# RIGHT TO CLEAN WATER: A NATIONAL AND INTERNATIONAL PERSPECTIVES

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**Abstract**

*The survival of any forms of life on earth is possible only because of water. The natural environment of an area depends upon the quality of water available in that place. Once water was considered as an inexhaustible gift of God and Sacred for every religion. Hence the sources of drinking water like rivers, ponds, lakes, tanks and other water bodies were preserved cautiously. Due to increase in population, industrialization and urbanization, there is an increasing demand for water in day-to-day life. Moreover, discharging of large volumes of effluents beyond the assimilating capacity of earth has resulted in polluting or contaminating the sources of water. There is ever increasing menace of water pollution not only in India but every nation in the globe. Therefore, right to clean water is a serious global concern. The world trade organization has stated that inadequate access to clean water for consumption will result in health risk along with a threat of resulting in blindness. Lack of adequate supply to potable water is denial of right to protection to life itself. Access to clean water is a priority issue in United Nations Millennium Development Goals as well as World Summit on Sustainable Development (2002). Therefore, this research paper makes an attempt to analyse international as well as national obligations of sustainable conservation of water sources.*

**Keywords:** Industrialization, Urbanization, Millennium Development Goals, Clean Water, Sustainable Conservation.

## Introduction

The presence of water makes earth unique among other planet because without water life is impossible on earth. From cradle to grave the need for wholesome water for life is an undying need[1]. The report on Global Risk 2016 issued by the World Economic Forum stated that water has been identified as one of the top three concerns in the context of global risks. The World Resource Institute (2011) states that consumption of water is growing at twice the pace of

[1] COSMAS EMEZIEM, THE HUMAN RIGHT TO CLEAN WATER AND SANITATION- A PERSPECTIVE FROM NIGERIA in Edn JULIEN CHAISSE, CHARTING THE WATER REGULATORY FUTURE: ISSUES, CHALLENGES AND DIRECTIONS 195 (2017)

population growth. Therefore, the 2030 agenda sets out the goal for ensuring availability as well as sustainability in water management and sanitation for everyone.

**Concept of water pollution**

Water is the oldest form of environmental pollution. Generally, water pollution means departure from a normal state. water pollution is such a change involving destruction in the quality of water by contamination. This affects the aquatic ecosystem adversely in terms of living organisms, oxygen content, the presence of toxins, etc.[2] Section 2(e) of *Water (Prevention and Control of Pollution) Act*, 1974 defines water pollution as "pollution means any contamination of water or alteration of physical, chemical and biological properties of water or disposing of any sewage waste in water which is likely to cause nuisance or renders such water to be harmful to public health or safety or to domestic, industrial or other legitimate use or harmful to the life and health of the animals and aquatic plants".

**Sources polluting water**

There are various sources to pollute water in which the major sources are industrial effluents, agricultural run-off and municipal sewage.

**Discharge of Effluents from Industries**

Industrial waste or effluents of different industries that come along with waste waters pollute most of the rivers in India and fresh water streams in a serious manner[3]. The effluents which are in the liquid form are discharged in largest volume from almost all industries at certain stage during the manufacturing process[4]. Further these effluents which contain different pollutants released from various sources get distributed in the aquatic environment through number of ways. The pollutants released from the industrial waste include garbage, sewage sludge, solid refugee of mine, mine tailings on land, chemicals, paints, etc. Industries like Petro-chemical companies, factories manufacturing fertilizers, pulp, oil refineries, paper, textile, sugar and steel mills, tanneries and many other organic and inorganic toxicant, discharges waste these are toxic to living organism[5].

[2] KAILASH THAKUR, ENVIRONMENTAL PROTECTION LAW AND POLICY IN INDIA 26 (Deep and Deep Publication 1997).
[3] 2 G. R. CHATTWAL, ENCYCLOPEDIA OF ENVIRONMENTAL POLLUTION 298 (Anmol Publications Pvt. Ltd. 1996).
[4] KAILASH THAKUR, ENVIRONMENTAL PROTECTION LAW AND POLICY IN INDIA 28 (Deep and Deep Publication 1997).
[5] 2 G. R. CHATTWAL, ENCYCLOPEDIA OF ENVIRONMENTAL POLLUTION 299 (Anmol Publications Pvt. Ltd. 1996).

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**Agricultural waste**

It includes farm animal waste, fertilizers and pesticides, etc. Farm animal waste are organic in nature which contains mainly of excreta, urine, manure and slurry. When those contaminants enter into rivers or streams, they increase the biological oxygen demand of water. Further waste like nitrogen, phosphate add to the eutrophication of lakes and water bodies which produces stench in the water bodies.

**Municipal or Domestic pollution**

The impurities from domestic as well as municipal waste constitute major cause for water pollution. These pollutants generated from small sources and spread over a fairly wide area. Mostly these wastes were transmitted by sewers to a municipal waste plant. When domestic sewage untreated, it carries water borne waste of the community. The untreated sewage contains the following polluting agents:

- Concentration of bacterial, viral and parasitical contaminants at a higher level makes the water unconsumable.
- Constituents that place a high bio-chemical oxygen demand like dissolved organic and suspended carbohydrates, fats, proteins and oils, etc., on decomposition cause depletion of oxygen from water.
- High concentration of phosphorous and nitrogen compound which enrich the receiving waters with nutrients speed up eutrophication.
- Floating of organic and inorganic constituents creates serious problems and hiders with self-purification process.

**Adverse effects of water pollution**

Pollution is the effect of an undesirable or deleterious changes in our surroundings. These changes seriously influence the human life by interfering in living conditions and has the ability to create harmful effects on cultural assets, or life cycles of the plant and animals that inhabit in a given system. Bacterial contamination has been the most common water borne disease hazard. This is due to the presence of bacterial and other types of organisms which generate typhoid fever, cholera and gastroenteritis causing wide spread illness and death.

**Water crisis**

Every country has started realizing that the water available to the living beings is not only limited but is fixed. There is an imperative necessity to identify some appropriate strategy to provide solution to cater for scarcity of water because for the enjoyment of human rights, it is essential to have right to access to potable water. The growing demand for water in various sectors namely industry, agriculture, drinking water and to maintain sustainability of resource base is a major challenge. In addition to that pollution also creates a shortage of drinking water and often people organise processions in protest the industrial units which causes pollution. Further, agitation for water scarcity become a common feature. For example, farmers in may arid and semi-arid areas protest in rural areas against the transportation of ground water to urban areas as they believe that it may result in ground water depletion[6]. Studies such as Report of the High-Level National Commission for Integrated Water Resources Development Plan, Ministry of Water Resources, Indian Water Vision, etc. has emphasized about the water demand[7].

The problem of scarcity of water is aggravated due to the mismanagement poses serious challenge among the multiple uses in different areas. The World Bank (1992) has defined governance as "the manner in which power is exercised in the management of a Country's economic and social resources of development".

Governance, as per United Nations Development Programme (UNDP) means "the exercise of economic, political and administrative authority to manage a Country's affairs at all levels". It should be understood that governance of water should start with evaluating the crisis level and water resources development. Then the next step of governance is to water resources management.

To meet the challenges of crisis, the strategies have been devised in the investment in water storage, control and distribution in addition to seasonal rainfall and river flows. Water situation across the globe has become very serious in threatening food security. Further, ability to meet the clean drinking water has become a challenge and an issue related governance of water. Therefore, water has now recognized value as it is commodified which can be bought and sold. (For ex. supply of water and the bottled water trade).

[6] VISWA BALLABH, GOVERNANCE OF WATER: ISSUES AND CHALLENGES in Ed. VISHWA BALLABH, GOVERNANCE OF WATER: INSTITUTIONAL ALTERNATIVES AND POLITICAL ECONOMY 5 (Sage Publications 2008).

[7] RAMASAMY R IYER, WATER GOVERNANCE, POLITICS, POLICY in Ed. VISHWA BALLABH, GOVERNANCE OF WATER: INSTITUTIONAL ALTERNATIVES AND POLITICAL ECONOMY 23-24 (Sage Publications 2008).

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**Water governance: issues and concerns**

The growing scarcity as well as the failure of the institutional arrangements in capturing, allocating and distributions generate to produce the desire result combine to generate water crises. Equitable water distribution is a herculean task due to scarce water where in which requirements exceed supply, the excess supply is directed to the people who can afford. In case of poorest section of the society including marginal farmers and users of water for domestic purposes whether in rural or in urban areas, there is a struggle to acquire water and fulfill the requirements. But they are left out with no option to control over scarce water.

**International agenda for water conservation**

Access to quality water for drinking is being provided generally in different stages in various national systems. Public health hazards and costs to the economy are due to inadequate access to clean drinking water. Sustaining safe sources of clean drinking water is a major challenge to meet the demand for expansion of water services in the midst of growing urbanization and industrialization and intensification of agriculture. The debate of whether water constitutes human rights has been responded by United Nations Assembly through resolution 64/292 that "the right to safe and clean drinking water and sanitation as a human right which is essential for the full enjoyment of life and all human rights". The Water Report of UNESCO in the executive summary it was stated as follows:

> *"Water and energy supply and provision are interdependent choices made in one domain impact the other, for better or for verse. The steps to be taken by the policy makers, planners and practitioners is to overcome the obstacles which exist between their respective domains. For more efficient as well as cost effective provisions of services relating to water and energy could be possible by the lead of innovative and pragmatic national policies ..... water and energy are both at the heart of sustainable development and need to be recognized as such".*

The United Nations Conference organised in Mardel Plata, Argentina in 1977 first expressed the importance of access and quality of water. Article 6, para 1 of the 1996 International Covenant on Civil and Political Rights as well as Article 12, para 2 of the 1996 International Covenant on Economic, Social and Cultural Rights have implicitly mentioned about water in the context that 'right to life' comprises water within the liberal interpretation. By emphasizing the specific water-quality requirements i.e., importance of adequate access to clean drinking water, the Conventions relating to Elimination on All Forms of Discrimination against

Women[8], the Convention on the Rights of the Child[9], the Protocol on Water and Health[10] and the Convention on the protection of Use of Transboundary water Courses and International lakes[11] have been explicitly incorporated.

The need for protection and the quality of supply of fresh water was marked in 'Agenda 21'. Article 18, Para 2 of Agenda 21 stated as follows:

> *"Water is needed in all aspects of life. The general objective is to supply adequate water of good quality which is to be maintained for the entire population of this planet and to make it certain while preserving the hydrological, biological and chemical functions of ecosystems, adapting human activities with the capacity limits of nature and combating vectors of water related diseases".*

The General Comment 15 in 'United Nations Committee on Economic, Social and Cultural Rights' explicitly recognises the right to water as human right under Article 11 and 12. Further, General Comment 15 under para 1 recognises water as a "limited natural source and a public good fundamental for life and health". The definition of human right entitles "everyone to sufficient, safe, acceptable, physically accessible, affordable water both for personal and domestic use". In 'para 2 of General Comment 15', it has been highlighted the importance of 'adequate amount of safe water for primary use for consumption relating to cooking, personal and domestic hygienic requirements. This is important for the purpose of prevention of death due to dehydration and also to minimize the risk of contracting diseases due to unclean water. Further, it is also highlighted in Article 11 and 12 of ICESCR that water resources are essential and required to prevent starvation and diseases in order to fulfil the core objectives of covenant rights. Since it fulfils the needs as pre-requisites for realization of every other human right for the decent existence of human being, it is considered as human rights. Therefore, the human need is at the heart of human right of water[12].

**Sustainable Development Goals**

The main aim of 'Sustainable Development Goals' relating to water is the access and management of water and also the ability to meet the challenges for the future of water

[8] The Convention was adopted in the year 1979.
[9] The Convention was adopted in the year 1992.
[10] The Convention was adopted in the year 1999.
[11] The Convention was adopted in the year 1992.
[12] VIRGINIA J. M. JASSIN, REGULATION AND PROTECTION OF WATER IN INTERNATIONAL LAW: TERRESTRIAL AND MARINE PERSPECTIVES in Ed. JULIEN CHAISSE, CHARITY THE WATER REGULATORY FUTURE: ISSUES CHALLENGES AND DIRECTIONS (U.K. Edward Elgar 2017).

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governance. It is otherwise called as 'global goals' which is one of the major outcomes of 'Rio+20 conference' and was adopted by UN in 2015 as a Universal call for active participation in the eradication of poverty in order to ensure peace and prosperity across the globe. In the list of 17 goals clean water and sanitation falls under Goal 6. The purpose of this goal is 'to ensure availability and sustainable water management and sanitation for all'. UNICEF reported that in 2017, 2.2 billion persons were suffering till date without safely managed drinking water[13]. This goal addresses the problems relating to water resources in terms of quality and sustainability, in addition to clean drinking water and sanitation. Since, these are all critical issues for the survival of people on earth, the 2030 Agenda recognizes the centrality of water resources to sustainable development. This is because the improvement in the quality of drinking water, sanitation and hygiene influences the progress in areas such as health, education and poverty reduction. The ultimate goal to achieve by 2030 is "to ensure universal and equitable access to safe and affordable drinking water". Specifically, the goal is to end up open defecation by paying attention to vulnerable situations faced by the women and girls and also to achieve the protection and restoration of water-related ecosystem along with mountains, forests, wet lands, rivers, aquifers and lakes. For the implementation of programs and activities relating to 'water-harvesting, desalination, water-efficiency, waste-water treatment, recycling and reuse technology', the goal emphasis to achieve the expansion and support of international cooperation and capacity building. Goal is also included for the support and strengthening the active participation of the communities at local level for improving water and sanitation management. Water is inextricably linked to the development of all nations but there are lots of pressures on water resources as the demand for water globally is expected increase 50% by 2030. In case of agriculture activities, it is expected to experience 70% increases in demand of 2050[14]. Therefore, effective solutions are needed to meet out the challenges.

**Target fixed by Millennium Development Goals**

These Goals have fixed specific target to measure 8 international development goals. By 2015, these Goals focused to achieve the following:

1. Minimise the population who suffer from hunger and thereby eliminating poverty;
2. Focussing on every child in getting primary education at universal level;

[13] SUSTAINABLE DEVELOPMENT GOALS, https://sdgs.un.org/goals (last visited Oct. 21, 2022).
[14] FOOD AND AGRICULTURE ORGANISATION OF THE UN WATER SCARCITY-ONE OF THE GREATEST CHALLENGES OF OUR TIME, https://www.fao.org>fao-stories>article (last visited Oct. 21, 2022).

3. Addressing on the elimination of Gender discrimination and track the progress of empowerment of women in order to ensure equality among men and women;
4. Minimising the mortality rate among children by ensuring food security and nutrition;
5. Reducing the maternal mortality rate and improving reproductive health of women;
6. Fighting against the risk of being infected by HIV or AIDS and protecting people vulnerable to malaria and other infectious diseases;
7. Creating sustainable environment in order to reduce the damage to the environment;
8. Achieving the co-operation of working together internationally by developing effective global partnership[15].

In target 7A while ensuring the sustainability of environment, the target is to integrate the principles relating to sustainable development in the policies and programmes of the country in order to reverse the loss of environmental resources. Target 7B deals with reduction in biodiversity loss and target 7C aims to achieve a sustainable access to an improved water source in rural and urban areas as well as access to an enhanced sanitation.

**Right to clean water: an Indian perspective**

Access to clean water is recognized as a basic human right. In India, right to water is not enumerated justiciable right, but it is a derivate of constitutional and fundamental right to life. In plethora of cases, the apex Court of India has affirmed the justifiability of the right to water.

**Constitutional provisions and legal system in the protection of water**

The impact of Stockholm conference in 1972 has brought out 42nd Amendment to the Constitution of India to have serious concern for living creatures and the protection of environment. It has issued a direction to both state and citizen for the conservation of natural resources by inserting Article 48A into the Indian Constitution to protect and promote environment. This is also to protect the flora and fauna of the Country. Similarly, by the same amendment, Article 51A(g) was inserted in order to impose a duty on "every citizen of India to protect and improve the natural environment" including forest, lakes, rivers and wildlife. There is no provision in Part III of the Constitution of India regarding right to access to clean and safe drinking water. It is solely on the wider interpretation of Article 21 of the Constitution

[15] THE WORLD BANK, https://www5.worldbank.org/mdgs/ (last visited Oct. 23, 2022).

of India by the Indian judiciary, right to safe drinking water acquired the status of fundamental right[16].

**Water (Prevention and Control of Pollution) Act, 1974**

This was the first statue in India to control pollution of water. The aim of the Act is not only to control and prevent water pollution but also to maintain and restoring the wholesomeness of water. The Act establishes 'Central and State Pollution Control Board' for conferring on and assigning powers for the administration of the Act.

The Act also provides State Board has the authority to limit the territorial jurisdiction of any order issued by State Board in matters connected to the prevention and control of water pollution[17]. This implies that the State Board's instructions will only apply in regions plagued by contamination of water. The State Board has to decide the areas which are to be designated to be water contaminated and which are not.

Section 20 of the Act empowers the State Board to give directions to any person requiring him to give information about abstraction of water from any stream or well. The State Board may make surveys of any area for gauging and keeping records of volume or flow of any stream or well in that area. Section 23 of the Act lays down that persons empowered by the State Boar shall have the power to enter any place for the purpose of inspection and also for examination of any plant, record, register, document or other material object.

Where any person defaults in complying with the directions given under various sections of the Act shall lead to various kinds of punishments as prescribed under the Act itself. Particularly, section 42 specifies penalties for several types of acts, such as removing, destroying, or removing any notice posted by the board.

**Rights of Riparian Owner under Indian Easements Act 1882**

The Act deals with the rights of a riparian owner to unpolluted water. The Act recognises the right of riparian owner to use the water of the natural streams which closed past his land equally with other riparian owners. He has the right to use and consume natural streams water for drinking as well as for watering his cattle and sheep. The Act also lays down that there is a right to continued flow of water of natural stream in its natural condition without any distraction or unreasonable pollution for every riparian owner[18].

[16] A.P. Pollution Control Board v. M.V. Naidu, AIR 1999 SC 812.
[17] Water (Prevention and Control of Pollution) Act, 1974, s 19, No.6, Acts of Parliament, 1974 (India).
[18] The Indian Easement Act, 1882, s 7, No. 5, Acts of Parliament, 1882 (India).

**The Shore Nuisances (Bombay and Kolaba) Act, 1853**

The earliest statute on control of pollution in India with wider power has been given to collectors of land revenue. Board has to issue notice to an affecting party requiring the removal of nuisance anywhere below the high-water mark. The legislation that's been implemented for big sea in the islands in order to permit the clearance of nuisances, obstacles, including encroachments underneath high-water mark in harbour, either upon or near the beaches of islands in Mumbai (previously Bombay) throughout former British India.

**Preventing Of Water Pollution under IPC 1860**

The provisions relating to water pollution has been dealt with control of public health and safety under section 269,277 and 290 of the code which is used to keep the environment clean. Section 268-294-A of Chapter XIV of the IPC deals with offences relating to safety, public health, and so on. These laws prioritise public health and make any conduct that pollutes the environment or endangers an individual's life illegal.

Section 268 describes the term "public nuisance" as follows:

1. Any individual who commits an illegal act or omission is responsible for the crime.
2. A 'common damage' or risk must have resulted from such a conduct. Inconvenience to the public or to the individuals in the surrounding area, or other an act must infringe someone's public right.
3. A frequent annoyance is not justified on the grounds that it provides some benefit or convenience.

Section 277 of the IPC says that anybody who intentionally corrupts or fouls the water of a public spring or reservoir, rendering it unsuitable for ordinary public use, is punished by imprisonment extending up to three months or a fine up to Rs. 1000, or both.

Furthermore, Section 290 renders the violation of public nuisance subject by a fine of up to Rs. 200. As a result, every act or omission that pollutes the environment and causes injury to any person is punishable by law it also considers noise pollution a crime as well.

**Indian Fisheries Act, 1987**

This act prohibits poisoning of water and the consequent distinct of fish. The act under section 5 provides “if any person put poison, lime or noxious material into any water with intention to

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anybody catch or destroy any fish shall be punished with imprisonment of 2 months or fine of Rs. 200."

**Forest Act, 1927**

In India the Forest Act, 1927 where subsection (1) of sec 26 provides that if any person who is in prohibited in any forest activity that has been carried out by him for which the rules of state government under section 32(f) relating to poisoning of water in forest , poisonous water of forest area makes it punishable.

**Factories Act, 1947**

Specific provisions are provided with regard to factors and effluents section 12(2) provided effective management made by every factors more effluents discharge. The act empowers state government to make rules prescribes arranging to be made and requite it.

**Water (Prevention and Control of Pollution) Cess Act, 1977**

The Act empowered the Central Government for imposing CESS on water consumed by listed industries. Though there is no mechanism under the Act for control and prevention of water pollution, it serves as an instrument for implementation of the Act in an effective manner. This also serves as an economic incentive for controlling pollution by providing adequate funds to the State Boards for its effective functioning. The CESS money credited to the consolidated fund of India will later be disbursed by the Central Government to the State Board[19]. The Act prescribes the penalty of imprisonment extending to 6 months or/and fine extending to Rs. 1000/- or both for submitting false assessment report[20].

**Conclusion**

Humans have created wonderful truths and equipment for enhancing the quality and comfortable of their lives. But it has resulted in damage to the human environment as well as human beings itself. The main causes responsible for deterioration of the environment is due to haphazard urbanization, increasing industrial activities, pesticides, agricultural practices and enormous uses of water for multi-purposes. This has ended up in water pollution, food insecurity, difficulties in water management. The UN Water Report in 2016, has cautioned about the severe water scarcity through which one-third of the global population could suffer in 2025. The International Agenda for Conservation of Water have focused that access to clean

[19] The Water (Prevention and Control of Pollution) CESS Act, 1977, s 8, No. 36, Acts of Parliament, 1977 (India).
[20] I*bid*. Section 14.

water as a priority issue in development which influences the other developments for human being in ensuring quality life. Man's survival depends on the conservation of nature in which water is fundamental resources even for existence itself. From the above analysis it is clear that one of the major and common issues across the globe is rights of the people to safe drinking water. There is a growing recognition of water resources as an integral part of environmental protection and management. It is a high time for achieving the goal of equitable and universal access to safe, adequate and affordable drinking water. The international instruments committed to take efforts for ensuring clean drinking water as well as for protection and enhancement of human environment. This is possible when all nations co-operate and enhance the participation in water resources management.

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