

DISCUSSING THE 'HUMAN RIGHT TO WATER IN INDIA': GENESIS FOR DEBATE?

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ABSTRACT

The spontaneous and ethical answer to the question, is clean freshwater a '*basic human right*'? is affirmative in general, but unfortunately the legal response is unsettled. The *right to water* is highly debatable and has secured itself top priority in the agenda of national and international organizations. Due to the vitality of the resource and its overarching impact on various sectors of life, its categorization becomes daunting within the legal perspective. Its importance is undeniable and unanimously accepted at the global level, but the manner and technique to master the art of securing the '*human right to water for all*' is yet to be conquered. The realization of the '*right to water*' is unique, as its realization is restricted by the fact that the fair and equitable distribution of the resource depends on its availability that to in sufficient quality and quantity. Thus, the conservation and restoration of the resource needs to be governed in a manner so that the laws and policies dealing with the resource are coherent and sustainable. Therefore, this paper argues that the governance of the resource and the rights-based approach for its realization are complementary to one another. It will emphasize the judicial interpretation of *right to water* in India and will attempt to project the common links between the governance of the resource and the realization of the right by strengthening the commonalities observed in their evolutionary path and the manner in which they understand the resource.

Keywords: freshwater, governance, human right to water in India, International law, judicial interpretation of right to water in India, management and policy.

1 INTRODUCTION

The *right to water* is highly debatable and secures itself top priority in the agenda of the national and international organization's [1]. The situation in India is complicated as the *right to water* is not recognised as the right by the legislature in any statute or the constitution itself, but interpreted by the judiciary from the existing fundamental rights in different cases brought before it. Therefore, the status of the right, its legal standing and the means for its realisation could not be compartmented into the right and duties of the different departments or the institutions involved in governance of the resource. The importance of the right is undeniable and unanimously accepted at the global level [2] but the manner and technique for securing the '*human right to water for all*' is yet to be conquered. Although, recognition of the *right to water* could be translated as the obligations of the states to fulfil their positive obligations for the realisation of right and such realisation raises many concerns, which will be discussed in this paper. Additionally, the link between those concerns and the realisation of the right will be analysed to develop the holistic understanding of the matter in hand.

This paper is designed to explore the link between the management and governance of the resource with the realisation of the *right to water*. To examine the cause, this paper will investigate deeper into the ways the *right to water* has evolved internationally and in India. Because, the Indian judiciary had affirmed the *right to water* the status of *fundamental right* which will be discussed in Section 4 of this paper in detail. This paper will first examine the need and evolution of the *right to water* internationally and will briefly outline the journey for such development. In the following section, it will examine the manner of evolution of the right internationally and in India. By further digging deeper into the cause for such interpretations and evolutions in both the jurisdictions and what could be the possible



consequence and the upcoming possibilities arising from such derivations. The next section of the paper is dedicated to exploring the importance of management and governance of the resource and its importance in realisation of the *right to water*, followed by the conclusion.

2 THE UNITED NATIONS AND THE RIGHT TO WATER

With the changing global scenario and the realisation of the need to confer the *right to water* the status of international human right, the United Nations had initiated the journey to explore the possible horizons for the advent of such right. In 1997, Mr El Hadji Guisse was appointed to draft the working paper on *'protection and realisation of right to drinking water and sanitation for all'*, by the sub-commission on prevention of discrimination and protection of minorities [3]. The decision was mainly influenced by the collective impact of the declaration on the Right to Development; Chapter 18 of Agenda 21 and the international drinking Water Supply and Sanitation Decade. He suggested in the following year that the commission could undertake an in-depth study of the issue and its relationship with enjoyment of other economic, social and cultural rights, due to its complexity and importance in the life of an individual [4]. Subsequently, the Human Right commission authorised the sub-commission to appoint Mr El Hadji Guisse as the Special Rapporteur in 2002 to conduct the study he had proposed earlier, at both national and international levels [5]. The report submitted by him as the special rapporteur on the subject had clarified the content of the right, as well as, the legal basis for the *right to drinking water* at national and international level. He also submitted the draft guidelines for the realisation of the *'right to drinking water and sanitation'* which resembles to the provisions of the General Comment No. 15 declared after few years [6]. Later in 2007, the High Commissioner for Human Rights (hereinafter UNCHR) submitted the report to the Human Rights Council (hereinafter HRC) as requested by the decision of 2/104 on 27 November 2006. The study affirms that the *'UN High Commissioner for Human Rights believes that it is now the time to consider access to safe drinking water and sanitation as human right, defined as the right to equal and non-discriminatory access to sufficient amounts of safe drinking water for personal and domestic use including – drinking, personal sanitation, washing of clothes, food preparation and personal and household hygiene- to sustain life and health'* [7].

Consequently, HRC appointed Ms Catarina de Albuquerque as an independent expert in September 2008 for the term of three years to take further the study of the *right to water* and prepare a compendium of best practices related to *access* of safe drinking water, to accomplish the MDGs (Goal 7 in particular) [8]. The HRC recalled the assembly resolution of 15/9 of 2010 and affirmed that *'the human right to safe drinking water and sanitation'* is derived from *'the right to highest attainable standard of physical and mental health'*, as well as from the *right to life and human dignity'* [9]. In March 2011, her tenure was extended by the HRC and she became Special Rapporteur for the *'human right to safe drinking water and sanitation'*, where she was concerned with the challenges and obstacles to the full realisation of *right to water* [10], mainly emphasising on the implementation of the established right in accordance with the specific content [11]. This task was determined to work towards the realisation of the right by taking forward the work done and basing the foundation of the upcoming work by conforming the existing data and its relevance. During her work, she touched upon several related issues and developed comprehensive base for the realisation of right, her work was compiled in the form of the annual report [12] and the Handbooks. The handbooks were in the form of 9 booklets each comprising of the topic related with the *right to water* and its realisation along with the detailed guidelines used for the realisation of the *human right to water and sanitation* [13]. Additionally, the book on good practices was



the result of collective learning experience from across the world. The fact-sheet on *right to water and sanitation* and the benefits of legal entitlements associated with such right were some of other contributions for general use of public [14].

In the last two decades of the work of the special rapporteurs from 1997–2015, had created phenomenal advancement in the understanding of *right to water and sanitation* at every possible level. The last few decades had not only been dedicated for the development and realisation of the *right to water*, but its importance, need and awareness have all together progressively achieved in various aspects. Additionally, the global momentum has been set for the cause because of the activities of the past. Finally, on 17th December 2015 UN's had adopted the resolution recognising the right for the '*human right to safe drinking water and sanitation*' [15]. Subsequently, on 25th December 2015, the Sustainable Development Goals 2030 were adopted with Goal 6 specifically dedicated to clean water – '*to ensure availability and sustainability of water and sanitation for all*'. Along with this, the advancement of international literature on freshwater resource in the form the 1997 United Nations Watercourse Convention and the Berlin Rules of 2004 for the regulation of freshwater had created the comprehensive database for the regulation and governance of the resource based on customary principles of international law. The understanding and the importance of the legal principle for the regulation of the resource and for the realisation of the right as well as its recognition had created global impact. Which has subsequently inspired the manner these rights and responsibilities could be addressed and taken to the next level.

The means, mechanism to master the governance of the resource is backed by the legal development in the field and the content of the right and the manner for its realisation are settled by the work of the United Nations. Additionally, the sufficient reliable data is present in national and international level to initiate the process and to determine the path they wish to follow to reach to the desired end [16]. For the realisation of internationally recognised human rights the political will of the states plays an important role, because the states are ultimately the primary duty bearer and custodian of such rights. Evidently, the recognition of the *right to water* in constitution of states or their recognition at national level by recognising them as part of their legislative statute had been proven as the most promising manner for the realisation of such right. For example, the constitution of South Africa has explicitly mentioned the *right to water* in its constitution and the Indian Constitution has derived its presence from the existing fundamental right of *right to life* [17]. Recognition at state level is promising because, on one hand it can be managed, enforced and monitored at local level as per the need of the society and on the other hand, it becomes easier for the individuals to accept such rights and reach to the court of law for their enforcement. Henceforth, the following sections will analyse the manner of evolution of such right internationally and its recognition and progressive realisation in domestic context limited to jurisdiction of India.

3 EVOLUTION OF THE 'RIGHT TO WATER'

The need for emerging *right to water* seems to have aroused due to the limited availability of the resource and its utility in every dimension of human life. Making it desirable to investigate the importance of conferring legal status to the *right to water* in national and international domain. Along with this the pattern of emergence of right and its acceptability will also be considered.

The legal status of the *right to water* in international law is argued to be arising from explicit and implied recognition of rights from the existing human rights instruments available. The explicit recognition of the *right to water* is evident from the recent human right treaties such as, the Convention on the Elimination of all forms of Discrimination against Women [18]; the Convention on the Rights of Child [19]; and the Convention on the



Rights of Persons with Disabilities [20]. And the implicit recognition of the *right to water* is mainly argued to have its relevance from the *right to life* and the *right to adequate standard of living* originating from International Human Rights instruments such as, Universal Declaration of Human Rights (1948) [21]; International Covenant on Civil and Political Rights (1966) [22]; International Covenant on Economic, Social and Cultural Rights [23]. These conventions confer international obligations on the parties to work towards accomplishment of the duties specified in the documents they are party to. However, the explicit recognition is for the targeted individuals who are beneficiary to the conventions mentioned above such as: women, children's and person with disabilities respectively and the implicit recognition is for all as those are the convention or treaties having universal recognition and equally applicable to all the human beings, unless restricted by law. But it is interesting to note that recognition of both the types mentioned above has already recognised the *right to water* in one form or the other. Therefore, it can be understood as the recognition has only ascertained the right a legal status, which perhaps initiates the implementation but certainly that does not guarantee the realisation as such.

The international community in that regard is having a tough time placing the *right to water* in one of the assigned category, as some argue in favour of its placement in UDHR; ICCPR or ICESCR due to its implicit recognition. Whereas, others question the placement on the ground that, what this right will mean on part of the local governing body and regarding the manner they must be realised? Even if they are placed in stated convention's above or the charter itself. The dilemma seems obvious given the panoply of interdisciplinary aspects it touches upon, because recognition of right is one thing and realisation of the right is another. Moreover, the realisation requires the availability of the resource and its firm and equitable management. The rights conferred in above stated instruments are protected by law in case of their infringement, but the instruments are silent regarding conferring such rights by recognising positive obligation on the part of the local governing body. For the realisation of the *right to water* mere declaration of right is not sufficient but requires the government to act positively for its realisation by fulfilling their positive obligations in their regard. This exactly has been the bone of contention regarding the *right to water* and its placement in available legal instruments. Additionally, the physical availability of the resource, its finite quantity and vital nature further contribute to the growing concern. If we analyse the situation, we could argue that one of the prominent reason for non-realisation of such right or conferring positive obligation which impose strict obligatory duties of the bodies conferring it, is non-availability of the resource or the lack of confident means and mechanism on part of the body entrusted to fulfil such obligations.

The implicit recognition of the *right to water* from the *right to life* in international domain and in context of India share analogy in their derivation, objective and the inefficacies felt in their realisation as well. The derivation of the fundamental right: *Right to life-Article 21* in India, does not only confine to mere existence but also guarantees '*right to life with human dignity*' [24]. This phrase (the right to life with human dignity) had been defined extensively by the higher judiciary in various case laws (discussed in section 4), and the extensive elaboration and interpretation given to the word dignity attached with *right to life* is one of the prominent factor for broader interpretation of *right to life* in national jurisdiction [25]. The judiciary has clarified that the *right to life with dignity* does not restrict itself to animal existence, but it extends to the availability of basic-necessities for dignified life of an individual, such as: food, shelter, water, education, free movement and so on [26]. However, '*Article 21-Right to life*' in Indian Constitution is worded in negative terms, but the judicial interpretation in various case laws have made the right inclusive of several other dimensions of life giving it true purpose. Indeed, clarifying that the article surely has both negative and



affirmative dimensions attached to it, thus conferring origin of positive rights or obligations from such fundamental rights (Jain [27]). Therefore, it is important to analyse what could be the legal and pragmatic consequence for the *right to water* in India and its derivation as the fundamental right in that regard?

4 JUDICIAL INTERPRETATION OF THE RIGHT TO WATER IN INDIA

Indian Constitution is the result of relevant borrowed principles from across the world. Since after independence the primary goal for the framers of Indian Constitution was to protect and cherish the freedom acquired after the prolonged colonial rule. As a result, the diverse set of principles from across the world were incorporated to safeguard the interest of diverse community. To protect the citizens and to facilitate the development of nation as an independent and strong nation it became the necessity to protect the true sense of the object and purpose of the constitution by means of an independent judiciary [28]. Judiciary as one of the strong pillars of the democratic nation has served the purpose entirely till date also it represents strong commitment to continue the same. Judicial priorities have continually changed to adapt to the current scenario and they have had modified and amended the existing laws to fulfil the constitutional purpose and to accommodate the change needed in the society [29].

The advancement of fundamental rights for the protection of environmental rights (or so called third generational rights) through means of litigation has been customary from 1970 onwards in India. The protection of such rights by bringing them within the ambit of enlarged interpretation of existing fundamental rights and later development of relevant laws and policies for keeping the promise so made, has have been the real motivation to reframe the administrative and legislative capacities of the government in that regard. Evidently, the recognition of *universal primary education* as an explicitly recognised fundamental right and emergence of separate programme to satisfy the *right to food* for people has been the remarkable achievements made through the means of rights based litigation. Similarly, the Court had interpreted the *right to water* as an integral part of Article 21 (*right to life*). However, the prominent cases in this field cover different challenges regarding the notion of the *right to water* is exposed in the Indian constitutional and legal setup.

In the case of *Subash Kumar vs State of Bihar* [30] the concerned question was that, does the right to pollution free water qualify as one of the parameters arising from the liberal explanation of the notions of Art 21 – *Right to life*. In response to the concern so raised, the Supreme Court (hereinafter SC) has made a statement stating “*Art-21 of the Constitution includes the right of enjoyment of pollution free water and air for full enjoyment of life. If anything endangers or impairs that quality of life in derogation of laws, a citizen has right to have recourse to Art-32 of the Constitution for removing the pollution of water or air which may be detrimental to the quality of life*” ([30], writ petition 1991 AIR 420 (SCC 196/1991)). The SC recognised the *right to water* as interpreted and originated from within the *right to life*, but the recognition so made in this particular case was from the protectionist view point and the protectionism so made was negative protectionism. Which is only applicable against negative interference by third party (inclusive of state). However, the positive obligation of the state for the realisation of such right was not the matter of concern in this case and the petition so made was dismissed on technical grounds, but the clear judicial stand was made on recognition of the *right to water* and its relevance as a *fundamental right*.

In the case of *MC Mehta v Kamal Nath* [31] the SC has directed the use of natural resource in public trust by the state for the people at large. This case has been the landmark judgement as far as the governance of the resource is concerned in conjunction with its realisation as the community resource. Clear recommendations were made for the governing body regarding

the management of the resource, which stated with exclusive clarity '*that, such resource should not be converted into the resource for private ownership in any case*' [31]. Conversely, the judgement again has recognised such right and protected it from negative interference. In this case, the court directed the polluters of groundwater and every other source of water in vicinity not to continue polluting the resource by any direct or indirect means and made very clear the intention of the order passed which considered not amounting to such order as the direct case of violation of fundamental rights. Thus, it again confirmed the existence of the *right to water* as the fundamental right.

In the case of *Coca-Cola vs state of Kerala* [32], the situation is far more complicated and the matter is *sub-judice* on appellate jurisdiction before the SC of India. This case clearly pictures the overarching aspect of proprietary rights to groundwater and its contradicting claim the *right to water* as a fundamental right under Article 21. However, this case is more inclined towards the jurisdictional aspect than on technical questions about realising the fate of the legal right versus constitutional or fundamental right related with the resource. The fact of issue mainly revolves around the authority of the lower administrative functionary working at the village level (the grass-root level) and its jurisdiction to question or cut down the legal authority of the corporate giant in that area, on the piece of land owned by the corporate company. Nevertheless, the matter somehow should have been consistent with the fact that the absolute legal property right of the corporate company functioning in that area is interfering with the normal functioning of the *right to life* of individuals living in that locality. This is due to deterioration of the primary source of water by alteration in its quality and quantity available to the people, which acted as their means of livelihood.

The recognition, confirmation and acceptance of the *right to water* as a fundamental right within the expanded notion of the *right to life* had been explicit by the abovementioned case laws. The apex court of the country has had ascertained the *right to water* as an integral part of the *right to life*, but the recognition so made is in the form of negative right as it is confined to the non-interference with the *right to water* of an individual by the concerned third party: by direct or indirect means. Henceforth it can be said that, the SC has ascertained the *right to water* as the fundamental right but the positive obligation so attached for the enforcement of such rights has not been guaranteed yet. Notwithstanding the fact, that the protection of right from negative discourse is easier and has been the foundation for realisation of all civil and political rights. This means of protection of rights is comparatively easier to be managed by the government in comparison to the positive obligations so imposed for the realisation of the ESC rights [33]. Thus, preferred as the most common practice by the judiciary for the protection of rights.

The recognition of right and its protection against negative interference is settled but that does not mean that the recognition by means of positive obligation is not possible. However, if we look back into the judicial practise, the ESC rights have been first recognised by means of their recognition as a fundamental right and later by means of imposition of positive liabilities/obligations on the government to fulfil them. This type of rights and their recognition takes longer time, due to the negotiation between all the branches of democracy on one hand and on the other to create, deploy and establish the means for their realisation. As it has been observed in the case of *right to food* or *right to primary education*, once the need has been realised by the government, its fulfilment has been progressively achieved by means of rights based discourse. Given the fact, that Indian constitution has accommodated the *right to food and education* (86th Amendment Act 2002, *Constitution of India*), within the ambit of *right to life*, then what makes the *right to water* so different? To answer this question, it is important to analyse the importance of management and governance of the resource.



5 IMPORTANCE OF MANAGEMENT AND GOVERNANCE OF THE RESOURCE IN SECURING THE 'RIGHT TO WATER'

The freshwater resource is finite, vital and un-substitutable; thus, the aspect of management and governance of the resource becomes equally important than that of recognition of right. Alternatively, we can argue that it acts as the prerequisite for the realisation of the *right to water*. As we have noticed that the declaration of the *right to water* or ascertaining the *right to water* a legal status in international or national domain is oriented towards fulfilment of the demand for the resource in sufficient quality and quantity. This demand is increasing but the quantum of resource available on the planet is static. Thus, the management, conservation and governance of the resource becomes the key aspect prior to the demand fulfilment; which is based on the two prominent factors. The one being physical availability of the resource and the other being management of the resource where it can be reused, treated and directed towards further use [34]. Therefore, in addition to conservation and wellbeing of the resource the other factors contributing toward its wellbeing must also be considered. This is multidisciplinary and mammoth task to be done, which remains inchoate, if the development of freshwater laws and governance techniques are not concerned and learned from [35].

To work this idea for the management and governance of the resource it need to consider two prominent factors: alignment of the techniques for the management and governance of the resource by the similar principles of law; and the bottom-up approach for the management and governance of resource. Along with the liberty to accommodate the managing techniques keeping in mind the difference in geography, topography, social-cultural and economic dimensions in each area of its application. For that purpose, the advancement of freshwater laws and customary principles of International Law must be considered as the guideline for the advancement of the laws and policies in nationalistic domain [36] and they must be non-derogatory. This assertion to non-derogation from certain principles is required to maintain coherent and sustainable governing and managing techniques on one hand and on the other it will help align the policies in a manner to avoid or at least take into account the transboundary environmental issues.

Secondly, accompanied by the framework of principles to be applied equitably, the flexibility and derogation shall be permitted given the basic framework to be adhered to. This derogation empowers management and governance of an area in accordance to the need and availability of the resource. Therefore, it has been suggested that the policies must be designed and evolved at the source and the approach must be bottom-up [35]. When these approaches evolve within the well-set parameters of law, it will flourish keeping the need of another component of environment and the adjoining jurisdiction in mind. Resulting in coherent policies and mechanism for the governance of the resource. This paper argues in favour of both the prescribed means for the management and governance of the resource and rest assured that this sort of technique for the management and governance of the resource could assist in realisation of the *right to water* indubitably. Since these are the principles to be adhered to, they carry strong persuasive strength backed-up with rich legal and scientific research and confirmation by the international community. However, the environmental principles are soft law principles, but they act as the law of nature and because of this they need not to be imposed but educated with [37]. Therefore, once these principles are translated into laws and practices in domestic environment giving them persuasive strength of law and incorporating it within the aspect of policy making and governance, it becomes easier to transform and evolve the culture of freshwater regulation in practical terms.



6 CONCLUSION

To conclude the findings of this paper it is safe to say that the recognition and implementation of the *right to water* largely depends on the availability of the resource. And in the absence of the resource in sufficient quality and quantity the realisation of right will have to suffer. If we consider the rights based mechanism, it usually guarantees negative rights, but the economic social and cultural rights demand positive obligation from the governing body for their fulfilment. However, the implication of assertion of positive obligation for the realisation of the *right to water* is important but different from all other rights from that group. Because, this kind of positive implication further divides the *right to water* in two separate dimensions of demand and supply; where demand aspect is held with realisation of the right and the supply aspect of it is dealt with the management and governance of the resource which ensures the availability. They complement each other and one cannot survive or flourish in weak presence of another. Therefore, it is believed and argued in this paper, that the positive obligation imposed with the *right to water* must adhere to the strict standards of management and governance of the resource. This adherence will strengthen and guide the management and governance of the resource on one hand and on the other it will make a persuasive case for the realisation of right. The lack of management and governance of the resource has been one of the biggest drawback in realisation of the *right to water*. For instance, if we consider that the state has good means to manage and govern the resource which ensures sufficient and good quality of available resource in hand, it becomes easier for the state to confer and guarantee such rights as fundamental right or human right to its subjects. Therefore, the strong management forms the prerequisite to manoeuvre the world for ascertaining the *right to water* the status of human right.

To comment on the specific case of India in consideration, it can be presumed given the pro-active judiciary especially for the environmental concerns that, if India possessed such means of mechanism and governance which have been discussed in this paper or the one which could have assured the availability of the resource to cover the demand in hand. It would have declared the positive obligation on part of the government as well, along with the elaborative interpretation and declaration of the *right to water* origination from the fundamental right: *right to life* as discussed above. But this declaration could not be sufficient unless the legislature and the administrative units of the government fulfils their respective obligations in this regard, moreover it is beyond the authority for the judiciary to make that happen without over-stepping the boundaries of the theory of separation of power enriched in the Indian constitution. As the declaration will be of no use without the support from other branches and this was reflected from the past events where the judiciary has made such efforts and the other branches have equally contributed to make them possible. Based on the past events, where higher judiciary had not only declared certain rights to be part of the fundamental rights, but also made amendments and changes in the constitutional text to ensure that the positive obligations so imposed on the part of government gets translated into the enforceable right and duties, respectively [36]. Similarly, this study is optimistic to the assumption that if any state or region has mastered the art of management and governance of the resource, then the realisation of the right does not seem farfetched. The two-fold manner and technique discussed is the art we need to master for making the '*human right to water for all*' a reality.

To master this art, the two branches of international law need to work side-by side which are designed for the same cause. As the development of freshwater laws in international domain started due to rising water crisis and the future projections related with it. Therefore, over the course of last century they have continually examined, researched and evolved with the principles to deal with the water crisis of 21st century [38]. The work of international



organizations is considered putative in that regard. However, the development of freshwater-course law started with different objective, but their lies considerable similarities with the process and object the rights based aspect of the *right to water* came into existence. Both these branches seem to have evolved due to necessity given the rising water crisis and the manner to tackled with them. They have evolved an approach where instead of creating new principles of law or innovative model for its management and regulation, they understood the situation and tried to fix them using the mechanism existing in place. Similar to the rights based framework which consistently insisted on deriving the *right to water* from existing rights in place such as, the *right to life*; the *right to adequate standard of living* and so on and so forth (Alston and Goodman [39]). Moreover, the freshwater laws have evolved to have developed from the existing principles of customary international law. By extensively interpreting the principles in place and designing the new one which can easily fit into the acceptable legal framework [40]. This represents similarity in the manner both the branches have worked, evolved and the approach they have taken. Moreover, it also represents that both the branches have understood the issue in similar manner and have evolved to deal with them using similar coping strategies. Although, this is beyond the scope of this paper to discuss their coping mechanism in detail. But, based on the investigation in this paper is seems obvious that the bifurcation of these two branches has been the sole cause for non-fulfilment of the water crisis and for non-realization of the *right to water* with certainty. Therefore, this paper argues for unification of freshwater laws for governance of the resource and the rights based aspect associated with the *right to water*, as one [34], by incorporating this behaviour of governance into positive obligations associated with the rights based aspect of the *right to water*. As these two branches are not just two sides of the same coin, but they complement each other in a fashion one can't survive or flourish in absence of another. This is to asseverate that these two branches possess the strength to strengthen one another in a way they can manoeuvre the world to recognize and realize the *right to water* for all.

REFERENCES

- [1] United Nations Department of Economic and Social Affairs (UNDESA), International Decade for Action 'WATER FOR LIFE' 2005-15'. <http://www.un.org/waterforlife/decade/index.shtml>. Accessed on: 6 Jan. 2017.
- [2] UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 15: The Right to Water (Arts. 11 and 12 of the Covenant), 20 Jan. 2003, E/C.12/2002/11. <http://www.refworld.org/docid/4538838d11.html>. Accessed on: 4 Apr. 2017.
- [3] Sharmila, L. & Murthy, J.D., MPA, The Human Right(s) to Water and Sanitation: History, Meaning, and the Controversy Over-Privatization, 31 Berkeley J. Int'l Law. 89 (2013). <http://scholarship.law.berkeley.edu/bjil/vol31/iss1/3>. Accessed on: 4 Apr. 2017.
- [4] UN Sub-Commission on the Promotion and Protection of Human Rights, The right of access of everyone to drinking water supply and sanitation services, Working paper by Mr El Hadji Guissé, Special Rapporteur, under Sub-Commission resolution 1997/18, 10 June 1998, E/CN.4/Sub.2/1998/7. <http://www.refworld.org/docid/3b00efbf30.html>. Accessed on: 22 Jan. 2017.
- [5] UN Commission on Human Rights, Report on the Fifty-Eight Session (18 Mar.–26 Apr. 2002), UN Doc. E/CN.4/2002/200,393.
- [6] UNCHR, Realisation of the right to drinking water and sanitation, Report of the Special Rapporteur, El Hadji Guisse (11 Jul. 2005), UN Doc. E/CN.4/Sub.2/2005/25.



- [7] UN HRC, Report of the United Nations High Commissioner for Human Rights on the scope and content of the relevant human rights obligations related to equitable access to safe drinking water and sanitation under International human rights instruments, (16 Aug. 2007), UN Doc A/HRC/6/3, para 66.
- [8] UN HRC Resolution 7/22 (2008) UN Doc. A/HRC/RES/7/22, para 2.
- [9] UN HRC Resolution 15/9 (2010) Resolution adopted by the Human Rights Council 15/9 Human rights and access to safe drinking water and sanitation, A/HRC/RES/15/9.
- [10] UN HRC Resolution 16/2 (2011) UN Doc. A/HRC/RES/16/2, para 5.
- [11] Catarina de Albuquerque, On the right track, good practices in realising the rights to water and sanitation (Human right to water and sanitation special rapporteur with Virginia Roaf. http://www.worldwatercouncil.org/fileadmin/www/Library/Publications_and_reports/OnTheRightTrackBook.pdf. Accessed on: 22 Jan. 2017.
- [12] UN Water, Annual Report of the Special Rapporteur on the Human Rights to Water and Sanitation presented at HCR, 12 Sep. 2013. <http://www.ohchr.org/EN/Issues/WaterAndSanitation/SRWWater/Pages/AnnualReports.aspx>. Accessed on: 22 Jan. 2017.
- [13] UN Human Rights Office of the High Commissioner, *Realizing the human rights to water and sanitation: A Handbook*, <http://www.ohchr.org/EN/Issues/WaterAndSanitation/SRWWater/Pages/Handbook.aspx>. Accessed on: 22 Jan. 2017.
- [14] UN Human Rights Office of the Commissioner of the Human Rights, *The Right to Water: Fact Sheet No. 35*, <http://www.ohchr.org/Documents/Publications/FactSheet35en.pdf>. Accessed on: 22 Jan. 2017.
- [15] UN General Assembly, adopted by the General Assembly on 17 December 2015, 70/169. The human rights to safe drinking water and sanitation A/RES/70/169.
- [16] UN Water, The UN inter-agency on all freshwater related issues, including sanitation. <http://www.unwater.org/>. Accessed on: 6 Jan. 2017.
- [17] Committee on Economic, Social and Cultural Rights, General Comment No. 3: The nature of States parties' obligations (Fifth session, 1990), UN Doc. E/1991/23, Annex III, reprinted in: 'Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies', U.N. Doc. HRI/GEN/1/Rev.6 at 14, 2003
- [18] Convention on the Elimination of All Forms of Discrimination against Women (adopted by General Assembly Resolution 34/180 of 18 December 1979, entered force on 3 September 1981), Article 14, para 2.
- [19] Convention on the Rights of the Child (adopted by General Assembly resolution 44/25 of 20 November 1989, entered force on 2 Sep. 1990), Article 24, para 2.
- [20] Convention on the rights of persons with disabilities (adopted on 13 Dec. 2006 by General Assembly resolution 61/106, entered force on 3 May 2008), Article 28 (2).
- [21] United Nations Universal Declaration of Human Rights, 1948, Article 25 (1): Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.
- [22] UN's Human Right Office of the High Commissioner, International Covenant on Civil and Political Rights Article (Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 Dec. 1966 entry into force 23 Mar. 1976, in accordance with Article 49), Article 6(1).
- [23] UN's Human Rights Office of the High Commissioner, International Covenant on Economic, Social and Cultural Rights (Adopted and opened for signature, ratification



- and accession by General Assembly resolution 2200A (XXI) of 16 Dec. 1966 entry into force 3 Jan. 1976, in accordance with article 27), Article 11 (2) and Article 12.
- [24] Supreme Court of India, Maneka Gandhi V. UOI, AIR 1978 SC 597.
 - [25] Supreme Court of India, Peoples Union for Democratic Republic vs Union of India and Others (1982) AIR 1473, 1983 SCR (1) 456.
 - [26] Supreme Court of India, Francis Coralie v. UT of Delhi, AIR 1978 SC 597.
 - [27] Jain, M.P., *The Constitutional Law of India*, 45th ed., CLA, p. 230, 2008.
 - [28] Seckler, D., Barker, R. & Amaeasinghe, U., Water Scarcity in the twenty-first century. *Water Resource Development*, **1**(2), p. 29, 1999.
 - [29] Bhagwati, P.N., The Role of the Judiciary in the Democratic Process: Balancing Activism and Judicial Restraint. *Commonwealth Law Bulletin*, **18**(4), 1992.
 - [30] Supreme Court of India, Subhash Kumar v. State of Bihar and Ors 1991 AIR 420, 1991 SCR (1) 5; Writ Petition 1991 AIR 420 (SCC 196/1991) (actual quote from judgement).
 - [31] Supreme Court of India, MC Mehta v. Kamal Nath and Others 1997 1 SCC 388.
 - [32] Kerala High Court Perumatty Grama Panchayat vs State of Kerala 2004 (1) KLT 731.
 - [33] Akandji-Kombe, J.-F., *Positive Obligations under the European Convention on Human Rights: A Guide to the Implementation of the European Convention on Human Rights*, *Human Rights Handbooks*, No. 7, 2007.
 - [34] Murillo Chavarro, J., Extraterritorial obligations to ensure the enjoyment of the human right to water in a transboundary context. *Human Rights and International Legal Discourse*, **1**, 2015.
 - [35] Laban, P., Accountability and rights in right-based approaches for local water governance. *Water Resource Development*, **2**, p. 355, 2007.
 - [36] United Nations Watercourses Convention Online User's Guide, 2014.
<http://www.unwatercoursesconvention.org/news/united-nations-watercourses-convention-enters-into-force/>. Accessed on: 21 Jan. 2017.
 - [37] Wiener, J.B., Something borrowed for something blue: Legal transplants and the evolution of global environmental law. *Ecology Law Quarterly*, p. 1295, 2001.
 - [38] International Law Association, Report of the 71st Conference 3, 2004; 71 ILA 337, 385, 2004.
 - [39] Alston, P. & Goodman, R., *International Human Rights, The Successor to International Human Rights in Context*, OUP, p. 287, 2013.
 - [40] International Law Association, Water Resource Committee, 'Berlin Rules (2004)'.
http://internationalwaterlaw.org/documents/intldocs/ILA_Berlin_Rules-2004.pdf.
Accessed on: 25 Jan. 2017.