
Right to Water and Sanitation as a Human Right

**Ms. Reenu Rana
Faculty of Law
The Maharaja Sayajirao University of Baroda*

***Ms. Parul Singh
Faculty of Law
The Maharaja Sayajirao University of Baroda*

“A human right is a universal moral right, something which all men, everywhere, at all times ought to have, something of which no one may be deprived without a grave affront to justice, something which is owing to every human being simply because he is human.”¹

Every individual has the right to safe, sufficient, accessible and affordable water and sanitation without any discrimination for personal use.

According to Kofi Annan, the former United Nations (UN) Secretary-General said, “Access to safe water is a fundamental human need and, therefore, a basic human right. Contaminated water jeopardizes both the physical and social health of all people. It is an affront to human dignity.”²

Former UN Secretary-General Ban Ki-moon said, "The children who have no clean water to drink, the women who fear for their safety, the young people who have no chance to receive a decent education have a right to better, and we have a responsibility to do better. All people have the right to safe drinking water, sanitation, shelter, and basic services."³

Due to the worldwide spurt in population, the demand for water has increased many folds. In the recent years water crisis has emerged as a global problem. Climatic change, ever growing population and increased demand of water have made the situation really challenging for the entire world. A number of countries are facing real challenges as their water supplies are not adequate to meet the minimum requirements of people. According to World Health Organization (WHO), over one billion people approximately more than one-sixth of the world's population, do not have any right to even basic delivery of water.⁴ Right to safe and clean drinking water and sanitation is recognized as human right by United Nations General Assembly in the year 2010. Right to water means Right to access sufficient safe and clean water so as to meet the basic human needs. This right is also incorporated in the sustainable development goals. There is no universal treaty that contains Right to Water as explicit human right. Not having access to

¹ M Cranston, *What Are Human Rights?* (2nd edn).

² <https://freshoutlookfoundation.org/water-is-a-basic-human-right/>

³ *ibid*

⁴ World Health Organization & United Nations Children’s Fund, *Global Water Supply and Sanitation Assessment 2000 Report*.

sufficient safe and clean drinking water would have devastating effects on the health, prosperity and dignity of people. Universal human rights are incorporated in the Constitution of India.

Right to Water in Indian Context

The Constitution of India categorize the specified rights into two: (a) Fundamental Rights which includes civil and political rights. The fundamental rights mentioned in the Indian Constitution are directly justiciable. (b) Directive Principles of State Policy which includes economic, social and cultural rights are not explicitly justiciable. Right to water which is a Directive Principle is not explicitly categorized as a fundamental right in the Constitution of India but the Supreme Court through its activist approach have included Right to Safe and Clean Water in Right to life under Article 21 and therefore made justiciable in the Court of Law. In *Attokaya Thangal v. Union of India*⁵ the Kerala High Court gave the decision that due to the excessive groundwater pumping by the farmers, there was danger of saline intrusion in the groundwater resources of Lakshadweep Islands. Residents over there were against this order as they argued that it violates their right to life and livelihood. They were provided relief under Art. 21 of the Indian Constitution. This decision apparently made the right to water a fundamental right.⁶ The issues related to pollution of Ganga River Water by Kanpur Municipal Corporation were addressed in *M.C. Mehta v. Union of India*. In this case, the government was ordered to develop proper sewage system and to put an end to the practices that cause pollution of water. It was held that Article 51 of the Indian Constitution imposes duty on the government to protect and improve the environment. The Dublin Statement of 1992 had indicated that for ensuring just and equitable allocation of water it is necessary to limit the origin of water as an economic good by recognizing it as a human right.⁷

In order to prevent and control water pollution with adequate safeguards, the Water (Prevention and Control of Pollution) Act 1974 has been enacted in India.

During the recent COVID 19 pandemic, the important strategy to combat corona virus came out to be the regular washing of hands. But scarcity of water is being noticed in several rural areas. In 2019, due to overexploitation of groundwater and delayed monsoons, around 44% of India was under drought.⁸ In Uttar Pradesh, Maharashtra, Bihar, West Bengal and Madhya Pradesh, a critical lack of access to drinking water, the impossible distance to water sources, and

⁵ *Attokaya Thangal v Union Of India (UoI)* on 1 January, 1990; C Singh, 'Research Agenda for Groundwater Law in India' in Marcus Moench (ed), *Groundwater Law: The Growing Debate (VIKASAT 1995)* 174–80.

⁶ <https://www.tandfonline.com/doi/full/10.1080/03050718.2020.1836500>

⁷ Elisabeth Türk and Markus Krajewski, *The Right to Water and Trade in Services: Assessing the Impact of GATS Negotiations on Water Regulation*, Draft Paper presented at the CAT+E Conference "Moving forward from Cancún" Berlin, 30-31 October 2003.

⁸ *ibid*

unsatisfactory sanitation conditions, have been making it near impossible to deal with COVID-19.⁹

In India right to groundwater belongs to the owner of the land and this right can be transferred with the transfer of land to other as per the Transfer of Property Act, 1882. There is no limit on how much groundwater the landowner may extract.¹⁰ Wells are generally considered as their property by the land owners without any disturbance from others. It is the fundamental right of every landowner to extract water from wells on their land.¹¹

A draft model Bill was prepared in 2016 for the conservation, protection, regulation and management of groundwater. Groundwater legislation has not been executed on the basis of the model Bill in any state. Regulations were passed by the Gujarat government by way of amendments to Bombay Irrigation Act in 1976 but not yet imposed.¹² The groundwater regulation in Maharashtra protects sources of drinking water only which means that applicability of fundamental rights is only for drinking water. Different states have suggested different amendments to the Model Bill but none of the amendments have been enacted.

International Perspective on Water as Human Right

Article 25(1) of the Universal Declaration of Human Rights states that ‘Everyone has the right to a standard of living satisfactory for the health and well-being of himself and of his family’.¹³ This provision of Universal Declaration of Human Rights laid the foundation for human right to water. International Treaty on Economic, Social and Cultural Rights, (ICESCR), adopted by U.N. General Assembly is the most promising expansion on the Universal Declaration of Human Rights and is in force since 1976.¹⁴

Right to life and Right to Health are the two rights that include Right to Water and are recognized by the International Bill of Human Rights. Water is not explicitly mentioned in the International Bill of Human Rights, the keystone of international human rights law composed by the Universal Declaration of Human Rights (1948), the International Covenant on Civil and Political Rights (1966), and the International Covenant on Economic, Social, and Cultural Rights (1966).¹⁵ After a few decades, the scholars and the activists advocated for explicit recognition of human right to water. The UN Committee on Economic, Social and Cultural Rights (UNCESCR) acknowledged human right to water as indispensable right for leading a life with human dignity

⁹ Swasti Pachauri, ‘Drought, literature and the lessons’ Down to Earth (15 July 2020).

¹⁰ Chhatrapati Singh, (ed.), Water Rights in India (Indian Law Institute 1992) sec. 3.42.

¹¹ A Jacob, ‘The Existing Legal Regime of Ground Water: Some Observations’, paper presented to Efficiency and Equity in Groundwater Use and Management (Institute of Rural Management 1989); C Singh, Water Rights and Principles of Water Resources Management (Indian Law Institute 1991) 158.

¹² BPC Sinha and S K Sharma, ‘Need for Legal Control of Ground Water Development-Analysis of Existing Legal Provisions’ (1987 April–June) Bhu Jal News 10–13.

¹³ GA Res. 217A, U.N. GAOR, 3d Sess., 1st plen.mtg., U.N. Doc. A/810 (Dec. 10, 1948), art. 22.

¹⁴ Opened for signature Dec. 16, 1966, 993 U.N.T.S. 3.

¹⁵ <https://onlinelibrary.wiley.com/doi/full/10.1002/wat2.1405>

in 2002. UN Special Rapporteur was appointed on the human right to safe drinking water and sanitation in 2008.¹⁶ On 28 July 2010, through Resolution 64/292, the United Nations General Assembly explicitly recognized the human right to water and sanitation and acknowledged that clean drinking water and sanitation are essential to the realization of all human rights.¹⁷ As per the resolution, the States and the international organizations will provide financial resources and transfer technologies for helping other countries especially the developing ones in order to provide clean, affordable, accessible and safe water for drinking and sanitation for everyone.¹⁸

A broad international recognition is now been given to right to water and sanitation through Human Rights Council Resolution 2010, the UN General Assembly resolution 2010 and through many other means. UNICEF, which is guided in its work by human rights conventions including the Convention on the Rights of the Child (CRC), the Convention on the Elimination of Discrimination against Women (CEDAW) and the Convention on the Rights of Persons with Disabilities (CRPD), welcomes these developments.¹⁹ The organization believes that international recognition of this right would ensure everyone, including the poor and the children and families of most marginalized groups, the proper access to safe and clean water and proper sanitation. As a part of its mission to ensure safe water and sanitation, UNICEF works with governments and other stakeholders. The organization has extensive experience and in-country capacity, including water, sanitation and hygiene (WASH) programming in over 100 countries, as well as programming in other sectors including health, nutrition, education and child protection that complement and strengthen WASH efforts.²⁰

A new resolution was issued in 2011 by the United Nations General Assembly Human Rights Council concerning a human right to water.²¹ Article 1 of the resolution states that “the Human Rights Council welcomes the recognition of the human right to safe drinking water and sanitation by the General Assembly and the Human Rights Council, and the affirmation by the latter that the human right to safe drinking water and sanitation is derived from the right to an adequate standard of living and inextricably related to the right to the highest attainable standard of physical and mental health, as well as the right to life and human dignity”.²² The resolution ensures financing of enough sustainable delivery of water and sanitation services by the States.

In May 2011, the World Health Organization (WHO), through Resolution 64/24, made a call to Member States "to ensure that national health strategies contribute to the realization of water and

¹⁶ *ibid*

¹⁷ Resolution A/RES/64/292. United Nations General Assembly, July 2010

¹⁸ United Nations, Resolution adopted by the General Assembly on 28 July 2010, [without reference to a Main Committee (A/64/L.63/Rev.1 and Add.1)] 64/292. The human right to water and sanitation.

¹⁹ https://www.unicef.org/media/files/Current_Issues_Paper-_The_Rights_to_Safe_Water_and_Sanitation.pdf

²⁰ *ibid*

²¹ United Nation General Assembly, Resolution adopted by the Human Rights Council 18/1, the human right to safe drinking water and sanitation.

²² *ibid*

sanitation related Millennium Development Goals while coming in support to the progressive realization of the human right to water and sanitation" and to WHO's Director General "to strengthen WHO's collaboration with all relevant UN-Water members and partners, as well as other relevant organizations promoting access to safe drinking-water, sanitation and hygiene services, so as to set an example of effective inter sectoral action in the context of WHO's involvement in the United Nations Delivering as One initiative, and WHO's cooperation with the United Nations Special Rapporteur on the human right to safe drinking water and sanitation with a view to improving the realization of the human right to water and Sanitation".²³

Conclusion

Water is essential for life, therefore denial of right to water means denial to life. Due to climatic changes, population surge resulting in increased demand for water has led to worldwide water crisis in the recent years. A number of countries are facing difficulties to meet the minimum water requirements of people. Right to Water is not explicitly guaranteed by the Constitution of India or any other legislation in India but the judiciary under Article 21 of the Indian Constitution had provided right to water by expanding the scope of Right to Life so as to include right to safe and adequate water. So right to water is guaranteed under Article 21 of the Indian Constitution. The UN General Assembly has adopted resolutions thereby recognizing the human right to water expressly.

²³ World Health Assembly Resolution 64/24