



## Water Inequality: An Overview

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### ABSTRACT

Access to water is a fundamental human right, and it is essential for all individuals to have equal access to adequate, safe, and clean drinking water. However, water inequality persists due to factors such as income, gender, caste, colour, ethnicity, religion, and the urban/rural divide. In India, the government is facing challenges in providing better access to water and sanitation services. The United Nations suggests that all people, including the poorest, should have access to and reasonable prices for water and sanitation facilities and services. Access to drinkable water is linked to school attendance, with many illnesses linked to low water quality affecting children. Women and children often have to gather water for households, which can lead to dropout rates. The increasing population demands more water for drinking, agriculture, and industry, leading to competition among big companies to control water resources. International corporations are seizing land in underdeveloped countries to control water resources, and climate change is exacerbating the crisis. In this paper, it has been suggested that access to water is a human right, and the state must take affirmative steps to remove inequalities that impede this fundamental right.

Key words: water resources, dignity, fundametal right, access.

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### 1. Introduction

Water is an essential component that sets the Earth apart from the other planets in our solar system. One of the most amazing features of Earth is the water that covers over 75% of the planet's surface. Based on geologic data, there has most likely been substantial water flow on Earth for much of its 3.8 billion years of existence. It is believed that the eruptions of long-extinct volcanoes brought water to the surface in the first place. In particular, it appears that water is a necessary element for the development and maintenance of life.<sup>1</sup> But the amount of water on Earth that is appropriate for human consumption is only 0.3 percent. And this valuable resource is vanishing alarmingly. Climate change is causing natural water reserves to dry up.<sup>2</sup> Not all living creatures have equal access to fresh water. Water is the source of life for every living creature. Life is impossible without water. Life on earth started with water. If there had been no water, there would have been no human civilization today.

Many problems arise without access to water. Without water, diseases like cholera, diarrhoea, dysentery, hepatitis A, typhoid, polio, etc. can occur. According to the Human Biology Study, water provides nutrients to the human body and oxygen to its cells. It is because of water that the digestive system remains healthy, and it helps to remove bacteria from the body. Drinking water is the most helpful way to keep the kidneys clean. Water maintains a normal body temperature.<sup>3</sup> While dehydration can cause various problems related to consciousness, digestive system, kidneys, speech, muscles, eyes, blood pressure, heart etc.<sup>4</sup>

The importance of water is not only limited to the physiology of the human body; spirituality-related literature from around the world has also described the properties of water through which the soul unites with eternity. In spirituality, it is believed that the pristine soul of water calms the mind and brings a sense of contentment.<sup>5</sup> Apart from this, if a person does not get sufficient, safe and clean drinking water and suffers from many diseases, her basic necessities of life, and opportunities to make life meaningful also get affected.

Without water, the food production system could break down. Daily life is also associated with access to water, such as when it is needed for drinking, bathing, washing clothes, etc. Earning a livelihood without water is also impossible.

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<sup>1</sup> "Earth Observatory Water Cycle Overview," available at <https://gpm.nasa.gov/education/articles/earth-observatory-water-cycle-overview#:~:text=Viewed%20from%20space%2C%20one%20of,years%20of%20its%20existence>.

<sup>2</sup> "Our drinking water - Is the world drying up? | DW Documentary," available at [https://www.youtube.com/watch?v=\\_t6sg2C-jqw](https://www.youtube.com/watch?v=_t6sg2C-jqw)

<sup>3</sup> "Water and Healthier Drinks" Centers for Disease Control and Prevention [https://www.cdc.gov/healthyweight/healthy\\_eating/water-and-healthier-drinks.html](https://www.cdc.gov/healthyweight/healthy_eating/water-and-healthier-drinks.html) July 19th 2023.

<sup>4</sup> See E Jéquier and F Constant, "Water as an essential nutrient: the physiological basis of hydration," *Eur J Clin Nutr.* 2010 Feb;64(2):115-23

<sup>5</sup> See Terje Oestigaard, *Water and World Religions: An Introduction*, (2005). SFU & SMR. Bergen.

## 2. Human Right to Water under International Law

Initially, water was not specifically mentioned in the international human rights law that was composed of the 1948 Universal Declaration of Human Rights, the 1966 International Covenant on Civil and Political Rights, and the 1966 International Covenant on Economic, Social, and Cultural Rights. However, over time, the international community has come to recognise water as a human right, particularly in light of the fact that water inequalities are on the rise due to social, economic, political, and geographic factors. First appearing in the Convention on the Elimination of All Forms of Discrimination Against Women (1979) and then in the Convention on the Rights of the Child (1989), water rights became explicit provisions of the international human rights instruments.

Article 14(2) of the 1979 Convention on the Elimination of All Forms of Discrimination against Women addresses the human right to water, stating that states must guarantee women's access to acceptable living conditions, including water and sanitation. Similar obligations are found in Article 24 of the International Convention on the Rights of the Child, which requires states to acknowledge children's right to health and work towards implementing this right, including by providing clean drinking water.

Further, it is also suggested that the human right to water is linked to other rights related to social and economic development, culture, civil and political liberties, and sustainable development, which calls for the protection and fulfilment of the principles of precaution, polluter pays, and intergenerational equity. In 1977, during the United Nations Water Conference, the first Action Plan was established, acknowledging that everyone has the right to access drinking water in quantities and of a quality equal to their basic needs, regardless of their stage of development and social and economic conditions.

Member States are required under the International Covenant on Economic, Social, and Cultural Rights (ICESCR) to implement the prescribed rights within their economic capacity. According to the recently enacted Optional Protocol, the Committee on Economic, Social, and Cultural Rights ('the Committee') is now qualified to receive and consider communications as provided for by the provisions of the present Protocol. Article 2 of the Optional Protocol stipulates that communications may be submitted by or on behalf of individuals or groups of individuals who are under the jurisdiction of a state party and who allege that the state party has violated any of the economic, social, or cultural rights specified in the Covenant. If someone submits a communication on behalf of a person or group of people, it must be done so with their permission, unless the author can legitimately act on their behalf without getting permission.

The human right to water is also a part of Article 11(1) of the International Covenant on Economic, Social, and Cultural Rights (ICESCR), which recognises the right to an 'adequate standard of living'. It provides, "The States Parties to the present Covenant recognise the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing, and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realisation of this right, recognising to this effect the essential importance of international cooperation based on free consent."

According to the General Assembly's 2030 Agenda for Sustainable Development, the following water-related targets are to be achieved by 2030:

- Attain equal and universal access to reasonably priced, safe drinking water for all.
- Put an end to open defecation and provide everyone with access to sufficient and equitable sanitation and hygiene, with a focus on the needs of women, girls, and those in vulnerable situations.
- Reduce pollution, end dumping, minimise the release of dangerous substances, cut the amount of untreated wastewater in half, and significantly increase recycling and safe reuse worldwide in order to improve the quality of water.
- In order to overcome water scarcity and significantly lower the number of people affected by it, it is important to significantly boost water-use efficiency across all sectors and assure sustainable freshwater withdrawals and supplies.
- Adopt integrated water resources management at all levels, where necessary, through transboundary collaboration.
- Preserve and rebuild ecosystems that are connected to water, such as wetlands, rivers, aquifers, lakes, mountains, and forests.
- Increase international collaboration and support for developing nations' capacity-building in activities and programmes pertaining to water and sanitation, such as water harvesting, desalination, water efficiency, wastewater treatment, recycling, and reuse technologies.
- Encourage and bolster community involvement in enhancing water and sanitation management.
- Water-related habitats, such as those found in mountains, forests, wetlands, rivers, aquifers, and lakes, should be preserved and restored.
- Expand global collaboration and assistance in developing nations' capacity-building for water and sanitation-related projects and activities, such as water harvesting, desalination, water efficiency, wastewater treatment, recycling, and reuse technologies.
- Encourage and bolster local communities' involvement in enhancing the management of water and sanitation.<sup>6</sup>

<sup>6</sup> UNGA 'Transforming our world: the 2030 Agenda for Sustainable Development' UN Doc A/RES/70/1 (21 October 2015). Available at [https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A\\_RES\\_70\\_1\\_E.pdf](https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_70_1_E.pdf)

### 3. Water Jurisprudence in India

While the Indian Constitution does not specifically mention the right to water, it is essential that this fundamental right be recognised in order to fulfil the Preamble's aspirations of transformative constitutionalism. For everyone to live with justice, liberty, equality, fraternity, and dignity, the right to water must be acknowledged as a fundamental right. By the 42nd Constitutional Amendment, Article 48-A—which states that the state shall attempt to maintain and promote the environment as well as safeguard the nation's forests and wildlife—was added to Part IV of the Constitution. According to Article 51A, among other things, it is the responsibility of every Indian citizen to preserve and enhance the natural environment, which includes forests, lakes, rivers, and animals, as well as to show compassion for all living things. Article 47 stipulates that the state has an obligation to enhance public health, boost living standards, and promote nutrition. Furthermore, in light of the right to life under Article 21, it is not acceptable for the most basic necessities—soil, water, and air—to be abused or contaminated in a way that lowers the standard of living for others.<sup>7</sup>

In its various judgements, the Supreme Court has recognised access to water as a fundamental right to life guaranteed under Article 21 of the Constitution. The Supreme Court in *Delhi Water Supply & Sewage Disposal Undertaking v. State of Haryana*<sup>8</sup> observed that water is a gift of nature; it cannot be cursed under any circumstances, and everyone should have access to drinking water. Moreover, it is a paradox that, on the one hand, those who live on the banks of the river are yearning to drink water, and on the other hand, those who are in advantageous places are using the same river water for non-drinking purposes.

Access to water is also linked to other basic necessities of life. Without access to water, a person cannot get food, education, health, shelter, earn a livelihood, or realise the inner and outer content of his right to growth and personality. And if a person does not have these basic human rights, then she cannot even enjoy her civil and political rights. In *Chameli Singh v. State of U.P.*,<sup>9</sup> the Supreme Court emphasised the fact that in a civilised society without access to basic necessities including water, food, shelter, health, a safe environment, education, etc., it is impossible to enjoy civil, political, social, and cultural rights guaranteed under the Universal Declaration of Human Rights and Convention and the Constitution of India.

Further, in *Narmada Bachao Andolan v. Union of India*<sup>10</sup>, the Supreme Court acknowledged that human survival is impossible without access to water, which is an indispensable part of the fundamental right to life under Article 21 of the Constitution of India. In this decision, the Supreme Court upheld the right to water while allowing the government to build 3,000 dams on the Narmada River in varying sizes. Increasingly, in *Hinch Lal Tiwari v. Kamala Devi*<sup>11</sup>, the Supreme Court recognised that the access to water is connected with the right to live in a hygiene environment.

Water is a public resource and human right, and every individual is its public trustee, who must use it in such a manner and with such responsibility that its quality and sources are maintained so that it can be made available to future generations. In simple terms, the right of the future generation to access water resources cannot be violated by the present generation. In *M.C. Mehta v. Kamal Nath*<sup>12</sup>, the Supreme Court applied the 'public trust doctrine' to protect natural resources, including seashores, flowing waters, air, forests, and ecologically fragile lands. The court said that the state cannot relinquish natural resources and convert them into private ownership or for commercial use. The Court said, "Our legal system - based on English common law - includes the public trust doctrine as part of its jurisprudence. The State is the trustee of all natural resources which are by nature meant for public use and enjoyment. Public at large is the beneficiary of the seashore, running waters, airs, forests and ecologically fragile lands. The State as a trustee is under a legal duty to protect the natural resources. These resources meant for public use cannot be converted into private ownership."

This public trusteeship can only be implemented when the water polluter, who has the potential to cause irreversible damage to the quality of water resources, is held accountable for restoring the water quality system. Moreover, potential polluters should also be made obliged to take preventive measures and submit water quality impact assessment reports of their actions to prevent any harm in the future. The Supreme Court in *Vellore Citizens' Welfare Forum v. Union of India*<sup>13</sup>, held that "the Precautionary Principle" and "the Polluter Pays principle" are essential features of "Sustainable Development". The Court stated that "the polluter pays principle" puts absolute liability on the polluter to compensate victims of pollution as well as pay to restore the damaged environment. And under the "precautionary principle," the state must take environmental and scientific measures to anticipate and prevent environmental pollution, and the burden is on the actor, industrialist, or developer to prove that the action is friendly to the environment.

### 4. Discussion

From above-mentioned reasons, it can be easily realised that access to water is a human right, and it is essential that all human beings have equal access to adequate, safe, and clean drinking water. If a person does not have equal access to water for whatever reason, it is a denial of the equal protection of laws guaranteed under Article 14 of the Constitution of India. And the State is bound to take affirmative steps to remove any inequalities that impede the

<sup>7</sup> See *M.C. Mehta v. Union of India* (2004) 12 SCC 118

<sup>8</sup> (1996) 2 SCC 572

<sup>9</sup> (1996) 2 SCC 549

<sup>10</sup> AIR 2000 SC 375

<sup>11</sup> AIR 2001 SC 3215

<sup>12</sup> (1997) 1 SCC 388

<sup>13</sup> (1996) 5 SCC 647

fundamental right of anyone to have access to adequate, safe, and clean drinking water. More importantly, the human right to water is enforceable against both public and private entities, as private entities' control of water resources is increasing on an unprecedented scale.

Nonetheless, for a variety of reasons, water inequality still exists in almost all sections of the societies. Access to quality drinking water and the opportunity to use water resources sustainably are not equal for everyone. People continue to experience prejudice based on their income, gender, caste, colour, ethnicity, religion, and urban/rural divide. Caste hierarchy is still a social norm that is widely accepted, embodies violence, and leads to water inequalities in India.<sup>14</sup> Similarly, in the name of development and environmental conservation, forest communities are being displaced from their natural habitats and are being denied their inherent capabilities to access and use water resources.<sup>15</sup> Moreover, access to water sources is increasingly influenced by household income. According to a number of studies, impoverished households are more likely to be excluded and without access to water in urban areas compared to gentrified areas.

The provision of water and sanitation services differs significantly between urban and rural communities. The right to sanitation is equally important as the right to water. In India, where over 70% of people live in villages, the government's mission of providing better access to water and sanitation for all might face significant obstacles due to rural-urban inequality. Compared to less than 20% of urban households, 54% of Indian rural households rely on groundwater sources. Furthermore, open defecation is common among 67% of rural households and 12% of urban households, necessitating strict management measures in addition to well-planned awareness efforts.<sup>16</sup> That's why it has been suggested by the United Nations that all people, including the poorest, must have access to and a reasonable price for water and sanitation facilities and services. Water and sanitation services should not cost more than 5% of a household's income. This means that the provision of these services shouldn't interfere with a person's ability to pay for other necessities like housing, food, healthcare, and education. According to Ban Ki-moon, UN Secretary General, "Safe drinking water and adequate sanitation are crucial for poverty reduction, crucial for sustainable development and crucial for achieving any and every one of the Millennium Development Goals."<sup>17</sup>

A sizable portion of the population in India lacks access to drinkable water, and many of the illnesses linked to low water quality also affect children. Access to drinking water is also linked to school attendance. Children, especially girls, who do not have access to drinking water cease to attend school. It has been reported that it is usually the responsibility of women and children to gather water for households in the absence of a reliable water source inside the home. In India, when kids have to spend hours gathering water, their attendance at school drops. Reports indicate that in states afflicted by drought, school dropout rates have increased by 22%.<sup>18</sup>

Furthermore, more water is needed for everyone. More water is needed than ever for drinking, agriculture, and industry due to the increase in population. In certain nations, there is a surplus of water that is daily wasted due to carelessness. In other words, where there is more water, people are using it carelessly. And on the other hand, in many places, people do not even have water to flush toilets. 8 billion people need drinking water to quench their thirst, but about 70% of fresh water is used in industrial agriculture. Similarly, a large amount of fresh water is being used by industry. All over the world, to take advantage of the problem of the water crisis, there is competition among big companies to control the water resources. For them, water is the new precious metal. Conflicts over valuable water resources have already started. Further, international corporations are seizing land in underdeveloped countries in order to control the water resources, and they are completely dedicated to turning water into a commodity in the near future. Temperatures are rising due to climate change. Extreme weather and droughts are occurring more frequently, drying up springs and wells. The climate catastrophe, however, is exacerbating the crisis.<sup>19</sup>

## 5. Recommendations

It is submitted that all stakeholders must be involved in the conversation about the equitable access and distribution of water resources in order to eliminate water inequities. This can only occur if everyone acknowledges that water is a fundamental right rather than a commodity. Earth has plenty of water; the only issue is that not all people have equal access to and use of it. As trustees of the natural resources of Earth, including water, "we, the people of planet Earth," must manage water resources sustainably so that their quantity and quality are preserved for future generations. The public trust doctrine is a great resource for comprehending this idea. The state has a positive obligation to protect every citizen's right to access the natural resources of the state, including the right to water. This obligation is expressed through the public trust doctrine. There is some tension between the concepts of water as an economic good and water as a communal resource. Applying the public trust idea can help overcome tensions between acknowledging the interests of

<sup>14</sup> See D. Coffey et al. 'Explicit Prejudice: Evidence from a New Survey'. *Economic and Political Weekly* 53(1): 46–54, (2018).

<sup>15</sup> See De Debasree, Development-induced displacement: impact on adivasi women of Odisha, *Community Development Journal*, Volume 50, Issue 3, July 2015, Pages 448–462, <https://doi.org/10.1093/cdj/bsu053>

<sup>16</sup> Srirup Chaudhuri, "Rural-urban spatial inequality in water and sanitation facilities in India: A cross-sectional study from household to national level," *Applied Geography* 85(5):27-38 (2017).

<sup>17</sup> Media Brief, "The Human Right to Water and Sanitation," available at [https://www.un.org/waterforlifedecade/pdf/human\\_right\\_to\\_water\\_and\\_sanitation\\_media\\_brief.pdf](https://www.un.org/waterforlifedecade/pdf/human_right_to_water_and_sanitation_media_brief.pdf)

<sup>18</sup> "Clean drinking water: Ensuring survival and improved outcomes for every child with safe and secure drinking water for all," UNICEF India, available at <https://www.unicef.org/india/what-we-do/clean-drinking-water#:~:text=School%20attendance%20in%20India%20decreases,reported%20in%20drought%20affected%20states> .

<sup>19</sup> "The fight for water | DW Documentary," available at <https://www.youtube.com/watch?v=1MZFrJPPiQ8>

individuals, the public, and groups. Ultimately, any solution must consider the rights of individuals, groups, and common rights that signify the ownership of water resources by all.<sup>20</sup>

Social inclusion in the accessibility of water resources is another need of the public trust doctrine. Every form of discrimination that obstructs the enjoyment of fundamental rights is forbidden under the Indian Constitution. Articles 15(2) (access to public places), 15(3) (protection of women and children), and 17 (abolition of untouchability), as well as the liberal interpretation of the right to life and personal liberty guaranteed by Article 21 (protection of basic necessities including water, food, clothing, shelter, education, etc.), are enforceable against private individuals as well. These provisions obligate the state to take positive measures to remove existing inequalities and protect individual expression from all forms of discrimination.

The ideals of transformative constitutionalism that has the potential to eradicate the horizontal discrimination need to be implemented. And this demands that, in order to guarantee a clean water source for the most vulnerable, service providers must face consequences for neglecting to deliver essential services to the most vulnerable. While cross-subsidies between the rich and the poor are necessary, it is crucial to do away with cross-subsidies that have the opposite effect. The savings can be used to provide the underprivileged with direct subsidies. In addition, we ought to push the most impoverished individuals to become more independent (by supporting rainwater harvesting techniques, for example) and to demand high-quality services from businesses. Governments have the ability to offer both legislative measures, like mandating complete cost recovery on water rates, and financial incentives, such as cost-sharing for rainwater harvesting and water reuse. While governments in many developed and developing nations may find this an overwhelming endeavour, similar initiatives are carried out in the energy, education, and other sectors. It's time to treat water in the same way.<sup>21</sup>

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## 6. Conclusion

There are disparities in access to safe drinking water and sustainable water use. Worldwide, people have been denied on the basis of income, gender, caste, colour, ethnicity, religion, etc. Access to water and sanitation services is also hampered by rural-urban inequality. Children who experience low water quality are more likely to drop out of school. Large corporations compete with one another for access to water. However, in its various judgements, the Supreme Court has recognised access to water as a fundamental right to life guaranteed under the Constitution. Transformative constitutionalism obligates the state to take positive measures to remove existing inequalities and protect individual expression from all forms of discrimination.

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<sup>20</sup> Vrinda Narain, "Water As A Fundamental Right: A Perspective From India," *Vermont Law Review*, Vol. 34:917 (2010).

<sup>21</sup> Katherine Purvis, "13 ways to provide water and sanitation for nine billion people," *The Guardian* 14 July 2015.