram Sabha and PIA
- Implementation of proposed activities through various groups
- Receive, expand and account for programme funds
- Own and manage programme assets on public lands

⁵⁹ For a detailed account on the history and progress of the RGMWD especially in the context of Jhabua see the Citizens’ Fifth Report, Centre For Science and Environment, 1999.

- Collect Development Funds (DF) contributions for future maintenance of programme assets
- Formulate benefit-sharing arrangements from programme activities
- Mobilize, promote and assist SHGs and WTCGs
- Access resource from non-programme sources
- Purchase, lease or rent any movable or immovable property for achieving its aims
- Prepare and submit periodic progress report in specified formats

VWCs are required to meet at least once a month with meetings being chaired by the President. A quorum of a third of the member is necessary and the meeting is deemed invalid in the absence of the PIA Member. Prior notification of the meeting has to be provided a week earlier to all members by the Secretary. Only the PIA Member is authorized to call a VWC meeting at a 24-hour notice. The VWC Secretary is a key programme functionary and is to be appointed by the PIA with the approval of the GS. Required to be 18 years of age and form the same village, the Secretary has responsibilities for preparation of Action Plans, management of funds and supervision of agreed works. The Secretary is authorized to issue orders on the behalf of the VWC and Maintain records of meetings and financial flows

**Source I Panchayati Raj and Natural Resources Management: How to Decentralize Management over Natural Resources Madhya Pradesh: State Report, Taru et al.*

The Organisational Structure that Operates at the Village Level

The above discussion points to the following structure at the Village level in the RGMWD:

- Project Area: Micro watershed 500 Hectare
- Unit of Project Area: Village
- Responsibility of: Village (level) Watershed Committee.
- Implementation:
- Coordinating and Controlling Unit at the Village Level: Gram Sabha
- Village Level support Organizations: Gram Panchayat, PIA
- ‘Goal’ (Lakshya): Maximum work by User Groups
- Financial Mechanism: Direct Disbursement from DRDA
- Work Approval: District Level Watershed Team

The above information has been culled out from the Guidelines from the Mission and the Training Manuals of the RGMWD. This presents the Institutional Mechanism at the Village level of the Watershed Programme and also provides in theory the interface of the Village Watershed Committee with the Panchayat bodies. However the discussion in Bhopal as well as field visits showed that the real story of the Mission is not in the Guidelines and the Manual but on the ground. Some pointers to this story follow in the next section.

Insights on RGMWD from the Field

Discussions with agencies carrying out evaluation of the Watershed programme under the RGMWD were very revealing. It was suggested that if broadly RGMWD had the objectives of

participation, empowerment, sustainability and works, it is only the last one i.e. the works that has received the most attention and given the best results. Apart from the over-emphasis on Physical Structures, the frequent transfers of the Administrative heads responsible for the Watershed programme was identified as another major problem. In many cases it is lamented that while one set of official conceives a proposal, the second set takes the project halfway through and then a third set of official completes it. Generally speaking another main issue that has been an area of concern is the demarcation of the Micro Water Sheds and Milli Water Sheds on the ground. This is further compounded by the fact that there are problems with the way Gram Panchayat and village boundaries are also drawn. The two villages that the present Author went to show some light on the efficacy of the Mission on the ground also brought forth some interesting aspects.

Notes from Bhabra Block, Jhabua

In a meeting organized by a local NGO in the Bhabra Block in the District of Jhabua where Sarpanches, the Village Watershed Committee heads and villagers were present, some interesting questions emerged. Firstly out of the five Sarpanchs present in the meeting, at least three had been the Secretaries of the Water Shed Development Committee in the past. For example, the Sarpanch of Meeravath Wadi, Hari Singh has been the Chairperson of the VWC in the past. He said that he still has a primary role to play in the works of the VWC. It was also pointed out generally that in all the VWCs in the area, a minimum 33% representation of the women in the Committees have been given full effect too. Notably, since Jhabua is a Schedule-V area, a different legal regime on Panchayats operates there. However, the fact that Jhabua is covered under the framework laid down by PESA and that this Act gives more power to the Panchayats was not in the knowledge of the Sarpanches or even the Field Staff of the local NGOs in charge of the capacity building of the people in the area.

A short visit to remotely placed village Badgaon in the Babra Block, in the District of Jhabua provided some further insights. Harmal Bhai, the Sarpanch of the Panchayat first made it clear that there are four Falias in this Village. Since the villages had deemed that a Gram Sabha for every Falia is unworkable therefore it was decided that there should be only one Gram Sabha for all the four Falias of the Village. He complained that most of the development initiatives do not reach the village even when the decision in this regard has been taken at the District Head Quarters and at the State level. Most specifically he said that since April we have not got the agenda that was to be given to him monthly by the ‘Government’ (the visit being in December). Interestingly the Sarpanch introduced Rupli Bai as the *Adhyaksh* of the VWC. But on speaking to her it was obvious that she was not aware that she held this position and instead introduced herself as the *Adhyaksh* of the Agricultural Committee. On pointing this anomaly to the Sarpanch, the Sarpanch clarified that VWC in this village does not exist and in fact Rupli Bai is a volunteer watershed worker! In the same vein, however, he added that constitution of more and more Samitis for small villages with small agendas and small budgets is creating big problems as while the Committees multiply the money allocated for development purposes in the village remains the same. This leads to fights, in his words, like the ‘crows fighting for a common prey’.

Notes from Vinika Panchayat

In contrast to the remote Badgaon, the easily accessible village Vinika, 80 Kilometers from Bhopal, offered more insights into the way the RGMWD operates at the ground level. The watershed activities in the Micro Water Shed and the Milli Water Shed in this area have been under the well-known NGO Lupin as the PIA for the Water Shed. The Project Implementation Officer from Lupin pointed out that over the last few years intensive watershed activities had been undertaken in this area by them including constructing six

checkdams and seven Ponds in the Micro Watershed area comprising the villages of Vinika and Alampur. Interestingly while Vinika and Alampur Villages are contiguous and close to each other, they are in two different Panchayats. Further, in one of the small check dams visited it was noticed with surprise that while the small dam structure that was created was in the Gram Panchayat Vinika, the water storage was in the Gram Panchayat Champaner. The Project Implementation Officer pointed out that while creating this structure the village people from Champaner, particularly those whose lands were to be submerged, created problems, but their resistance was overcome. The VWC created for the Micro Watershed area comprising two villages in two different Panchayats consists of ten members as per the information given by the Secretary of the VWC. According to him, 50% of the membership consists of women and also of Gram Panchayat members. Significantly Lupin as PIA is withdrawing from the project which is not to be handed over technically under the control of the Gram Sabha as per the RGMWD guidelines. However, the Secretary of the VWC informed me that the Gram Sachiv who is a Government functionary is being made the PIA. On being queried as to whether the VWC would be able to discharge its functions after the withdrawal of Lupin, the Secretary along with a couple of women members stated that they would be able to do so with the funds that they held under the stipulated development fund created as per the guidelines. The VWC Secretary also pointed out that there has been no major conflict between the VWC and the two concerned Panchayats in the micro watershed area. It was however significantly pointed out, and was also seen, that there is a frenetic stone mining activity going on within the micro watershed comprising the villages Vinika and Alampur which has resulted in cracks in some check dam structures. The VWC has been unable to stop them because of the massive political and economic power that the mining lobby wields. Finally the two women member who Lupin in Bhopal identified as being part of the VWC, were themselves not aware that they were indeed so!

Some Pointers from the Mission

The interactions in Bhopal as well as on the field visits clearly shows that the real story of the Mission may not be in the Guidelines and the manual but on the ground. Some significant issues relevant for the present purposes include:

- Under the RGMWD there has been an over-emphasis on creation of physical structures and the other aspects of watershed development like community empowerment, poverty alleviation and institution building has got ignored to a large extent.
- The coming up of a large number of committees especially for the purpose of natural resource management within the small sphere of a village area has given rise to an ambiguity surrounding the legal regime at the village level.
- There is a lack of coordination between these committees / specific resource management institutions and often they are loggerheads with each other particularly over the issue of getting a bigger share of the funds available for village development.
- The 'Exit Protocol' i.e. process of withdrawal of PIA which is an external support organisation, after completion of the watershed project and the handing over of the assets created during the project to the VWC for the purpose of operation and maintenance suffers from serious implementation problems. Under the guidelines issued by RGMWD the post project operation and maintenance is to carry out by the VWC under the supervision and control of the Gram Sabha. However the field experiences reveal that in many cases the government officials in order to retain their direct control over the project even after withdrawal of the PIA tend to bypass the PRI mechanism by appointing a government functionary like the *Gram Sachiv* as the PIA in place of the Gram Sabha as provided in the guidelines. It is important to check such efforts on the part of the government officials to ensure the

equitable distribution of benefits of the assets created during watershed activity.

- In many cases there exists an overlap of membership between the PRIs & VWC i.e. the same set of people are members of both the bodies and it is often the case that key functionaries of the institutions were earlier holding important positions in the other institution. The above phenomenon is instrumental in minimizing institutional friction at the village level because it seeks to ensure that the two institutions do not treat each other as 'Parallel Bodies'. The VWCs have to face problems in ascertaining their territorial jurisdiction because the watersheds are based on ecological boundaries rather than physical boundaries. The problem becomes grave when a watershed area falls within the territorial jurisdiction of more than one Panchayat, in which case the VWC finds it difficult to coordinate with the two Panchayats.

CONCLUSION

The present paper was aimed at exploring legal spaces for possible inter-relationships of Panchayati Raj Institutions (PRIs) with the formal user groups engaged in water management in the country. The study looks into the issue more closely in the specific legal contexts within the States of Maharashtra, Rajasthan and Madhya Pradesh. While looking at the State legal framework an attempt has been made to pick up statewide initiatives that are likely to have far reaching implications in future. The local context of the Rural Water Supply Scheme initiated in Maharashtra has important implications for the national level drinking water supply scheme namely the *Swajaldhara*. Likewise, some of the lessons in law and policy experienced in the State of Rajasthan on the Participatory Irrigation Management (PIM) can be important for other States too especially in the light of the fact that the legal regime in these States on PIM is more or less the same. Similarly insights from the

Rajiv Gandhi Mission for Watershed Development is not only important for sustaining the Statewide initiative on watersheds but also in light of the national scheme for watershed development by the name of *Hariyali*.

The study also recognizes the inescapability of the Constitutional mandate. The Constitution by way of the 73rd amendment clearly envisages the role of Panchayats as institutions of Self-Government in the areas such as Minor Irrigation, Water Management, Watershed Development, Drinking Water, Social Forestry and Minor Forest Produce. The study thus proceeds with the conviction that at least in these areas the legal spaces need to be explored for giving surer footings to the Panchayats. Knowing that there are user groups outside the Panchayat Raj framework that operates in this area, an effort has been made to explore possible inter-relationships of the Panchayats with these user groups.

Building 'inter-relationships' by merely putting some Panchayat members within the formal user groups to give them representation may not be enough. A more critical test could be to see how much the Gram Sabha itself exercises control over these user groups or even the Gram Panchayat committees. This however can only be a result of a strong commitment to honour the 73rd Amendment. The political will of both the Centre and the States in this regard is often questioned—and for good reasons. The introduction of Members of the Parliament Local Area Development Scheme (MPLADS) soon after the 73rd Amendment came into force and the continuing support to DRDAs are sure pointers in this regard. Having said this, the paper also shows that the ineffective devolution in all cases may not be a function of the political will alone but could also be due to lack of conceptual clarity on the right institutional option that can work at the local level while being compatible with the legal mandate. An important conclusion of the study in the national context is that even the existing legal framework provides the room for evolving inter-relationships of the Panchayats with the user groups. The advantage of the user groups as smaller and specialized

entities can be brought within the Panchayat Raj framework by the mechanism of committees. In fact most of state laws enable the Gram Panchayats to form Committees of their own for purposes of education, health, water supply etc.

A critical test for the efficacy of the Panchayati Raj institutions and the User Groups must be their conduciveness in realization of rights at the local level. This is especially important because in the entire discourse on participatory natural resource management today, the rights of the people have been given almost a complete go-by. The right-based approaches however create a definite bias in favour of Panchayat Raj institutions.

Rural Water Supply, User Groups and Panchayats

The Rural Water Supply Reforms for a more demand driven and decentralized water regime under way in Maharashtra were closely studied for the present study. The Village Water Supply Committee (VWSC) is the primary Village Level Body responsible for executing the scheme. The status and authority of VWSC have been debated at length during the negotiations in the Water Sector Reforms in the State. A section in the paper closely examined this question in its proper legal context. There is now a definite realization that the VWSC should be integrated within the Panchayati Raj framework. However, questions still remain as to whether the VWSC should have a status of Gram Panchayat sub-committee or a Gram Sabha sub-committee. In the specific context of the Maharashtra Rural Water Supply Scheme there has been a fair degree of confusion on this aspect. However within the officials and formal circles a consensus seemed to be emerging that the VWSCs should be a part of the Gram Panchayat sub committee.⁶⁰

⁶⁰ The fact that the officials themselves are debating this *demand driven, decentralised and people oriented* regime in itself tells a story

In exercising this choice some times even the existing legal framework can be seen as a limitation. For example, officials in Mumbai deemed that the State Panchayat Act can only be used to give VWSC a status of a Gram Panchayat Committee. It was also pointed out that such a committee could only be drawn from the Gram Panchayat members itself. Even though technically, this was the limitation, for the purpose of giving the right legal support to VWSC small amendments in the Act can be made. Examples from other States' Panchayat laws show that in a Gram Panchayat sub committee, the Panchayat can co opt members from outside it and also that the VWSC can be directly a committee of the Gram Sabha. This last option is perhaps the best for VWSCs in Maharashtra.

Apart from the question of devising the appropriate institutional mechanism, it is also critical as to study how these are taken to the ground. The spirit of the 73rd amendment is in fact assessed best not by looking at the law alone but by seeing how the law is taken to the people. For example in a village in Satara, Maharashtra it was seen that even though the Governments' Resolution requires that Gram Sabha alone decides the making and composition of VWSC, in fact it was the CEO, Zila Parishad (a senior government official) who was doing so.

Participatory Irrigation Management, WUAs and the Panchayats

Unlike the 'Water Supply Sector' there has been little talk of involvement of Panchayats in Participatory Irrigation Management (PIM) in India. Insights from the Kharad Irrigation Project in district Jaipur in Rajasthan suggested why this could be so. The beneficiaries of the canal system there and the members comprising the WUAs were scattered over a large geographical area and were from different villages and even from different Panchayats. For example, the Patalwas WUA in the area had beneficiaries from five Revenue Villages in two different Panchayats, even though the total beneficiaries were only about 275 in number. (Although the

total population of the said five villages was approx. 5000). This makes it very difficult to conceive WUAs as Committees or Sub Committees even of the Gram Panchayat, let alone the Gram Sabha! A larger question that emerged was that of administrative viability of such Irrigation systems particularly as the PIM law passed in the State in the year 2000 requires that the Command Areas of the Irrigation systems be delineated 'on a hydraulic basis which may be administratively viable'

A critical observation in this area was that even though an elaborate canal system exists and WUAs are in place since August 2002, there had not been a drop of water in the Patalwas branch canal and the Birasana Minor over the last few years. The WUAs without the water in the canals were dysfunctional and are likely to remain a paper organisation.

The problem of a severe lack of water resources also plagues the Indira Gandhi Nahar Pariyojana (IGNP) Command Area badly. The Chak Samities constituted there by the CADA under a World Bank initiative in mid 1990s—as lawfully registered societies responsible for development of the Chak Abadi including management of canal—have also been rendered dysfunctional today. After the coming of the law facilitating PIM in the State in the year 2000, local organisations and the heads of the Chak Samitis are seeing a way forward by redesignating these Chak Samitis as WUAs in the area. However, a closer look into the nature and functions of these Chak Samitis would show they were envisioned for larger development purposes, including, but not restricted to water distribution, monitoring and canal management in the area. (Note here that the Chak Samitis are called the *Nahri Kshetra Vikas Samiti* and not *Nahri Vikas Samiti* i.e. Canal Area Development Committee and not merely Canal Development Committee) A close examination of the records in a local Gram Panchayat and the Chak Samitis within the territorial jurisdiction of the Panchayats was carried out and this proved to be very instructive. First it showed that the chak abadis, located around

the canal distributory and watercourses, were now some distance away (3–6 KM on an average) from the revenue villages in the area. The amenities that they have pale before the limited amenities that even these remote villages have. Finally, the resolutions of Gram Panchayat showed almost conclusively that they exercise a fair degree of control over the Chak Samitis. As has been pointed out these Chak Samitis (NKVS) face a severe identity crisis today. The policy initiative of Participatory Irrigation Management under which they were initially formed seemed to have died a natural death after the coming of the new PIM law in the State. The law itself has not been extended to the IGNP area. In these circumstances, the Chak Samitis are not sure whether they are more in the nature of development committees of the Panchayat or prospective WUAs in the IGNP areas.

Water Shed Development, VWC and Panchayats

Much like the experience in the Rural Water Supply reforms in Maharashtra there now appears a very clear understanding that the Panchayats have to be fully involved in watershed development all across the country. The launch of *Haryali* affirms that today watershed development through the PRIs is an accepted national strategy. The Zila Parishad at the District level and the Gram Panchayat as well as the Gram Sabha has been given the significant powers in the new guidelines. Both the Gram Sabha and Gram Panchayat can constitute the user groups in the Watershed and especially in the new Haryali guidelines a clear attempt is made to put all the works under the control of the Gram Sabha.

The applicability of these provisions and their efficacy in the Rajiv Gandhi Mission for Water Shed Development (RGMWD) in Madhya Pradesh was closely examined in the study. The guidelines of the RGMWD do provide for inter face for Village Watershed Committees (VWC) with the Panchayat bodies. But as has been pointed out before, the real story of RGMWD is not in the guidelines or training

manuals but on the ground. Some indicators to this story could be gathered from the field visits to Jhabua and Bhopal. It was felt that in the Mission while there has been a needed emphasis on physical works, the aspects of participation of the people, their empowerment and institution building has been under emphasized. At the heart of the issue of evolving inter relationships between Panchayat Institutions and the VWC is the problems associated with the demarcation of village boundaries as well as those of Watersheds and Micro Watersheds. Besides, the experience in Jhabua showed that a good number of Sarpanches today had been ex-VDC Chairmen (and the reverse might also be true). Further, typically NGOs have been the Project Implementing Agencies (PIA) in many areas of the Mission, but now as the first phase of the mission is over, NGOs are 'handing over' their role to the Panchayats. The sustainability of RGMWD critically depends on how the Panchayat with the control of Gram Sabha perform as the new PIA in Watershed development. The mandate under *Haryali* is clear that at the village level Gram Panchayats would execute the Project under the guidance and control of Gram Sabha. The VWCs in the RGMWD though the under the control of the Gram Sabha in theory, may not be so in most cases on the ground. The nodal agencies of the Union Ministry of Rural Development, evaluating Watersheds in Madhya Pradesh also affirmed this view.

In the Ultimate Analysis

The debate on Panchayats and the user groups created around management of natural resources, in the ultimate analysis, is a debate on the means to a larger end. The end is the sustainable use and protection of resource and also the extent of control that village groups have over these resources. To illustrate, the WUAs in Kharad Irrigation Project and the Chak Samitis in IGNP were ringing reminders that without assessing the water resource, ascertaining its availability, assigning water rights and defining the institutions to administer these rights 'which might include WUAs as a small

part of the institutional structure'. WUAs will not improve water management in the country.

One must hasten to add here that conclusions from specific case studies cannot be extrapolated to all situations even within the sectors in which the studies are located. In fact, as shown above, the two villages in District Satara where VWSC are to be created ought to have two different models depending on the sizes of the villages. Likewise applicability of provisions relating to Water User Associations in the Kharad Irrigation Project in Jaipur and in Indira Gandhi Nahar Project cannot be the same. However, keeping in mind the Constitutional mandate, local institutional options need to conform to two essential principles. First, the committees of the Gram Panchayat or the Gram Sabha, as also the Gram Panchayat itself needs to be accountable to the Gram Sabha. Second, the mechanisms devised should ensure that responsibilities and powers that can be delegated, should devolve to the lowest possible level and not to the level above it.

During the course of the study one critical aspect of the PRIs and User Groups interface has been settled at least in principle. First, the Prime Minister announced *Swajaldhara* as a national level Rural Water Supply Scheme that makes it very clear that PRIs have to be the central decision-making and implementing bodies in respect of the scheme. Close on the heels *Swajaldhara*, another national level initiative on watershed development namely *Hariyali* has been launched which again makes the PRIs as its corner stone while making the Gram Panchayat the Project Implementing Agencies (PIAs) for the Watershed projects. The Central Government has specifically asked the States to transfer all the functions on Rural Water Supply, watershed development and social forestry, amongst other things, to PRIs. The Roundtables of State Ministers of Panchayati Raj towards the end of 2004 also made clear that existing user groups have to be subsumed under the Panchayati Raj Institutions. Clearly it is no longer disputed whether the Panchayat Raj institutions should be engaged in activities relating to managing

natural resources like Water Supply, Watershed Development and Forestry Management. The question is no longer *whether* the PRIs should work these functions but it is about *how* it can be done. This study is an attempt to locate the precise legal context in which the search for this *how* can be carried out especially when it comes to governing (and not mere managing) natural resources. The study serves this limited purpose. A full awareness of this limitation is perhaps its biggest strength.

