CHAPTER II

RIGHT TO SAFE DRINKING WATER AS A BASIC HUMAN RIGHT

Introduction

Water is essential for life and many people confront daily the situation of inadequate supply of safe drinking water. The inadequacy in the supply and access to water has taken the central stage recently due to the global reflection which is very serious and threatening. Many people, especially in developing countries, daily face enormous hardships because water supplies are neither sufficient nor safe and women are the worst sufferers. Water which is a major factor for the sustainable development in economic, social and environmental field must meet the needs of not only the present population but also of the future generations. While the consumption of water has increased constantly through the years and the number of human beings using and relying on it continuous to multiply at an alarming rate, the amount of water on earth remains finite and constant being that the total supply of water neither grows nor diminishes. It is believed to be the most precious resource now as it was three billion years ago.¹ In this sense there exists a steady and continuing reduction in the amount of freshwater on earth per individual that will inevitably lead to intensified competition for the use of scarce water.² The demand for water stimulates intervention and the facility of obtaining it is increasing the demand. It is perhaps not surprising that the most technically advanced societies consume the water on a per capita basis. The average person living in the United States, for eg, consumes over 70 times as much water annually as the average resident of Ghana.³
Water – Need for a Specific Human Right

One billion people lack access to minimum supply of water. Unclean water and lack of water is leading to premature death worldwide which has necessitated enough reason to take steps to ensure that effective action be taken on behalf of those who suffer greatly. One of the major steps is the recognition of water as a basic human right. The legal obligation that ensures from the acknowledgement of the right to water is a needed precondition to effective action and change. Although the International Community has recognized the right to water as an important component of right to life, millions around the world is denied access to adequate amount of clean drinking water. Pollution of water resources, failure to provide purification and sanitation for the urban poor etc., are some sort of violation of right to safe drinking water. The States by regulating access to water in arid areas control marginalized groups. Recognizing human right to safe drinking water is an important step towards decision making as it is accountable, because the states are under an obligation to provide adequate amount of water for bare necessities. The consumption of water world wide has been doubling every 20 years. Global economic forces have put increasing pressure on developing countries to devote more of their water resources towards industrial use. Water deprivation is a global phenomenon that will only grow more acute as the further demands are placed upon local water resources by industrializing economics. The recognition of water as a basic human right is critical to the healthy survival of the communities in the 21st century.

The need for human right to safe drinking water assumes greater importance in the wake of privatization. Water, which is a global source, is owned by commons. But the
attempt of many countries is to make this common resource a commodity through their policy. \textsuperscript{6} Today, access to clean drinking water has become very scarce due to the human attempts have control over water rights.

**Documentation of Right to Water – An International Perspective**

Human Right to water is not specifically included in many international documents like UDHR, 1948 or in the International Covenant on Civil and Political Rights, 1966 or in the ICESCR, 1966. Nevertheless, the right to water is understood as part of the right to life, as a component of the right to health and as a part of right to food. However, little attention has been given to the question whether there is any specific right to water and if so what are the contours of such right may be. \textsuperscript{8}

With respect to water as part of the right to life, the right to life comprises the right of every human being not to be deprived of his life and the right of every human being to have the appropriate means of subsistence and a decent standard of living. \textsuperscript{9} In this sense, right to life includes the right to safe drinking water. \textsuperscript{10}

The right to water can be viewed as part of the right to health. The Constitution of the WHO in 1946 declared the ‘enjoyment of the highest attainable standard of health’ to be a fundamental right recognized by the international community. \textsuperscript{11} In this respect, one common definition of health is a ‘state of complete physical, mental and social wellbeing and not merely absence of disease or infirmity’. \textsuperscript{12} It has been argued, that applying these standards, the right not to suffer from cancer, liver damage, disorders of the nervous system or birth defects as a result of drinking contaminated water is a fundamental right. \textsuperscript{13}
In relation to water as a component of the right to food, ‘the right to food should be interpreted as the right to receive life sustaining nourishment or sustenance, so that it would include the right to potable drinking water sufficient to sustain life.’

Regarding International Documents UDHR 1948 proclaims that very individual has a right to standard of living. According to McCaffrey right to water is implicit in the right to adequate standard of living, because ‘it seems obvious that such a standard of living could not exist without an adequate supply of water suitable for drinking. Further unless food were imported from other states, the right to an adequate standard of living presumes and adequate supply of water to sustain agriculture to the extend necessary to feed a state’s population.

ICCPR, 1966 guarantees right to life but it is argued that ‘the human right to life per se…. Is a civil right and does not guarantee any person against death from family on cold or lack of medical attention’. In this line of thought right to life under the Declaration would not require the state to take affirmative action to ensure that its citizens have access to adequate sustenance but only obliges it to refrain from practicing or tolerating arbitrary deprivation of life. Therefore, it would be difficult to infer a right to water under the interpretation of ‘right to life’.

On the other hand doctrines and declarations adopt a more expansive interpretation of Art.6. As per Cancado Trindade, former Judge of Inter –American Human Rights Court says that, ‘under the right to life in its modern and proper sense not only is protection against any arbitrary deprivation of life upheld but further more states are under the duty to pursue policies which are designed to ensure access to this means of survival for all individuals and all people.’
With this view, the right to life comprises the right of every human being not to be deprived of his life and the right of every human being to have the appropriate means of subsistence and a decent standard of living. In this context, the right to life would clearly encompass the right to safe drinking water.22

Special Documents on Right to Safe Drinking Water

The UN Convention on the Rights of the Child, while recognizing the rights of the child of the highest attainable standard of health, have recognized the need to have safe drinking water.23 The treaty may be regarded as the main universal instrument which explicitly refers the right to safe drinking water as a basic human right. Under the Humanitarian law, the right to safe drinking water is recognized and protected.24 McCaffrey points out that it is well established rule of law of armed conflict that the enemy’s water supply may not be poisoned or contaminated.25

The United Nations has explicitly established the right to safe drinking water in its Minimum Rules for the treatment of Prisoners.26

The right to safe drinking water is diversely treated in National laws while many countries do not have this right in their laws, there are examples in which this right is given much importance that it is placed in the Constitution27 while others have enacted specific laws in this matter.28

Institutional Affirmation of Human Right to Water

On November 27, 2002 the United Nations Committee on Economic, Social and Cultural Rights adopted the General Comment on Right to Water. The General Comment states that ‘the human right to safe drinking water is fundamental for life and
health. Sufficient and safe drinking water is the precondition for the realization of all human rights. With these words, the United Nations Committee on Economic, Social and Cultural Rights took the unprecedented step of agreeing on a General Comment that water is a basic human right. The 145 countries which have ratified the Covenant will now be compelled to progressively ensure that every one has access to safe and secure drinking water and sanitation facilities equitably and without discrimination.

The General comment of right to water is an interpretation of the right to food and right to health of the ICESCR, 1966. The Comment defines sufficiency, safety, affordability and accessibility in fulfilling this right. The human right to water entitles everyone to sufficient, affordable, physically accessible safe and acceptable water for personal and domestic uses. The provision of water must be adequate for human dignity, life and health.

The Comment is significant as it no longer disconnects the house holds from the water supplies. The authority enforcing disconnection is in violation of the International Human Rights Law. It defines water as a social and cultural good, not solely as an economic commodity.

The Committee has increasingly been confronted with the wide spread denial of the right to safe drinking water in both developing and developed countries. It is estimated that 1.1 billion persons lack access to an adequate water supplies (the overwhelming majority live in rural areas) while 2.3 billion persons suffer from diseases linked to water. Moreover the continuing deterioration of quality of safe drinking water is exacerbating existing poverty and discrimination, as well as contributing to present and potential conflicts.
Enjoyment of the right to safe drinking water is dependent upon the realization of other human rights, particularly the right to housing, health, work, social security and education as well as freedom of expression, freedom of association, freedom of residence and participation in decision making. The Committee notes the importance of adequate housing and health in ensuring the protection of water resources and supplies.

The General Comment of ICCPR casts an obligation on the state parties to take steps for the realization of safe drinking water.\textsuperscript{37}

According to the Comment\textsuperscript{38}, the right to safe drinking water like any other Human right imposes three types or levels of obligations on the state parties: obligation to respect\textsuperscript{39}, to protect\textsuperscript{40} and to fulfil\textsuperscript{41}.

Water should never be used as an instrument of political and economic pressure. In the international arena, states should prevent third parties, resident or registered in their jurisdiction from violating right to drinking water and the state parties shall not impose embargoes and other similar measure that will prevent the supply of water, goods and services essential for the supply of safe drinking water.\textsuperscript{42}

There is also provision for remedies and accountability where any person or group have been denied their right to safe drinking water should have access to effective legal remedies\textsuperscript{43} and Principle 10, Rio Declaration.\textsuperscript{44}

The realization of right to drinking water includes aspects of right to food\textsuperscript{45}, right to health (including environmental hygiene) \textsuperscript{46} and right to work.\textsuperscript{47}

Duty is cast on the state parties to take steps to ensure that water resources are made available for the entertainment of these Covenant rights, particularly, the
minimum essential level of each right, accordingly priority to marginalized and vulnerable groups.

The United States has its part the Safe Drinking Water Act, 1974 which directed the human health sub committee of the United Nations Environmental Agency, to ensure that both public and non community water systems meet minimum standards for protecting the public health.

Water is indeed the basis of life. Yet, mankind has not been wise enough to live with water. The situation differs from region to region and from country to country the issues needed to be addressed in urban are different from those in rural areas. As for the drinking water and sanitation, it is estimated that about 1.2 billion people that is one out of 5 people do not have access to safe drinking water and 2.4 billion i.e. two out of five people do not have access to sanitation.48

The UNESCR, in its 29th session has explicitly declared right to water as a fundamental right under right to life and placed several obligations upon the state parties to ensure and enable the citizens to realize the right. It is clearly stated that safe drinking water is fundamental for life and health and it is a precondition for the realization of all human rights. Therefore, every citizen is entitled ‘to safe, sufficient, affordable and accessible drinking water that is adequate for individual requirements. Further, the realization of the right to drinking water must also be sustainable ensuring that the right can be realized for present and future generations’.

But the situation will aggravate in the years to come. In order to raise awareness and to galvanize action to protect and manage the basic resources, the UN has proclaimed 2003 as the ‘International Year of Fresh Water’.
Water has been the major issue of concern in the 21st century, in order to discuss the problem of drinking water and other related issues. The countries around the world has joined together to discuss the water related problems in the World Water Forums.

First World Water Forum, 1997

As per the first World Water Forum, the availability of the fresh water is one of the greatest issues faced by the human kind, because the problems associated with a lack of water or due to the pollution of the water bodies affects virtually every one of the planet. In contrast, to the diminishing resources, global demand for water is rising. Demand is estimated to have arisen six to seven times from 1900 to 1995 more than double the rate of population growth. Access to safe drinking water is still a distant dream for the urban population. Much of the water abstracted from the surface and ground water resources for human activities is wasted or used inefficiently. Losses also occur in the public water supply systems mainly where the water mains are old and have not been well maintained. Pollution of water also poses a serious problem. Apart from man made pollutants there are many naturally occurring pollutants in ground water which are potential health hazards. Arsenic and iron are few which are causing major drinking water problems in many parts of the world. So to deal with all this issues there is a need for a global water strategy. Water must be the environmental issue at the top of the agenda of Governmental institutions and individual alike.
Second World Water Forum

Recommendations of the Second World water Forum, 2000 urges a reduction in the total amount of water extracted from rivers and groundwater. Techniques are increasingly available for determining the quantity, quality and seasonal flows of water needed to maintain rivers, lakes and coasts, The Second WWF also points out the degradation of freshwater systems and the resources they provide is due partly to pollution and waste disposal. In the developing world, sanitation services and waste water treatment within the mega cities should be given a high priority, as cubic kms of untreated and polluted, discharge is threatening downstream ecosystems now and into the near future. It also urges in the reconsideration of infrastructure development to conserve ecosystems. For this, high quality Environment Impact Assessment studies have to take place, which is directly linked to the design and implementation of avoidance, mitigation and compensation measures. Agenda 21, the ecosystem component of the World Water Vision is presented on the ‘Vision for Water and Nature: A World Strategy for Conservation and Sustainable Management of Water Resources in the 21st century, 2000’. Agenda 21, a comprehensive global, national and local plan of action in all areas of human impact on the environment, recognizes that in developing and managing water resources, priority should go to meet the basic needs and the safeguarding of the ecosystem and biodiversity. It recognizes the importance of the integrated water resource development and management and calls for the incorporating technologies, socio-economic, environmental and human health considerations into that management. Agenda 21 recognizes that both the quantity and quality of water should determine its
use. Water pollution adversely affects both human water uses, such as for drinking water and food production and ecosystem on the need for the water management approach based on a river basin, water shed or aquifer. This need has been recognized at international meetings such as the Second World Water Forum in Hague, 2000, the International Conference on Freshwater in Bonn in 2001 and the World Summit on Sustainable Development in Johannesburg in 2002.52

At the International Conference on Fresh water held at Bonn 2001, fresh water was recognized as a scarce natural resource which are expensive to purify, difficult to transport, and impossible to substitute. Overall, it means that fresh water crisis will lead to political, economic and social crisis if proper attention is not given to the water conservation and management issues. The main objectives of the summit were:

1. to discuss macro dimensions of water issues, current status and evolve strategies for the future;
2. to underscore the significance of water conservation and management;
3. to access future protection of water resources by all sectors;
4. to address the problem of water crisis, its availability, quality and usage;
5. to examine rivers and ground water pollution, environmental hazards due to the industrial waste water effluents and strategies to overcome it;

The National Implementation Plans for the Management of Persistent Organic Pollutants, an initiative of United Nation’s Environmental Programme began in 2001. The activity has recommended priority projects and measures to address pollution, such as industry, agriculture and human settlements. A number of action focuses on the use
and quality of groundwater which must be protected from pollution and exploitation to meet the needs of both ecosystems and people.

**Third World Water Forum, 2003**

According to the Third World Water Forum, 2003 held at Kyota, it was argued that developing and transnational economics will need $180 billion annually to achieve the global water security over the next 25 years. They emphasized that the Government cannot achieve the required increase in annual investment in water. Other sources including private sector was given importance in the Third World Water Forum, 2003. The concept of sustainable cost recovery emerged in this forum.

Public private partnerships were another major controversy at Kyota, much of it is motivated by misunderstanding of what ‘privatization’ would mean in the water sector. No one in the third World water Forum, neither the forum participants nor the World Water Council, not even the private sectors supported full privatization in terms of the private sector ownership of water resources and full control over pricing. Still the discussion in Kyota over private sector participation reflected the ideological concerns of the anti-privatization groups relating to globalization and trade liberalization. The third WWF focused mainly on ownership and management of public resources like water, the guiding principle for pricing policy, and the ethical question of making a profit on public services.

**Fourth World Water Forum, 2006**

The Fourth World Water Forum, 2006 was held at Mexico on April, 2006 giving priority to the conservation and management of water resources. Privatization and Public-Private partnerships were given priority in the fourth world water forum. The
countries who took part in the forum gave importance to the preservation and management of the water resources for the future generations.

Through these world water forums, the countries who took part in the forums gave importance to the preservation of the scarce resources. The World Water Forums recognized the concept of right to safe drinking water as a basic human right. But even then, there are millions of people who are deprived of this human right mainly because of the fact that state are not under the obligations to provide this basic right to their millions of citizens. For this, state parties should join their hands together so that the people are not denied of their basic right to have safe drinking water.

**Fifth World Water Forum, 2009**

During the seven day forum which was held from 16-22 March, 2009 at Istanbul, Turkey, agreed that the water is an increasingly vital resource in the 21st century, which are challenged by overpopulation, climatic change, ecosystem collapse, urbanization, consumption pattern change and financial crisis. According to the statistics of the forum, only 2.5% of all the water on earth is fresh water, two third of which is in glaciers and polar ice caps. Therefore, available freshwater represents less than 1% of the world’s total water stock. Furthermore, a study released at the forum showed that 85% of the world’s population lives on the droughty land on the earth. More than 1 billion people living in arid and semi arid parts of the world have little access to renewable water sources. According to third UN World Water Development Report released by UNESCO during the forum more than 900 million people still have no access to drinking water and sanitation. The fifth World water Forum highlighted that cooperation on water is crucial among technocrats, policymakers, local authorities, research institution and states. The
fifth World Water Forum recognizes water as basic human need rather than basic human right. The World Water Forum supported the implementation of integrated water resources management and improve water demand management, productivity and efficiency of water use for agriculture, strengthen the prevention of pollution from all sectors in surface and ground water, resolve to work to prevent and respond to natural and human induced disasters and strive to improve water related monitoring systems.\(^{53}\)

**Sixth World Water Forum, 2012**

The sixth World Water Forum which was held from 12 – 17\(^{th}\) March, 2012 at Marseille, France emphasized the importance to satisfy the essential needs of billions of children, men and women for whom the state must guarantee food, health, education and first and foremost energy and water so that they can finally pull themselves out of poverty. The 6th World Water forum also recognized that water issues are increasingly political in nature and require an adapted approach to make further progress at the global, regional, national and local levels.\(^{54}\)

**Conclusion**

Now, through many International Covenants and Declarations and through the World Water Forums, right to safe drinking water has been given the status of basic human right. Many Constitutions, have adopted directly or indirectly, the concept of safe drinking water as a fundamental right. Being a basic human right it is the duty of the state and the International Organizations to provide this right to millions of people who are actually deprived of the right to safe drinking water.
On 28th July, 2010 the United Nations General Assembly adopted a resolution recognizing the right to water and sanitation as a basic human right, by which Article 31 has been added to the Universal Declaration of Human Rights, 1948 which read as follows:

“Everyone has the right to clean and accessible water, adequate for the health and well being of the individual and family, and no one shall be deprived of such access or quality of water due to individual economic circumstances.”

There is nothing more important to human being than water. We cannot live without water for three days or so. The General Assembly resolution called on states and international organization to provide financial resources build capacity and transfer necessary datas to remember that safe, clean drinking water and sanitation are integral for the realization of all human rights. Therefore, it is the need of the hour that the water rights should be recognized and the accessibility of the safe drinking water should be made available to the millions who are deprived of their basic human right.
References


2. Ibid.

3. Ibid at p.4.


7. Ibid


10. Supra n.8 at p.10.


12. Ibid.


14. Supra n.8 at p.3.
15. Article 25 of UDHR 1948 proclaims: ‘Everyone has the right to a standard of living adequate for the health and wellbeing of himself and his family, including food’. The word ‘including’ in Article 25 of the Declaration implies that there can be other components of the right to an adequate standard of living.

16. Supra n.8 at p.8.

17. Article 6 of the ICCPR, 1966 says, ‘Every human being has the inherent right to life, which has to be protected by law’.


19. Supra n.8 at p.9.

20. Supra n.17.


22. Supra n.8 at p.10.

23. Article 24 of the Convention establishes that ‘the state parties should recognize the right of the child to the enjoyment of the highest attainable standard of health and the right to facilities for the treatment of illness and rehabilitation of the health’. To the end of pursuing the full implementation of this right state shall take appropriate measures to combat diseases and malnutrition, including within the frame work of primary health care through interalia, the application of readily available technology and through the provision of adequate nutritious food and clean drinking water….’.

24. Additional Protocol 1 of the Geneva Convention of August 12, 1949 and the rights relating to the Protection of the Victims of International Armed Conflicts (Dec.7, 1978). Article 54 para 2 of the 1977 Additional Protocol 1 of the Geneva Convention related to the Protection of Civilians in conflicts of an International nature states, ‘It is prohibited to attack, destroy, remove or render objects indispensable to the survival of the civilian population such as food stuffs, agricultural areas for the production of food stuffs, crops, live stocks, drinking water, installation and supplies of irrigation works for the specific purpose of denying them for their sustenance value to the civilian population or to the adverse party, whatever the motive, whether in order to starve out civilians , to cause them to move away or for any other motive’.

25. Supra n.8 at p.20

Art.20 of this Rule, whose title is ‘food’ states:

1. Every prisoner shall be provided by the administration at the usual hours with food of nutritional value adequate for the health and strength of whole some quality and well prepared and well served.
2. Drinking water shall be available to every prisoner whenever he needs it.

27. The 1996 South African Constitution, Rules in its Section 27 (b) as, ‘Everyone has the right to have access to sufficient food and of sufficient water.’


30. ‘Safe Drinking Water’, http://www.purewatergazette.net.Un.html accessed on 10/10/2007 at 8.00 p.m.


32. Ibid at Art.12.

33. Article 11.1 of the Covenant on Economic, Social and Cultural Rights specifies a number of rights for the realization of the right of an adequate standard of living, which include adequate food, clothing and housing and to the continuous improvement of living conditions.

Article 12.1 of the same Covenant states that the state parties to the present Covenant should recognize the right of everyone for the enjoyment of the highest attainable standard of physical and mental health.

34. ‘General Comment on Right to Water’, http://www.citizen.org/documents/therighttowater.PDF accessed on 27/9/2007 at 12.00 p.m.


37. The State parties are urged to adopt legislative and other measures to eliminate discriminatory acts or omission that have the intention or effect of modifying or impairing the equal enjoyment of the right to safe drinking water on the grounds listed in Article 2.2. Under Article 2.2 the state parties to the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. The minimum obligation cast on the state parties is to ensure satisfaction of at the very least, the minimum essential level of the right to safe drinking water.

38. *Supra* n.29.

39. The obligation to respect requires the state parties to refrain from interfering directly or indirectly with the enjoyment of the right to safe drinking water. The obligation to respect includes, interalia refraining from engaging in any practice or activity that denies or limits equal access to adequate safe drinking water, arbitrarily interfering with customary or traditional arrangements for water allocation, unlawfully diminishing or polluting water, for eg, through waste from state owned facilities.

40. The obligation to protect requires state parties to prevent third parties from interfering in any way with the enjoyment of the right to safe drinking water. Third parties include individuals, corporation and other entities as well as agents acting under their authority.

41. The obligation to fulfill requires state parties to adopt necessary measures directed towards the full realization of the right to safe drinking water which includes affording sufficient recognition of the right within, preferably by way of legislative implementation, adopting a national water strategy ensuring that the right is affordable for every one and facilitating improved and sustainable access to drinking water, particularly in rural and urban areas.

42. The Committee recalls General Comment No.8 where it noted the disruptive effect of sanctions upon sanitation supplies and clean drinking water and that sanctions regimes should provide for repairs to infrastructure essential to provide safe drinking water.

43. The Committee notes that the right has been constitutionally entrenched by a number of states and has been subjected to litigation before national courts. All
victims of violations of the right to safe drinking water should be entitled to adequate reparation including restitution, compensation, satisfaction or guarantees of non-repetition. National Ombudsman, Human Right Commissions and similar institutions should be permitted to address violation of this right. Individuals and groups should be given full and equal access to information concerning water, water services and environment held by the public authorities or third parties.

44. Principle 10. Rio Declaration on Environment and Development, UNCED, 1992 states that respect to environmental issues that ‘effective access to judicial and administrative proceedings, including remedy and redress shall be provided’.

45. The Committee stated in the General Comment No.12 stated that the right to adequate food includes the possibility of ‘feeding oneself directly from productive land or other natural resources’. The right to adequate food entitles an individual or group to secure the water necessary for the production of food and ensure at least, freedom from hunger, where there is no alternative for securing essential food stuffs for the population concerned.

46. Environmental hygiene as an aspect of the right to health under Article 12.2(b) of the Covenant, encompass taking steps on a non discriminatory basis. (Article 2(2) and 3 of the ICESCR, 1966) to prevent threat to health from unsafe and toxic water conditions.

47. Right to work includes ‘access to a minimum amount of safe and sufficient water needed to attain an adequate livelihood by work particularly when no alternative are available’. (Article 6 and 11 of ICESCR, 1966). The Committee wishes to emphasis the role that water resources play in the traditional modes of securing a livelihood, particularly for indigenous people and other marginalized or vulnerable groups in society and that in no case may a people be deprived of its own means and subsistence (Article 1 (2) of ICESCR, 1966).


52. Supra n.49 at p.139.
