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Water Crisis and its Resolution: A Study from Equitable Prospective

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ABSTRACT

Water is very essential for us. Without water, we cannot assume our life. To protect and preserve the water bodies is our fundamental duty. There are some laws specifically for the prevention of water pollution but no specific laws dealing with all problems related to the equitable distribution of water. Water cannot be a personal good because the water was always a common good. Old laws are not sufficient to deal with the problem that lies in the modern period with the distribution of water. India is facing a lot of scarcity of water and our economy's lot of funds we are bearing to manage the distribution of safe drinking water. So, there is a need to mix all the components related to water distribution law in one place and there should be a law on the national level to deal with the problems related to groundwater and surface water. Judiciary has time given guidelines for water laws. This is the right time for specific water laws related to the distribution of safe drinking water.

I. INTRODUCTION

According to Indian philosophy, life is made up of five components (*Panchbhuta*) namely, *Kshitiz* (earth), *Jal* (water), *Pawak* (Agni), *Gagan* (Akash), *Samira* (air). Out of these five elements, 'water' is the most important element. It is a life-giving elixir. Hence, without water, we can't imagine our life. We are propelled by water in many aspects of our lives, from anatomy to economics. Water is freely and commonly provided to us by nature. It is the state who regulates the supply and distribution of water according to the local needs. It is evident that clean water is decreasing and the human population is explosively increasing day by day so the pressure on natural resources is far greater than expected.³ Consequently, there is a large gap between supply and demand for natural resources, resulting in scarcity. Equitably providing natural resources is a new challenge. This research paper will address the growing

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³ The world population is 7,913,697,171 and the population of India is 1,399,679,947, based on Worldometer elaboration of the United Nations data, available at: <https://www.worldometers.info/> (visited on 15 December 2021).

concerns and propose solutions to the problem of unequal distribution.

History is evident that human civilizations settled down near rivers and water resources, according to the Italian polymath *Leonardo da Vinci*, water is the driving force of all nature which means we can't survive without water. As we all know, water covers 71% of our planet, while landmasses and islands make up the remaining 29%. When we consider the availability of water on Earth, we discover that there is no scarcity of water; yet, otherwise freshwater that can be utilized for drinking and other human purposes, is proved to be just 2% of the water available on this planet and among this the majority is frozen in ice-caps, leaving with us only 0.3 percent which is useful to us.

II. SHORTAGE OF WATER AND CONCERNS

As the problem of pollution worsens, we are experiencing a shortage of fresh drinkable water. The current scenario is alarming and terrifying. We can see people are predicting the third world war for water. Fresh drinkable water shortage is at an all-time high in human history. Oil is even cheaper than water in some nations. We are witnessing a variety of sociological and political issues as a result of water scarcity, the situation in third-world countries is extremely volatile; various diseases and endemic are spreading due to lack of pure water. Water is a source of contention between countries as can be felt from the certain instances when in India disagreement arose among the states over the distribution of water resources.

According to some recent studies, women in third-world countries work 200 hours in a year only to find pure water because they travel hundreds of miles to find it.⁴ Nearly 2.5 billion people on the planet do not have access to enough resources or equipment for purifying water. Nearly 3.6 million people in developing nations are affected by water-related diseases, with the majority of them dying as a result of contaminated water or a lack of safe drinking water. One child dies every 15 seconds in such countries owing to a lack of water or the usage of contaminated water. Even in some regions of Maharashtra (India), people are marrying more than one woman to carry water. In this scenario, one woman cooks while the other goes in search of freshwater.⁵

⁴ UNICEF, *Collecting Water is often a Colossal Waste of Time for Women and Girls*, available at: <http://www.unicef.org/press-releases/unicef-collecting-water-often-colossal-waste-time-women-and-girls> (visited on 09 August 2021).

⁵ Erin Blakemore, "Water Wives: Men in India Marry Extra Women to Fetch Them Water", *SMITHSONIAN*, June 5, 2015, available at: [Water Wives: Men in India Marry Extra Women to Fetch Them Water | Smart News | Smithsonian Magazine](#) (last visited on December 20, 2021).

III. RIGHTS AND DUTIES OVER WATER

According to *Hohfeldian's Theory of Right* water is a matter of right is connected with a duty or obligation upon the state to provide the same. Humans are found to be selfish by nature, for their wants and desires, thus exploiting nature in countless ways. In the decade of globalization and industrialization, we used natural resources in an unplanned and brutal manner. In today's world, every country is dealing with a water problem in some form or another, and the crisis will worsen in the next ten years to come.⁶ In India, it is proposed that by the year 2030, 75% of households would lack access to safe and clean water. Our country's population faces water shortage 40% of the time⁷ and according to the 2018 CWMI (*Composite Water Management Index*), India's GDP is anticipated to decline by 6% by 2050.⁸ In India's top 15 cities, about 50 million people do not have access to safe drinking water.⁹ The situation is extremely distressing, and we must consider our options. There have been increasing calls over the past decade for the adaptation for a uniform framework on Water and its Procurement, which is the need of the present time.¹⁰ Fair Distribution of water should be the key to such legislation keeping in my mind the principles of equality and equity for all. The present Policy of water distribution is governed by two different basic principles depending on whether the issue at stake is surface water and groundwater, governed by two different legislations. Legal principles governing the use of these two bodies of water have not been updated for about a century and a half.¹¹

IV. LEGAL FRAMEWORK FOR WATER

The Indian Constitution does not expressly provide for the right to water as a matter of fundamental right. However, the Apex Court decided that Article 21 is broad enough to encompass the right to clean water as a basic right.¹² Indian Constitution ensures the welfare of people, minimizing the inequalities and equalization in the distribution of material resources.

⁶ Report, *1 in 3 people globally do not have access to safe drinking water – UNICEF, WHO*, available at: 1 in 3 people globally do not have access to safe drinking water – UNICEF, WHO (last visited on Decemeber 20, 2021).

⁷ ANI, "India's water crisis: Is there a solution?", *Financial Express*, September 23, 2020, available at: India's water crisis: Is there a solution? - The Financial Express (last visited on Decemeber 20, 2021).

⁸ NIHAR GOKHALE, "By 2050, India may lose 6% of GDP due to water crisis: World Bank", *CATCHNEWS*, 10 February 2017, available at: By 2050, India may lose 6% of GDP due to water crisis: World Bank | Catch News (last visited on Decemeber 20, 2021).

⁹ Aarti Kelkar Khambete, "Fifty million people in Indian cities lack access to safe drinking water", *INDIAWATERPORTAL*, 12 May, 2021, available at: Fifty million people in Indian cities lack access to safe drinking water | India Water Portal (last visited on Decemeber 20, 2021).

¹⁰ Ramaswamy Iyer ed., *Water and the Laws in india*(Sage:New Delhi,2009)

¹¹ Rules for groundwater allocation were settled in English cases, such as *George Chasemore v Henry Richards* (1859) VII House of Lords Cases 349 (House of Lords,27July 1859).

¹² *Subash Kumar v. State of Bihar*, AIR 1991 SC 420.

Article 38 provides that the state shall secure a social order for the promotion of the welfare (justice, social, economic, and political) of the people. Sub-clause (2) of article 38 strives to minimize the inequalities in income and endeavor. Article 39 and its sub-clause (b) provides that ownership and control of material resources are to be distributed as best to serve the common good. In *State of West Bengal v. Kailash Chandra Kapoor*¹³ Apex court stated that when material resources are distributed by the government under any policy, it would be regarded as to make the effective mandate of a constitution to establish social justice and dignity of a person with equal status. So, we can understand from this judgment that material resources should be distributed equitably. Moreover, Article 48(a) talks about the protection and preservation of the environment.

On the *International* front, some efforts have been put to curb pollution. In the year of 1977, United Nations organized a conference on water. Further, in 2010, 2016, and recently in 2020, the UN document on the water was updated and emphasized providing safe drinking water. The UN has accepted this as a primary issue under the *Millennium Development Goal & SDG6* (Sustainable Development Goals 6) which aim to provide safe drinking water and sanitization to every household by 2030.

During and post Covid-19 situation, people have understood the importance of hygiene, sanitation, and safe water. Under the *WASH Project* (Water, Sanitation and Hygiene) experts from the UN emphasized the need for safe drinking water to maintain good health and hygiene, but most of the recommendations and proposals are not implemented yet.

The market is playing a crucial role in developing countries and a lot needs to be done in the field of distribution, harvesting, and management of water and energy. We need relevant regulation and legislation to ensure people's democracy. Environment-centric water democracy is desired to ensure the equitable use and management of groundwater.¹⁴ Indian judiciary has always shown a positive approach to providing clean water. In *Subhash Kumar v. the State of Bihar*¹⁵, it was held by the apex court, discharging the surplus amount of waste was polluting the river *Bokaro*, taking cognizance of the same under Article 21 to the court said that to retain the right of enjoyment of pollution-free water and fresh air for full enjoyment of life is everyone's fundamental right. Further underlying the same it said that if anything endangers or impairs the quality of life in derogation of laws, citizens have the right to use and apply the principle of the constitutional remedy under article 32 for removing the pollution of

¹³*State of West Bengal v. Kailash Chandra Kapoor*, AIR 1997 SC 1348.

¹⁴ Vandana Shiva, *Water Wars: privatization, pollution and profit* 34 (South Press, New York, 1st edn., 2002).

¹⁵ *Subhash Kumar v. State of Bihar* AIR 1991 SC 420.

water or air which may be detrimental to the quality of life.

The courts have recognized the right to water in many cases like In *Ashok Kumar v. Hyderabad Metropolitan Water Supply and Sewerage Board & Ors.*,¹⁶ wherein the Andhra Pradesh High court found that the “*right to access to drinking water*” is fundamental to the right to life and the state is duty-bound to provide safe and clean drinking water. Drinking is the most beneficial use of water and such use of water is paramount and the same cannot be made subservient to any use of water as irrigation.¹⁷ In *Narmada Bachao Andolan v. Union of India*,¹⁸ B. N. Kirpal, J., while delivering the verdict said that water is the basic need for the survival of human beings and is part of the right to life and human rights as enshrined in Art. 21 of the Constitution. In the case of *Perumatty Grama panchayat v. the State of Kerala*, the High court of Kerala asserted that groundwater also is given the *status of public trust* so that the distribution leads to equitable and environmentally friendly way. In the case of *M.C.Mehta v. Kamalnath*¹⁹, the Supreme court held that air, water, sea, forests, are the subject matter of *public trust doctrine* so it shouldn't be a subject of private ownership. one very relevant case on this issue was decided in the year 1991 by the Supreme court is *Attakoya Thangal v. Union of India*.²⁰ In this case, the Supreme court decided that the right to sweet drinking water is a fundamental right and extension of the right to live for every citizen. Similarly in *F.K. Hussain v. Union of India*²¹, it was decided by the Kerala High court that groundwater usage as the water supply is the fundamental right of every citizen of this country under Article 21 of our constitution. But in the case of *Federation of Hotel and Restaurant Association of India v. Union of India*²², the Supreme court decided that if water is used for service purposes then its charge cannot be fixed according to the M.R.P. and here the principle of fundamental right cant apply like in a hotel and restaurants people use to visit to enjoy its ambiance and services not just to buy a water bottle. But when if the sale contract element is found then no overcharged rates can be taken other than what's printed on any water bottle. So, if we use water for the services and not for essential needs then it can be charged for a higher price. This case was decided on the *principle of consumer law*. As we try to put our glance from the context of the legislature the judgment of *In Re the Punjab Termination of Agreement Act 2004(2016)*²³ becomes important for us, wherein the Supreme court decided that any state can not make law unilaterally. Given the

¹⁶*Ashok Kumar v. Hyderabad Metropolitan Water Supply and Sewerage Board & Ors*, 2006 (3) ALD 541.

¹⁷*Delhi Water Supply and Sewerage Undertaking v. State of Haryana* AIR 1996 SC 1992.

¹⁸*Narmada Bachao Andolan v. Union of India*, AIR 2000 SC 3757.

¹⁹*M.C.Mehta v. Kamalnath*, SCC 1997 SC 388

²⁰*Attakoya Thangal vs. U O I*, AIR(1990)SC

²¹*F.K.Hussain vs. State of Kerala*, AIR(1990) KER321

²²*Federation of Hotel and Restaurant Association of India v. U.O.I.*, AIR 2018 SC 73

²³*In Re the Punjab Termination of Agreement Act 2004 case, in re (2017) 1 SCC 121*

supreme court, water is a common resource and no state can make law separately for it for its sole benefit, as it is against the principle of distribution. The same has to be done by the central government rules and guidelines as issued by the Apex court.

In the case of *Friends Through its General Secretary v. Ministry of Water Resources*²⁴ the *National Green Tribunal* of India which has been set up in the year 2010 to solve the environmental concern try to regulate the marketization of water. The NGT ordered the central government to formulate a policy to ban the RO system in those places wherever the TDS level is 500 per liter. Because in that place there is no need for RO. Against this judgment, the *Water Quality India Association* filed an appeal before the Supreme court namely *Water Quality India Association (WQIA) K. J. John And CO. v. Friends & Ors*,²⁵ wherein the Supreme court upheld the order of NGT. So, we can see that the judiciary not only established that access to safe drinking water is not only fundamental but also time to time putting effort to regulate its commercialization.

In the International Arena, efforts have been made to provide safe drinking and sanitization to all mankind. The UN conference on the water at *Mel Del Plata* in 1977 issued out that recognize the need for an adequate supply of quality water to meet the socio-economic needs of people. This action plan also called for rational measures to ensure water management and proper distribution of water. There are 228 points in this document under different sub-heads, suggesting the idea for use of water in a sustainable way.²⁶

One of the great scholars over water rights *Manas Ranjan Hota* talks about the facts and figures that how situations are horrible.²⁷ He further writes concerning an international survey and study that “more than 50% of the population has no access to safe and clean drinking water and about 200,000 people die every year due to lack of access to safe water. The current problem of coronavirus pandemic isn’t making this national problem easier to handle either. The government is doing its best to overcome this growing crisis. But is there an end in sight?” Based on the above facts, I have reached my conclusion.

V. CONCLUSION AND SUGGESTIONS

The water has become public goods from private goods. When the water became private

²⁴ *Friends Through its General Secretary v. Ministry of Water Resources*, LQ,NGTPBND/2021/304

²⁵ *Water Quality India Association (WQIA) K J JOHN AND CO v. FRIENDS AND ORS, SHRISTI AGNIHOTRI, CIVIL APPEAL NO. 170868 OF 2019, DIARY NO. 37657 OF 2019*

²⁶ Conference of the parties, United Nations water conference, Report of the United Nations water conference in its sixteenth plenary sessions, Held in Mel Del Plata from 14-25 March 1977.

²⁷ *Manas Ranjan Hota, India's water crisis: Is there a solution*, Financial Express, 23 Sept. 2020 (visited on 21 November . 2020).

property things have totally changed and then access to water became unavailable to most people. The dire need for central legislation is the need of the hour and this can be foreseen from the apparent ambiguities between the different water laws made from Groundwater and surface many Governments have launched various water distribution projects like *Swajaldhara Project*, in states to provide sufficient water to every urban and rural area specifically, but due to lack of infrastructure and ground research work, such projects haven't been more effective. Thus such division of water be it on the lines of urban or rural areas or spring or groundwater isn't an instrument of division among equals. The *Draft National Water Framework Bill, 2013*, and *Draft River Basin Management Bill, 2012* had been brought to cater towards the ideals of water democracy along with the Water (Prevention and Control of Pollution) Act, 1974 for preventing pollution of water bodies and granting the right to clean water. But such laws are insignificant in their approach and central legislation needs to be implemented for the protection of the right to water under Article 21. It is necessary to modernize and amend the old laws as these have taken away the access to free water from the people at large and also to facilitate the global changing trends and principles to safeguard the environment and climate. Commercial use of water is another problem hindering the aim of water democracy which is a common pool resource of any community. There should be the establishment of water unions on ward level or village level which shall administer the distribution of water. It will also regulate and decide the amount of water to be distributed to every citizen, along with any surcharge to be applied as a penalty on excess use of water. Another suggestion is that the central government undertake regulation and development of the interstate rivers and river basins/valleys, which should prevent the disputes between states relating to access to water which the country has foreseen such as Cauvery, Ganga, Krishna, and other disputes in the past decades.

Hence, based on the above analysis, it can be summed up that we need a water law that should be based on the principle of democracy, fundamental rights, and equitable management. We as a society also have to put effort to come over from this problem through community work, social awareness, and the establishment of a community association. Because the problem of safe drinking water is not only a problem for the resource of management but also a problem that originated through the lifestyle change. We have introspected in ourselves too that what we have done wrong is past and what is the learning and teaching of past and how and where it should apply. Because we had glorious past as a nation and we were very rich also in the matter of natural resources in the past. So, we have to work on the lifestyle level also. We have to set up water harvesting initiatives in our colonies, we have to preserve our small water

resources in our neighboring areas. So, we have to work on not only institutional reforms and legislative reforms but also on a societal level to solve this problem.
