

## **Changing Dimension of Water legal Framework in India**

### **ABSTRACT**

Water is the central for the well-being of people and planet and forms the essence of life. Its importance stands to be in a position that forms the very indispensable basis to sustain life and health and also acts as the key to sustainable development. As the Climate Change emerges as the non-ignorable crisis of today, response to the issue remains to be incomplete without addressing the problem of safe drinking water and sanitation. Though water stands to be indispensable for leading a life of human dignity, yet we see that millions of people fail to get access to the safe drinking water and improved sanitation. Though it is the fact that 72% of the earth's surface is made up of water, yet the accessibility of water emerges as a challenge with limited time. Though water stands to be our human right, yet the people continue to be deprived of their right to safe drinking water. Though the importance of water is known to everyone, yet we fail to understand its value and to maintain a balance. Though the duty of providing access to water has been legitimized by the laws laid down by United Nation, yet a major part of the world's population still struggles with the crisis. Thus, it shows that an integrated global agenda is still left to be laid down by the governments of the world and optimum implementation of our vision of sensitizing the right to water is what the present crisis calls for. When we talk about the efforts towards spreading awareness about right to water, the bend of the United Nations towards addressing the issue of safe drinking water and sanitation and implementing policies and laying down laws can never be ignored. Starting from the first step which is the adoption of General Comment No. 15 specifically on 'Right to Water' by the United Nations Committee on Economic, Social and Cultural Rights that focuses on the concept of accessibility, availability, affordability, acceptability and safety, till reaching a milestone in July 2010 about making the right to have access to enough water as the right of every human, the United Nations have continuously work laid down various mechanisms to ensure right to water. With the launch of the 'Water Action Decade- 2018-28' as a part of the United Nations Sustainable Development Agenda, efforts are being made to shift the focus of the governments around the world on the achievement of water-related goals and targets, yet the Government around the world continues to fail in keeping their promises. Talking about the water condition in India, the 2018 Chennai

water crisis can never be ignored. With the declaration of “Day Zero” by the Chennai city officials on 19 June 2019 due to the drying of all the four main reservoirs supplying water to the city, the grave intensity of the water crisis was realized by the country and with becoming an eye-opening event for the government, it clearly indicated that ‘now or never’. Thus, the present paper shredding some light upon the less efficient legal framework of water laws mainly focuses on the present need of a strong system of water laws in India and hence makes some recommendations for the same.

## INTRODUCTION

*“You cannot have peace without human rights, democracy, gender equality and clean water”.* – Cora Weiss

The sustainability of human life depends on three major components, food, air and water. When talked about first two components, we feel a sense of security of their future sustainability due to their abundant quantity. However, this sense of security begins to fade away when the focus is shifted to determining the future sustainability of water, because it’s then we realize that the infinities of nature and of the earth are not to be taken for granted. With total of 71% of Earth’s surface being covered with water, we have always considered water as an infinite resource, considering our authority over it and not valuing its importance. However, as every mistake deserves a punishment, here we are stuck in the middle of acute water crisis, fighting for a right that we once considered having an authority over.

Thus, the fact that water forms the very ‘stuff of life’ and is a ‘basic human right’<sup>1</sup> cannot be denied in any circumstance. Standing as the central for the well-being of people and planet and forming the indispensable basis of human life, “Right to Water” emerges as the basic fundamental right that every person deserves on this planet. Thereby, with the issue of Climate Change emerging as the non-ignorable crisis of today, response to the issue remains to be incomplete without addressing the “right to water” and attached to it, the problem of safe

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<sup>1</sup> United Nations Development Programme, Human Development Report 2006 – *Beyond Scarcity: Power, Poverty and the Global Water Crisis 1* (New York: UNDP, 2006).

drinking water and its unavailability and inaccessibility. Though, right to water has been recognized as the human right, but still millions of people around the world are deprived of their right to safe drinking water and die each year due to the non-accessibility of water or due to the accessibility of extremely contaminated water.

Thus, this brings us to understand that mere recognizing of the right is not what the present hour calls, but laying a strong legal framework to protect the right, to ensure the enforcement of the right and along with that, to impose an obligatory duty to value the right and protect the resource, is what the present problem calls for as a solution. Thus, with understanding the need of a well-defined legal framework, this paper highlights the acute water crisis in India, the inefficiency of the existing laws and policy regulations and the dire need to come up with a strong and well-defined water security law. The paper focuses on how law can play an important role in ensuring the right and at the end also suggests some policy reforms that are absolutely required to not only enforce the right, but also to ensure the availability and sustainability of water for the future.

## **LEGAL RECOGNITION OF RIGHT TO WATER IN INDIA**

When it comes to the legal recognition of human *right to water* as a fundamental right, India stands to be in a position of ‘judicial recognition’ of right to water. After a liberal and activist interpretation of fundamental ‘Right to Life’ under Article 21, the Indian judiciary delivered a number of verdicts in the favor of recognition of the right to ‘pollution free water’ and the right of access to ‘safe drinking water’<sup>2</sup> as a fundamental right protected under Article 21 of the Indian Constitution. In addition to the recognition of the right, the Supreme Court also recognized the duty of the State to ensure safe drinking water to the citizens, even at the cost of other development programmes, failure of which would amount to violation of the fundamental right to life enshrined under Article 21 of the Indian Constitution<sup>3</sup>.

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<sup>2</sup>Wasim Ahmed Khan v. Govt. of AP, [2002] 5 ALT 526 (D.B.); Mukesh Sharma v. Allahabad Nagar Nigam & Ors., [2000] ALL. L.J. 3077; Diwan Singh and another, v. The S.D.M. and other, [2000] ALL.L.J. 273; S.K. Garg v. State of UP, [1999] ALL.L.J. 332; Gautam Uzir & Anr. v. Gauhati Municipal Corpn. [1999] 3 GLT 110.

<sup>3</sup>Vishala Kochi Kudivella Samrakshana Samithi v. State of Kerala, [2006] 1 KLT 919

But the fact that just a judicial recognition of right to a natural resource, that sustains the whole of the human life on this earth, cannot be said to be sufficiently granting of right until the right is explicitly incorporated in the Indian Constitution. This is because of the lack of elaboration on the actual content of the right. Thus a proper carving of 'Right to water' in the Indian Constitution, through the explicit introduction of a new sub section, that is indiscriminate and that elaborates upon the content included within the purview of 'Right to Water', and also that underlines the non-negotiable and mandatory legal duty of the State to protect the right, is what will guarantee the fundamental right to every citizen. Inferences can be drawn from the Constitutions of South Africa and Equador, where the 'Right to safe drinking water' is explicitly enshrined in their Constitution<sup>4</sup> in order to protect their citizens from being deprived of their right to live in dignity.

## **CURRENT EFFICIENCY OF WATER LAWS IN INDIA**

When the efficiency and the development of a well-defined water law in India is accessed, keeping the importance of water in sustainability of human lives and economics at the central point, it can be derived that the development of a formal legal framework, for the protection of right and providing of the remedy in case of violation, has always been slow and has always been given a back seat in the priority list of framing laws. In a country where 600 million people go through water stress crisis, where two lakh people die every year due to inadequate access to safe drinking water<sup>5</sup>, where three-fourth of the total households suffer from lack of access to drinking water at their premise, a country that secured a rank of 120<sup>th</sup> amongst 122 other countries in the water quality index<sup>6</sup>, in such a country, the lack of a proper and integrated umbrella legal framework especially designed for securing the right of the citizens to water and for regulating the sources of safe drinking and quality water, is a great blunder by the government, both at the Centre and state level.

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<sup>4</sup>VivedhUpadhyay, Water Rights and 'New' Water Laws in India: Emerging Issues and concerns in a Rights Based Perspective, <http://www.idfc.com>

<sup>5</sup> WRI Aqueduct; WHO Global Health Observatory

<sup>6</sup>NITI Aayog, Composite Water Resources Management: Performance of State, (2018), <https://niti.gov.in>

With water being a component of the state list in the constitution, the existing legal framework for water is characterized by the existence of a large number of laws and acts for each state, bunch of National Water policies, a set of regulations and judicial pronouncements<sup>7</sup> that still fails to address the present crisis. This shows how little attention has been given to the issue of right to water and to the importance of framing a central water law and policy framework.

Also, in addition to being disintegrated, another main loophole in Indian water law framework is that they stand to be inefficient and outdated in respect of present crisis. No special act has been framed by the central government to ensure regulation of nation's public drinking water supply. Unlike USA, where the right of the citizens to safe drinking water is protected by the existence of a special act, 'The Safe Drinking Water Act'<sup>8</sup>, Indian acts still continues to revolve around prevention of water pollution and establishing standards for water quality<sup>9</sup> and levying of fees on water consumption through meters<sup>10</sup>, with zero efficiency and no strictness in the implementation.

Though it can be argued that the various rules and policies, released by the government, work to protect the right to water and to ensure safe drinking water, however, the mere formation of rules and policies with no legal support, with no focus on accountability and with no legal remedy available to the citizens in case of violation of their rights, cannot be expected to give the same protection as an single-integrated 'Water Security Act' can do.

Thus, it's the time to prioritize the reframing of the legal framework in matter of water security with the focus on protecting the right of access to safe drinking water to every household, meeting the standards of quality and quantity and also providing a legal remedy to the victims by holding the authorities accountable for their inefficient and non-performance.

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<sup>7</sup>Philippe Cullet, Water Law in India: Overview of Existing Framework and Proposed Reforms, International Environment law Research Centre, <http://www.ielrc.org/content/w0701.pdf>

<sup>8</sup>United States, Environmental Protection Agency, <https://www.epa.gov/sites/production/files/2015-04/documents/epa816f04030.pdf>

<sup>9</sup>The Water (Prevention and Control of Pollution) Act 1974

<sup>10</sup>The Water (Prevention and Control of Pollution) Cess Act 1977; The Water (Prevention and Control of Pollution) Cess Rules 1978

## **CHANGE OF INDIAN WATER LEGAL FRAMEWORK**

As stated earlier in the paper, the Indian water legal system stands to be insufficient in ensuring water security to its citizens, due to which the water rights in our country tends to become 'rights without remedies'. Thus, in order to change the perspective to a remedial right, it is very important to bring about a strong change in the existing legal framework, starting from the scratch, that is, the direct entry of 'Right to safe drinking and quality water' in the Indian Constitution.

**Direct entry of right in constitution-** Before establishing a rock-based framework, a detailed explanation of what all is covered under the right and to what extent the right can be exercised, is very much required to be enshrined in the Constitution under a separate sub-section, just as we have a separate sub-section, Article 21A, for 'Right to preliminary education'. This will prevent the birth of any arbitrariness or negotiability in the system while the recognition of the right, which is an absolute possibility in the existing judicially-evolved fundamental right system, and will impose a non-delegable duty upon the states to provide for safe drinking quality water to every household of the state.

**Establishing Water Security Act-** This gives way to the next step of establishing a strong, updated, well-defined 'Water Security Act' in order to ensure a sense of security to the citizens by backing the constitutionally granted right with a legal remedy and ensuring strict penal actions against the violators of rights and duties. However, 'Water Security Bill' has already been drafted by the India's waterman, RajendraSingh, it still fails to even draw the attention of the government towards putting it for recommendations to be passed as an act. In addition to this, it also fails to provide a holistic approach to the water problems by remaining silent on various important issues. Thus it is important for the bill to incorporate the following provisions also.

**Water Pricing Strategy-** The bill remains silent on the pricing strategy to be followed by the households and farmers. In order to maximize the returns from a finite resource, it is very important to keep a check on its unnecessary wastage by the households and farmers. Thus, while ensuring the human right to water, it is also very important to charge the households and also farmers that are the highest users of water, on the use of water which is beyond the

minimum water requirement set by WHO<sup>11</sup>. Thus, the act should provide a provision for making the installation of ‘working water meters’ in every household, both urban and rural, ‘mandatory’, just like is the case with electricity meters and bio-gas meters and thereby fixing the accountability of the state in this matter. Such meters should calculate the charge of using the water after a minimum limit. Thus, a legal provision in this matter will ensure a proper implementation.

**Water Redressal Forums-** Next, bill should contain provisions for making mandatory the establishment of small water redressal forums at all levels, from the local rural villages to the city level, under the control of the State or Municipal corporations on its behalf. This mandatory legal establishment will look into the water issues faced by the people directly and hence will ensure efficient redressal of issues, thereby extending protection to their fundamental right.

**Public information and consultation-** A provision in the Act should emphasize the consumer right to know what is contained in the drinking water, the source of water, the way of treatment and the way of protection. This will not only sensitize the consumer about their right, but also will also establish a heavy duty on the State for being accountable not only to the government but also to the public about their efforts.

**Penal Actions-** One of the most important role of law in ensuring the right to water is punishing the authority for not abiding by the legal requirements or for depriving the citizens of their fundamental rights. Thus, the act should contain detailed provisions on the legal actions that can be taken against the wrongdoers, either in form of compensation or penal punishment. Such penal actions will help in ensuring that the states are tight in their actions and that rights are sufficiently ensured.

Thus, with the law playing a very important role in protecting a human fundamental right, the above few changes, if brought about in the existing legal framework of water laws, will definitely prove to be a great step towards attaining the Sustainable Developments Goals by 2030.

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<sup>11</sup>The World Health Organization (WHO) says, “A minimum of 7.5 litres per capita per day will meet the requirements of most people under most conditions...a higher quantity of about 20 litres per capita per day should be assured to take care of basic hygiene needs and basic food hygiene.”

## **SUGGESTIONS FOR POLICY REFORMS**

In addition to the requirement of the above mentioned changes in the existing legal framework, bringing changes in the National water policy framework is also the need of the hour to not leave any stone unturned while ensuring safe water to all. Thus, in the light of the present crisis that India plunges into, the following reforms are suggested in the existing policy framework:

1. Community Water systems should be established at different levels, like is the case in United States<sup>12</sup>, and they must be put under a mandatory duty to monitor, test, prepare and distribute reports, about the quality of water they are supplying, to the public on an annual basis. This will make people sensitized about the actual issue.
2. The level of groundwater need to be measured as soon as possible in order to frame a concrete plan about the conservation of groundwater, which is the most important drinking water resource in the country and 'rainwater harvesting' should be made mandatory to regenerate groundwater.
3. A program for the upgradation of the water treatment plants should be launched by the Central government, but should be kept under the monitoring of the state governments, in order to ensure that the hygiene of the plant and safety of quality of water and also to replace the leaking pipes with strong long-lasting pipes.
4. Long distance travel of water should be avoided and should instead be localized in order to make the monitoring easier and larger the accessibility of water.
5. Privatization of the whole water system should be ordered to ensure high level implementation and accountability, as is happening in case of electricity.
6. Space technology, like aro mapping and 3D contour mapping, should be used in order to decide the slope and hence the origination, level and the best way of treating the water. Latest technology sensors should be used to monitor the leakages and breakdowns in the water pipes and treatment plants.

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<sup>12</sup> The Safe Drinking Water Act 1974

Thus, these reforms are what the citizens of the country require at this time of crisis and in order to achieve the SDGs, the government should not afford to overlook these reforms and suggestions in the present time.

## **Conclusion**

Thus, in order to prevent more states from plunging into the worst nightmare of “Day Zero” that Chennai faced in 2018, it’s the time to invest in water by shaking our baskets of modest resources and prioritizing the funding of water programs that are more crucial at present time. To help India survive and come out of the present worst water crisis, the government is required to tighten its control over water laws and resources in the country.

Thus, it’s the time to raise our visions and make the world listen that there is no more time left to waste seeing what all problems will be faced by the humans due to the lack of water. It’s the time for the governments around the world to become the advocate of the endless reuse of this fragile and finite resource. The present hour calls for integrated laws and regulations for the countries like India to govern not only the rash use of water by the citizens but also to govern the fulfillment of obligations of the governments in respecting the right of water, thereby ensuring water justice. Thus, it is now important to invest in water before it is too late.

**Word Limit:** 2000-4000 words-short articles: 2622 words