

On the line of Water Justice: Reflecting on the foundational pronouncements of the United Nations and the Indian Constitution

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Abstract

In the past few years, the global community has realized that the unavailability and unaffordability of water cannot be a simple question of natural phenomenon. Since the absence of water is directly linked with the right to life, it is critical to comprehend what it means to assure communities and individuals the right to use water. The present paper, given this reality, attempts to define what the idea of water justice holds¹. For the same, the paper uses the United Nations declarations and the Indian constitution as its units of analysis. Here, the fundamental claim of the paper is that justice is 'neutral', by nature and activity and hence required to be documented most effectively.

To explore the idea of water justice the paper analyzes the key documents of the United Nations (i.e., Comment 15 and Resolution 2010) and key provisions of the Indian constitution. For the same, the paper uses content analysis and hermeneutics as a research tool.

Keywords: Water, Rights, Justice, United Nations, Indian Constitution

Introduction

The idea and argument that underlines that water is a concern for justice is established against the backdrop of the fact that unavailability, inaccessibility, and unaffordability of water for all is not a simple problem of water scarcity. It is essential to realize that in the modern system of water governance, scarcity is a human-constructed phenomenon. In essence, the debate that moves around this understanding centers on the "Political" aspects of water governance. These understandings urge that water injustices must be recognized and addressed under the notion of justice. To some extent, the United Nations (hereafter UN) has recognized this need. In the process of institutionalizing global governance in the line of justice, the UN has codified the notion that access to water is a fundamental human right by issuing several declarations. Globally, these declarations have received exceptional solidarity. Mainly, after the Dublin conference, existing water inequalities are condemned loudly. In contrast to other nations, India's attention to conventional water inequalities was evident from the outset of its independence, as evidenced by the fundamental provisions incorporated in its constitution. Indeed, according to the Indian Preamble justice is a core value. However, since the concerns for water justice are subject to interpretation, it is crucial to go over the provisions and interpret them in light of the

reality of the unavailability of water for all. Besides, considering accepted water uses, it is imperative to elucidate and deliberate upon the objective constitutional truths endorsing water justice, as only this can confer the entitlement to water as a right.

Given this need, the present paper focuses on two questions: how the global community has defined and safeguarded water rights, and how (if) India has constitutionalized the promise. The goals here are twofold: to investigate the connection(s) between concerns for water justice and the United Nations' concept of the Human Right to Water, and to examine whether India's constitutional scheme is concerned with water justice and, if so, what it proposes. The paper, while addressing these questions, focuses on the most significant contributions of the United Nations and Indian constitutions to water justice, claiming that both have conceptually expanded the idea of water justice by providing institutional language (s).

The units for the investigation: The Reason behind

As mentioned previously, to investigate the idea of water justice, this paper has chosen two units i.e., the key declarations made by the United Nations and the provisions proposed by the Indian constitution, mainly because-

The United Nations as a unit:

When it comes to water the present century has witnessed many realities that are often manipulated and politicized. For instance, to argue for uses of water for development over life accepting that water scarcity is merely a natural phenomenon. Common trends of such manipulations have created and encouraged inappropriate understandings of water problems. This further has allowed discrimination in water supply and sharpened gaps between water haves and have-nots. The ways of identifying the nature of the problem, including exploring water demand and consumptionⁱⁱ, examining meteorological conditionsⁱⁱⁱ, and analyzing basin landscape and geological features, have proved insufficient. This is mainly because, while investigating the problem of water accessibility, all these popular tools adopt a techno-centric approach and conveniently avoid the human-centric approach, which further has resulted in more profit and less welfare. Realizing these many facts the UN has tried to centralize the rights over water in favor of humanism and has attempted to create a scope for water justice. As implications of the understandings put out by the UN transcend national boundaries, it is critical to examine the introduction and development of the concept.

Indian constitution as a unit:

For the advanced water management processes, India has embraced and encouraged technological ways. Recently, the goal of providing piped water to nine crore households till 2019, is been achieved by the governmental machineries. Here, the dilemma is that the leading planning agencies while confirming the achievement, accept that even after the arrangement 21% of communicable diseases in the country are caused by unclean water, and 500 children under

five pass away from diarrhea every day. The data released by the UN are not different, it states that in India, 163 million people are still lacking access to clean drinking water and 210 million are still waiting for modern sanitation facilities. In the given condition, policymakers need to reflect on what is overlooked and where the planning falls short. For India, which is the nation with the longest written constitution, proposing comprehensive provisions on every topic, such a condition raises questions about the will and capacity of the government. Since the Indian constitution is a "living contract" that outlines the relationship between the government and the people and guarantees justice and welfare for everyone, it is interesting to investigate if the Indian constitution has provisioned water rights as well.

Water is a Human Right: The Foundations of United Nations

To initiate water justice, the United Nations has institutionalized the right to water in a global setting and called it as 'Human Right to Water'. The notion has steadily evolved as an ideology, particularly after the 1990s. Before the 1990s, water was stated in conjunction with other rights. The language used in the early agreements established water as a right, which is linked to other rights such as the right to health, the right against discrimination in water supply, the right to food, and the right to development. A significant shift was noticed only in 2002 when General Comment 15 (hereafter CG15) interpreted the 1966 International Covenant on Economic, Social, and Cultural Rights (ICESCR) in favor of the right to water as international law and found it essentially indispensable for leading a dignified life^{iv}. This is the first document on the human right to water that acknowledges water as a claimable right, stating it is essential for a quality of life including sufficient food, freedom from hunger, and physical health (articles 11 and 12). The principles and pledges presented in this text cover the essential uses of water, such as subsistence farming and agriculture, and raise the right to water from a shadowy human right.

For the water-poor regions, CG15 is realized as most significant mainly because the proposed ideas have synthesized individualism and collectivist values, and have encompassed the right to health, life, and development. Global acceptance of these commitments has signified a paradigm shift in globalization, which has underlined the cooperation between international and regional organizations (Langford: 2006, Cahill: 2005, Salman & Lankford: 2004, Kiefer & Brolmann: 2005 and Pierre Thielborger: 2014). This very idea was reemphasized on July 28, 2010, when a document called UNGA Resolution A/RES/64/292, titled "The Human Right to Water and Sanitation," (herewith Resolution 2010) was released by the United Nations. According to this resolution, the human right to water must be "recognized with two rights," namely the right to safe and clean drinking water and the right to sanitation. This document has clearly 'acknowledged' the need for equitable access to safe and clean drinking water and sanitation as an essential component of the realization of all human rights (para 5). The resolution's provisions 'Reaffirmed' the responsibilities of states to promote and preserve all human rights. For this goal, the resolution has redefined the human right to water and sanitation as universal, indivisible, interdependent, and interconnected. To scale up efforts to provide safe, clean,

accessible, and affordable drinking water and sanitation for all (Para 8), the resolution insists on international assistance and cooperation for which it has called upon states to provide financial support and technology transfer. Explicitly, the proposals of these two documents are extensive and to expand the understanding of water justice, required to be elaborated, as the following paragraphs attempt to do.

General Comment 15 and Resolution 2010: The key proposals

The principles recommended by Comment 15 and Resolution 2010 collectively make water a concern of justice. Together, they seek to standardize important components of the human right to water in terms of availability, quality, accessibility, affordability, and acceptability to everyone.^v The documents have further established that-

Availability means that water and sanitation facilities must meet people's needs now and, in the future, ensuring a sufficient and continuous supply for personal and domestic use.

Quality infers ensures water is safe and free from microorganisms, chemical substances, and radiological hazards.

Accessibility means water and facilities are accessible to everyone without discrimination, including –

- Physical accessibility: ensures water is within safe reach for all sections of the population
- Economic accessibility: safeguards the affordable costs.
- Non-discrimination: guarantees that the most vulnerable or marginalized sections have access to water facilities.
- Acceptability: confirms that water and sanitation services are culturally and socially acceptable, including color, odor, and taste.

To emphasize the human right to water in the planning process, the documents define the fundamental components of the human right to water and state that-

- *Participation* enhances transparency in the planning, design, maintenance, and monitoring of water services.
- *Accountability* means an obligation that obligates states to create additional mechanisms to maintain rights, with accessible judicial remedies at the national level. Good practices, such as laws, policies, programs, and campaigns, should have a positive impact.
- *Sustainability* is essential as it secures water quality and availability for future generations by avoiding water contamination. These elements are crucial for ensuring the realization of the human right to water.

The key phrases established and specified in these two declarations establish the human right to water as a shared duty. To elaborate, the Guiding Principles on Business and Human Rights,

established in 2011, stipulate that both public and private actors must follow the principle of protecting, preserving, and respecting the human right to water. Here, the term "respect" is established as a principle that has been used to clarify that governments have a constant and uncompromised responsibility to ensure water access, and for the same, government institutions and representatives should not hinder anyone's access to water. Such an obligation further includes preventing people from being without water, maintaining water infrastructure systems, and offering social support for water services. Similarly, while protecting water rights, third parties must be banned from restricting water rights through pollution, damage, or privatization. To create water-favorable conditions, governments must establish and enforce legislation to penalize water rights offenders and secure water for future generations. Furthermore, public involvement and responsibility must be prioritized above private management, and state regulation and independent monitoring methods must be developed. Under the guiding principles, it is emphasized that if the private sector manages water, government regulations must be put in place to ensure access to water and sanitation.

The UN's guiding principles safeguard people's rights to water and place a strong emphasis on the role of public and private players in water administration. The principles advocate setting up network infrastructure and tariff mechanisms to provide affordable water and sanitation services. As per the scheme proposed by the principles, while the private sector guarantees protection in circumstances outside government control, governments must promote the use of clean water, preserve water resources, and reduce waste and pollution.

Water justice, within the human right to water?

The concept of water justice has a broader reach that cannot be addressed without philosophical considerations; however, this fact does not suspend the UN's endeavours and undertakings. The claim of the UN's success is remarkable mainly because initiatives of the UN have defined important terms, like availability, affordability, acceptance, participation, responsibility, sustainability, respect, protection, and fulfilment. Significantly, this together-

- Emphasises non-discrimination, equality, and non-retrogression and directs the nations to maximize resources and achieve universal rights.
- Promotes transparency and openness, and focuses on public engagement in water resources and entitlements.
- Encourages water consumers to participate in decision-making and guarantees gender equality.
- Improves responsibility for national and global states by providing norms and measures.
- Categorises duties to ensure the effective enjoyment of rights at various levels.

Indeed, these proposals and establishments are exceptional, however, to make the water justice a reality, needs regional support.

India’s stand for water Justice: Testing the constitutional scheme

India’s stand and commitment to justice are reflected in the Preamble, where it is sharply placed in the favor of all. The thematic scheme and flow of the same echo India’s pledge to achieve justice. The concept and structure proposed by the Indian preamble create justice as a continuous process in which individuals participate as co-partners. The phrase 'We the people' reveals that India's democracy is the consequence of an accepted agreement, of which each Indian is the party. For Indian the nature of the interpreted contract is significant, for being both social (including economic) and political. To administer justice, the use of this phrase generates legitimate power for the government while also ensuring rights for all citizens. Indeed, due to the constitutional commitment, building and strengthening social, economic, and political mechanisms for justice for all, is relatively simple. As clear from the Preamble, a promise for justice encompasses social, economic, and political dimensions that guarantee liberty of thought, speech, belief, faith, and worship, as well as, equality of position and opportunity for all. Notably, in the pursuit of justice, the Indian Constitution's fundamental rights and guiding principles of governmental policy have helped in formalizing and institutionalizing the idea which establishes that water is for all. This can be described as follows:

India’s Constitutional Scheme for Justice: The Promises of Preamble

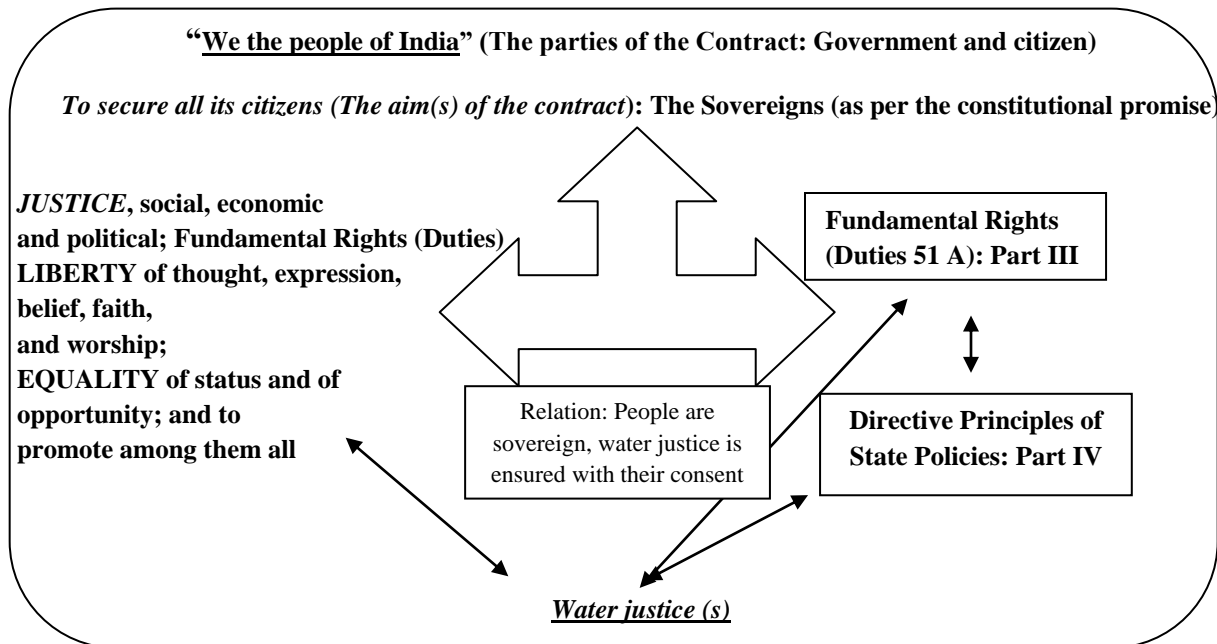


Figure 1: The figure, while proposing the scheme

Figure 1 demonstrates that Parts III and IV, which represent the Fundamental Rights and Directive Principles of State Policies, pursue water justice for everyone. Since each is the party and beneficiary of rights over water, each is accepting the need for water justice, as the figure proposes. While adopting a serious call on justice, the Constitution stretches a specific language

and definitions that compel Fundamental Rights and Directive Principles of State Policies to assist in achieving water justice for everyone, as shown in the table below:

The provision and Article	Language of the article	What can be possible Meaning and Impact?
Right to Equality (Article 15(2))	Article 15(2) no citizen shall “on grounds only of religion, race, caste, sex, place of birth or any of them” be subject to any disability, liability, restriction, or condition concerning “the use of <u>wells, tanks and bathing ghats</u> ”	Suspends social discrimination and entitles everyone to have and use water from (any) water bodies. No public or private body can create a condition of discrimination for anyone. This implicitly suspends the idea of ownership of water resources.
Right to Freedom (Article 19(1)(e))	Article 19(1)(e) gives a right to freedom and guarantees the right to reside and <u>settle in any part</u> of the country	The federation is a base element and everyone is entitled to have a proper water supply to their households. For this both union and state governments are accountable.
Right to Life (Article 21)	No person shall be <u>deprived of his life</u> or personal liberty except according to procedure established by law”.	Water cannot be denied to anyone, not even by any law proceeding.
Right to Education Act 2009 (Article 21(A))	All schools must provide safe and adequate <u>drinking water facilities to</u> their students.	School management as the party of the contract must ensure water to all children studying.
Fundamental Duties (Article 51(A)(g))	to protect and improve” the natural environment, including forests, lakes, <u>rivers</u> , and wildlife, and to have compassion for living creatures	Everyone is a party to the promise of water justice and hence must perform a duty to preserve water. Assuring rivers are pollution-free is the prime obligation of every citizen.
Directive Principles of State Policy (Article 48A)	The State shall endeavor to protect and improve the <u>environment</u> and safeguard the forests and wildlife of the country	Indian states have a constant moral obligation to protect water as it is an inseparable part of the environment.
Entry 17 (the State List)	Water, that is to say, water supplies, irrigation and canals, drainage and embankments, water storage, and water power are the subject of the state.	Water should be supplied as per the priority based and state governments have a constant duty regarding the same.
Entry 56 (List I)	Regulation and Development of interstate rivers and river valleys are under the control of the Union	Water and water resources are the national resources and hence union can decide on the issues that emerge in the context of river management.
73rd and 74th Constitutional Amendment Act 1992	Water planning including minor irrigation, water management and watershed development (Entry 3), fisheries (Entry 5), drinking water (Entry 11), waterways (Entry 13), health and sanitation (Entry 23), public distribution system (Entry 28) and maintenance of community assets (Entry 2)	Water planning should be done at the local level, and for the same, the local administration should create an environment, where the bottom-up model of water planning can be implemented.

Table 1: Provisions enshrined in the Indian constitution, its language and impact

The table demonstrates that, despite the absence of a defined concept of water justice, the Indian Constitution, through parts III and IV, establishes a framework that endorses water as a right.

Water rights in India are founded on the Indian state's obligations, which are deeply ingrained in the constitution. The Constitution defines the idea of water justice as a dependent right safeguarded by the rights, duties, and guiding principles of state policy. The implicit entitlement promotes individuals' rights to water and secures their freedom to obtain and use water, which is contrary to all customary discrimination. The Articles quoted above maintain that India's concept of justice has undergone a paradigm shift that suspends the colonial practice of exploiting water for economic benefit (Baxi, 2010). The spirit of the proposed articles does allow the Indian court to consider water-related issues to protect the right to water and obligate the government to give it to everyone. Significantly, when it comes to water justice, the impact and influence of the constitutional framework can be observed largely because positively it has -

- built the required background (the language of the Preamble and Article 21)
- provided a platform for the judiciary to play the role of guardian of rights over water as part of –

Liberty: use water (positive restrictions can be put) and

Equality: accessibility and affordability (Articles 19 and 15)

- ascertained individuals as a party of water governance (Article 51)
- obligated Union, state as well local governments to create an environment for the sustainability of water (Articles 15, 19, 21, Act 2009, entries 17 and 56, and 73rd and 74th Amendments)
- supported for water peace (entry 56)

Though the proposals are attractive, *but not without* limitations. Indeed, the limitations are more serious and need unbiased attention, it is essential to accept that-

- “We” in ‘We the People of India’ reflects the ‘tragedy of commons’, where, perhaps nobody wants to leave anybody behind in the pursuit of justice, but because resources are limited, choices are restricted.
- provisions are subjected to interpretations and hence are often manipulated by the powerholders.
- acceptance and adaptation of the liberalist scheme of water governance have questioned the idea of justice. Unfortunately, policies made under reference to these provisions are weak, biased, and insensitive toward the fulfillment of water justice.
- in the proposed framework, clarity on the required mechanism is missing, due to which the water laws and water policies can be prioritized in favor of a few.
- for the regions with water abundance, water scarcity is just a figure. Since the residents of these regions are not sensitive to the struggles of water have not, it is difficult to deal with the problems concerning to unavailability and unaffordability of water. This ultimately harms the emotions of collectiveness and creates a deep sense of water injustice.

Looking at the limitation, the concerns are multiple which seeks to examine *what went wrong and why water justice* is far for India. The reasons are perhaps many, which include-

- Politics of priority
- Misconceptions about the idea of a ‘Smart City’ and the failure of city models

- Absence of knowledge of water footnote
- Failure of the practice of good governance
- Convenient interpretations of the idea of “Water Rights”
- Politics of Planning
- Insensitivity of the governments and people
- Adopting neoliberal strategies for water governance

One of the most important factors is a shift in the climatic cycle and global warming. Looking ahead, India must recognize that improving the lives of the water poor and guaranteeing water justice will require more than just a constitutional framework. The path must go from water effectiveness to water sensitivity.

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ⁱ The meaning and impact of right to water and water right is different, however, the purpose of present paper is not to highlight the debate, but it is to

ⁱⁱ heavily influenced by population and socioeconomic activity

ⁱⁱⁱ which determine water availability and seasonality of supply

^{iv} General Comment No. 15 comprises 60 paragraphs divided into six parts: an introduction; normative content of the right to water; States Parties’ obligations; violations; implementation at the national level; and obligations of actors other than states.

^v The details of terms are directly taken from the WHO publication that is available with the title of Right to Water also see World Health Organisation (2003) *The Right to Water* (Geneva: WHO) available at www.who.int/hhr .