

DIALOGUE ON RIGHT TO WATER: ASSESSMENT OF EXISTING GOVERNMENT LEGISLATIONS DURING COVID-19 WATER CRISES

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ABSTRACT

The Right to Water was declared a vital right by the Apex court in 1984. However, the declaration has had little to no effect at the ground level. The disruption caused by the COVID-19 pandemic has aggravated the already existing water crisis. The major cities are running out of water earlier than predicted. The authors want to comprehend the current position of the Right to Water and recognize the drawbacks of not overtly identifying the Right to Water as a basic Fundamental Right. The paper tries to understand the various hindrances to the proper enjoyment of the Right to Water which includes legal, social, and environmental factors. The paper explores the disconnect between the central and state government in regards to water governance and critically analyses the infrastructure in place; The paper also explores the various water policies and initiatives that the Central Government adopted to mitigate the water crisis. This paper focuses on two major regulatory bills: the Draft National Water Framework Bill and National Water Policy. The paper looks to determine whether the policies adopted for alleviating the water crisis have failed to complete their mission all through the COVID-19 pandemic. The paper also scrutinizes the absence of laws that protect the public Right to Water. The paper brings light to various suggestions and actions that the government can adopt to help with better implementation of the Right to Water.

Keywords: *Right to Water; Government Policy; COVID-19; Water Crisis; Right to life.*

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Introduction

Even though India has been going through a pandemic for the past two years, it is still not the biggest crisis that India is facing right now. India is going through the world's worst national water crisis, which will be the biggest crisis in its history. It has been reported that over 200,000 Indians die annually due to the lack of access to safe water supplies.¹ Estimates had shown that over 21 major cities will run out of water by 2020, and around 70% of India's water is contaminated.² As estimated, Chennai ran out of water in 2019.³ The reports suggest that over 40% of the population will lack access to drinking water by 2030 as the overall demand is set to exceed supply by twofold.⁴

The COVID-19 pandemic aggravated the issue as the demand for water increased by 20-25% during the pandemic as sanitation consciousness increased.⁵ While experts were fast to note that a proper hand wash mechanism was the most likely method to stop the coronavirus transmission, it was a near-impossible task for the millions of Indians as they have little to no access to clean water. The absence of clean and usable water played a vital role in the spread of COVID-19 in India. Research and studies from the previous epidemics have shown that it can cause public health crises when clean water is absent. When the Ebola outbreak occurred in Africa, the states with the lowest basic water access were the worst affected countries.⁶

The Supreme Court in *Bandhua Mukti Morcha v. Union of India* was the first to introduce the “right to a healthy environment” concept as a prerequisite for the fundamental Right to Life under Article 21 of the Constitution.⁷ Under the “right to a healthy environment,” the Apex court protected the Right to Water. It has been over 38 years, and the country has still not been

¹ NITI Aayog, COMPOSITE WATER MANAGEMENT INDEX: A TOOL FOR WATER MANAGEMENT (2018), https://niti.gov.in/writereaddata/files/document_publication/2018-05-18-Water-index-Report_vS6B.pdf.

² Id. At 1.

³ Sujith Sourab Guntoju, *Chennai Water Crisis: A Wake-Up Call For Indian Cities*, DOWNTOEARTH, (May 11, 2022)

<https://www.downtoearth.org.in/blog/water/chennai-water-crisis-a-wake-up-call-for-indian-cities-66024>

⁴ Id. At 70.

⁵ Suresh Kumar Rohilla, *COVID-19 Outbreak: More Hand Washing Can Increase India's Water Woes*, DOWNTOEARTH, (Mar. 20, 2020),

<https://www.downtoearth.org.in/blog/water/covid-19-outbreak-more-hand-washing-can-increase-india-s-water-woes-69900>

⁶ Aaron G. Buseh et al., *The Ebola epidemic in West Africa: Challenges, Opportunities, and Policy Priority Areas*, 63 NURSING OUTLOOK, 30–40 (2015)

⁷ *Bandhua Mukti Morcha v. Union of India*, AIR 1984 SC 802.

able to guarantee the Right to Water to its people. The National Water Policy was initially implemented in 1987, three years after the Right to Water was declared an implied Fundamental Right. The policy was later reviewed and updated twice in 2002 and 2012. The government has adopted many policies, missions, and campaigns for purposes that vary from providing piped water connections to rural households to water conservation campaigns.

Primary Obstacles Around Right to Water

Right to Water is an incomplete piece of work. There have been no significant steps taken regarding it since distinguishing it as a fundamental right. Right to Water was derived from the dramatic leeway of the fundamental “*Right to Life*” under Article 21 through judicial interpretation. Essentially Right to Water is enshrined from the fundamental Right to Life. Various High Court judgments have trailed the Apex court’s decision and recognized this Right in cases like *Hamid Khan v. State of Madhya Pradesh*.⁸ In *Narmada Bachao Andolan v. UOI*, Justice Kirpal stated that water is essential for survival and hence is a fragment of the Right to Life enshrined under Article 21.⁹ The official recognition of the Right to Water as a fundamental right shows that each one is entitled to enjoy the Right to the same level irrespective of dividing factors.

Legislative and Political Obstacles to Right to Water

There is no statute explicitly recognizing the Right to Water. Rather, some statutes express it through the duties bound. However, the implicit recognition is in a very narrow context and does not take into consideration the entire issue at large. The Right to Education Act¹⁰ makes it compulsory for schools to make available safe and clean drinking water facilities. Similarly, the Factories Act¹¹ makes it compulsory to ensure convenient arrangement and supply of drinking water in factory settings. These statutes do not explicitly use the term “Right to Water” but instead articulate water supply as a legal duty.

Nevertheless, it is the need of the hour for the legislative to explicitly recognize it as a fundamental right through an amendment in the Constitution to create the necessary clarity, consistent and effective implementation of the same. Not recognizing the Right to Water

⁸ *Hamid Khan v. State of Madhya Pradesh*, AIR 1997 MP 191.

⁹ *Narmada Bachao Andolan v. Union of India* (2000) 10 SCC 664.

¹⁰ Right of Children to Free and Compulsory Education Act, 2009, Schedule (2), No. 35, Acts of Parliament, 2009 (India).

¹¹ The Factories Act, 1948, §18(1), No. 63, Acts of Parliament, 1948 (India).

explicitly has created many hindrances in achieving it in its entirety. The recognition does nothing more as it does not provide any more clarity on what is contained under Right to Water.¹² No threshold has been set, which, when failed to meet, should be identified as a violation of the Right to Water. After explicitly declaring Right to Water, South Africa set the threshold at 6,000 liters per capita per month for all households and failing to meet that threshold is declared violative of the Right to Water. Even after almost 38 years of declaring the Right to Water as a Fundamental Right, the courts have failed to elaborate on the contents of the Right to Water and the steps to be taken by the government.

There is a disconnect between the Central and State government in terms of water governance as it is fragmented and causes the implementation of erratic water policies between the Centre and State. According to the Concurrent and State list, the States are to deal with their issues, and the Centre has the Right to resolve issues arising out of the interstate rivers. The Centre has created authorities and institutions such as Central Groundwater Authority to govern water issues. Meanwhile, the State governments have also created similar institutions for the state level creating fragmentation and making it incredibly hard for proper implementation. There is a division between Central and State institutions. Moreover, there is also fragmentation between central organizations like the Ministry of Urban Development and Ministry of Rural Development as the former provides for drinking water in the urban region, and the latter provides for the former.

Other reasons for the lack of proper execution of the Right to Water

The challenges to the Right to Water are not only legislative and political in nature. Various other reasons create a shortage of water which adversely affects the proper implementation of the Right to Water. Agriculture as commerce is one of India's major consumer of water, being accountable for almost 85% of total water consumption.¹³ It has been reported that India fails

¹² Sujith Koonan, *Right to Water in India: Privileging Water for Basic Needs*, PUNE: FORUM FOR POLICY DIALOGUE ON WATER CONFLICTS IN INDIA (2015), https://waterconflictforum.org/lib_docs/Right%20to%20Water,%20Privileging%20water%20for%20basic%20needs_Final.pdf.

¹³ DEP'T OF AGRIC. AND COOPERATION, MINISTRY OF AGRIC., *Annual Report 2010-2011*, 169 (2011), <https://agricoop.nic.in/sites/default/files/Annual%20Report%202010-11%20English%20OK.pdf>.

in conserving water used in agriculture, and having low rates of water utilization efficiency makes water consumption unregulated and inefficient.¹⁴

Industrialization and Urbanization are two other factors creating water challenges. India is still a developing nation that has not fully recognized its potential for industrialization. More and more people are moving into cities for better opportunities and lifestyles, creating the need for rampant urbanization.¹⁵ With extensive industrialization and urbanization, the water consumption by these two sectors will also soar. This creates a supply shortage, moreover these two sectors also cause water pollution due to sewage leakage and dumping of industrial and chemical waste into open waters without proper treatment.¹⁶ This creates enormous challenges in an already difficult situation.

Legal Commitments to Pledge Right to Water

India has ratified numerous of laws pertaining to water and water-based resources. With regard to water supply, irrigation, and evacuation affected by Water Resource Management Plan actions, the vast majority of them are connected. The right to water is not explicitly protected by law in India. A prospective *National Water Framework Bill (2016)* and a *National Water Policy (2012)* are part of the existing regulatory framework, however both policies and draught legislation do not specify the legal claim to water. Furthermore, although some states have utilised the *Model Bill for the Conservation, Protection, Regulation, and Management of Groundwater (2016)* as a guide for drafting regulations on ground water consumption, there is still significant difference in water and sanitation laws and policies across states.

The Constitutional Framework Pertaining to Right to Water

The Supreme Court of India has repeatedly reiterated that the State Government along with Centre has a responsibility to deliver drinking water which is clean and fit for consumption, which it recognized as a fragment of the Right to Life with dignity even without an explicit

¹⁴ Sandip Sen, *If 80% Water Consumption In India Is For Agriculture, Why Is It Unregulated And Inefficient?* OBSERVER RES. FOUND. (May 3, 2018), <https://www.orfonline.org/expert-speak/if-80-water-consumption-in-india-is-for-agriculture-why-is-it-unregulated-and-inefficient/>.

¹⁵ OECD, *Developing Countries And Development Co-Operation: What Is At Stake* (Apr. 28, 2020) <https://www.oecd.org/coronavirus/policy-responses/developing-countries-and-development-co-operation-what-is-at-stake-50e97915/>.

¹⁶ Richard Damania et al., *Quality Unknown: The Invisible Water Crisis*, WORLD BANK GROUP (2019) <https://openknowledge.worldbank.org/bitstream/handle/10986/32245/9781464814594.pdf>.

and precise Right to Water in the Constitution.¹⁷ The same is affirmed underneath the sphere of Article 21 of the Constitution.¹⁸ Moreover, the constitutional framework also comprises of other legal option in the name of water laws. It discuss a framework where water is a part of Union List under Entry 56 of List I and State List under Entry 17 of List II, article 39(b), Article 47, Article 51(A)(g), Article 262¹⁹ and Part IX and IXA that paves the path for local self-governance. A proposal to introduce a new Article 30 D establishing a right to drinking water was made at one point, it was never articulated and stayed just on paper.²⁰

The Chawla Committee opined that "*such a framework law is required and desirable as a Union statute*" and that "*putting water under the concurrent list or getting agreement from a majority of the states*" are both necessary and desired. The states are hesitant to share or relinquish control over water.²¹ Because of interstate water disputes and interstate character of the vast majority of river systems, it is evident that the federal government has a vital part to play in supporting state-to-state cooperation in water management.

The Judicial Trajectory of Water in India

The right to water may be circled from the verdicts of the Supreme Court where they interpreted the Constitution, since there is no adequately organised legislation in existence. The Supreme Courts of many states have likewise reaffirmed this right by imposing a statutory obligation on the state. It is essential to look through such legal judgments that constitute the cornerstone of the Indian right to water in order to grasp the current water legislation. In order to produce a decision, judges have often applied their minds to water from numerous angles.

Previously, the Apex Court related the right of every Indian citizen to live with dignity under Article 21 before putting the right to water within the canopy of human life underneath Article 21.²² Even if the Constitution doesn't explicitly state that everyone has the right to water, the Court has consistently affirmed that "*the State has a duty to provide clean drinking water*",²³

¹⁷ Subhash Kumar v. State. Of Bihar, (1991) 1 SCC 598.

¹⁸ INDIA CONST. art. 21.

¹⁹ INDIA CONST. art. 39, cl. B; INDIA CONST. art. 47; INDIA CONST. art. 51 cl. A(g); INDIA CONST. art. 262

²⁰ SUMMARY OF RECOMMENDATIONS, (2022), <https://www.outlookindia.com/website/story/summary-of-recommendations/215076> .

²¹ Sujay Mehdudia, *Ashok Chawla Committee report on allocation of natural resources gather dust*, THE HINDU, APRIL 16, 2012, <https://www.thehindu.com/business//article59986277.ece> .

²² Narmada Bachao Andolan v. Union of India and Others, Writ Petition (C) No. 319 of 1994.

²³ A.P.Pollution Control Board (II) v. Prof. M.V.Nayudu, (2001) 2 SCC 62.

which it recognized as “*part of the right to life with dignity guaranteed in Article 21 of the Constitution.*”²⁴

To reiterate the importance of water, according to the Court in *Chameli Singh Case*, Right to housing comprises “*enough living space, safe and decent structure, clean and decent surroundings, sufficient light, clear air and water, power, sewage, and other civic facilities such as roads.*”²⁵

The trying times of COVID-19 brought to light the critical need for safe drinking water in rural regions. According to a Supreme Court writ petition ruling of 3 April 2020²⁶, DDWS issued a recommendation to states mandating them to provide safe, drinkable water to all homes, with priority given to water-scarce regions and vulnerable people. States were recommended to priorities FHTCs to prevent crowding at areas where people meet to draw water, such as public hand pumps, wells, and public stand posts, since social distance and frequent handwashing are among the most effective ways to control the spread of the illness. The Government also changed the Disaster Management Act's standards to allow water supply infrastructure operations to proceed during the COVID-19 induced lockdown period.²⁷

Conclusion

Indian authorities have failed to uphold their obligations to all of its inhabitants, by not ensuring that their right to water is respected. In India, laws pertaining to Water are complex, multidimensional, and sectoral, which necessitates the adoption of appropriate laws. It appears in a slew of federal and state statutes, rules, policies, and regulations, but nowhere else. There is a pressing need to recognize and safeguard India's aquatic resources, as future demand of water is predicted to outstrip water supply by two-to-one, resulting in an oncoming water crisis that might impact masses in the near future. Groundwater has replaced surface water as the prime source of clean drinking water for the mainstream Indians because of its unpredictability and pollution.

It's worth noting that although proposed legislation such as the *Draft National Water Framework Bill 2016* makes an effort to seize the essence of Right to Water, Government

²⁴ High Court of Bombay, *Milun Suryajani v. Pune Municipal Corporation*, 2016 (2) ABR 105.

²⁵ *Chameli Singh v. State of UP.*, 1996 (2) SCC 549.

²⁶ *Rohit Samhotra and Anr. v. Union of India and Ors.*, WP (PIL) No. 10808 of 2020, decided on 3-04-2020).

²⁷ OECD, *The Territorial Impact Of COVID-19: Managing The Crisis Across Levels Of Government* (Nov. 10, 2020) <https://www.oecd.org/coronavirus/policy-responses/the-territorial-impact-of-covid-19-managing-the-crisis-across-levels-of-government-d3e314e1/>.

policies and schemes do not explicitly address it, neither do the courts in their verdicts. However, it seems that they are attempting to clarify the substance of this right to some degree by specifying the minutest amount of water which is to be delivered under such agendas and emphasizing on piped water supply admittance. In addition, since India is such a large nation with such a diversified environment and socioeconomic structure, decentralized and community-based planning may be more feasible.

As the Right to Water is integrally knotted to the Indian right to life, it should be recognised and aggressively protected by law. A national legislation or explicit constitutional recognition is required. Water rights should be codified in a way that clarifies their essence while ensuring that different levels of government aren't hampered in their ability to carry out their responsibilities. Despite the difficulties, legal acknowledgement of the Right to Water in India will prove to be an optimistic pace toward plummeting discrepancies in water access grounded on land rights. Some key points, all of which will lead to a more equitable distribution of water resources in the long run will be prioritising the water needs, ensuring accountability from the authorities, getting lucidity on the standards of governance models and methodical and operative community partaking involving various stakeholders.

Ensuring that all persons in water-scarce areas have access to emergency water is a top priority during the COVID-19 epidemic. Even if an informal settlement isn't legally recognised or hasn't been notified, such access should be granted. Hand sanitizer and public hand-washing facilities need to be constantly stocked and cleaned throughout the COVID-19 pandemic. The federal government should offer explicit directions to state governments on acceptable water delivery methods as well as a minimum amount and quality of water to each home. This may be accomplished by waiving water rates for all those earning less than a certain amount during the COVID-19 epidemic, as well as ending all water disconnections.

The government may complete the passage of enforceable national law on water access that complies with India's water rights commitments. In the course where such a legislation is lacking background, the government will need to elucidate through advisories, laws, regulations and instructions. It shall be pertaining to access to water and emergency access to water during COVID-19. Simultaneously, relevant authorities might establish and maintain a water supply hotline for efficient and timely resolution of complaints and replies to emergency water demands. Along with strengthened policies and legislation, authorities must develop independent monitoring procedures that include effective involvement from community

people and society groups and added individuals as the government deems appropriate. They may give frequent, reliable, evidence-based information to the general public on COVID-19's spread (including through public television and radio) as well as hygienic practises that are successful in preventing COVID-19's spread.