

## RIGHT TO SAFE DRINKING WATER AS A HUMAN RIGHT: CHALLENGES AND PERSPECTIVES

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### Abstract

Water is considered to be of paramount importance when it comes to survival of the entire humanity. The chemical formula of water is H<sub>2</sub>O, which contains two molecules of Hydrogen and one molecule of Oxygen. The need and importance of water has been there since time immemorial as numerous civilizations got settled near the sea coasts/river banks. Empedocles, a Greek philosopher stated, water is one of the five basic elements for individual sustenance. Earth is also known as the blue planet, and per se there is no shortage of water. An approximate amount of 336 trillion gallons of water is present. However, 97% of its water is salty and the remaining 2% lies in trapped snow-capped mountains, hence the world is left with just 1% in the form of potable water to survive. A separate Ministry of Jal Shakti under the aegis of Government of India was formed in May 2019, by merging the two ministries, i.e. Ministry of Water Resources, River Development & Ganga Rejuvenation and Ministry of Drinking Water and Sanitation. As per this ministry, it aims to provide safe drinking water via household tap connections by 2024 in rural areas across the country. The Hon'ble Supreme Court of India in numerous judgments, i.e. Subhash Kumar v State of Bihar<sup>1</sup> considered right to safe drinking water as fundamental right under Article 21 of the Indian Constitution. However, the ground reality is different as the access to safe drinking water as a fundamental right is not expressly stated in the Indian Constitution nor there is any specific legislation on access to safe potable water. Right to safe drinking water is a global concern which is needed to be resolved on top priority.

**Keywords:** Water, Human Right, Fundamental Right, Potable water and Privatisation.

### I. INTRODUCTION

“Water is the essence of life, and potable drinking water is the indispensable necessity of human health.” (Van Derslice 2011).<sup>2</sup> Water is considered to be of paramount importance when it comes to survival of the entire humanity. The chemical formula of water is H<sub>2</sub>O, which contains two molecules of Hydrogen and one molecule of Oxygen. The need and importance of water has been there since time immemorial as numerous civilizations got settled near the sea coasts/river banks. Some of the greatest civilizations settled near the Indus Valley of India, Nile Valley of Egypt and Euphris valley of Mesopotamia. Water was used for irrigation of the fields in order to fulfill their basic requirements. Empedocles of Argegentum (490-430 B.C.E.), a Greek philosopher stated that water is one of the five basic elements for individual sustenance. It was not mentioned in the Universal Declaration of Human Rights in the year 1948. But the UN General Assembly in the year 2010 stated, “all previous resolutions of the Human Rights Council on human rights and access to safe

<sup>1</sup> AIR 1991 SC 420

<sup>2</sup> Vanderslice, J. Drinking Water Infrastructure and Environmental Disparities: Evidence and Methodological Considerations S109-S114 (American Journal of Public Health, 2011).

drinking water and sanitation, recognized the right to safe and clean drinking water and sanitation as a human right which is very important for fulfilling other human rights.”<sup>3</sup> Other UNGA resolutions include 7/22 of 28th March and 12/8 of 1st October, 2009 which relates to right to safe drinking water and sanitation as a human right.

The General Comment. 15 of the Committee on Economic, Social and Cultural Rights and Art 11 and 12 of the International Covenant on Economic, Social and Cultural Rights, etc provides with certain obligations to ensure the right to safe drinking water and sanitation. The necessity of water has been outlined under Goal 7 of the Millennium Development Goals (MDG), i.e. “Ensure environment sustainability”, and Goal 6 of UN Sustainable Development Goals (SDGs) which states “Ensure availability and sustainable management of water and sanitation for all” Prof. Dr. Vinod Shankar Mishra, Professor of Law, BHU, Varanasi in his research paper titled: “Human Right to Water & National Water Policy, 2012: Emerging Issues”, stated the need for national law on water as we have it for forests, air, water, etc. Professor Mishra in one of his research projects as an outcome of UGC sponsored Major Research Projects (2008-10) titled: Protection of Water Bodies and Regulatory Measures: A Case Study of Varanasi & adjoining Areas, highlighted the State is as much responsible as private agencies in terms of the policies that it has formulated and the lack of ensuring transparency and accountability.

Water bodies have degraded rapidly because polluters have not been penalized, and the general public and stakeholders have not been included in the decision-making process and are not getting sufficient economic benefits from restoration. The NITI Aayog report of 2019 states, by the year 2030, approximately 40 percent of the population will not have access to safe drinking water. Earth is also known as the blue planet, and per se there is no shortage of water. An approximate amount of 336 trillion gallons of water is present. The water evaporates and then condenses either in the form of rain or ice, but it doesn't leave the planet Earth. However, 97% of it's water is salty and the remaining 2% lies in trapped snow-capped mountains, hence the society is left with just 1% in the form of potable water to survive. Unfortunately, the freshwater that we have is not abundant. The scarcity of drinking water has become a major issue globally. The women and young girls are too getting affected by the scarcity of water. They in their villages have to walk and travel kilometres to fetch the drinking water ranging from 100m-6kms.5 As per the 2011 Census report (except Jammu & Kashmir), out of 330 million households, 24 percent population stays in rural areas and the remaining 54 percent in the urban areas. 43.5 % of the households use tap water, while 87% are still dependent on tubewells, wells and hand pumps which are considered to be the main sources of drinking water. As per the 2011 Census report, 47% of the population have accessibility of water within the premises, whereas the remaining 36 percent of population have to fetch water which is located at-least at a distance of 500 meters in rural areas and 100 meters in the urban society. Also, as per this report, 43% people rely on taps, then 34% on hand pumps which is then followed by wells and borewells.

## II. WORLD REPORT ON MANAGEMENT OF WATER

<sup>3</sup> General Comment No 15, Para. 12. B. The General Comment further refers to States parties to the World Health Organization Guidelines for Drinking Water Quality (available at <https://www.refworld.org/pdfid/4538838d11.pdf>.) Accessed on 7<sup>th</sup> of June. 2022).

## • WHO, UNICEF, AND THE WORLD BANK REPORT ON SAFE DRINKING WATER, 2022<sup>4</sup>

As per 2022 WHO Report, safe drinking water is defined as "does not represent any significant risk to health over a lifetime of consumption, including different sensitivities that may occur between life stages." Although our earth is known as blue planet and is covered with 70% of water, however, 2.5% of it is only available to us in the form of fresh water and only 1% of freshwater is fit for human consumption. Out of this 1%, 3/4th of water is present in glaciers, the remaining 1/4th is available deep in the aquifers which is not accessible for human consumption. As per this report, by the year 2030, there will be scarcity of drinking water and it also states that 1.2 billion people do not have access to potable water. The method adopted by Israel is since it's located in desert terrain, it treats 100% of its water which is used and approximately 94 percent of water is recycled back to the households. The irrigation practice in Israel is done primarily using reused water. 2 billion people live in homes without access to properly regulated drinking water. 1.2 billion of them have access to basic drinking water services. 107 million more people will have access to securely managed drinking water at home between 2015 and 2020, and 115 million more will have access to secure restrooms at home. Rural areas are home to 8 out of 10 people who still lack access to basic drinking water services.

The data on the relationships between water, health, and development are presented in this paper, together with practical suggestions for accelerating access to clean water. Numerous instances of how various nations have approached the problem of providing safe drinking water serve as examples for the recommendations, which are based on the five accelerators of the UN-Water SDG 6 global acceleration framework: governance, financing, capacity development, data and information, and innovation.

The necessity for the government to significantly expand leadership and investment in securely managed drinking-water services is obvious given that this service offers enormous economic and health benefits as well as crucial gender quality outcomes. It is hoped that this report would spur action to provide everyone with sustainable drinking water services.

The report cautions that governments must strategically invest in developing safe drinking water systems, which includes not only increasing funding but also bolstering capacities to plan, coordinate, and regulate service provision, if the world is to achieve universal access to safe drinking water and mitigate the effects of climate change. It is demonstrated by numerous examples of how nations have handled the problem of providing their inhabitants with safely controlled drinking water. The report outlines strategies that governments can use to meaningfully implement sustainable improvements, even with constrained resources and while capacity is still being built, while also acknowledging that, in the end, a comprehensive approach underpinned by political leadership is necessary. These strategies address the five accelerators of the SDG 6 Global Acceleration Framework: infrastructure, governance, finance, capacity development, data and information, and innovation.

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<sup>4</sup>World Health Organization (WHO) and the United Nations Children's Fund (UNICEF), and the World Bank, launched the report *State of the world's drinking water: An urgent call to action to accelerate progress on ensuring safe drinking water for all.*, available at: <https://www.unwater.org/news/report-state-worlds-drinking-water> (last visited on 07<sup>th</sup> June, 2022)

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### **WORLD WATER DAY 2022: HOW INDIA IS ADDRESSING ITS WATER NEEDS**

A commodity as valuable as gold in India is water. The nation is among the most water-stressed in the world because it has 18 percent of the world's population but just 4 percent of the water resources. According to a recent analysis by the government's policy think tank, the NITI Aayog, many Indians experience high to acute water stress. This problem is made more difficult by India's reliance on a monsoon that is becoming more unpredictable. Even as the frequency and severity of floods and droughts in the nation rise, climate change is predicted to make this demand on water supplies worse.

The Atal Bhujal Yojana, the government's national groundwater initiative, is supported by the World Bank to help with groundwater management. This is the largest community-led groundwater management initiative in the world, and it has been implemented in 9000 gramme panchayats throughout seven Indian states. Since hundreds of millions of people and communities have the power to conserve groundwater, the programme is assisting locals in understanding their water availability and usage trends so they may plan their water use appropriately.

In order to address the non-drinking water needs of its industries, Chennai has now become the first Indian metropolis to recycle its wastewater on a large scale. By recycling around 20% of Chennai's sewage once two Tertiary Treatment Reverse Osmosis (TTRO) plants are finished, the city will be able to use less fresh water.

### **Jal Shakti Abhiyan: 'Catch the Rain where it falls, when its falls'**

The Prime Minister of India, Shri Narendra Modi on the occasion of World Water Day launched the flagship scheme of '*Jal Shakti Abhiyan: Catch the Rain where it falls, when it falls*'. An MOU was signed between the Union Minister of Jal Shakti with states of Uttar Pradesh and Madhya Pradesh for the implementation of Ken Betwa Link Project, along with the interlinking of rivers in the august presence of the Hon'ble Prime Minister of the country.

#### **Key Highlights:**

- This project is covered in all the districts of urban and rural areas;
- Implementation of programme from 21st March-2021-30th November, 2021.
- Launched under the name of 'Jan Andolan' to conserve the water resources at the grass root level which is possible via effective participation of the people.
- The aim is to form the Rain Water Harvesting Structures (RWHS) which is suitable under all the climatic conditions and sub-soil strata to ensure rainwater storage.

Hence, with this backdrop the researcher aims to meet the proposed area of study and is going to try her level best that my work benefits every stratum of society, research scholars and law enforcing institutions as well.

### **III. ROLE OF JUDICIARY**

- *Hon'ble High Court of Uttarakhand in Mohd. Salim v. State of Uttarakhand Writ Petition (PIL) No.126 of 2014 and Lalit Miglani v. State of Uttarakhand, Writ Petition (PIL) No.140 of 2015* granted legal personality to River Ganga as it being a holy river it is necessary to protect it.

- In *Narmada BachaoAndolan vs Union of India, [2000] 10 SCC 664*, Kirpal J observed, “Water is the basic need for the survival of human beings and is part of the right of life and human rights as enshrined in Article 21 of the Constitution of India.”
- *A.P Pollution Control Board (II) v. M.V. Nayudu. (2001) 2 SCC 62* – The Hon’ble Supreme Court stated, the right to access to drinking water is fundamental to life and there is a duty on the state under Art. 21 to provide clean water to its citizens.
- *Bandhua Mukti Morcha v. Union of India A.I.R. (1984), S.C. 80*, the Apex court stated the concept of Right to healthy environment under the ambit of ‘Right to Life’ was protected under Article 21 of the Constitution.

#### IV. COMPARATIVE ANALYSIS

##### a) *United States of America*

In the U.S.A. there is no specific law on right to safe drinking water. However, the following laws are on prevention of water pollution:

- The Federal Water Pollution Control Act, 1948;
- The Clean Water Act, 1972.

##### b) *France*

“Right to water” is recognized as a right under the French law. The 1992 water law considered it as ‘common heritage of the nation’. Article 1 of this law provides: “Within laws, regulations and established rights, the use of water is for all and every physical person has the right of access to drinking water for nutrition and hygiene at affordable price.”

#### V. CRITICAL ANALYSIS

The following issues are mentioned below which are needed to be addressed immediately:

- **Scarcity of water:** The services and infrastructure provided in Delhi is deeply affected by high population. It is surrounded by the cities of (i.e. Noida, Ghaziabad, Gurugram and Faridabad) have good functional linkage with this city and good amount of population of people travel from their city to Delhi on daily basis. However, the main point of concern is that our country lags behind usage, supply and reuse of drinking water.
- **Depletion of groundwater:** As per the NITI Aayog Report, 2018, Delhi is considered to be one of the 21 cities which is expected to run out of groundwater by the year 2020. As per 2011 Census, approximately 32 percent of the households in the country have access to the tap water facility. As far Delhi is concerned, approximately 18 percent or 6,25,000 don’t have access to piped water facility.
- **Lack of Water Policy:** As per the Present scenario, the Delhi Jal Board which manages the Delhi’s water sector, it as of now doesn’t have a proper legislative framework and mandate on ‘Delhi water Policy’. Hence, the DJB being a para-statal authority has undertaken prime responsibility for supply of water, sewage disposal and performing revenue functions. The policy hasn’t addressed the following aspects: a. Lack of clarity in setting out the objectives; b. Policy on recycle and reuse; c. Conservation of groundwater resources; d. Lack of innovation; e. Balance between environment and development; f. Negotiation of institutional and constitutional requirements.
- **Lack of legislative framework:** Model Groundwater (Sustainable Management) Bill, 2017 under the Ministry of Jal Shakti, Government of India came into existence in the wake of Model Groundwater (Control and Regulation) Bill, 1970. It aims at protection of the groundwater and inculcating the public trust doctrine. However, this bill is not free from defects. It lacks the proper implementation of regulatory framework. It can be well

substantiated with the famous Plachimada case, where the Hon'ble High Court of Kerala, concluded where a person has a right and has entitlement for the extraction of groundwater, the void area remains is to prohibit the same person from extracting groundwater.

## VI. SUGGESTIONS

- It is need of an hour to make a special legislation on water law to ensure the right to safe drinking water as a Human right.
- On side-lines with water law, it is the pertinent to have water policy.
- Groundwater is a major issue in country as a whole. Hence, proper framework and conservation strategy is required for storage and consumption judiciously.
- Right to safe drinking water should be considered as a right accessible to all rather than privatisation of water by private players for commercial gain.
- The aspect of right to water is not expressly guaranteed under the Indian Constitution nor through any specialized law. It is an implied right which is asserted in form of laws, rules and bestows the responsibility on the State to prevent the water pollution.

## VII. CONCLUSION

Article 21 of the Indian Constitution clearly states that every individual has right to life and personal liberty which also includes living peacefully in the pollution-free environment.6 Water is such an intrinsic part of the society which has at the end of the day compelled the law makers to come up with special schemes and policies on potable water. It is to be noted with utmost concern that water has become such important issue; a separate Ministry of Jal Shakti under the Government of India was formed in May 2019, by merging the two ministries, i.e. Ministry of Water Resources, River Development & Ganga Rejuvenation and Ministry of Drinking Water and Sanitation. As per this ministry, it aims to provide safe drinking water via household tap connections by 2024 in rural areas across the country. It is the citizens with their responsible behaviour and conduct can make a difference at global level.