

Right to Water in International and National Perspective

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I. Introduction:

Water is vital to life. Its indispensability, access and quality are crucial factors deciding the quality of life of not only human beings but also all other living beings. Water is a very basic necessity for overall economic development of the human society. It is also needed for various other industrial and commercial activities.

Internationally the right to water is not directly recognized. International efforts are insufficient and states are not subject to any legally binding obligations to recognize water as a human right. The adoption in 2002 of General Comment 15 on the right to water by the UN Committee on Economic, Social and Cultural Rights is understood as the defining moment in supporting a human rights approach, articulated as the “right of everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses”.¹ The UNDP’s 2006 Human Development Report recommended that countries should make water a human right.² Most recently, however, in March 2009 at the World Water Forum, countries have demonstrated a continuing reluctance to recognize water as a human right, notably the United States, Canada and China, preferring to call it a basic need.³

At the domestic level, colonial legislation first focused on the regulation of water for economic reasons, for instance, through the development of legislation concerning irrigation and navigation.

In India, water law is made of different components. It includes international treaties, federal and state acts. It also includes a number of less formal arrangements, including water and water-related policies as well as customary rules and regulations.⁴ The Constitution of India does not recognize a fundamental right to water. However, the right to water has been derived from the fundamental right to life under Article 21 of the Constitution. This research paper will map out the relevant legal framework concerning right to water.

Right to Water:

Water is major constituent of all living matter and no one can exist without water. We need it and we must have a right to it. A right based approach to water means that priority should be given to those who do not have access and requires that individuals and communities have to access to information, justice and participation in decision making process concerning water related issues.

II. International Perspective:

The principle of universality of human right is the cornerstone of international human rights law. Human rights are rights inherent to all human beings. We are all equally entitled to our human rights without discrimination. These rights are all interrelated, interdependent and indivisible. The improvement of one right facilitates advancement of the others. In like manner, the deprivation of one right adversely affects the others. The human right to water is increasingly widely recognized at the international and national levels.

UN Charter, 1945

There is no express mention of water is made in the UN Charter⁵, but the contemporary challenges that we face as a global community elevate the central role played by water in the achievement of the Charter’s goals. Article 55 of the Charter promotes:

- a. higher standards of living, full employment, and conditions of economic and social progress and development;
- b. solution of international economic, social, health, and related problems; and international cultural and educational cooperation; and
- c. universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion.

Give an uncertain climatic future, population increases, and ultimately water shortages, a right to water may be a necessary avenue to uphold many of these undertakings.

Universal Declaration of Human Right, 1948

International environmental law and the law of human right embody distinct but related concerns of the modern world. The principle of universality of human rights is the milestone of the international human rights law. Human rights are rights which inherent to all human beings and all human beings are equally entitled for it without any discrimination. There are three basic human rights instrument: the 1948 Universal Declaration of Human Rights, the two 1966 human rights treaties, the International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights. It is very clear that there is no mention of a human right to water in any of these three basic human right instruments. Although water is not expressly defined as a human right in the basic human rights instrument but access to drinking water has been described by the United Nation as human right. Human right to water has been read into such instruments due to its character as an essential ingredient for the existence of human life.

Universal Declaration of Human Rights declares that, “everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control”.⁶ The term including in Article 25 shows that the components which are mentioned is not complete list. It provides a scope of entering some other component like water also explicitly.

Geneva Conventions and Protocols

The Geneva Conventions and their Additional Protocols recognize the right to water in context of drinking-water. A right to drinking water is found in:

- Arts.20, 26, 29 and 46, Geneva Convention III (1949);
- Arts.85, 89 and 127, Geneva Convention IV (1949);
- Arts.54 and 55, Additional Protocol I (1977);
- Arts.5 and 14, Additional Protocol II (1977).

The Covenants of ICCPR and ICESCR, 1966

International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights adopted by the General Assembly of the United Nations on 19 December 1966. ICCPR states that, “Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life. Right to life under this Article covers all facets of life, water is one of them”.⁷

ICESCR affirms that, “The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent”.⁸ Further, It declares that, “The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health”.⁹

Both the Articles of ICESCR recognize the right to water implicitly because the components which are provided under Article 11(1) is not exhaustive and declaration of Article 12(1) is mere a hypothesis without the recognition right to water.

Stockholm Declaration, 1972

The Stockholm Declaration is one of the earliest environmental instruments which affirms the fundamental right to “....an environment of a quality that permits a life of dignity and well being...”¹⁰ and also that, "the natural resources of the earth including the air, water, land, flora and fauna and especially representative samples of natural ecosystem must be safeguarded for the benefit of present and future generations through careful planning or management, as appropriate".¹¹

Mar del Plata Action Plan, 1977

The Action Plan from the United Nations Water Conference held in Mar del Plata in 1977, recognized water as a “right”, declaring that all people have the right to drinking water in quantities and of a quality to their basic needs.¹² The primary outcome of this conference was the launching of the International Drinking Water Supply and Sanitation Decade (1980-1990) with the slogan ‘Water and Sanitation for All’.

Convention on the Elimination of Discrimination against Women, 1980

CEDAW obliges States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such right to the women, “to enjoy adequate

living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications".¹³ Thus express recognition of water may be seen in the Convention on the Elimination of Discrimination against Women 1980.

Convention on the Rights of the Child, 1989

As the name of convention, it is obvious that it emphasizes the child's right and to enjoy the highest attainable standard of health in the furtherance of "combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking water, taking into consideration the dangers and risks of environmental pollution...."¹⁴

Dublin Statement, 1992

The Dublin Conference on Water and Sustainable Development explicitly recognized the right to water, ".....it is vital to recognize first the basic right of all human beings to have access to clean water and sanitation at an affordable price".¹⁵

Agenda-21, 1992

Chapter 18 of Agenda 21 is on freshwater, entails three elements of right to water: access, quality and quantity. It states that, "Water is needed in all aspects of life. The general objective is to make certain that adequate supplies of water of good quality are maintained for the entire population of this planet...."¹⁶ Further, it emphasizes that, "Safe water-supplies and environmental sanitation are vital for protecting the environment, improving health and alleviating poverty. Safe water is also crucial to many traditional and cultural activities...."¹⁷

Declaration on the Right to Development, 1993

Several international documents, among them the Vienna Declaration, states that the right to development is a "universal and inalienable right and integral part of fundamental human rights".¹⁸ Art.8 (1) of the Declaration on the Right to Development says that "States should undertake, at the national level, all necessary measures for the realization of the right to development and shall ensure, inter alia, equality of opportunity for all in their access to basic resources...." In interpreting this Article, the General Assembly clarified and reaffirmed in its Resolution 54/175 that "the rights to food and clean water and fundamental human rights and their promotion constitutes a moral imperative both for national Governments and for the international community".¹⁹

Millennium Declaration and Political Declaration of Johannesburg, 2002

A strong commitment for right to water has been included in the Political Declaration of the World Summit on Sustainable Development "to speedily increase access to basic requirements such as clean water, sanitation, adequate shelter, energy, health care, food security and the protection of bio-diversity...."²⁰

In 2002 the United Nation Committee on Economic, Social and Cultural Rights which monitors implementation of the Corresponding Covenant adopted General Comment No.15. General Comment 15 affirms that, "The human right to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses. An adequate amount of safe water is necessary to prevent death from dehydration, to reduce the risk of water-related disease and to provide for consumption, cooking, personal and domestic hygienic requirements." The right to water finding such a right by necessary implication From Articles 11(right to adequate standard of living) and 12(right to health) of the Economic, Social and Cultural Covenant. While General Comment 15 does not have the same binding force as a treaty commitment, puts the parties to the Economic, Social and Cultural rights Covenant on notice that the Committee will be monitoring their progress in implementing the right.

In **March of 2008 the Human Rights Council adopted a resolution** recognizing human rights obligations in regard to water and sanitation, and establishing an independent expert to investigate these obligations and their implications for international action.²¹

III. National Perspective:

Article 21, 48 and 51A(g) of the Indian Constitution, 1950 are interpreted by judiciary in India to draw right to water as a special right but specifically no provision is constituted explaining right to water. The Constitution does not specifically recognize a fundamental right to water. The Constitution asserts economic, social and cultural rights under the Directive Principles of State Policy. Although the Directive Principles of State Policy are non-justiciable, but in spite of its non-justiciability these are the basic dogma for the formulation of public policy, governance and the interpretation of constitutional rights. There are many fundamental rights which has been recognized by the apex court of India through the vast interpretation of Article 21 and right to

water is one of them. Article 21 which pronounces the right to life has been bountifully interpreted by the Supreme Court to include all facets of life.

In India the architect of the right to water is judiciary. So it is necessary to have a look towards the right to water through judicial perspective. The first landmark decision was in *Francis Coralie Mullin v. the Administrator, Union Territory of Delhi*²² where the Supreme Court clearly stated that the right to life included the right to live with human dignity. It also made passing observation that it also includes the bare necessities of life.

The case where the Supreme Court recognized the right to clean environment, as an aspect of right to life, is *Rural Litigation and Entitlement Kendra v. State of U.P.*²³ without referring to Article 21 of the Constitution, the Apex Court observed:

“This would undoubtedly cause hardship to them, but it is a price that has to be paid for protecting and safeguarding the right of the people to live in healthy environment with minimal disturbance of ecological balance and without avoidable hazard to them and their cattle, homes and agricultural land and undue affectation of air, water and environment”.

Similarly, in *Charan Lal Sahu v. Union of India*²⁴ in his concurring opinion Justice K. N. Singh observed:

“In the context of our national dimensions of human rights, right to life, liberty, pollution free air and water is guaranteed by Constitution under Articles 21, 48A and 51A(g), it is the duty of the State to take effective steps to protect the guaranteed constitutional rights”.

The Supreme Court has repeatedly derived a fundamental right to water from the right to life in *Subhash Kumar v. State of Bihar*²⁵ Justice K.N.Singh declared:

“Right to live is a fundamental right under Article 21 of the Constitution and it includes the right to enjoyment of pollution free water and air for full enjoyment of life. If anything endangers or impairs the quality of life in derogation of laws, a citizen has right to have recourse to Article 32 of the Constitution for removing the pollution of water or air which may be detrimental to the quality of life”.

In *Virender Gaur v. State of Haryana*²⁶ the Court reiterating the view enunciated in the *Subhash Kumar* case stated:

“Article 21 protects Right to Life as a fundamental right. Enjoyment of life and its attainment including the right to life with human dignity encompasses within its ambit, the protection and preservation of environment, ecological balance free from pollution of air and water, sanitation without which life cannot be enjoyed.....”

In *A.P. Pollution Control Board II v. Prof. M.V. Nayudu and Ors.*²⁷ the Court emphasized the right to access to drinking water as basic and fundamental to life and a duty of the State under Article 21 to provide clean drinking water to citizens.

In *Narmada Bachao Andolan v. Union of India*²⁸ the Supreme Court held that right to water is a fundamental right under Article 21 of the constitution. The court further observed that water is the basic need for the survival of human beings and is part of the right to life and human rights as ensured in Article 21 of the constitutions, and can be served only by providing sources of water where there is none. In *M.C. Mehta v. Union of India*²⁹ the Hon’ble Supreme Court of India held that right to live is a fundamental right under Article 21 and it includes right to of enjoyment of pollution free water and air for full enjoyment of life.

IV. Conclusion:

It is clear that the right to water is now a human right, equal to all rights, which implies that it is justiciable and enforceable. Water as a human right must be recognized at all levels. Water must be remained as a public good but not economic good. The concept of right to water is achieved only when water, especially for drinking and domestic purpose need must be made available freely as a common good and not as a commodity.

A first step toward meeting a right to water would be for governments, water agencies, and international and local organizations to guarantee all humans the most fundamental of basic water needs and to work out the necessary institutional, economic, and management strategies necessary for meeting those basic needs, quickly and completely. All the treaties and conventions which were obliged by the parties must be followed properly. State level legislations must be drafted by looking into the possibilities from the grass root levels.

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