

# Right to Drinking Water in India

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## Abstract

The present paper provides a perspective on water from the known past to the present; how water has been perceived at different times. From being a community managed property or a means for achieving sustainable development goals, water metamorphosed into a commodity to be bought and sold. The management of water has become a complex policy issue due to ownership. On the other hand, equitable distribution of water has become a key area for public policy and its growing importance in national and international development. When water issues come to Indian context, it is often found that access to potable water is a dream for many states where majority population drinks contaminated water. The international agencies highlighted that water has a role in sustainable development and therefore there is a need to increase investment. With this objective the paper discuss about the changing role of the Indian State in provisioning potable water to its deprived community.

**Keywords:** Sustainable Development Goals, Potable Water, State, Market, Civil Society.

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## Introduction

Water is one of the most important natural resources in the earth and life is impossible without it. Water consists 71 percent of the total earth surface and is a rarest resource because majority of the water source on the earth is saline that cannot be used for drinking purposes. Water is not only a tasteless, odorless, and colorless resource but also a subject of conflict and a source of world economy. A small portion of 1.7 percent of total water is consists of ground water. With 17.74 percent of the world’s population, India has 2.45 percent of the world’s land resources and 4.5 per cent of fresh water resource.<sup>1</sup> Due to the scarce nature and its importance in human life, water has played an important source in conflict and cooperation since history. The history of development of the welfare state has a number of cases of

<sup>1</sup> Ministry of Water Resources, December 2008. Source: <https://jalshakti-dowr.gov.in/>

treating water as a human right and therefore the welfare State had made a number of treaties and agreements to resolve the conflict and strengthen the right.

The human right to water evolved from a number of different international treaties and agreements. The Convention on the Elimination of all forms of Discrimination against Women (1979), the Convention on the Rights of the Child (1990) and the Convention on the Rights of the Person with Disabilities (2008) more or less debated and inserted water as a human right and United Nations adopted the resolutions on the human right to water in 2010. The international apex body accepted water as a fundamental need and every human has right to safe drinking water and sanitation. UN emphasized upon water as a matter of right and human right to water is a necessity for leading dignified life. Therefore, the right to water includes that everyone has right to sufficient and safe water for survival and quality life.<sup>2</sup>

While highlighting the Indian context, the Indian State is the second populated country having only four percent of the world's total drinking water resource. Therefore, automatically the water issue is challenging and contentious in front policy makers in satisfying the need of the growing population with scarce water resource. Therefore, water issue has been a contentious issue since country's independence. The Constitution makes the Article 21 a *Fundamental Right (Life)* where water is included as pertinent for fulfilling it. And the constitution makers highlighted upon the State obligations towards its citizen in protecting their lives as a matter of highest priority. Consequently, the Supreme Court redefined Article 21 while elaborating what makes individual life meaningful. And to have a meaningful life, the apex court emphasized upon water, food, environment, education, safe housing, etc proclaiming as a necessity. The judiciary directed the government to create appropriate opportunities in which citizens get access to a certain quantity of quality water.

Based on a report of NITI Ayog (2019), the water issues in India is much complex and most threatening as it is estimated.<sup>3</sup> Fulfilling the water need is going to be a greatest challenge by 2030. A study by World Health Organization in 2017 brought out a detailed report highlighting that even the government provides drinking water to its citizens; more than 30 % of the water is either contaminated or mixed with iron, fluoride, arsenic and other dangerous elements.<sup>4</sup> Under United Nation's Sustainable Development Goals, the Government of India promised to provide safe drinking water to its population as a matter of their fundamental right. The constitutional provision ensures its citizens with basic rights to safe drinking water and realized that without it, human growth is not possible.

### **Water as a Fundamental Right**

In addition to fundamental rights, the State promised to provide safe drinking water to its people under Directive Principle of State Policy. The part 4 highlights that the State should develop water policy to secure the ownership and control of the material resources of the community (Article 39).<sup>5</sup> The State should not only own the water resource but make policy for appropriate distribution to maintain common good. On the other hand, the Article 47 suggests the State to raise the level of nutrition and standard of living, improve the public health by prohibiting the consumption of intoxicating drinks that

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<sup>2</sup>Langford, M.: Russell, A. (Eds.) *The Human Rights to Water: Theory, Practice and Prospects*; Cambridge University Press: Cambridge, UK, 2016.

<sup>3</sup>NITI Aayog (2019), Composite Water Management Index, Pg-187.

Source: <https://niti.gov.in/sites/default/files/2019-08/CWMI-2.0-latest.pdf>. Accessed on 25.07.2023.

<sup>4</sup> [www.un.org](http://www.un.org)

<sup>5</sup> Basu, D.D, (1991), Introduction to the Constitution of India, Prentice Hall of India, New Delhi.

are injurious to health.<sup>6</sup> The Constitution also facilitated people to approach the Supreme Court (Article 32) and the High Court's (Article 226) if the state fails to provide them safe drinking water.

Under the context, the 'Right to Water' connotes

- a) The State must ensure that all the people have access to available water. This means that water must be available for all sections of the population, especially for vulnerable, marginalized groups and poverty ridden population.
- b) The State should ensure that its population should have economic access to water. This implies that the cost of accessing water should not be so higher so that accessing water would be difficult.<sup>7</sup>
- c) Where water is provided, i.e. the right is guaranteed, they should be away of any short of exploitation.

According to the report by Saleth and Dinar (1999), "the concept and concern for right to water emerged due inadequate institutional reforms for the effective and efficient water management by the Indian State".<sup>8</sup> The report by Cronin and Khosla: 2012 highlights that the poor implementation of existing policies that negatively impact on sustainable water service delivery.<sup>9</sup> Poor institutional management and insufficient political also extend to rise of consensus on safeguarding water rights. Though differences exist in approaches to understand and estimate the current water supply and demand in India, but the fact is that there is a rising demand due to population rise and scarcity of resources and lack of water distribution policies. The recent trends highlights that the urban population has grown much higher and much faster as compared to the rural one.

As projected by Government of India, there would be a 40% population rise in urban India by 2030 and with this water consumption pattern is predicted for a change drastically putting further pressure on existing water resources. Indian urban centers and industries are directed to find ways to grow with minimal water uses and minimum water waste. The urban poor and people living in slums are deprived from basic facilities, water and sanitation services in urban areas. Water, that is provided in the urban centers are not regular, sufficient, or portable which leads to rise in expenditure in purchase of water, health issues due to intake of contaminated water.<sup>10</sup> Many describe the negative impact of urbanization which led to inappropriate distribution of water both in quality and quantity wise. Urbanization involves water marketing, pricing water and fixing the charges for provisioning water have deprived the rights of the people in the urban and semi urban centres.<sup>11</sup>

### **Commodification of Water and the Role of Judiciary**

The commodification of water in India has also given impetus to the debates on right to water discourse. When on one side, the Supreme Court and High Courts are continuously engaged in protecting the fundamental right to water. Whereas on the contrary the State licensed the water sector to the corporate

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<sup>6</sup> Ibid.

<sup>7</sup>J Visser, E Cottle & J Mettler 'The Free Basic Water Supply Policy: How Effective is it in Realizing the Right?' *ESR Review*, Vol-3, No-1, July, 2002.

Source: [http://www.communitylawcentre.org.za/ser/esr2002/2002july\\_water.php](http://www.communitylawcentre.org.za/ser/esr2002/2002july_water.php)

<sup>8</sup>Saleth, R.M. & Dinar, A. (1999), *Water Challenge and Institutional Response: A Cross-Country Perspective*, Policy Research Working Paper, Series 2045, The World Bank, Washington, DC, USA.

<sup>9</sup>Cronin, A. A. & Khosla, H. (2012), *Perspective on Governance in the India Water, Sanitation and Hygiene Sector*, Conference on WASH and Governance, LBSNAA, Mussoorie, June 2012, Academic Foundation, Delhi.

<sup>10</sup>The World Bank (2006). *Inclusive Growth and Service Delivery: Building on India's Success*. The World Bank, Washington DC. Source: <http://go.worldbank.org/ODEO1J4A50>. Accessed on July, 2023.

<sup>11</sup>Narain, V., Shah Alam Khan, M., Sada, R., Singh, S. & Prakash, A. (2013). Urbanization, peri-urban water (in) security and human well-being: a perspective from four South Asian cities. *Water International* 38(7), 930–940.

bodies for corporate profits. What is been observed since liberalization is the fastest growth of the bottle industry which is unchecked and unregulated have deprived the poor in easily accessing water. The expansion of bottle industry has somewhat proved negative for water security in many water scarce areas where groundwater is licensed to water industry while ignoring the constitutional right to life of population. Under such conflictual situation, it is also observed that judiciary interventions are rampant. The Supreme Court as well as several High Courts of different states upheld the citizen's right to have access to clean drinking water as a fundamental right under Article 21 of Indian Constitution.<sup>12</sup>

To discuss various important cases the first significant case is *Subhash Kumar vs State of Bihar* (1991), where the Supreme Court of India observed that the right to life under Article 21 of Indian Constitution includes the right to have safe water for fuller realization of quality life. If at any given point of time, the citizens are neglected with their basic rights, they can approach the Supreme Court under Article 32 and the High Court's under Article 226 of the Constitution. Under the second case of *M.C. Mehta vs Kamalnath* case of (1997) the Supreme Court categorically ruled that the State is not only bound to regulate water supply, but should also help realize the right to healthy water and prevent health hazards. The welfare of the people is paramount under the rule of law. In the *State of Karnataka vs State of Andhra Pradesh* (2000), the apex court held that the right to water is a fundamental right that must come under Article 21, that includes right to life. In *Narmada Bachao Andolan vs Union of India* (2000) it was held that 'water is essential for human survival'. The *A.P. High Court*, while citing several of the above mentioned rulings of the Court, reiterated the responsibility of the State in providing clean drinking water to the citizens in *Subhash Chandran vs Government of Andhra Pradesh & Others* (2001).

The *Kerala High Court* asserted the drinking water as a fundamental right of the people of the state in different cases including *Kerala Bottled Water vs State of Kerala* (2020), *Govindan Master vs Janaki V. & Ors* (2011). The court while being critical towards the approach of market, whose motive is only profit, put limitations on commercialization of water.<sup>13</sup> In *Gautam Uzir vs V. Guwahati Municipal Corp* case, Guwahati High court observed that Water and clean water is so fundamental forever and the municipality should make arrangements to protect Article 21 of the Constitution. In another case of *Chameli Singh vs State of Uttar Pradesh*, the Supreme Court held that the option to protect the right is a major right accessible to each resident and it was added something extra to Article 21 of the Constitution of India. The privilege to contamination free and safe drinking water is the extremely essential rights that every individual deserve it.

### **The National Water Policy: 2002**

In between the Government of India passed the National Water Policy in 1987 which was later amended in 2002. The National Water Policy emphasized on the role for a private sector player in water sector, a change from concentration on new projects and maintenance of existing ones. The new water policy emphasized upon the full recovery of the cost of administration, operation and maintenance of water resources. The new policy brought new players and mostly private operators and multinational corporations. The New Water Policy insisted upon the gradual withdrawal of State from service provider and to regulator. The State would invite community or private sector participation through Public-Private Partnership (PPP).

<sup>12</sup> Bhushan, C. (2006). Bottled Loot. *Frontline*, Vol-23, No-7. and [www.indiakanoon.com](http://www.indiakanoon.com)

<sup>13</sup> State Privatizing Water Supply in 16 Cities, *the Hindu*, 10 November, 2010.

With New Water Policy, the market is also perceived as a means for better service delivery and appropriate platform for water related technological solution. Liberalization, Privatization and Globalization principles handed over the State welfare activities to the market with an objective of better service delivery to people. Markets are expected to provide modern technologies for provisioning contamination free and hygienic water. The market role is visible with the improved water service delivery with waste water management; treatment plants for saline water could be possible due to market players. Markets also improved the water delivery services to the local communities through a Public Private Partnership mode.

The water sector has a number of key stakeholders, with defined roles and responsibilities to ensure the principle of good governance and citizen centric governance in the country. Beside State, there is the market which is discussed previously and the civil society and the full range of private sector from local dealers to international corporations. As many of the researchers and activists argued that State could not reach to the whole people in delivering basic services, there is a need of alternative and that alternative is suggested and emerged as community or civil society so as to meet the critical emerging day to day challenges within the society and in the State. The State or the government encompasses national, regional and local levels of governance mechanism as well as intra governmental interactions. The civil society is expected to work along with the State in implementation of public policies effectively.

However the issues related to accountability remain a matter of concern in a federal politics like India where the conflict between the Centre-state and local is persistent. Majority time the Centre makes the policy and the locals are instructed to implement. The confusion and dilemmas revolve around regulations, policies, public and political willingness in executing the plans of water governance. There is required for an integrated approach to water management in backward states and tribal dominated states where the awareness for healthy and contamination free water is essential. Therefore, there is a strong argument for community participation.<sup>14</sup>

Community participation is felt a necessary condition for effective coordination and with a systematic approach, one can provide improved water access to the remotest area. This experience is realized under the management practice of Water User Association of Hyderabad, *Pani* Panchayat of Odisha and other cases. But the study of Participatory Irrigation Management (PIM) brought conclusion that the actual involvement of the local community is not visible due to lack of financial independence to the community in managing the water management. Community management often faces challenges due to its dependency upon the central or state government for financial and other requirements.<sup>15</sup> The National Water Policy-2012 also emphasized on the community participation. According to NWP, the community should be mobilized, sensitized and encouraged to adopt better water utilization and storage practices as per the availability of water at local level, better provisioning of water to long distance areas without leakage and theft. The community based water management should be institutionalized and strengthened for better water management.

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<sup>14</sup> Narain, V., Brackets and Black Boxes: Research on Water Users' Associations, *Water Policy*, Vol-6, 2004, Pp.185-196.

<sup>15</sup> Mollinga, P. and Doraiswamy, R. (2005), 'Investing in farmer networks for inclusive irrigation policy processes in South India', in the World Bank's Report *Shaping the Future of Water for Agriculture: a Sourcebook for Investment in Agricultural Water Management*, The World Bank, Washington DC.

### Water Policies to Protect Right to Water

Under the ambit of above argument, the Government of Indian introduced Jal Jeevan Mission (JJM) to provide piped water supply to rural households. The JJM under the Department of Drinking Water and Sanitation focuses on demands and supplies as well as overall management of water at local level, creation and strengthening of local infrastructure to strengthen management of household wastewater for reuse, rainwater harvesting, and increasing groundwater recharge and so on. Under the Mission, the government identified 1592 critical blocks spread across 256 districts of the country. The government decided to provide pipe water (*Har Ghar Jal*) under JJM scheme and the Prime Minister decided to connect each household with a functional piped water connection with assured water supply in adequate quantity on a regular and long term basis. The mission aims at providing pipe water supply to village level institutions (anganwadi centres, schools, *ashramas*, and residential hostels for children, primary health centres, gram panchayat buildings, community toilets, and community centres).

### Role of Civil Society

The role of civil society is significant as it found helping the community in building its capacity, enabling community members, villagers in managing resources (both abundant and scarce) in a decentralized resource management framework. The society also found supporting the community in resource management, delivery, maintenance and operations, provides information to them who lack information about policies and plans and strategies to execute the government policies. The civil society attempts to coordinate with the State in monitoring the water management process to fasten equitable water distribution and sustainable management of the resources.

The role of civil society in India is prominent apart from the State machinery. The civil society organizations are found well equipped to undertake the responsibility of provisioning water to the large population. The CSOs plays a sphere of social interaction between the family and the State where community cooperation, its better communication and coordination is done to resolve the basic minimum expectations and conflicts. Civil society being a non State and non -profit organizations emphasize upon community problem solving, tolerance, inclusive policies and pursuance of community common interests.<sup>16</sup> The CSOs has a long and significant legacy in policy implementations and development programmes. Be it project implementations or natural recourse management, CSOs has been seen as an implementation agency of the State policies.

Under CSOs, Non Governmental Organisations (NGOs) role found prominent in different parts of India. The specific NGOs played effective implementation agencies while fulfilling the right based approach to development. To name few prominent NGOs working for right to water are WOTR in Maharashtra, Sadguru Foundation in Gujarat, Tarun Bharat Sangh in Rajasthan, MYRADA and Arghayam in Karnataka, CSE in Delhi are few examples. WOTR is operating in six different Indian states and recognized as a premier institutions in the field of participatory watershed development. The natural resource management sector in India has witnessed the emergence of wider support from the CSOs which not only protected the right of people to natural resources but also strengthened the legitimate role in the governance of natural resources including water. To cite the best example, *Narmada Bachao Andolan* and Chipko Movement are the best examples where civil society stood as a pillar against State decision. They not only secure the right to water but also undertake the task of awareness building,

<sup>16</sup> Charles Hauss, "Civil Society," 2003, <http://www.beyondintractability.org/essay/civil-society>.

social mobilization and capacity building. It is the effort of the civil society, it is realized that the basis for the success of a State policy lies with the people when they get full control over the resource and formulate their own practices and norms for the management of resources. It is also made aware to the society by the Civil Society Organization that the reason for the failure of most government driven water management programmes is due to the exclusion of people by these programmes. Government schemes do not include public participation at the planning, designing and implementation stages which later led to several peoples' movements in the past decades.

### Conclusion

However, at the current situation, water is not abundant but scarce resource. When the debate on right to water arise, everyone should realize that in the era of water scarcity, the role of the State is highly important in ensuring equitable distribution of water so as to facilitate every individual to enjoy his/her right to water. When on one hand commercialization and privatization of water is rampant, on the other the force of judiciary and different civil society organizations are equally prominent to make water available to everyone. The issue of right to water therefore, requires a broader attention from the legislature. The simple adoption of legal entitlements is not going to resolve the real conflict. The legislature has an emphatic role in making appropriate policies and simultaneously a vibrant right to water campaign by the civil society in pressurizing the policy makers. The additional pressure by the civil society and people is highly necessary in ensuring and educating them about their rights and strengthening awareness about accountable mechanism.

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