

POLITICO-LEGAL STRUGGLE FOR WATER-JUSTICE IN AN ERA OF GLOBALIZATION: AN INDIAN SCENARIO

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Water is a resource that triggers profound conflicts and close collaboration, a source of deep injustices and fierce struggles for life. Water crisis are thus never only just about water but much more. In what follows, we analyse why it is important to advance knowledge and civic action in water justice as well as how to involve the general public in creating more equitable and inclusive water worlds. Now is the time for active engagement by the average citizen, which is what this piece focuses on. Water is connected to broader issues of democracy, citizenship and development. We are thus seeing crisis, injustice and sufferings of different kinds around the world, in wealthy countries as well as in developing countries. This is why water justice becomes an important analytical and political issue and needs broader public understanding and support.

Keywords: *Water, justice, la, government*

INTRODUCTION

Water is an asset that trims thoughtful struggles and close co-action, a source of deep injustices, and aggressive endeavors for life¹. However, today, a momentous number of masses are disadvantaged of clean drinking water and sanitation services, with an accordingly high percentage of people dying from water borne bugs. At the same time, an acceleratory percentage of the global population be inherent in areas that are at risk of flooding, partly modified by climate change. Although it is increasingly recognized that adequate governance of water requires that issues of equity or social justice are taken into record, political philosophers or applied jurists have so far not or only scarcely been embroiled in the public debate on water governance². Despite the fact that water injustices have subsisted throughout human history, water justice problems and related policy intercession have changed quickly over late decades. Such proliferating problems of substantial and social water injustices render the backdrop for this research paper.

In recent years at global level, groundwater attenuation has become a major fear for all. Thriving groundwater governance is challenging because of its interdependence with these other instrumentals. These challenges are aggravated because groundwater is an asset concealed from view and therefore the impacts of its use are grueling to monitor and measure. The significance of groundwater to society is dominated by the more ocular surface water in

¹ BOELENS, R. & PERREAULT, T., INTRODUCTION: THE MULTIPLE CHALLENGES AND LAYERS OF WATER JUSTICE STRUGGLES 1-32 (Cambridge University Press 2018).

² Neelke Doorn, *Water and Justice: Towards an Ethics of Water Governance*, 5 (1) PUBLIC REASON 97-114 (2013).

rivers, lakes and reservoirs, yet the majority of the world's drinking water comes from groundwater and it supports an ever increasing agricultural sector³. The restricted capacity to quantify surface water, groundwater interactions; aquifer recharge rates; and groundwater dependent ecosystem responses to instabilities in groundwater quantity and quality. This paper is trying to find out The validation for sharing or apportioning groundwater can draw on a variety of principles or values that we as human beings have constructed and developed over time to reinforce our decision-making processes⁴.

In India, the government has accorded highest significance to drinking water followed by irrigation⁵. The Union Budget presented by Hon'ble Finance Minister Smt. Nirmala Sitharaman dated February 01, 2020 had main focus on "liquid and grey water management" along with waste management, where, under Prime Minister's 'Nal se jal' scheme, government proposes Rs 3.6 lakh crore towards piped water supply to households. "Wellness, Water and Sanitation" were presented as components of 'Aspirational India' which was pigeonholed under the main leitmotif of "Ease of Living". This shows the kind of significance 'water' has gained after frightening data presented by numerous global and Indian private plus governmental research agencies.⁶

As per the United Nations World Water Development Report, 2019⁷, Global water demand is foretold to continue increasing at analogous rate until 2050, accounting for an growth of 20 to 30% above the current level of water use, mainly due to mounting demand in the manufacturing and domestic sectors. Over 2 billion people live in countries undergoing high water stress, and about 4 billion people experience grim water scarcity during at least one month of the year. Stress levels will go along to increase as supposition for water grows and the effects of climate change escalate. Currently, 600 million Indians face progressive to extreme water stress and about two lakh people die every year due to undersupplied access to safe water.⁸ The Department of Consumer Affairs and Bureau of India Standards (BIS) has released a report on November 16, 2019 on the quality of piped drinking water. Report has uncovered the failure of water supplying agencies across cities to equip safe drinking water.⁹ The Composite Water Management Index (CWMI) report, 2019¹⁰ also states that by 2030, the country's water demand is proposed to be twice the reachable supply, implying strong water shortage for hundreds of millions of people and an ultimate six per cent loss in the nation's GDP.

So, looking at the above revealed reports, it can be said that the amalgamation of intensified groundwater resource extraction, land and water wretchedness, increasing competition over water access and control, and growing trust on market forces and forms of water pollution, have

³ M Giordano, *Global groundwater? Issues and Solutions*, 34 ANNUAL REVIEW OF ENVIRONMENT AND RESOURCES 153-178 (2009).

⁴ M.J. Neal (Patrick) et al., *The Social-Environmental Justice of Groundwater Governance, Integrated Groundwater Management*, Ch. 10, 251-272. (2016).

⁵ Government of India, Ministry of Water Resources, National Water Policy (2012).

⁶ www.indiabudget.gov.in (Jan. 02, 2020, 10:05 AM).

⁷ <https://unesdoc.unesco.org/ark:/48223/pf0000367303> (accessed on Feb. 08, 2020, 15.30 PM).

⁸ Source: WRI Aqueduct; WHO Global Health Observatory.

⁹ Dipak K Dash, *Bengaluru's Tap Water among most Unsafe, Mumbai's Best*, TNN, Nov. 17, 2019.

¹⁰ https://niti.gov.in/writereaddata/files/new_initiatives/presentation-on-CWMI.pdf (accessed on Feb. 08, 2020, 15.30 PM).

superficial insinuations for debates over water rights and justice¹¹. Water is no longer just a essential natural reserve of life, livelihood, and cultural machinist, but has also turned into a root of power, subject to fight and struggle for water justice.¹² However, Justice is a complex term to dissect for fresh water, which is socio-politically, culturally, geographically, and hydrologically changeable¹³.

Water issues are often related to general questions of justice¹⁴. Water Justice is both a social and a unsophisticated process or it can be said that water justice is a socio-political and moral issue¹⁵. Linked to water's magnificence, particularly for the world's defenseless and poverty-stricken population, the idea of 'water justice' is one that has acquired adorable analytical and political attention over the past several decades¹⁶. Despite the fact that water prejudices have survived throughout human history, water justice problems and affiliated policy interventions have transformed rapidly over recent decades¹⁷. Water justice considerations for drinking, sanitation, and productive consumption must therefore be identified, understood, and assessed in copulation to a wide range of social and political factors, viewing gender, income, indignation, and race. It provides several illustrations of social, economic, and biophysical differences as key to portraying and assessing water injustice.

Primarily, this paper targets to clarify key ideas to spotlight the intricacy behind water justice. The paper has its focus on several issues of reasonable water management. The author has made every endeavor to ravine attention towards the significance of seeing water differently; fin surrounding supremacy inequities and a needed way towards democratization. However, this paper broadens our understanding of water justice by connecting encounters found in the formulation and implementation of laws. Further, the paper posits that water justice is embedded and specific to historical and socio-cultural contexts.

PRINCIPLES OF WATER JUSTICE

Various scholars have argued that the human right to water catches political importance in the fight against privatization, calling for a more placed understanding of local struggles and for coalition among scholars, activists and politicians in the repute of water and social justice (Harris, Rodina, & Morinville, 2015; Sultana & Loftus, 2015, 2019)¹⁸.

According to Jason, 'Justice' is a thought that most electorate commonly associate with the legal

¹¹ RUTGERD BOELENS & TOM PERREAULT (EDS.), INTRODUCTION: THE MULTIPLE CHALLENGES AND LAYERS OF WATER JUSTICE STRUGGLES 1-32 (Cambridge University Press 2018).

¹² MIRIAM SEEMANN, WATER SECURITY, JUSTICE AND THE POLITICS OF WATER RIGHTS IN PERU AND BOLIVIA 55 (Palgrave Macmillan, 2016).

¹³ ZENNER, C. 2018. REVIEW OF "WATER JUSTICE" 167 (Cambridge University Press 2018).

¹⁴ Conde, Gilberto, *Water and Counter-Hegemony: Kurdish Struggle in The Tigris and Euphrates in Turkey*, 9 REVISTA DE PAZ Y CONFLICTOS 43-58 (2016).

¹⁵ Natalie R. Davis & Janelle Schaeffer, *Troubling Troubled Waters in Elementary Science Education: Politics, Ethics & Black Children's Conceptions of Water [Justice] in the Era of Flint*, *Cognition and Instruction*, 37 (3), 367-389, (2019).

¹⁶ HARRIS, L. & M.S. MCKENZIE, WATER JUSTICE: KEY CONCEPTS, DEBATES AND RESEARCH AGENDAS 1 (University of British Columbia 2016).

¹⁷ Margreet Z. Zwarteveen & Rutgerd Boelens, *Defining, Researching and Struggling for Water Justice: Some Conceptual Building Blocks for Research and Action*, 39(2) WATER INTERNATIONAL 143-158 (2014).

¹⁸ Leila M. Harris, Lucy Rodina & Cynthia Morinville, *Revisiting the Human Right to Water from an Environmental Justice Lens*, 3(4) POLITICS, GROUPS, AND IDENTITIES 660-665 (2015).

system. Justice will be served when a false is righted. In the orbit of morals something is just if it adheres to the present-day sanctioned value discourse – the problem being of course is that there is always few disagreement on what that sermon is. The meaning of justice in the context of its role in decision-making and resource apportionment is multilayered and is described in many different disciplines¹⁹.

Schlosberg²⁰ states “Justice demands an absorption on acknowledgment, distribution and participation, and that they are three interlinking, lap-jointed circles of interest”. According to Schlosberg, an over-focus on distributive justice follows a Rawlsian angle on justice and results in acknowledgment and participation being ignored. Youngs²¹ asserts that concentrating on distributive justice fails to consider issues underpinning poor distribution. Youngs advanced that a social justice aspect assorted with ‘Environmental Justice’ would event in superior recognition of democratic and participatory decision-making process, thus bearing in mind some factors underpinning piteous distribution.

Issues of water justice instigate when resources are, or are perceived to be, in little stream or when access to water resources is imperfect or snubbed. In these situations folks or clusters are troubled about getting their just stake and arrangements are made, or establishments created, to manage, apportion and administer the water resources in question²².

Recent studentship has also spotlighted water in the sermon of inter-generational and inter-species justice. Among such aids, feminist theorists have discussed the possibility of a ‘watery subjectivity,’ highlighting the solidity of bodies, human and nonhuman, in the ways that water moves through us, literally connecting all life. As Neimanis²³ argues, attention to water as a figurative, and material connector betwixt all living beings allows us to realize ourselves, and our bodies, as connected and allied to other peoples, places, animals, and ecologies. She writes: *“Perhaps by envisaging ourselves as irreducibly watery, as literally part of a global hydro commons, we might find new creative resources for engaging in more fair and thoughtful relations with the myriad bodies of water with whom we share this planet”*.

Activities of this type are opening brand-new features of water justice debates, predominantly with latest contributions from historians, literary theorists and other humanities scholars, totaling fresh vision to a field that has historically been subjugated by natural sciences and engineering fields²⁴.

Foregrounding equity and justice, we might ask: how can we use water, or make verdicts related to water, differently to respond to justice considerations, and specifically to improved meet the needs of those who are particularly defenseless and underserved? Such a justice orientation is

¹⁹ Jason A Colquitt, *On the Dimensionality of Organizational Justice: A Construct Validation of a Measure*, 86(3) JOURNAL OF APPLIED PSYCHOLOGY 386-400 (2001).

²⁰ David Schlosberg, *Reconceiving Environmental Justice: Global Movements And Political Theories*, 13(3) ENVIRONMENTAL POLITICS 517-540 (2004).

²¹ YOUNG, IRIS MARION, *JUSTICE AND THE POLITICS OF DIFFERENCE* (Princeton University Press, 1990).

²² A.J. JAKEMAN et al. (eds.), *THE SOCIAL-ENVIRONMENTAL JUSTICE OF GROUNDWATER GOVERNANCE, INTEGRATED GROUNDWATER MANAGEMENT - CONCEPTS, APPROACHES AND CHALLENGES* 253-272 (Springer, 2016).

²³ Chen, C., MacLeod, J., & Neimanis, A. (eds.), *Thinking with Water*, MCGILL-QUEEN'S UNIVERSITY PRESS (2013), www.jstor.org/stable/j.ctt32b7pn. (accessed on Mar. 16, 2020, 10: 05 AM).

²⁴ Chen M, et al., *Decoupling Epigenetic and Genetic Effects through Systematic Analysis of Gene Position*, *Journal Of Data And Information Science*, 3(1) CELL REP 128-37 (2013).

somewhat distinct from, and theoretically resistant to, productivity, cost recovery or other governance priorities that are often highlighted.

Academics and researchers of Water Justice represent that water needs its own form of justice. According to Mclean²⁵ and Strang²⁶ water differs from other natural resources; it has multiethnic necessities and demands (and is therefore a globally shared resource moderately due to the nature of the hydrological cycle), and appreciating arrangements used for water alter substantially in dissimilar societies, resulting in different contexts within which society-water relations are molded. Mclean (2007) avers that there is an over-focus on distributive justice, and that instead, the 'politics of difference' should be merged into Water Justice.

Mclean recommends adopting Schlosberg's Environmental Justice theory for Water Justice, discordant it would deliver improved water, sanitation and sterility outcomes and greater recognition of community water rights. In her mawkishness, Water Justice is at present used too widely in fighting corporations against communities, or formulating anti-privatisation movements, resulting in complex situations being misrepresented. According to Mclean, a political ecology motion would aid to counter these issues. This view is taken by Davidson-Harden²⁷ who argued that Water Justice movements are "a counter-hegemonic strategy critical of capitalism" which highlights differing agendas of transnational corporations versus global citizen movements. According to Tisdell²⁸, a social justice standpoint is important for Water Justice as it would result in emphasis upon "equality of liberty of opportunity in access to water" meaning that everyone in the interior of a community would in theory have the same chance to access water.

According to McLaughlin²⁹, there are a number of cardinal themes in Water Justice. Firstly, most literature is concentrated in the USA, Australia and South Africa. Secondly, there is a worthy theme of water as a human right, with many articles taking a rights-based gesture. This is causative with studies focusing on basic needs but is less pertinent when water use above basic needs satisfaction is reasoned. Consequently, it is important that a model for Water Justice does not take strictly a rights-based tactic and danger of risk limiting the agenda's useful application. In this view, we can say that justice is the step-up of everyone's human potential, achieved by both substantial provision of elemental needs (water, food, shelter) and the social institutions necessary for everyone to attain them. As such, the provision of water (and food and shelter and other basic necessities) is a means to an end and not the end itself (Bakker, 2010). This, for Sen, represents the very meaning of development, the freedom to carry through one's capabilities deduces other bundles of rights, and cannot be viewed in parting from the institutional arrangements through which rights are assigned, nor the physical infrastructure through which

²⁵ McLean, J. Water injustices and potential remedies in indigenous rural contexts: A water justice analysis. *Environmentalist* 27, 25–38 (2007).

²⁶ Magowan, Fiona. "Veronica Strang: The Meaning of Water." *The Australian Journal of Anthropology*, vol. 16, no. 2, 2005, p. 276+. (accessed on 17 Mar. 2020, 10.30 AM).

²⁷ Davidson-Harden et al. *Local Control and Management of Our Water Commons Stories of Rising to the Challenge*. Available at <http://www.onthecommons.org/media/pdf/original/WaterCommons08.pdf> (accessed on Mar.25, 2020; 11.00 AM).

²⁸ Tisdell, J.G, *Equity and Social Justice in Water Doctrines*, 16 SOCIAL JUSTICE RESEARCH 401–416 (2003).

²⁹ McLaughlin, D. L., Kaplan, D. A., & Cohen, M. J., Managing Forests for Increased Regional Water Yield in the Southeastern U.S. Coastal Plain. *JOURNAL OF THE AMERICAN WATER RESOURCES ASSOCIATION*, 49(4), 953–965 (2013).

resources such as water are delivered. This, then, is a relational interpretation of rights. Thus, the three areas of Schlosberg's idea of Water Justice to be addressed are:

1. Equity in arrangement of risk.
2. Acknowledgment in diversity of participants and experiences in affected communities.
3. Involvement in political processes which create and manage policies.

LEGAL STRUGGLE FOR WATER JUSTICE

In today's world of contending goods and products, everyone is facing growing water insecurity. Since the 1970s the discussion on water problems and increasing threats against the resource has entered national and international political and legal programs. During 2010-2020, increasing pressure on and greater competition over the resource (both among local communities and between old and new users) has transformed water into a contested resource. Thus, water is no longer just a vital natural resource of life, livelihood, and cultural identities, but has also turned into a source of power, subject to conflicts and legal struggle for water justice. (Roth *et al.* 2005; Bebbington *et al.* 2010; Boelens *et al.* 2013).

At both global and local level, it is pertinent to review literature and debates surrounding the thought of a universal human right to water, which has been critically reviewed for its potential to de-politicise and hollow out local struggles to improve access to water services, by creating a technocratic, legalistic, state-driven effort (see Sultana and Loftus 2011)³⁰.

AT GLOBAL LEVEL

Legally, and abstractly, the human right to water to every single person needs to be understood inversely from the bundle of water rights available to water consumers and users in dissimilar countries and the level of convenience of water justice to citizens.

In the domain of law and policies, the main questions rotate around the scope and the content of right to water, as well as the gadgets to ensure its monitoring and execution. The U.N. General Assembly, espoused a resolution in 2010, recognizing for the first time the human right to water and public health and admitting that clean drinking water and sanitation are essential to the understanding of all human rights. Explicit reference to water within international human rights instruments firstly materialized in the Convention on the Elimination of All Forms of Discrimination Against Women (1979, Article 14.2 on acceptable living standards of women in rural areas) and later in the Convention on the Rights of the Child (1989, Article 24.2 on the right to health). At domestic level, the human right to water has been fenced in national constitutions, for instance in South Africa (1996) or Uruguay (2004) where it was upheld through a national referendum³¹.

Although the International Covenant on Civil and Political Rights (ICCPR), does not explicitly billboard to a right to water, Article 6(1) cliques out the inherent right to life. The U.N. Human Rights Committee's 1982 interpretation of the ICCPR in General Comment No. 6 notes that States must adopt positive procedures to protect the right to life and guarantee access to the resources of survival.³² As water is necessary to sustain a life, the right to life in the ICCPR

³⁰ Anna Walnycki. 2015. *Rights on the edge of the city: the right to water and the peri-urban water committees of Cochabamba*. IIED Working Paper. IIED, London. <http://pubs.iied.org/10758IIED> (accessed on Mar. 10, 2020; 13.04 AM).

³¹ Parmar, P., *Revisiting the Human Right to Water*, 28(1) AUSTRALIAN FEMINIST LAW JOURNAL 77–96 (2008).

³² Human Rights Comm., General Comment No. 6, art. 6, (16th Sess., 1982).

debatably includes the right to water.³³

International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) requires that economic, social and cultural rights be rewarded in a non-discriminatory manner³⁴. It specifically recognizes the right to housing and public health, but the pact does not give an all-inclusive list of protected rights.³⁵ The Committee documented the right to water as a component of both the right to housing and the right to health.³⁶

The “Discrimination on the basis of “race and colour”, which includes an person’s ethnic origin, is prohibited by the International Covenant on Economic, Social and Cultural Rights as well as by other treaties, including the International Convention on the Elimination of Racial Discrimination.” The Committee on Economic, Social and Cultural Rights themes out that “The prohibited ground of birth also includes descent, especially on the basis of caste and analogous systems of inherited status.”³⁷

Discrimination grounded on language, religion, national origin and ethnicity is also prohibited. In some countries, indigenous peoples living on reserves do not have access to water or sanitation amenities.³⁸ Similarly, pastoralist communities and nomadic or semi-nomadic tribes are often neglected in terms of access to services.³⁹ Roma or traveller populations in many European countries do not have access to water and sanitation that is equivalent to that enjoyed by the majority population⁴⁰, while scheduled castes experience discrimination in access to water and sanitation in some South Asian countries.⁴¹ Moreover, scheduled castes are habitually forced into the most menial, socially degrading, dirty and hazardous jobs, such as working as manual scavengers or sweepers (emptying toilets by hand).

As far as discrimination to persons with disability is concerned, Persons with disabilities are disproportionately represented amid those who need access to safe drinking water and

³³ Adele J. Kirschner, *The Human Right to Water and Sanitation*, 15 MAX PLANCK Y.B. U.N. L. 445, 460-61 (2011).

³⁴ International Convention on the Elimination of All Forms of Racial Discrimination, opened for signature Mar. 7, 1966, 660 U.N.T.S. 195, Art. 5(e) (entered into force Jan. 4, 1969).

³⁵ Comm. on the Elimination of Racial Discrimination, General Recommendation 20, The guarantee of human rights free from racial discrimination, 48th Sess., 1996, U.N. Doc. A/51/18, annex VIII at 124 (Mar. 8, 1996).

³⁶ Safe Water Alliance et. al., United States’ Compliance with the International Convention on the Elimination of All Forms of Racial Discrimination, A Report Submitted to the Committee on the Elimination of Racial Discrimination in its 85th Session, 4 (August 2014).

³⁷ CESCR, General Comment No. 20, 2009 (E/C.12/GC/20), para. 19.

³⁸ Independent Expert on the issue of human rights obligations related to access to safe drinking water and sanitation, Catarina de Albuquerque, Mission to Costa Rica, 2009 (A/HRC/12/24/Add.1), para. 48.

³⁹ See S. L. Murthy and M. K. Williams, The complicated nature of stigma: Realizing the human rights to water and sanitation for Bedouins in the Negev, Israel – Submission to the Special Rapporteur on the human rights to water and sanitation (2012):

<http://www.ohchr.org/Documents/Issues/Water/ContributionsStigma/academia/StigmaSubmissionBedouinsrael-SMurthyWilliams.pdf>. (accessed on Apr. 01, 2020).

⁴⁰ UN Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, Catarina de Albuquerque, Mission to Slovenia, 2011 (A/HRC/18/33/Add.2), para. 33.

⁴¹ Independent Expert on the question of human rights and extreme poverty, Magdalena Sepúlveda Cardona and Independent Expert on human rights obligations related to water and sanitation, Mission to Bangladesh, 2010 (A/HRC/15/55), para. 25.

sanitation⁴². Water and sanitation facilities may not be designed to just the needs of persons with disabilities. A case study in Ethiopia exposed that the entrances to toilets are frequently too narrow for wheelchairs, forcing individuals to crawl or bask themselves on the floor to reach the toilets.⁴³

In Latin America, Mexico enshrined a human right to water and sanitation in its national constitution in the year 2012⁴⁴. The reorganization was simultaneously progressive in nature, a formal inductee to a safe, sufficient, affordable, and reliable domestic water supply, and also strikingly superficial, a cosmetic gloss that obscures widening inequalities of access and the boosted traction of neo-liberal reforms in Mexico's water sector. To date, the translation of constitutional mandates into enforceable regulations and real-life action has failed to evident in Mexico, despite expert recommendations and urgent need⁴⁵.

Thus, International human rights law gratifies states to work towards achieving universal access to water and sanitation for all, without discrimination, while prioritizing those most in need. Fulfillment of the human rights to water and sanitation necessitates that the services be accessible, equitably affordable, safe and culturally acceptable.

'Leaving no one behind' is at the heart of the assurance of the 2030 Agenda for Sustainable Development, which intends to permit all people in all countries to benefit from socio-economic expansion and to achieve the full understanding of human rights.

AT INDIA LEVEL

India's requirement on water is critical in arrears to its large agricultural base, the water needs of its billion-plus population, and the current economic growth trends. Despite the plethora of material on environmental law, legal scholarship on water law in particular has been negligible. This timely work pieces together crucial legislative instruments and strategy documents to provide an overarching picture of the legal regime and regulations associated to water in India.⁴⁶

For the purpose of admission to water justice, the right to 'pollution free water' and the right of admittance to 'safe drinking water' has been read as a part of 'Right to Life' under Article 21 of the Constitution of India⁴⁷. This has been possible for the reason that of a liberal and activist interpretation of the fundamental right to life by the Supreme Court as well as the High Courts of the republic in series of cases before them.

The Constitutional and legislative framework for admittance to water evenhandedness presents a complex picture of division of powers and responsibilities as regards to water resources in

⁴² CATARINA DE ALBUQUERQUE, REALISING THE HUMAN RIGHTS TO WATER AND SANITATION: A Handbook by the UN Special Rapporteur , 2014.

⁴³ J. Wilbur, Principles and Practices for the Inclusion of Disabled People in Safe Sanitation – A Case Study from Ethiopia WATER AID 11 (2010).

⁴⁴ Meehan, Katie, *Water Justice and the Law in Latin America*, 54(2) LATIN AMERICAN RESEARCH REVIEW 517–523 (2019).

⁴⁵ Alejandra Rabasa, Anaid Velasco, and Xavier Martínez, *La instrumentación del derecho constitucional al agua en México: Recomendaciones para su regulación* (Mexico City: Centro Mexicano de Derecho Ambiental A.C. and the Environmental Law Institute, 2014).

⁴⁶ PHILIPPE CULLET & SUJITH KOONAN, WATER LAW IN INDIA: AN INTRODUCTION TO LEGAL INSTRUMENTS (Oxford University Press, 2019).

⁴⁷ Article 21 of The Constitution of India, 1950 - "no person shall be deprived of his life and personal liberty except according to the procedure established by law".

India. The State government has the power to make laws in respect of water resources existing in that state subject to conditions and limitations laid down by Parliament from time to time⁴⁸.

The apportionment of responsibilities between the Centre and the States in greetings of laws to be made fall into three categories –

- i) The Union List (List – I)
- ii) The State List (List –II)
- iii) The Concurrent List (List –III)

Subject of ‘water’ is a matter at Entry 17 of List –II, i.e. State List. This Entry is subject to the provisions of Entry 56 of List –I, the Union List. The specific provisions in this regard are as under:

LIST - I UNION LIST

Entry 56. Regulation and development of inter-State rivers and river valleys to the extent to which such regulation and evolution underneath the control of the Union is declared by Parliament by law to be expedient in the public interest.

LIST - II STATE LIST

17. Water that is to say, water supplies, irrigation and canals, drainage and embankments, water storage and water power subject to the provisions of Entry 56 of **List - I**.

Article 262 of the Constitution deals with adjudication of water disputes. The provisions in this regard are:

ARTICLE 262 (1)

Parliament may, by law, provide for the adjudication of any quarrel or complaint with respect to the use, distribution or control of the waters of, or in, any inter-State river or river valley.

ARTICLE 262 (2)

Notwithstanding anything in this Constitution, Parliament may, by law, provide that neither the Supreme Court nor any other court shall exercise jurisdiction in respect of any such dispute or complaint as is referred to in clause (1).

The Central Legislation so far indorsed under the above Constitutional provisions consists of 4

Acts, three under Entry 56 of List –I namely,

- i. The River Boards Act 1956
- ii. Betwa River Board Act 1976
- iii. Brahmaputra Board Act 1980
- iv. The Inter-State River Water Disputes Act, 1956

Several state legislations are also edged for water management and proper supply of drinking water to the users. They are:

- i. The Andhra Pradesh Farmers’ Management of Irrigation Systems Act, 1997;

⁴⁸ Aman Mishra, *The Right to Water in India: Changing Perceptions*, 2(4) INTERNATIONAL JOURNAL OF RESEARCH IN HUMANITIES AND SOCIAL STUDIES 1-5 (2015).

- ii. Madhya Pradesh Sinchai Prabandhan me Krishkon Ki Bhagidari Adhiniyam, 1999;
- iii. The Tamil Nadu Farmers' Management of Irrigation System Act, 2000;
- iv. Kerala Irrigation and Water Conservation Act, 2003;
- v. Orissa Pani Panchayat Act, 2002;
- vi. Karnataka Irrigation Amendment Act, 2003;
- vii. Maharastra Management of Irrigation System by Farmers Act 2005;
- viii. The Chhattisgarh Sinchai Prabandhan Me Krishkon Ki Bhagidari Adhinyam, 2006;
- ix. The Uttar Pradesh Participatory Irrigation Management Act, 2009. Maharashtra Water Resources Regulatory Authority Act, 2005
- x. The Karnataka Ground Water (Regulation for protection of sources of drinking water) Act, 1999;
- xi. The Kerala Ground Water (Control and Regulation) Act, 2002;
- xii. The Andhra Pradesh Water, Land and Trees Act, 2002;
- xiii. The West Bengal Ground Water Resources (Management, Control and Regulation) Act, 2005;
- xiv. The Himachal Pradesh Ground Water (Regulation and Control of Development and Management) Act, 2005.

For the very first time a Central Environmental Tribunal was established in the name "National Green Tribunal" under The National Green Tribunal Act, 2010 that came into being as a law in June 2010. The act vests the power in a Tribunal to render relief and compensation to the wounded of pollution and other environmental damage, for restitution of property damaged' and 'restitution of environment'⁴⁹. The Schedule affixed to the Act makes it clear that the National Green Tribunal shall have jurisdiction over cases and violations under the Water (Prevention and Control of Pollution) Act, 1974. Thus the Act creates an enforceable right to claim damages and compensation for all victims of water pollution. This is a sharp departure from the provisions under the existing Water (Prevention and Control of Pollution) Act, 1974 where separately from closing down a polluting industry, cutting its water and power supply, and criminal punishment for those responsible for running it there was simply no right available to the victims of water pollution. The National Green Tribunal Act, 2010 introduces such an enforceable right. The Tribunal is likely to become functional later this year and the way it shapes law and jurisprudence in this area remains to be seen.

The Indian states water laws stated above confers on the owner of the land, the right to collect and set, within his own limits, all water under the land which does not pass in a defined channel. This enables the owner full control of the water beneath his property and he is free to withdraw and use it as he feels appropriate⁵⁰. This right has created a number of problems in circumstances where a farmer can dig deeper tube-wells and exploit large quantity of water thereby depriving nearby landowners from their legitimate rights to have water. It also affects and harms the quality of water because of uncontrolled disposal of industrial waste, sewage and use of chemical pesticides etc.

Thus, these water laws states that water sources are a public asset, under state control, and

⁴⁹ Section 15 of National Green Tribunal Act, 2010.

⁵⁰ Aman Mishra, *The Right to Water in India: Changing Perceptions*, 2(4) INTERNATIONAL JOURNAL OF RESEARCH IN HUMANITIES AND SOCIAL STUDIES 1-5 (2015).

intended for the use of its residents and development of the land. These laws explicitly states that every person is entitled to receive water for his needs. They also deals with the need to protect water sources and prevent their pollution, and polluting water is demarcated as a criminal offence⁵¹.

The Judicial approach to water justice in India evidently showcases the urge of the Supreme Court and various High Courts to shelter the right to water thereby providing basic amenities of life to poorest of poor. There are a number of judgments by virtue of which the Judiciary in India has expressed their concern from time to time.

In *Subhash Kumar v. State of Bihar*⁵², where a release of slush from the washeries into the Bokaro River was petitioned against by way of public interest litigation. the Court initiated that the right to life, as protected by Article 21 of the Constitution of India included the right to enjoy pollution free water.

In *Delhi Water Supply and Sewage Disposal Undertaking v. State of Haryana*⁵³, Apex Court observed that drinking is the furthestmost advantageous use of water and this need is so predominant that it cannot be made subservient to any other practice of water, like irrigation so that right to use of water for domestic purpose would rule over other needs.

POLITICAL STRUGGLE FOR WATER JUSTICE

Water policy is characterized by paradigmatic ideas (nirvana concepts) that socialize through expert networks and figure out how water and society is managed and understood.⁵⁴ Over the past two decades, the concept of ‘water security’ has ascended to global prominence in academic and policy circles, engender numerous United Nations proclamations, national policy authorizations, intellectual deliberations, and a namesake academic journal. Like many rising paradigms, water security agonizes from little agreement regarding its meticulous definition, scope, or analytic approach.⁵⁵

At Global Level

The United Nations Committee on Economic, Cultural and Social Rights passed a pronouncement in November 2002 in kith and kin to a covenant on Economic, Cultural and Social Rights. This framework includes a number of guiding principles in relation to the right to water.

In its Principles on valuing Water, the UN High Level Panel on Water has struggled to hold composed universality and situatedness, acknowledging both that “valuing water means recognizing and considering all the varied benefits and risks provided by water, and surrounding its economic, social, and ecological dimensions as well as its diverse enlightening and religious meanings” and that “Universal admittance to safe drinking water and sanitation is

⁵¹ Tamar Keinan, *Water Justice: Water as a Human Right in Israel*, GLOBAL ISSUE PAPERS, NO. 15, HEINRICH BÖLL FOUNDATION (2005).

⁵² (1991) 1 SCC 598.

⁵³ (1996) 2 SCC 572: AIR 1996 SC 2992.

⁵⁴ François Molle, *Nirvana Concepts, Narratives and Policy Models: Insights from the Water Sector*, 1(1) WATER ALTERNATIVES 131–156 (2008).

⁵⁵ Christina Cook & Karen Bakker, *Water Security: Debating an Emerging Paradigm*, 22(1) GLOBAL ENVIRONMENTAL CHANGE 94–102 (2012).

a fundamental human right” (UNHLPW, 2016). However what looks coherent on paper might generate dissonances in practice. Concepts like remunicipalization or initiatives like the Sustainable Development Goals (SDGs), underpinned by the human right to water, tend to promote governance and infrastructures models based on design historically formed in Europe or North America i.e., access to water through connection to centralized piped networks, that might not work everywhere to safeguard inclusive and universal access to water⁵⁶. As alternatives to fulfill the human right to water, researchers have started to explore new forms of partnerships midst water operators⁵⁷, as well as the role of unconventional sources like bottled and packaged water⁵⁸ or informal vendors.⁵⁹

In looking at welfare states throughout the world it seems that there are at best some common basic aims. If for example, one looks at the Scandinavian countries, or New Zealand, Australia, or Britain, there it seems as though they all attemptt:

1. to ensure the maintenance of employment so as to guarantee the right to live for most of us;
2. to ensure the maintenance of a minimum income at all times;
3. the right to protection and community support when one is incapacitated physically or mentally⁶⁰.

The welfare state shall concern itself not only with protection of our person, property and public order against possible offences but also with maintenance of essential services and utilities (such as, water, sewage disposal, sanitation and public health).⁶¹

So far as political struggle is concerned, the so-called developed nations are not immune to problems of water insecurity. In the United States, with its own particular geography of settler colonialism and racial capitalism, the struggle for secure water access is at the heart of problems in Flint, Michigan, and the unplumbed colonias of the Texas borderlands.⁶² Nearly half a million households in the United States suffer from a nonexistence of piped water access and sewerage, and these households are spatially clustered and disproportionately located in communities of color.⁶³

Latin America was the foremost province to adopt neoliberalism as its hegemonic model, as well as the earliest to develop and implement explicit alternatives. In Latin America, brawls against water privatisation have played an essential role in delegitimising the neoliberal model, such as the ill-famed “Water War” in Cochabamba in 2000 and the constitutional referendum in

⁵⁶ Michelle Kooy & Indrawan Prabaharyaka, *Inclusive Development of Urban Water Services in Jakarta: The Role of Groundwater*, 73 HABITAT INTERNATIONAL 109-118 (2018).

⁵⁷ Aaron T. Beck, *A 60-Year Evolution of Cognitive Theory and Therapy*, 14(1) ASSOCIATION FOR PHYSIOLOGICAL SCIENCE (APS) 16-20 (2019).

⁵⁸ Packaged water refers to drinking water usually packaged and hawked in cellophane or plastic bags.

⁵⁹ Bakker, K., *The “Commons” versus the “Commodity”: Alter-Globalization, Anti-Privatization and the Human Right to Water in the Global South*, 39(3) ANTIPODE, 430–455 (2007).

⁶⁰ DAVID MARSH, *THE WELFARE STATE* 39 (Longman, London, 1970).

⁶¹ S. Waseem Ahmad and M. Ashraf Ali, *Aspects of Justice*, 72(1) THE INDIAN JOURNAL OF POLITICAL SCIENCE 309-315 (2011).

⁶² Malini Ranganathan, *Thinking with Flint: Racial Liberalism and the Roots of an American Water Tragedy*, 27(3) CAPITALISM NATURE SOCIALISM 17–33 (2016); Wendy Jepson & Emily Vandewalle, *Household Water Insecurity in the Global North: A Study of Rural and Periurban Settlements on the Texas-Mexico Border*, 68(1) PROFESSIONAL GEOGRAPHER 66–81 (2016).

⁶³ Meehan, Katie, *Water Justice and the Law in Latin America*, 54(2) LATIN AMERICAN RESEARCH REVIEW 517–523 (2019).

Uruguay in 2004 (Kohl and Farthing 2006, Taks 2008). Thanks to these and other struggles that pursue to defend water as a human right and common good, Latin America has altered from being a region in which the neoliberal model was dominant to a territory of hegemonic instability in which alternatives are being hunted and contested (Sader 2009). For this reason, the world is looking to Latin America for alternative models of service delivery, which challenge the commercializing logic of neo-liberal capitalism⁶⁴.

In Latin America, Mexico is not alone in its paradoxical situation of law as the arbiter of water justice. Across the hemisphere, a classification of experimental policy reforms and imaginative pawn practices has established Latin America as a continental strength in global water policy-making. Countries like Mexico and Brazil have institutionalized notions like decentralization and participatory watershed councils even as they facilitate private sector participation and market creep in water. Chile continues to serve as the world's artwork child for water rights as tradable commodities, despite the tenacity of local costumiers that collectivize water management and rip the market right out of the Chilean model⁶⁵. Programs like Ecuador's Pachamama or Bolivia's Buen Vivir vaccinate radical new ontologies into water policy, refusing distinctions between people and landscape and prioritizing water for life and good living.⁶⁶ Yet in Bolivia, constitutional reforms are still wedded to a state-run that does not appear separated from neoliberal interests and powerful interests that stand-in the selfsame conditions of water insecurity. Indeed, comprehending the human right to water and sanitation in Latin America has not been antithetical to amplified private sector involvement.⁶⁷

Water also affects social and cultural issues, such as gender and income inequality. Since women are traditionally the family members responsible for the retrieval of water, women end up spending many hours of their day collecting water (many times still from polluted or unclean sources) for their family's survival rather than working outside the home or pursuing education. When people must devote such a large portion of their time procuring rudimentary resources such as water, their ability to better their situation through work or education becomes even more limited. This means that the poorest people in the world remain poor, as long as they are struggling daily to acquire water⁶⁸.

Probably the most heart wrenching characteristics of the global water crisis is its disproportionate consequence on children. Clean water, basic toilets and good hygiene practices are essential for the survival and development of children. The United Nations Children's Emergency Fund (UNICEF) in its 2019 updated report, shows that in 2017, the population using safely accomplished drinking water services increased from 61 per cent to 71 per cent. Today, there are around 2.4 billion people who do not use improved sanitation, and 663 million who do

⁶⁴ Abers, R., From Clientelism to Cooperation: Local Government, Participatory Policy, and Civic Organizing, 26(4) POLITICS AND SOCIETY 511–538 (1998).

⁶⁵ Carl J. Bauer, Siren Song: Chilean Water Law as a Model for International Reform (Washington, DC: Resources for the Future, 2004); Manuel Prieto, *Practicing Costumbres and the Decommodification of Nature: The Chilean Water Markets and the Atacameño People*, 77(1) GEOFORUM 28–39 (2016).

⁶⁶ María Cecilia Roa-García et. al., *Water Law in the Andes: A Promising Precedent for Challenging Neoliberalism*, 64(1) GEOFORUM 270–280 (2017).

⁶⁷ MADELINE BAER, *STEMMING THE TIDE: HUMAN RIGHTS AND WATER POLICY IN A NEOLIBERAL WORLD* (New York: Oxford University Press, 2017).

⁶⁸ Lall, U., Heikkila, T., Brown, C., & Siegfried, T. (2008). *Water In The 21st Century: Defining The Elements Of Global Crises And Potential Solutions*, 61(2) JOURNAL OF INTERNATIONAL AFFAIRS 1-17 (2008).

not have access to improved water sources⁶⁹.

According to World Water Development Report, 2019, Global water demand is expected to endure increasing at a similar rate until 2050, accounting for an increase of 20 to 30% above the current level of water use, mainly due to rising demand in the industrial and domestic sectors. Over 2 billion people live in countries experiencing high water stress, and about 4 billion people experience severe water scarceness during at least one month of the year. Stress levels will continue to increase as demand for water grows and the effects of climate change intensify⁷⁰.

Thus, it can be said that Environmental or livelihood struggles contributed to revealing the contested and political nature of water. The plurality of worldviews, ideologies, interests and discourses associated to water are manifested in countless conflicts and negotiation procedures aimed at solving competing entitlements at the level of households, distribution systems, watersheds or river basins⁷¹. The expression of these competing claims also laid bare the asymmetries of power amongst stakeholders or interest groups, showing the skintight interrelationship between the circulation of water and that of money and power as well as the pervasiveness of cross-scale interactions in aquatic social ecological systems⁷².

At India Level

Undersupplied access to improved water has been a frequent challenge for many Indian cities, where residents have to brick with daily shortages.⁷³ The challenges of implementing decentralization in water service delivery, nevertheless, have been enormous. The maintenance of central switch through regulation and funding by the federal and Union governments, the inadequate dimensions to perform decentralized functions effectively by local governance, and the continued prohibiting of the poor from influence over the decisions affecting their welfare, are among the main obstacles and matters associated with decentralization and institutional changes⁷⁴.

There are certain policies developed by the Government of India in which the initiatives aimed at water resource management are defined to overcome the challenges.

The first National Water Policy (NWP) in India was approved in 1987 and updated in 2002 and 2012 by the Ministry of Water Resources (MoWR 2002, 2012b). The main policy variations have been in relation to the prioritization of water uses, starting with drinking water, and trailed by irrigation, hydropower, ecology, agro-industries and other subdivisions (MoWR 2002, 2012b). Furthermore, in India's national water policies, water is preserved as "a prime natural reserve, a basic human need and a precious national asset" (MoWR 2002:1), as well as an "economic good, so as to indorse its conservation and efficient use" (MMR 2012b:6). In none of the policies since 1987 is the right to water protected, despite the fact that India was among the countries elective

⁶⁹. Available at <https://www.unicef.org/reports/progress-on-drinking-water-sanitation-and-hygiene-2019> (Accessed on Apr. 02, 2020; 11.05AM).

⁷⁰. United Nations World Water Development Report, published on March 19, 2019; available at <https://unesdoc.unesco.org/ark:/48223/pf0000372985.locale=en> (accessed on Apr. 03, 2020).

⁷¹. Francois Molle, *Water, politics and development: Introducing Water Alternatives*, 1(1) WATER ALTERNATIVES 1-6 (2008).

⁷². F Molle, *River-Basin Planning and Management: The Social Life of a Concept*, 40 (3) GEOFORUM 484-494 (2009).

⁷³. Nastar, M., *What drives the urban water regime? An analysis of water governance arrangements in Hyderabad, India*. 19(2) ECOLOGY AND SOCIETY 57 (2014).

⁷⁴. *Ibid.*

for the United Nations General Assembly Resolution in 2010, which documented access to clean water and sanitation as a human right.⁷⁵

CHALLENGES TO RURAL WATER SUPPLY

Drought is a commonplace occurrence in India, with 25 years of widespread drought chronicled over the past 123 years (Sivasami 2000) leading to the rural water catastrophe in India expatiating the dearth of sustainability and equity in natural resource access.⁷⁶

The continued incidence of severe water inadequacy in rural India suggests that an alternative is looked-for to the standard government response. This alternative must focus on fluctuating crop and water distribution patterns, not just exploiting novel sources⁷⁷.

To tackle the overhead mentioned challenges in rural areas, Indian government came up with several rural water management policies such as Accelerated Rural Water Supply Programme (1972) was the first such national level policy framework for water supply in rural areas. Under Rural Water Supply- Swajaldhara and National Rural Drinking Water Programme 2010, Swajal project led to the formation of Swajaldhara guidelines. The guidelines adopted and implemented the principles of community participation and decentralization⁷⁸.

KEY POLITICO -LEGAL ISSUES AND CHALLENGES

Lack of awareness about the law and policy framework is still a most important issue in India. The lack of public participation in law and policy making process is a collateral impression of lack of general awareness. Mostly, law and policy making process trail a top-to-bottom approach where people are at the receiving end having no part to play in the bordering of norms and regulations. This situation is worse in rural areas where significant number of people cannot read and write. In this context, it could be said that the idea of public reference or consultation in the law and policy making process mean hardly anything to rural people. This means, a lot of effort needs to be put to make a bottom-to-top formulation of work in law and policy making technique.

Gender and caste are two significant aspects to be given adequate attention in the law and policy framework related to water and sanitation. Women and lower caste people are quite often unattended sections. While there are surplus of studies arguing that women can play crucial and effective role in water resource management and development, they are frequently no where in the picture of framing and implementation of various policies and schemes.

So, the major state of affairs before governments in providing water justice is:

1. To generate mass awareness regarding vital human rights to water as guaranteed by the Constitution of India and affirmed by the Supreme Court of India and several high courts.
2. Lack of Community Participation in the decision production and implementation process.
3. Lack of Community mobilization and sensitization towards water rights and laws related to it.

⁷⁵. Resolution A/RES/64/292. United Nations General Assembly, July 2010.

⁷⁶. Roopali Phadke, *Assessing Water Scarcity and Watershed Development in Maharashtra, India: A Case Study of the Baliraja Memorial Dam, Science, Technology, & Human Values*, 27(2), SPRING 236-261 (2002) .

⁷⁷. Blaikie, P., *A Review of Political Ecology: Issues, Epistemology and Analytical Narratives*, 43 JOURNAL OF ECONOMIC GEOGRAPHY 131 (1999).

⁷⁸. Rakesh Kumar et. al., *Water resources of India*, 89(5) CURRENT SCIENCE 10 (2005).

4. Inadequate consideration given to the local setting⁷⁹.

CONCLUSION AND SUGGESTIONS

Thus, we are aware that water justice will not happen as a result of accurate conception and philosophies, and that it cannot be legally engineered or donated by policy makers. It instead calls for the interdisciplinary co-creation of knowledge, involving mutuality and reciprocity among water users, policy makers, activists and scientific communities. It starts with taking earnestly, and developing awareness of, the many manifestations of injustice, from brutal water grabs to much more elusive politics of disciplining and normalization. It involves the critical questioning of official water truths and their claims to rationality, efficiency, democracy and equity. In the end, though, modification will only happen through critical engagement and solidarity with those who undergo injustice. It importantly consists of attempts to creatively link demands for redistribution with those for cultural acknowledgment; of efforts to improve the political participation of those who are excluded or whose voices are silenced; and of actively interweaving diverse struggles for water justice across context, differences and scales.⁸⁰ It is suggested that resolving issues of geographic partiality will help to address the relatively controlled focus on issues of Water Justice. Addressing issues of power, equity, and justice is becoming increasingly crucial in tackling the water governance challenges that are provoked by the effects of climate change, industrialization, and urbanization. Government actions at all levels will be required to realize the human right to water in India and effective advocacy by civil society organizations, coalitions and networks will play an essential role in motivating those inaction.

As a result, we anticipate that lawyers and community leaders across this country will continue to diagnose the use of the human right to water as a tool for addressing all sorts of water-related problems. We hope that this research will assist those efforts. So, We can say that water justice is recognized to pretense some very pressing questions in the near future.

⁷⁹. PHILIPPE CULLET, ROOPA MADHAV & USHA RAMANATHAN (EDS.), WATER GOVERNANCE IN MOTION: TOWARDS SOCIALLY AND ENVIRONMENTALLY SUSTAINABLE WATER LAWS (New Delhi: Cambridge University Press, 2010).

⁸⁰. Margreet Z. Zwarteveen & Rutgerd Boelens, *Defining, Researching and Struggling for Water Justice: Some Conceptual Building Blocks for Research and Action*, 39(2) WATER INTERNATIONAL 143-158 (2014).