



National Water Policies and its relevance in Protecting the Environmental Rights

A Right, a Need, or an Economic Good? Debating our Relationship to Water.

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ABSTRACT

“Water is not a commercial product like any other but, rather, a heritage which must be protected, defended and treated as such.” - Preamble to the European Union Water Framework Directive, 2000

Water is a scarce and finite resource with no substitute, only upon which the existence of life on this earth depends. During the last century, the population of the world has more than tripled, from 1.6 billion to over 6 billion, while water resources have remained constant. According to the United Nations World Water Development Report, 2003, About 2 billion people in over 40 countries are affected by water shortages, more than 1 billion people lack sufficient and safe drinking water and 2.4 billion have no provisions for sanitation. To overcome this problem, for the first time United Nations Water Conference recognized “Right of water”. declaring that “All peoples, whatever their stage of development and social and economic conditions, have the right to have access to drinking water in quantities and of a quality equal to their basic needs”. In 2012 Union of India introduced the Indian water policy. According to the policy, Water needs to be managed as a common pool community resource held, by the state, under public trust doctrine to achieve food security, support livelihood, and ensure equitable and sustainable development for all. This study deals with importance of national water policies and its relevance with protections of environment and water as Right, or as a Need, or an Economic Good and analyzes legal developments in India, to illustrate some of the ways in which States have implemented a legal right to water.

Keywords: *UN water Report, national water policies, water as a right.*

Introduction

The concept of water as an environmental right developed from the recognition that treating the right to water as an economic good may result in an affordability problem for some communities, depriving them of access to water. To counter these effects, a human right to water is being developed. This human right to water, though not fully defined by existing international and state laws or practice, has been protected as necessary to secure other human rights, such as those to health, well being, and life. Given the structure of state law, State obligations depend upon which human right a right to water is found to support or whether such a human right to water is ultimately found to be a separate and independent human right from other recognized human rights Whether a human right to water is ultimately established as a right subordinate to other human rights or as an independent human right, recognition of a human right to water will have far-reaching effects.

This Comment analyzes legal developments in India, to illustrate some of the ways in which States have implemented a legal right to water. The Comment then identifies some of the key challenges and development constraints in ensuring a right to safe water without any barrier. These challenges include modifying riparian and prior-appropriation systems of water rights, defining and limiting impacts upon other legal doctrines, and making economic adjustments associated with providing water to meet the "basic needs" of all

persons. The Comment concludes that while recognition of a human right to water is necessary, its implementation is fraught with difficulties.

Definition and Meaning

The notion of human rights has metamorphosed from simply a moral creed to attaining a legal and binding nature making its breach an actionable cause in the court of law. Human rights are rights that are innate in a human being. They are indivisible, interrelated, interdependent, cannot be derogated from, and they are not discriminatory in their application.

As the idea of Human Rights is better understood, new aspects are realized. One of such is what is termed as the “Environmental Human Right” or “Environmental Rights”. It is a perception that has been considered in various ways and has resulted in many debates for and against.

Environmental rights should not be confused with Environmental law, as they are both different in their scope and meaning. Environmental Law deals with legal frameworks available to safeguard the environment and promote a healthier, cleaner, safer environment. It includes principles, standards that should be incorporated into the production, extraction, transportation, installation and so forth, of man-made or natural resources in the environment. It is more extensive in its scope than Environmental Rights. On other hand, Environmental Rights deals with rights accrued to persons as regards the environment. It means the “access to the unspoiled natural resources that enable survival, including land, shelter, food, water, and air. It can be translated as the more ecological rights or the right of an individual to an adequate, unspoiled environment.”

Genesis of Water as an Economic Good

Until the beginning of the second half of the twentieth century the weak demographic pressure put on available resources led people, as well as economists, to take water as a free good, in other words as a good available for consumption according to the principle of the first come first served. However, the fast pace of economic development that has characterized world economy since then boosted water consumption in order to meet all kinds of demands, which implied that water management had to be thought within a frame of scarcity, which, in turn, implied changes in the way water was classified as a good. This fact, along with the shocking gap between supply and demand, implied that

the right to water could also be expressed as an economic good. The first step that must be taken in order to express the right to water as an economic good consists in identifying what sort of economic good water is. The United Nations explicitly mentions water as a public good, but as this classification could seem to derive from a political discourse rather than from an economic analysis, in order to avoid misunderstandings one should argue more carefully. This trend reflected in India in the form of National Water Policy 2012, hereinafter mentioned;

Revising the National Water Policy

What are National Water Policies?

National Water Policy is introduced by the Ministry of Water Resources of the Union of India to regulate the scheduling and development of water resources and their best consumption. The initial National Water Policy was adopted in September, 1987. It was revised and updated in 2002 and later in 2012. It is the current policy of the country.

Key Legislations in Water Governance

The National Water Policy intends to transform the water as economic good, the relevant provisions in the policy are mentioned below;

- Water resources projects, though multi-disciplinary with multiple stakeholders, are being planned and implemented in a fragmented manner without giving due consideration to optimum utilization, environment sustainability and holistic benefit to the people. Water needs to be managed as a common pool community resource held, by the state, under public trust doctrine to achieve food security, support livelihood, and ensure equitable and sustainable development for all.
- Pricing of water should ensure its efficient use and reward conservation. Equitable access to water for all and its fair pricing, for drinking and other uses such as sanitation, agricultural and industrial, should be arrived at through independent statutory Water Regulatory Authority, set up by each State, after wide ranging consultation with all stakeholders.
- In order to meet equity, efficiency and economic principles, the water charges should preferably / as a rule be determined on volumetric basis. Such charges should be reviewed periodically.

- Available water, after meeting the above needs, should increasingly be subjected to allocation and pricing on economic principles so that water is not wasted in unnecessary uses and could be utilized more gainfully.
- Water Users Associations (WUAs) should be given statutory powers to collect and retain a portion of water charges, manage the volumetric quantum of water allotted to them and maintain the distribution system in their jurisdiction. WUAs should be given the freedom to fix rates subject to floor rates determined by WRAs.

Drawbacks in Water Governance of India

The Water Policy 2012 recommended that water other than that required for drinking and sanitation, be treated as an economic good. Subsequent revisions have ensured that the water requirements for food security and agriculture are also considered primary. An incident that occurred in 1995 remains fresh in my mind after all these years. A friend and I were shopping in a busy area in Coimbatore when a posh car stopped near us. A pair of hands emerged from the window of the vehicle; the hands were washed using a 1-litre bottle of mineral water freshly bought from a shop. The rich can afford mineral water to wash their hands! But what if the poor were made to pay for the water they use? The Water Policy has gone into two revisions, first in May 2012 and then again in July, after being tabled in January when protests were made about the policy treating water as an economic good and favouring privatization. Still, the soul of the policy remains intact except for a few points. There is every likelihood that water will become a highly rationed commodity in the future. We will have to pay for any excess water we use after our basic domestic, sanitation and agriculture requirements have been met. This makes a national-level legal framework to control water use and prevent inter-state, intra-state and regional water conflicts absolutely imperative. With a population of over 1.3 billion (17% of the world's population), India has only around 4% of the world's renewable water resources. Its geographical area is 329 Mha, of which 180.6 Mha is arable; a total area of 142 Mha is the net sown area, of which 57 Mha is irrigated. India has the largest irrigated area in the world. The country's total drainage area is divided into 24 basins, of which 13 major basins have a drainage area more than 20,000 sq km. According to present estimates, India receives an average annual precipitation of about 4,000 billion cubic metres (bcm), which is its basic water resource.

Of this, after considering natural evaporation/transpiration, only about 1,869 bcm is the average annual natural flow through rivers and aquifers. Of this, only about 1,123 bcm is utilisable through present strategies, if we don't consider large inter-basin transfers.

Though availability of water is limited, demand continues to grow rapidly on account of rising population, rapid urbanisation, industrialisation and economic development. All across the country, rivers are running dry and suffer pollution by solid waste and effluents. Groundwater reserves are being overexploited, sanitation needs are not being met, and water conflicts are on the rise. Add to this, lack of a holistic and inter-disciplinary approach to water management, improper decision-making by public agencies, altering characteristics of catchment areas due to land use and land cover changes, Stalinization, and changing rainfall patterns due to climate change. All these factors warrant strict water regulation. Indeed, spreading awareness about water issues and the need to use water judiciously is vital.

Water demand for various sectors in 1998 and 2025 in India (billion cubic metres)

Sector	1988	2025	2050
Irrigation	524	618	807
Domestic use	30	62	111
Industrial use	30	67	81
Inland navigation	0	10	15
Power	9	33	70
Environment	0	10	20
Evaporation losses	36	50	76
Total	629	850	1,180

The policy sees water as a community resource but also treats it as an economic good, which is contradictory. Approaching water as an income-generating resource by government must be executed very carefully. The policy allows for the public-private partnership model and also asks states to exit their "service-provider role" and play a role as regulator. This could lead to distortions in access to water and prices in the long run. As with other policies, the poor will be at the receiving end. The draft policy also wants to take away

proprietary rights over water, which means no one can claim ownership of groundwater on private land. Though this seems like a good move, it may affect use of water for agriculture unless the point is further clarified.

Link between the Two Rights

The policy denied the Environmental Rights as well as Human Right to Water in the following context

Foundation of the Claim

On a factual level, it has already become apparent that preservation, conservation and restoration of the environment are necessary and integral part of the enjoyment of; *inter alia*, the rights to health, to food and to life including a decent quality of life. The close link with these rights clearly shows that a right to environment can easily be incorporated into the core of the human rights protection whose ultimate purpose is the blooming of the personality of all human beings in dignity. In accordance with international law theory, all human rights represent universal claims necessary to grant every human being a decent life that are part of the core moral codes common to all societies. International human rights have been based, since their inception, on this premise that should not be seen as another manifestation of imperialism, but as the recognition that all human beings aspire to a life in dignity. The linkage between environmental and human rights concerns has so far been envisaged mostly in terms of the protection or conservation of a clean or healthy environment for the benefit of individuals whose conditions of life are threatened.

Nature of the Claim

An environmental right should nevertheless not be classified as a synthesis right, because it embodies specific characteristics that can be distinguished from other rights, and does not constitute a 'shell-right' aimed at enhancing the realization of the other ones." In fact, the widespread criticism of this right stems mainly from the incapacity we have to mould it into one of the old categories of human rights. However, we cannot and should not attempt to categorize this new right as, either a civil and political right, or an economic, social and cultural right, or a solidarity right because it transcends the distinctions and embodies elements found in each of the three categories." The environment right requires States to refrain from activities harmful to the environment, and to adopt and enforce policies promoting conservation and improvement of the quality

of the environment. Secondly, it appears on several counts that the right is not purely an individual right: one may single out the rights of future generations whose interests must be taken into account but whose individual members cannot be identified," or focus on more precise claims relating in particular to displaced indigenous peoples facing the total loss of their cultural, social and physical environment.

Formulation of the Right

At this juncture, the focus must be put on the terminology used to define a right to environment in legal instruments. Most of the instruments embodying this right have either qualified the word environment," or focused the attention on some particular elements. At the UN level, the references to a right to environment have become over the last 20 years less and less clear even though a great number of instruments do acknowledge the relationship between human rights and environmental protection. The determination of a human right to environment is that some of the provisions seem to move away from some of the most fundamental elements of the human rights theory. One may thus wonder whether Principle 3 of the Rio Declaration grants a right to development to States or to individuals, and Article 3(4) of the Climate Change Convention clearly grants States a right to sustainable development. These developments, whatever their merits, are not welcome in the framework of a human rights' analysis as rights of States can by definition not be included in the framework of rights of individuals and groups against the State.

International Documents

The Action Plan from the United Nations Water Conference recognized water as a right for the first time declaring that "All peoples, whatever their stage of development and social and economic conditions, have the right to have access to drinking water in quantities and of a quality equal to their basic needs". Principle 4 of the Dublin Conference states that "... 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". Chapter 18 of Agenda 21 endorsed the Resolution of the Mar del Plata Water Conference that all peoples have the right to have access to drinking water, and called this "the commonly agreed premise." The Political Declaration of the Summit states "We welcome the Johannesburg Summit focus on the indivisibility of human dignity and are resolved through decisions on targets, timetables and partnerships to speedily increase access to basic requirements such as

clean water, sanitation, energy, health care, food security and the protection of biodiversity”. The Human Rights Council “Request the Office of the United Nations High Commissioner for Human Rights, taking into account the views of States and other stakeholders, to conduct, within existing resources, a detailed study on the scope and content of the relevant human rights obligations related to equitable access to safe drinking water and sanitation under international human rights instruments, which includes relevant conclusions and recommendations thereon, to be submitted prior to the sixth session of the Council”. In this resolution, the Human Rights Council welcomes the consultation with the independent expert on the issue of human rights obligations related to access to safe drinking water and sanitation, acknowledges the independent expert’s first annual report and, for the first time, recognizes that States have an obligation to address and eliminate discrimination with regard to access to sanitation, and urges them to address effectively inequalities in this area. The UN General Assembly resolution, the UN Human Rights Council affirms that the right to water and sanitation are part of existing international law and confirms that these rights are legally binding upon States. It also calls upon States to develop appropriate tools and mechanisms to achieve progressively the full realization of human rights obligations related to access to safe drinking water and sanitation, including in currently unserved and underserved areas. In this resolution, the Human Rights Council decides “to extend the mandate of the current mandate holder as a special rapporteur on the human right to safe drinking water and sanitation for a period of three years” and “Encourages the Special Rapporteur, in fulfilling his or her mandate... to promote the full realization of the human right to safe drinking water and sanitation by, inter alia, continuing to give particular emphasis to practical solutions with regard to its implementation, in particular in the context of country missions, and following the criteria of availability, quality, physical accessibility, affordability and acceptability”.

Position in India

It must be remembered that though law can come in as a facilitator of change, for it to be truly effective and deliver on its mandate, the desire of the people must always remain the supreme consideration. Several attempts on the part of the government to protect the right of people for *THE RIGHT TO WATER* are not complete in itself. Right to water till today is not mentioned explicitly in our Constitution, besides knowing that except air there are no other sources of

life comparable to water on the earth. Thus to have access to water ‘is not a matter of choice, everyone needs it.’ Despite constitutional mandates and official proclamation, India has lagged behind among others in the most important concerns for the wellbeing of people in any society. From time to time government has made many provisions but its implementation for achieving this as a fundamental right has not yet achieved.

Conclusion and Suggestions

Water, food and shelter are the basic amenities for every human being. Hence, drinking water and water for agriculture should be ensured as a right of every Indian. While such proposals are not new, what is new is that these policies are justified in the name of dealing with the water crisis and in the name of conservation! The policy also recommends “full cost recovery” of water used as the means for achieving efficient use of water. While full cost recovery will help to meet the costs of water delivery, it does not deter water use among those who can afford to pay. In that sense it works particularly against lower income groups, and groups that use water for activities that have low economic returns. Full cost recovery needs to be accompanied by protection of the right to water for basic needs, including that for basic livelihood strategies. Water is to be transformed from an economic good to a fundamental right

- Right to safe drinking water is to be prioritized
- Privatization and co modification of water as mentioned in NWP 2012 can be implemented only through proper laws.
- Water resources law is the need of the hour.
- Stringent punishment is to be imposed against the wrong doers.
- Right to water as a fundamental right of Article 30D as mentioned in the Constitutional Review committee, 2002 is to be implemented.
- Water use is to be minimized so that it can be preserved for future generation.
- Water as an economic good will fail to meet the need of the common man, thus affecting his basic right.

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