

# Right to Water – Commodification of Fundamental Facet of Human Rights in the Era of Globalization - I

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## I. Introduction

### *By means of water we give life to everything*

*The Koran, Book of The Prophets 21:30*

Water is a natural resource; an essential and integral part of universal and earthly environment. It is an essential element and precondition of origin, occurrence and existence of all known life and life forms. It is the predominant component of all life forms – plant and animal, human and non-human including the ill-defined types – in their active and dynamic states. All life forms hence need water for survival and sustenance. It is a condition for their existence. The form, amount and source of water may differ in different species but the need is always present.

Water exists naturally in surface water bodies or as underground reservoirs. The surface bodies - except perhaps in the case of earliest habitations are at a distance from human habitation. Human endeavour is hence necessary to make water available at the point it is to be consumed and utilised – for personal use or for livelihood activities – production, agricultural and non-agricultural. The underground water too has to be discovered and brought to the surface and to places where human beings live and utilise the water. Thus in its utilisable form water generally represents human effort, human activity and human labour. It has therefore been controlled by individuals or collectivises and efforts to bring it to human habitation began.

The age of Capitalism brings about rapid and tumultuous changes not only in social relations of human beings but also in relations of human beings with themselves and with nature. The original harmony and unity with nature is then altered into an extractive and exploitative

relationship that seeks to consume, subjugate, and enslave nature with an arrogant belief in human capacities and powers often born out of abysmal ignorance.

Elements of nature (among other things fish, fauna, flora, mountains, forests, specific climatic conditions, scenic beauty and above all water as water bodies and by itself) are by then converted into factors of production – resources or raw materials. A number of inevitable results follow this apparently simple transformation. Natural riches now resources or raw materials – are then consumed ever more rapidly as if they are inexhaustible with no thought spared for sustainability or renew ability.

The access to them is restricted and a control over them is established. They become object for trade, in other words commodities with a price for the extant or the potential unit. In short this begins a process of commercialisation and privatisation of what was originally a natural object – an element of the environment.

The world is experiencing the scarcity of water. Part of scarcity may be due to natural phenomenal with changes in climate and rainfall. The other reason is the change of utilisation. The scarcity of water is not the actual scarcity but is the uneven distribution (natural or artificial) of the resources of water. This can be solved through proper distribution and utilisation of water. The present era of globalisation has malformed this need of water in the name of scarcity into weakness.

## II. Right to Water

The right to water is fundamental to life and health. Sufficient and safe water is a precondition for the

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realization of human rights. The growing scarcity of freshwater on a global scale has become a matter of grave concern in the present time and the United Nations has also been worried about it, especially after the emerging worldwide trend of trade in water and water bodies. The general principles of law which act as a source for legislative instruments and judicial decisions do prohibits privatisation of water, one such principle is the *Public Trust Doctrine*<sup>1</sup>. This Doctrine is the part of law of our land. The Supreme Court itself has said that the government holds water in India as a trustee on behalf of its people and thus in the public trust. There have been both express and implied references to right to water in both national and international laws.

#### **International Law**

There is an extensive body of covenants and international agreements formally identifying and declaring a range of human rights.<sup>2</sup> The most important of these are the following:

##### *1. Universal Declaration of Human Rights (UDHR), 1948*

In 1948 the General Assembly adopted the text of the Universal Declaration on Human Rights, 1948<sup>3</sup>; Article 25 proclaims: "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..."<sup>4</sup> The question arises that why was "water" not included in this list? Perhaps water was considered to be implicitly included. The debate around the wording makes clear that the specific provisions for food, clothing, housing and so on were not meant to be all-inclusive, but representative or indicative of the "component elements of an adequate standard of living".<sup>5</sup>

##### *2. Convention on the Rights of the Child, 1989*

The recognition of water as a right continued with the Convention of the Rights of the Child (CRC), 1989.<sup>6</sup> Article 24 of the CRC, paralleling Article 25 of the Universal Declaration of Human Rights, provides that a child has the right to enjoy the highest attainable standard of health. Measures taken to secure this right include

'combat [ting] disease and malnutrition ... through, inter alia ... the provision of adequate nutritious foods and clean drinking water'. Paragraph 2 of Article 24 of CRC articulates: "(c) To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution."<sup>7</sup> It also directs the member states to enforce the child rights, "States Parties shall undertake all appropriate legislative, administrative and other measures for the implementation of the rights recognised in the present convention..."<sup>8</sup>

##### *3. Committee on Economic, Social and Cultural Rights, General Comment No.15*

The United Nations affirmed the right to water on 26 November 2002, noting that such a right is 'indispensable for leading a life in human dignity' and 'a prerequisite for the realization of other human rights'. Through its General Comment 15<sup>9</sup>, the Committee on Economic, Social and Cultural Rights of the United Nations Economic and Social Council stated: "the human right to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses..."<sup>10</sup> General Comment 15 is the first to focus explicitly on the right to water and the responsibilities that governments have in delivering clean water and adequate sanitation services to all.

#### **National Law**

The lack of legislative instrument in India has left the room unbolt for the exploitation of water resources. The apt insinuation can be furnished to the existing legislative instruments so as to preserve the right to water and the same has been done by the judiciary.

1. *Constitution of India*: The Article 21 in Part III of the Indian Constitution which guarantees right to life includes right to pollution free water. Article 21 articulates, "No person shall be deprived of

\* National law here is referred to as Municipal Law of India.

