

Laws and judicial response: protecting the water ecosystem with emphasis on water scarcity and rivers

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“Thousands have lived without love, not one without water.” W. H. Auden

Human beings are nothing without environment. In some way or the other he has to depend upon his environment to earn his bread. Going back to ancient era of the Indian history, we can find that vedashave considered the environment as important element of human life. Therefore, an onus has been put upon the human beings to fulfill the task of environment management, afforestation, habitation, non-pollution, protection and other pious tasks pertaining to our environment.

The water bodies such as seas, oceans, rivers, lakes etc., are of utmost essence for human beings as compared to other ingredients. But to its misfortune, most of the water bodies are at the verge of extinction. The water bodies are no more suitable for the daily household uses, due to mass contamination caused by various factors like industrial wastes and other garbage.

The four major ancient civilizations of the world, the Harappa (Indus River), Egypt (Nile river), Mesopotamia (Euphrates and Tigris) and China (the yellow river) developed around rivers. During excavations, there were traces of wells in Egypt, stone rainwater channels in Mesopotamia and wells, waterpipes, toilets in Indus civilization. It seems from the very beginning the mankind preferred to give lot of importance to wells and springs, probably as a source of drinking water (IWA, 2020). As civilization progressed, humanity flourished near rivers.

India is a country with great dependency on monsoon and rivers for water supply. These rains are critical to almost 60% of India's rain-fed agriculture and the timely arrival and adequacy of monsoon winds plays a vital role in our farming practices. We have been a witness to monsoon variability in the last decade resulting into frequent droughts. In June

2019, 65% of all reservoirs in India reported below-normal water levels, and 12% were completely dry.

Also, it is very important to study the initiatives of the government and judicial discourses on water scarcity.

This article address the aforementioned issues considered by judiciary and whether it has resulted into development of reliable green jurisprudence. Apart from that, the authors will also analyse the initiatives taken by the governments and judiciary to grant rivers legal personality.

Water Scarcity: Laws and Judicial Response

Water scarcity broadly means scarcity in availability due to any of the following three reasons; Firstly, due to physical shortage, secondly due to scarcity in access which might be due to the failure of institutions to ensure a regular supply and thirdly due to a lack of adequate infrastructure. For water systems, water scarcity is divided into two parts – surface water and ground water. The fact remains that we need to have efficient policies to reduce the challenges due to water stress (UN Water, 2020).

To be able to arrive at the larger concept of water security It is very essential to study water scarcity. Water security or lack of water scarcity will provide us six related securities – human community security, water resources security, food security, energy security, climate security and national security (Lankford et al., 2013)the concern is to arrive at water resource consumption in such a manner that all the human requirements are met without compromising on the natural reserve. This would lead to water security and aid other related securities.

As per recent UNICEF Report, more than 450 million, or one in five children, worldwide reside in areas of high or extremely high-water vulnerability. Eastern and southern Africa had the highest proportion of children living in such areas. More than half of children (58 percent) in these regions face difficulty accessing sufficient water every day. Other affected regions are West and Central Africa (31

per cent), South Asia (25 per cent) and West Asia (23 per cent). More than 155 million children in South Asia live in areas with high or even extremely high water vulnerability. (Down to Earth, n.d.).

The major laws in India that ensure access to water and water conservation can be studied under the following heads:

1. Constitution of India. Constitution of India is the supreme law of the land. Under this head we need to study the Article 51- A, Schedule VII and Article 262 and the Constitution (73rd) Amendment Act, 1992

2. The Easement Act, 1882.

3. The Water (Prevention and Control of Pollution) Act, 1974.

4. The Environment (Protection) Act, 1986.

5. The Indian Penal Code 1860 under Section 277.

6. Relevant State Legislations.

a. Laws relating to canals and irrigation.

1. The Northern India Canal and Draining Act, 1873,
2. The Bombay Irrigation Act, 1879,
3. Karnataka Irrigation Act, 1965,
4. The Rajasthan Irrigation and Drainage Act, 1954.

b. Use of water sources.

1. The Kumaon and Garhwal Water (Collection, Retention and Distribution) Act, 1975.

c. Water sewerage and drainage.

1. The Uttar Pradesh Water Supply and Sewerage Act, 1975.

d. Ground water.

1. Madras Metropolitan Area Ground Water (Regulation) Act, 1987,
2. Kerala Ground Water (Control and Regulation) Act, 2002,
3. Karnataka Ground Water (Protection and Regulation for Drinking Water) Act, 2003.

7. The Coastal Regulation Zone (CRZ)

Notification, 2018.

8. **Policy initiatives.** The National Water Policy 2012.

9. **Model Groundwater (Sustainable Management) Bill, 2017.**

10. **International Developments.** include Millennium Development Goals (MDG's) were adopted by the UN Millennium Declaration and SDG Goal 6 relates to clean water and sanitation; to ensure availability and sustainable management of water and sanitation for all.

It may be noted here that international law, both customary and modern norms emphasise upon equitable utilisation of water is ensured by the customary international law for trans-boundary freshwater resources.

A. The Madrid Declaration of 1911.

B. Declaration of Montevideo 1933.

C. International Law Association's (ILA) Helsinki Rules 1966 on the Uses of the Waters of International Rivers.

D. UN Convention on the Law of the Non-navigational Uses of International Watercourses was adopted by the UN General Assembly in 1997.

Judicial Approach

Narmada Bachao Andolan v. Union of India

(2000) In this case, it was observed that Water is the basic need for the survival of human beings and is part of the right to life and human rights as enshrined in Article 21 of the Constitution of India .and the right to healthy environment and to sustainable development are fundamental human rights implicit in the right to "life". (Also see **Hinch Lal Tiwari v. Kamala Devi (2001)**). In **A.P. Pollution Control Board II v. Prof. M.V. Nayudu (1999)**, the honorable apex court struck down the order of government as being carelessly passed and ignoring the 'precautionary principle'.

Vellore Citizens Welfare Forum v. Union of India (1996) gave relief to the victims of water pollution caused by tanneries, by applying the 'precautionary principle'.

Plachimada coca cola case (2004) is the classic case relating to the extent to which a

person/party can draw groundwater.

In **M.C Mehta v. Kamal Nath (1997)** or the Spam motel case, the apex court declared the State to be the trustee of all natural resources, meant for public use and enjoyment. As a trustee it is under a legal duty to protect the natural resources of the seashore, running waters, air, forests and ecologically fragile lands. Public at large is the beneficiary of these resources, which cannot be converted into private ownership.

Other important cases include **National Institute of Medical Science University Rajasthan & Others v. State of Rajasthan & Others (2017)**; **Jitendra Singh v. Ministry of Environment (2019)**; **State of T.N. v. Hind Stone, (1981)**; **Mangesh Shelar v. State of Maharashtra; Sanjay Kale vs State of Maharashtra (2016)**; **Lt. Col. Sarvadaman Singh Oberoi v. Union of India (2020)**.

The most important drought case is **Swaraj Abhiyan v. Union of India (2017)**, in which the Court issued guidelines relating to constitution of National Disaster Response Force with regular specialist cadre, establishment of a National Disaster Mitigation Fund, formulation of a National Plan and revision of the Drought Management Manual.

Legal Personality to Rivers

In 2017, New Zealand enacted the Te Awa Tupua (Whanganui River Claims Settlement) Act 2017, granting legal rights to Whanganui River, as the local Māori struggled to obtain legal protections for the Whanganui River since 1873.

Similarly, in 2017 judgments of **Lalit Miglani v. State of Uttarakhand & others** and later in **Mohd Salim v. State of Uttarakhand (2017)**, the Uttarakhand High Court declared the Indian rivers Ganga and Yamuna as 'legal persons'. Therefore, these rivers can enjoy all rights, duties and liabilities of a living person. Similarly, the 2020 judgment of **Court on its own Motion v. Chandigarh Administration**, the Punjab and Haryana High Court declared the Sukhna Lake in Chandigarh city as a living entity, also with rights equivalent to that of a person.

Thus, it can be inferred that there has been positive shift from extractive mindset of the people towards conservation of the environmental elements, by granting them rights, which are to be respected by the people.

Selected References

1. India's water crisis: The seen and unseen. (2021, March 19). *Down to Earth*. <https://www.downtoearth.org.in/blog/water/india-s-water-crisis-the-seen-and-unseen-76049>
2. Koshi, J. (2018, June 14). *India faces worst water crisis: NITI Aayog*. The Hindu. Retrieved from <https://www.thehindu.com/sci-tech/energy-and-environment/india-faces-worst-water-crisis-niti-aayog/article24165708.ece>
3. Kothari, J. (2006). *The Right to Water: A Constitutional Perspective*. Retrieved from http://www.ielrc.org/activities/workshop_0612/content/d0607.pdf
4. Raghunandan, G. (2017, August 20). *A Look at the Legal Issues Plachimada's Struggle for Water Against Coca-Cola Has Brought Up*. The Wire. <https://thewire.in/law/coca-cola-plachimada-kerala-water>
5. Science Daily. (n.d.). *Water Scarcity*. Retrieved August, 2021, from https://www.sciencedaily.com/terms/water_scarcity.htm
6. UNESDOC. (2020). *UN World Water Development Report 2020: Water and Climate Change*. Retrieved September, 2021, from <https://unesdoc.unesco.org/ark:/48223/pf0000372985.locale=en>

