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ACCESS TO CLEAN WATER AS A HUMAN RIGHT: CHALLENGES, PROGRESS, AND STRATEGIES

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ABSTRACT

This comprehensive paper examines the importance of water availability and emphasises the scarcity of clean freshwater, even though the Earth's surface is mostly covered in water. It highlights how important water is to agriculture, industry, daily living, climate regulation, and ecosystems. The urgency of appropriate water management is emphasised in the paper as a means of ensuring a sustainable future for our planet and its inhabitants.

The paper examines the barriers that stand in the way of guaranteeing that everyone has access to clean water. It provides this by exploring particular objectives of the Sustainable Development Goal (SDG) 6 of the United Nations (UN), which include safeguarding water-related ecosystems, attaining universal access to safe drinking water, enhancing water quality, increasing water-use efficiency, and fostering international cooperation. It also emphasises how crucial gender equality and community involvement are for the management of water and sanitation.

This paper addresses the constitutional recognition of the right to clean water in India as an integral part of the right to life. It examines significant court decisions that support peoples' rights to a clean environment and access to water, including the Delhi Water Supply and Sewage case and the Vellore Citizens' Welfare Forum. With an emphasis on the ambitious Jal Jeevan Mission, the study also explores the government's water policies and actions, such as the National Water Policy and the creation of the Jal Shakti Ministry.

The study also explores the goals of the National Water Mission, which include addressing the effects of climate change, conserving water, and promoting effective water usage. It emphasises how important it is to have an extensive public water database.

The paper concludes by highlighting the critical role that water plays in maintaining ecological balance, industry, and community well-being in addition to being essential for life. In order to solve the issues of water shortage and rising demand, it promotes prudent water management and conservation techniques, guaranteeing a sustainable and prosperous future for our world and its different inhabitants.

Keywords: Water Scarcity, Clean Water, Sustainable Water Management, Sustainable Development Goal 6, gender equality, community involvement

INTRODUCTION

Our planet and all living things depend on water, which is also known as the "elixir of life." It covers approximately 71% of the Earth's surface, and while it may appear abundant, access to clean, fresh water remains a global challenge. A staggering 96.5% of the world's water is saline, residing in vast oceans. Freshwater accounts for the remaining 2.5%, with only 0.3% available in liquid form on Earth's surface.¹ Beyond just being necessary for life, water is important for our ecosystems, regulating the climate, agriculture, industry, and countless other aspects of daily life. For our planet and its inhabitants to have a sustainable future, this limited and valuable resource needs to be managed responsibly.

Around the world, 2.1 billion people live without access to safe, affordable water. Despite advancements, there are still significant obstacles in the way of achieving sustainable development and addressing the vast disparities in access to basic water between and within nations.

In the era of incredible technical advancements, the persistent threat of water scarcity serves as a sobering reminder of how fragile our world is. However, there is a glimmer of belief despite this obstacle. By means of cooperative efforts, progressive legislation, and an unwavering commitment to the cause, we have the ability to guarantee that every individual, regardless of their situation, can exercise their fundamental right to obtain clean water. Our efforts to achieve universal water access and sustainable water management are not just about ensuring our

¹ ABOUT WATER AND SANITATION OHCHR, <https://www.ohchr.org/en/water-and-sanitation/about-water-and-sanitation> (last visited Nov 04, 2023)

survival, they also serve as a lasting legacy for future generations, demonstrating our capacity to safeguard the planet and promote the welfare of all its occupants.

The 2030 Agenda's goal of "leaving no one behind" can only be fulfilled through partnership between all stakeholders, an integrated approach to the social, economic, and environmental dimensions of sustainable development, and a people-centered focus rooted in international human rights. To address the challenges of SDG 6, a paradigm shift is required: water should be regarded not just as a natural resource to be managed and used but as a fundamental human right to which all people are entitled without discrimination.²

INTERNATIONAL DOCUMENTS

The human right to access to safe, affordable, clean water and sanitary facilities was recognized by the UN General Assembly in Resolution 64/292, which was adopted in July 2010. It was acknowledged that access to sanitary facilities and clean, safe drinking water are fundamental human rights that must be respected to enjoy life.

Right to Water in SDGs

The right to water, according to the United Nations, guarantees that everyone has access to enough water for personal and domestic use that is safe, acceptable, physically accessible, and affordable. The 2030 Agenda for Sustainable Development, which consists of 17 Sustainable Development Goals (SDGs), was adopted by the General Assembly in September 2015.³ The new agenda emphasizes a holistic approach to achieving sustainable development for all, building on the idea of "leaving no one behind." The sixth goal is ensuring everyone has access to clean water and sanitation and managing it sustainably.

Goal 6's objectives

1. Protect and restore water-related ecosystems, such as mountains, forests, wetlands, rivers, aquifers, and lakes, by 2020.
2. Achieve universal and equitable access to safe and affordable drinking water for all by 2030.

² "Clean water is a human right, not a privilege," <https://www.malteser-international.org/en/about-us/service/news/press-detail-en/clean-water-is-a-human-right-not-a-privilege.html> (last visited Nov 04, 2023)

³ HUMAN RIGHTS — SAFE DRINKING WATER FOUNDATION, <https://www.safewater.org/fact-sheets-1/2017/1/23/human-rights> (last visited Nov 04, 2023)

3. Improve water quality globally by 2030 by reducing pollution, eliminating dumping, minimizing the release of hazardous chemicals and materials, halving the proportion of untreated wastewater, and significantly increasing recycling and safe reuse.
4. Increase water-use efficiency across all sectors by 2030, as well as ensure sustainable withdrawals and supply of freshwater to address water scarcity and significantly reduce the number of people suffering from water scarcity.
5. Implement integrated water resource management at all levels by 2030, including transboundary cooperation as needed.⁴
6. Expand international cooperation and capacity-building assistance to developing nations by 2030 in activities and programs related to water and sanitation, including technologies for water harvesting, desalination, water efficiency, wastewater treatment, recycling, and reuse.
7. In order to improve water and sanitation management, encourage and strengthen community involvement.
8. End open defecation by 2030 and ensure that everyone has access to adequate sanitation and hygiene, paying particular attention to the needs of women, girls, and those in vulnerable situations.

RIGHT TO WATER IN INDIA

In India, the right to food, the right to a healthy environment, and the right to health are all protected under the umbrella of the "RIGHT TO LIFE," which is guaranteed by Article 21 of the Constitution. These rights can all be drawn upon to support the constitutional right to access to clean drinking water. According to a thorough analysis of international treaties, the authors of the Indian Constitution implicitly recognized water as an essential resource. Later, international rights conventions and agreements included access to water as one of the many explicit rights safeguarded. It is believed that access to basic, clean water is a requirement for achieving or guaranteeing human rights.⁵

According to Article 39 (b), "the State shall, in particular, direct its policy towards securing that the ownership and control of the material resources of the community are so distributed as to best serve the common good."

⁴ Supra note 2.

⁵ HUMAN RIGHTS AND WATER SIWI - LEADING EXPERT IN WATER GOVERNANCE, <https://siwi.org/why-water/human-rights-and-water/> (last visited Nov 04, 2023)

According to Article 47, it is the responsibility of the State to improve public health as well as levels of nutrition and living conditions. The state must prioritize improving the standard of living, nutrition, and health of its citizens as one of its top priorities. In particular, the state must work to make it illegal to consume intoxicating beverages and drugs that are harmful to health, unless it is for medical reasons. The state must prioritize improving the standard of living, nutrition, and health of its citizens as one of its top priorities. In particular, the state must work to make it illegal to consume intoxicating beverages and drugs that are harmful to health, unless it is for medical reasons.⁶

The fundamental obligation to protect the environment is addressed in Article 51(A)(g) in particular. "It shall be the duty of every citizen of India to protect and improve the natural environment, including forests, lakes, rivers, and wild life, and to have compassion for living creatures," the constitution reads. It is crucial to remember that Article 51(A)(g) only applies to "citizens" of India and imposes the fundamental obligation "to protect and improve the natural environment" on them. This could be interpreted as "non-citizens" having no obligations for the purpose."

Article 262 is related with adjudication of disputes relating to waters of Inter State Rivers or river valleys

(1) Parliament may by law provide for the adjudication of any dispute or complaint with respect to the use, distribution or control of the waters of, or in, any Inter State River or river valley

(2) In spite of the provisions of this Constitution, Parliament may pass legislation stating that no court, including the Supreme Court, has the authority to hear any dispute or complaint mentioned in clause (1) regarding interstate coordination.⁷ The "Right to safe drinking water" was not originally recognized as a fundamental right in the constitution. Riparian rights are recognized as water rights in the Indian Constitution under Article 262, which was written to settle disputes over state river water rights.

⁶ ibid

⁷ HUMAN RIGHTS TO WATER AND SANITATION UN-WATER, <https://www.unwater.org/water-facts/human-rights-water-and-sanitation> (last visited Nov 04, 2023)

SUPREME COURT ON WATER RIGHTS

Vellore Citizens' Welfare Forum v. Union of India (1996)⁸

In this case, a writ petition was filed against the state of Tamil Nadu's large-scale pollution caused by tanneries and other industries. The petitioners claimed that untreated effluent was being discharged into agricultural fields, waterways, and open land, eventually reaching the Palar river, which was the area's primary source of water supply. The effluents had harmed the soil's physiochemical properties and contaminated groundwater through percolation. After carefully reviewing the facts of the case, the Supreme Court, while recognizing the common law right of the people to a clean and healthy environment, awarded compensation to pollution victims based on the "precautionary principle" and the "polluter pays principle." The Supreme Court specifically stated that "the constitutional and statutory provisions protect a person's right to fresh air, clean water, and a pollution-free environment, but the source of the right is the inalienable common law right to a clean environment."

Delhi Water Supply and Sewage vs State of Haryana (1996)⁹

The Supreme Court stated in its order, "Water is a gift from nature." This bounty cannot be turned into a curse or oppression by human hands. Since drinking is the main purpose of water, it would be cruel to make those who live along a river's bank perpetually thirsty while allowing others who happen to be in a better position to use the water for purposes other than drinking. A river must flow through some land, and it would be unfair for the upper-riparian States to use the water for things like irrigation while denying the lower-riparian States access to it even for quenching their residents' thirst.

M.C. Mehta v. Kamal Nath (1997)¹⁰

The court stated in this case, "Our legal system, which is based on English common law, includes the public trust doctrine as part of its jurisprudence." The state is the trustee of all natural resources that are by definition intended for public use and enjoyment. The general public benefits from the seashore, running waters, air, forests, and ecologically sensitive lands. The

⁸ VELLORE CITIZENS WELFARE FORUM VS UNION OF INDIA & ORS ON 28 AUGUST, 1996, <https://indiankanoon.org/doc/1934103/> (last visited Nov 05, 2023)

⁹ DELHI WATER SUPPLY & SEWAGE ... VS STATE OF HARYANA & ORS ON 29 FEBRUARY, 1996, <https://indiankanoon.org/doc/1520766/> (last visited Nov 05, 2023)

¹⁰ M.C. MEHTA VS KAMAL NATH & ORS ON 13 DECEMBER, 1996, <https://indiankanoon.org/doc/1514672/> (last visited Nov 05, 2023)

state, as trustee, has a legal obligation to protect natural resources. These public resources cannot be converted to private ownership."

A.P. Pollution Control Board II v. Prof. M.V. Nayudu (1999)¹¹

In this case, the Andhra Pradesh government granted an exemption to a polluting industry and allowed it to be established near two major reservoirs in the state, the Himayat Sagar lake and the Osman Sagar lake, in violation of the Environment Protection Act of 1986. The Supreme Court overturned such an exemption, ruling that the "Environmental Protection Act and The Water (Prevention and Control of Pollution) Act 1974 did not allow the state to grant exemption to a specific industry within the area prohibited for the location of polluting industries." The exercise of such a power in favor of a specific industry must be regarded as arbitrary, contrary to public interest, and a violation of the right to clean water guaranteed by Article 21 of the Indian Constitution. The government could not issue such dangerous exemption orders, ignoring the fate of lakhs of citizens in the twin cities who rely on these lakes for drinking water. Such a careless exemption order, ignoring the 'precautionary principle,' could be disastrous.

THE POLICY AND DECISIONS OF THE GOVERNMENT

It took the Indian government a while to start developing its National Water Policy (NWP). The first NWP was published in 1987 in response to a severe drought. This policy's guiding principles were as follows:¹²

- Use of water from both surface and subsurface sources concurrently.
- Supplemental irrigation.
- Crop patterns that conserve water.
- Irrigation and production technologies that use less water.
- Increased canal water charges.
- Increasing user participation in canal management.

¹¹ A.P. POLLUTION CONTROL BOARD II VS PROF.M.V. NAYUDU (RETD.)AND ORS ON 1 DECEMBER, 2000, <https://indiankanoon.org/doc/1543623/> (last visited Nov 05, 2023)

¹² INTERNATIONAL DECADE FOR ACTION "WATER FOR LIFE" 2005-2015. FOCUS AREAS: THE HUMAN RIGHT TO WATER AND SANITATION, https://www.un.org/waterforlifedecade/human_right_to_water.shtml (last visited Nov 05, 2023)

MINISTRY OF JAL SHAKTI, GOVERNMENT OF INDIA

Jal Shakti Ministry was established in May 2019. The Ministry of Water Resources, River Development, and Ganga Rejuvenation merged to form this ministry.

Drinking Water and Sanitation Ministry mandate includes international and inter-state water disputes, the Namami Gange project, the flagship initiative to clean the Ganges, its tributaries, and sub-tributaries, and to provide safe drinking water.¹³ The government claimed during the formation of the new ministry that "all water-related works have been merged under one ministry."

JAL JEEVAN MISSION

The Indian government recently set an ambitious goal of providing piped clean drinking water to all rural households by 2024. Under the Department of Drinking Water and Sanitation, this Mission will concentrate on integrated demand and supply side management of water at the local level, including the development of local infrastructure for sustainable source technologies like rainwater harvesting, groundwater recharge, and management of household wastewater for agricultural re-use.¹⁴ To achieve its goals of sustainable water supply management across the country, the Jal Jeevan Mission will collaborate with other Central and State Government schemes. For the Jal Shakti Abhiyan, the government has identified 1592 critical and overexploited blocks spread across 256 districts.

NATIONAL WATER MISSION

The Ministry of Water Resources developed the National Water Mission after extensive consultation. The National Water Mission's primary objectives are to:

- Establish a comprehensive public water data base and evaluate the effects of climate change on water resources
- Focused attention on vulnerable areas, such as overexploited areas;
- Promoting citizen and state action for water conservation, augmentation, and preservation;

¹³ OHCHR AND THE RIGHTS TO WATER AND SANITATION OHCHR, <https://www.ohchr.org/en/water-and-sanitation> (last visited Nov 05, 2023)

¹⁴ US: ADVANCE HUMAN RIGHT TO SAFE, AFFORDABLE WATER | HUMAN RIGHTS WATCH, <https://www.hrw.org/news/2021/09/08/us-advance-human-right-safe-affordable-water> (last visited Nov 05, 2023)

- Increasing water use efficiency by 20%
- Increasing support for basin-level integrated water resources management

CONCLUSION

Water is necessary for life, one of the biggest problems facing humanity today is its shortage. It is impossible to overestimate the significance of sustainable water management and the availability of water. Water is necessary for ecosystems, daily life, industry, agriculture, and climate management.

Ensuring universal access to clean water and sanitation is the goal of Sustainable Development Goal (SDG) 6. Although this objective is lofty, if we all work together, it is doable.¹⁵ The accomplishment of SDG 6 is hampered by a number of factors, such as:

- **Water scarcity:** Overuse of water resources, pollution, and climate change are all factors in this issue.
- **Inequality:** Not all communities have equal access to water, with the most vulnerable and underprivileged groups frequently suffering the most.
- **Lack of infrastructure:** A large number of people worldwide lack access to even the most basic facilities for water and sanitation.
- **Ineffective management:** Waste and inefficiency result from the frequent mismanagement of water resources.

Notwithstanding these obstacles, the significance of water security is becoming increasingly acknowledged. To guarantee that everyone has access to clean water, corporations, governments, and civil society organisations are all making improvements to water management.

The Indian government has taken a variety of measures to increase access to water and sanitation. The National Water Policy, the Jal Jeevan Mission, and the National Water Mission are examples of these. Inequality, inadequate management, and water scarcity are problems that still require attention.

¹⁵ WHY A HUMAN RIGHTS BASED APPROACH TO WATER AND SANITATION IS ESSENTIAL FOR THE POOR, <https://blogs.worldbank.org/water/why-human-rights-based-approach-water-and-sanitation-essential-poor> (last visited Nov 05, 2023)

The following are some suggestions for guaranteeing India's sustainable water management:

- India must make investments in water infrastructure, including irrigation systems, dams, and reservoirs. This will lessen water loss and enhance water distribution and storage.
- Encourage water conservation: Sustainable water management depends on water conservation. Water conservation strategies including rainwater collection, drip irrigation, and wastewater reuse should be supported by the government.
- Cut down on pollution: One of India's biggest issues is water pollution. In order to lessen water contamination from agricultural and industrial sources, the government must take action.
- Ensure that everyone has fair access to water: Everyone should be able to afford and obtain water. Water subsidies for low-income homes and communities should be provided by the government.
- Promote community involvement in water management: Sustainable water management depends on community involvement. Communities should have an active role in how their water resources are managed and be included in decision-making on water management.

It is crucial for India to have sustainable water management for a sustainable future. India can meet its water scarcity concerns and guarantee universal access to clean water by making investments in water infrastructure, encouraging water conservation, cutting pollution, and enhancing community involvement in water management.

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