

Turn to your Duties to retain your Rights: Critical analysis on Right to Water

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Abstract— The outstanding importance of water has pronounced many of scholars in various occasions. Water is necessary for the survival of entire life, yet over one billion people do not have available sources of clean water for drinking. People those who are undergoing water scarcity menace tend to claim right to water from governments without considering their obligations to uphold the right. However this situation should be observed in reciprocal manner. Right to water is entirely based on the availability of the resource. Without prejudice entire mankind is responsible altogether to safeguard water resources. Presently water is facing for a huge threat of pollution and over extraction which was created and responsible by the mankind themselves and the mankind rapidly reaching towards an era of the water scarcity. Immerging trend to expand the Right to Life which has been recognized by the Article 3 of the UDHR accommodated the Right to Water by establishing state obligations through several other instruments such as Treaties and their Protocols, Regional instruments and International declarations, norms and other standards. Hereby all the states are compelled to provide continuous water supply and to facilitate various other integrated water resource management systems in order to enhance the infrastructure facilities to uphold water rights. Hence it is essential to turn towards the duties and responsibilities of the people being right holders to become eligible to claim their rights from governments being duty bearers. This paper expects to investigate the possibility to assign duties upon general public to safeguard water resources mutually as to preserve their right to water. The main objective of this paper to convince the contribution of the community to counter future challenges of fresh water and indicate the necessity of contribution to preserve fresh water resources. Further this research expects to emphasize the necessity of reciprocal approach to claim water rights and to elaborate the mutual understanding between right holders and duty bearers in terms of water rights.

Keywords - Right, Water, Reciprocal Obligation, Duties

I. INTRODUCTION

Uttering the importance of water as an inheritance of humankind, few centuries back Chief Seattle pronounced that “This shining water that moves in streams and rivers is not just water but the blood of our ancestors.”¹ It

demonstrates that human beings are part and parcel of the nature and water is the nexus between the nature and mankind. The famous adage made by King Parakramabahu (1153 – 1186) “not even a little water that comes from the rain must flow into the ocean without being made useful to man” further annunciate the great effort made by our ancestors to utilize water in ancient times.²

Even though people being right holders claim their rights from states being duty bearers under rights based approach, states are incapable to facilitate alone without support of the general public. It is unreasonable to claim such rights in a one way channel. People those who claim right to water need to accomplish their reciprocal duty towards sustainability of water while they demand continuous water supply.

Reciprocal approach of right to water is not a direct liability which can be imposed on each and every human being by way of a compensative manner. People should be empowered with legal backing to act against water polluters and over extractors in order to preserve water resources. Protection of water resources is a universal obligation that has been posed before water scarcity. It is a prime duty of mankind to ensure the sustainability of water resources in order to ensure the life on earth.

This study mainly focused on the reciprocal affiliation between rights and duties with regard right to water. International community has recognized water as a human right. Sometimes entire mankind is liable to accomplish certain duties towards the sustainability of water resources. Accordingly it is clear that people are having a reciprocal duty to preserve water resources being right holders of right to water. Otherwise water resources will not remain to uphold the right to water. However most of the people do not aware of their obligations and reluctant to perform their duties to preserve water resources. Thus this research intend to investigate the problem that “why people neglect to uphold their duty to preserve water resources which would conserve the water supply despite the states endeavour to ensure the right to water of people themselves?”

Primary objective of this research is to educate the community in relation to future challenges of fresh water

¹ < <http://www.snopes.com/quotes/seattle.asp> > Last visited 01.03.2017

² Culavamsa, LXVIII, 8

and necessity to preserve fresh water resources. Further this research expects to emphasize the validity of reciprocal approach to uphold the right to water and requirement to establish mutual understanding between right holders and duty bearers.

II. RIGHT TO WATER AS A HUMAN RIGHT IN INTERNATIONAL PERSPECTIVE

Apparently our planet is full of water resources and is the secret of life. Even though 70% of our planet is covered by water; 0.007% is limited for human consumption and over one billion people do not have available sources of clean water for drinking.³ In order to overcome this tragic situation United Nations World Water Development Report has given top priority to implement sustainable strategies to preserve water resources for future generations.⁴

In 2002 the UN Commission on Economic, Social and Cultural Rights defined the right to water as “right of everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses”. In 2008, the UN Council of Human Rights decided to establish an independent expert on the issue of human rights obligations related to access to safe drinking water and sanitation. In 2010, the General Assembly acknowledged the “right to water” and the Human Rights Council adopted a binding resolution affirming that the human right to safe drinking water and sanitation are a part of the right to an adequate standard of living and inextricably related to the highest attainable standard of health.

Human rights are protected by internationally guaranteed standards that ensure the fundamental freedoms and dignity of individuals and communities. They include civil, cultural, economic, political and social rights. Human rights principally concern the relationship between the individual and the State. Governmental obligations with regard to human rights can broadly be categorized in obligations to respect, protect and fulfil.

Although the government would agree to accomplish the responsibility cast upon them certain unavoidable circumstances may interrupt the continuous water supply. However always people being right holders should be responsible to protect, maintain and sustain available water resources to uphold the right to water by the state.

It has been decided by the global community to recognize water as a human right before many challengers confront.

³ World Health Organization, *The Right to water*, P12(2003)(Life Liberty, and the Pursuit of Water: Evaluating Water as a Human Right and the Duties and Obligations it Creates; Amy Hardberger)

⁴ The United Nations Water Development Report

The General Comment No. 15 of the UN committee on Economic, Social and Cultural Rights (CESCR) set out the right to water as the right of everyone in 2002 “to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses”.⁵ Nevertheless people around the globe confront significant difficulties in access to water; do not focus on emerging challengers of preserving water resources. On the other hand it is essential to safeguarding water resources rather than claiming to preserve right to water as a human right. Indeed, the right to water is one of the constitutional guarantees which find many obstacles for its effectiveness both in developing and developed countries.⁶ Taking into account all these circumstances, the justifiability of the right to water or, in other words, the effective access of citizens to safe water and sanitation is crucial.⁷

It is important to inquire the transnational environmental law perspective in right to water as a human right and identify key controversial issues involved in the recognition of the right. Right to water accrued the due recognition as a human right very recently.⁸ UN convened the First World Conference on Water in 1977 and subsequently launched the International Decade of drinking water and sanitation 1981-1990 in order to ensure equitable and safe access to water resources.⁹

States are obliged to actively involve with human rights to

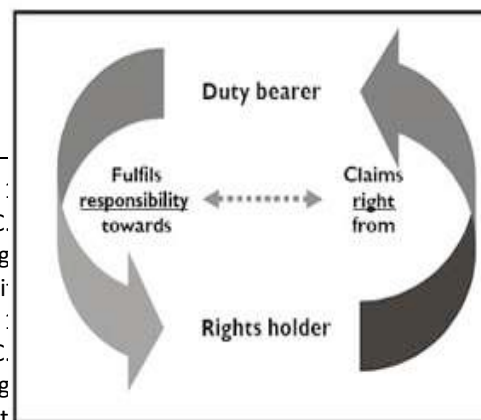
⁵ General Comment No. 15, Council, 20.01.2003, E/C.12/2003/12, <http://www2.ohchr.org/doc/doc/CR_GC_15.pdf> Last visited 05.04.2017

⁶ General Comment No. 15, Council, 20.01.2003, E/C.12/2003/12, <http://www2.ohchr.org/doc/doc/CR_GC_15.pdf> Last visited 05.04.2017

⁷ Chapple, Ellen & Leitch, Frances, “The Right to Water: Does it Exist and is it Justifiable Content?”, available at <http://law.anu.edu.au/coast/events/environment/papers/chapple&leitch.pdf>. “What price for the priceless?: Implementing the justifiability of the right to water”, 120 Harv. L. Rev. 1067 (2007), <<http://www.sciencedirect.com/science/article/pii/S1870465415000100>> Last visited 05.04.2017

⁸ A. Boyle, “Human Rights and the Environment: A Reassessment - First Preparatory Meeting of the World Congress on Justice, Governance and Law for Environmental Sustainability”, <[http://www.unep.org/dec/worldcongress/docs/Towards the declaration human rights.pdf](http://www.unep.org/dec/worldcongress/docs/Towards%20the%20declaration%20humanrights.pdf)> Last visited on 12.04.2017

⁹ Attila, T. and Arcari, M., *The UN Convention on the Law of International Watercourses*, The Hague, Kluwer, 2001



respect, protect and fulfil. Even though International Covenant on Civil and Political Rights (ICCPR) does not expressly recognize the right to water, some other human rights treaties explicitly recognize the right to water.¹⁰ In this regard, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) provides in Article 14 paragraph 2 (h) that States Parties shall ensure to women the right to “enjoy adequate living conditions, particularly in relation to... water supply”.¹¹ Furthermore, the Convention on the Rights of the Child in paragraph 2 (c) of Article 24 requires States parties to combat diseases and malnutrition “through the provision of adequate nutritious foods and clean drinking-water”.¹² Similarly, the Convention on the Rights of Persons with Disabilities in Article 28.2.a sets out the obligation of States to “ensure equal access for people with disabilities to clean water services”.¹³

However these international human rights instruments provided a legal basis for the right to water arises from human rights and guarantees as enshrined in national constitutions.¹⁴ Thus the right to water has been recognized directly or indirectly in different national constitutions, among them, for instance, the constitutions of South Africa, Ethiopia, Kenya, Bolivia, Ecuador and Uruguay encompass the right to water, whereas the constitutions of Gambia, India, Venezuela, Spain and Belgium provide for an indirect recognition.¹⁵

¹⁰ Various organizations have advocated for an international convention on the right to water. <<http://www.watertreaty.org/>> Last visited 12.04.2017

¹¹ The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted in 1979 by the UN General Assembly, < <http://www.un.org/womenwatch/daw/cedaw/>> Last visited 18.04.2017

¹² Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989. Entry into force 2 September 1990, < <http://www.ohchr.org/english/law/crc.htm>> Last visited on 20.04.2017

¹³ The Convention on the Rights of Persons with Disabilities was adopted on 13 December 2006 during the sixty-first session of the General Assembly by resolution A/RES/61/106. The Convention and its Optional Protocol opened for signature by all States and by regional integration organizations at United Nations Headquarters in New York on 30 March 2007. Available at <http://www.un.org/disabilities/convention/conventionfull.shtml>.

¹⁴ General Comment No. 15 (2002), para 3.

¹⁵ The Implementation of the Human Right to Water in Argentina and Colombia- M. Belén Olmos Giupponi* Martha C. Paz <http://ac.els-cdn.com/S1870465415000100/1-s2.0-S1870465415000100-main.pdf?_tid=869a1494-35ef-11e7-a66c-00000aab0f6b&acdnat=1494469033_f7dc40a6d358b101b0c8274237fa2a36> Last visited 22.04.2017

While establishing right to water the Constitution of South Africa embedded very special and advanced provision as to the obligation of natural and legal persons to respect the right to water.¹⁶ The right provided by the constitution would raise reciprocal duty for both parties to preserve natural resources by Article 24 (b). It highlights the requirement of conserving natural resources through reasonable legislative and other measures for the betterment of present and future generations. In this regard other measures would be included with reciprocal and mutual participation of general public to preserve natural resources while the state arranges infrastructure facilities. South African constitution further expands this obligation by interpreting right holders as to natural and legal persons. Apart from that in India, several courts have endorsed the right to water in the broader context of right to life recognized in Article 21 of the Constitution of India.¹⁷

III. HISTORICAL BACKGROUND OF WATER RIGHTS AND EFFECTIVENESS OF PARTICIPATORY MANAGEMENT SYSTEM

Water was highly preserved and carefully managed by the ancient community of Sri Lanka as a scarce resource which would immensely used for rice cultivation. Most of the ancient kings deemed to facilitate rice cultivation by providing appropriate infrastructure facilities to assure sufficient water supply. Colossal kingships were turned up by constructing massive tanks throughout the history and people tend to believe that they protect tanks even after their demise by becoming gods. For an instance King Mahasen who ruled the country from 277 to 304 AD is being worship by the people as a god Mahasen. A range of disciplines and practices related to water developed over the years have been established as customary laws in various regions of the country. Sometimes certain cultural values were influenced to amplify customary laws. It would accommodate equitable sharing during the stressed times and all the community were bound to preserve water resources and water management system.

Irrigation system and advanced management procedures affiliate with irrigation process in the ancient Sri Lanka were based on the sense of moderate cautiousness with a mix of paternalism, humanitarianism, and self

¹⁶ <<http://www.justice.gov.za/legislation/constitution/SAConstitution-web-eng.pdf>> Last visited 16.04.2017

¹⁷ 1949 Constitution of India, article 21. Protection of life and personal liberty.

interest.¹⁸ Correlative practices of the ancient institutions of compulsory labour (Rajakariya) and hereditary treadmill were supported to persistence of the irrigation system. However it was abolished by the Colebrooke-Cameron reforms of 1832 and Paddy Lands Irrigation Ordinance No. 9 of 1856 was enacted for the purpose of resuscitate the ancient customs, traditions, and practices in the paddy sector. The preamble to the Ordinance specifically pronounced the validity of ancient practices supported to enhance irrigation management.

“The non-observance of many ancient and highly beneficial customs connected with the irrigation and cultivation of paddy lands as well as the difficulties, delays, arid expenses attending the settlement of differences and cultivators relating to water rights, in the ordinary course of law, are found to be productive of great injury to the general of proprietors of such lands and it is expedient to provide a remedy for these evils.”

Participatory management strategies were mostly adopted in the irrigation sector in ancient Sri Lanka. Ancient rulers were obliged to provide water for the cultivation purposes of the people as duty bearers. In the process of providing water, rulers tend to assign duties upon people to perform mutually. The legal background of ancient Sri Lanka clearly elucidate that when the state obliged to preserve particular right for the sake of people at the same time people also abide to perform certain duty in order to enjoy the same right. It is evident to demonstrate that people could retain their rights by performing their obligatory duties cast upon them to preserve natural resources.

Participatory management system embedded with historical irrigation process witness to long-lasting sustainable water policy functioned in the ancient times. It is clear that participatory management system which influenced to protect water resources and inveterate profound faith on water were the root cause of the success of the ancient water policies. Hence it is desirable to educate people on their duty to preserve water before tend to claim their rights.

IV. DUTIES CAST UPON PEOPLE TO ACHIEVE SUSTAINABLE DEVELOPMENT PERTAINING TO WATER

¹⁸ Participatory management in Sri Lanka's Irrigation schemes – International Irrigation Management Institute 1986- Government Policy in Participatory Irrigation Management – J Alwis <http://www.iwmi.cgiar.org/Publications/IWMI_Research_Reports/PDF/pub034/Report34.pdf> Last visited 12.04.2017

The Sri Lankan Constitution does not expressly recognize the right to water as a constitutionally protected fundamental right nor does it expressly recognize the right to life as a fundamental right. However some fundamental rights in the constitution implicitly recognize the right to life.¹⁹ Accordingly it is evident to prove that there is a room for identify the right to water as a fundamental right which could extend the right under existing laws. Neither it has not ensured by the constitution nor abides by any statutory provisions to provide continuous water supply to its people by government as duty bearer under the customary international law. However people as right holders are not entitled to demand their rights without accomplishing their duties implicitly cast upon to preserve water resources. The constitution imposes a fundamental duty on every person in Sri Lanka to protect nature and conserve its riches by the Article 28(f) rather not enforced.

In the process of accomplishing sustainable development right to water retains high priority. United Nations Sustainable Development Summit held on 2015 recognized the access to water and sanitation as one of the Sustainable Development Goal with broad vision of establishing right to water. Hence it is essential to accelerate and expand the implementation process of sustainable water management policies and laws for protecting and utilizing available natural water resources efficiently by all nations.

Most effective definition given to the term sustainable development is “development that meets the needs of the present without compromising the ability of future generations to meet their own needs”²⁰ Sustainable development has emerged as a new paradigm of development, integrating economic growth, social development and environmental protection as interdependent and mutually supportive elements of long term development. It emphasizes a participatory, multi- stakeholders approach to policy making and implementation, mobilizing public and private resources for development and making use of the knowledge, skill and energy of all social groups concerned with the future of the planet and its people.²¹ According to the sustainable development principles responsibility to

¹⁹ Article 27(14) Sriyani Silva Vs. Iddamaligoda, OIC Police Station Paiyagala (2003) 2 SLR 63

²⁰ Brundtland, G (ed) 1987 our common future : The world commission on Environment and development, Oxford University Press, Oxford

²¹ (UN 2002. 2002 Global Challenge Global Opportunities: Threats in sustainable development available. <<http://www.un.org/esa/sustdev/publications/indisdmg2001.pdf>> Last Visit 02.03.2017

preserve natural resources including water was allocated mutually among both the state parties and individuals.

As per the principle of inter generational equality, the rights of the future generations should be protected by the present generations by segregating exploiting natural resources.²² It is a notion that is implicit in ecological sustainability, while giving responsibility to the present generation as the custodian of the plant for future generations.²³ This principle has dragged from the Principle 1 of the Stockholm Declaration. "Man has the fundamental right to freedom. Equity and adequate conditions of life in an environment of a quality that permits a life of dignity and well- being and he bears a solemn responsibility to protect and improve the environment for present and future generations...." This principle further elaborates the responsibility of man to protect natural resources rather than appearing for strengthening their rights. Principle 2 of the same declaration more over explains the requirement of safeguard the natural resources and natural ecosystems for the benefit of present and future generations. Apart from that preambles of the convention on biological diversity, Convention on the conservation of migratory species of wild animals, Convention on international trade in endangered species of wild fauna and flora further express the necessity of communal participation to preserve natural resources.

In the *Bulankulama v. Min. of Industrial Development (Eppawala case)*²⁴ justice Amarasinghe rightly express the requirement of public participation to preserve natural resources. He observed that "international standard setting instruments have clearly recognized the principle of inter generational equity. It has been stated that human kind bears a solemn responsibility to protect and improve the environment for present and future generations. The natural resources of the earth including the air, water, land, flora and fauna must be safe guarded for the benefit of present and future generations. The non renewable resources of the earth must be employed in such a way as to guard against their future exhaustion and to ensure that benefits from such employment are shared by all human kind. The right to development must be full filled so as to equitably meet development and environmental needs of present and future generations. The inter generational principle in my view should be

regarded as axiomatic in the decision making process in relation to the matters concerning the natural resources and the environment of Sri Lanka in general particularly in the case before us. It is not something new to us, although memories need to be jogged." This principle further adopted by the supreme court of Sri Lanka in the case of *Wattegedara Wijebandara Vs. Conservator General of Forest*.²⁵ In this case court has pointed out the necessity of utilizing natural resources in sustainable manner and it automatically institute the public responsibility to preserve natural resources. However present legal understanding exhibit that the requirement of public participation to preserve natural resources in the process of establishing the rights associated with natural resources specially preserving right to water.

In the *Eppawala* case justice Amarasinghe interestingly reject the public trust doctrine and lead to a new pathway to formulate novel concept of public guardianship. He stated that "in my view is restrictive in scope and I should look at our resources and the environment as our ancestors did and our contemporaries do, recognizing the shared responsibility."

Further he elaborates the nature of duty of the state to preserve natural resources on behalf of the people as "the organs of the state are guardians to whom the people have committed the care and preservation of the resources of the people. This accords not only with the schemes of government set out in the constitution but also with the high and enlightened conceptions of the duties of our rulers, in the efficient management of resources in the process of development." Accordingly it is clear that the state has been considered as guardian rather than duty bearer in terms of preserving rights compiled with natural resources in the Sri Lankan Legal structure. Thus the people are liable to safeguard natural resources to preserve their rights in the process of claiming right to water.

V. CHANGING THE APPEARANCE OF RIGHT TO WATER BY IMPLEMENTING RECIPROCAL OBLIGATIONS

Reciprocal means Bilateral, two-sided, mutual or interchanged. Reciprocal obligations are duties owed by one individual to another and vice versa. A reciprocal contract is one in which the parties enter into mutual agreements. This bilateral relationship could be posed in the field of human rights between duty bears and right holders. However it is clear that people and state parties

²² Birnie, P and Boyle, A. *International Law and the Environment*, Oxford University Press.

²³ Birnie, P and Boyle, A. *International Law and the Environment*, Oxford University Press.

²⁴ S.C. Application No. 884/99 (F/R)

²⁵ S.C.F.R. 118/2004 Supreme Court Minutes of 05.04.2007
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are having consecutive mutual deal in terms of performing and establishing human rights. Duty bearers are actors those who have a particular obligation or responsibility to respect, promote and realize human rights and to abstain from human rights violations. This term is most commonly used to refer to State actors.²⁶ Duty bearers are interact with rights holders those who are entitled to demand their rights or demand to assure their privileges.²⁷

The concept of human rights are defined as moral principles or norms which describe certain standards of human behaviour and are regularly protected as legal rights in local and international law.²⁸ Among others certain rights have inherent nature of performance which demands mutual contribution from the right holders to uphold the right. Mostly these rights are accompanied by natural resources, for an instance right to water. Accordingly it is clear that right to water is not only a one way right which should ensure by the government but also incorporated with mutual responsibility of people which would promote reciprocal integrity. Thus the demanding nature of right to water should be given new approach of rights according to the reciprocal understanding.

VI. DISCUSSION AND CONCLUSION

Global propensity towards the Right to Water and water scarcity menace triggered to moderate the water resource management in Sri Lanka from 1997 with the assistance of the Asian Development Bank and Food and Agriculture Organization of the United Nations.²⁹ Although comprehensive Water Resources Act and Management Policy were drafted in the light of that massive project, none of productive legislation has been implemented to counter future challengers of water resources in Sri Lanka. This research investigated the reasons affected to fruitless of existing water policies and most of the Water related statutes. Even though the right to water has partially recognized in Sri Lanka both people who threatened and already assaulted by the water scarcity have not effectively proceed to achieve right to water. The rationale behind this huge failure is long term withdrawal from the responsibilities cast upon the

general public which was implemented during the ancient era. The solution for the research Problem which was investigated by this paper is very crucial and time consuming attitude changing procedure. Entire society should have to educate under various age categories and initiate awareness programs in relation to reciprocal obligation of the people to preserve right to water.

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²⁶ <<https://www.unicef.org/gender/training/content/resources/Glossary.pdf>> Last visited 16.04.2017

²⁷ <<http://www.childrensrightswales.org.uk/what-are-human-rights.aspx>> Last visited 12. 03.2017

²⁸ James Nickel, with assistance from Thomas Pogge, M.B.E. Smith, and Leif Wenar, December 13, 2013, Stanford Encyclopedia of Philosophy, Human Rights, Retrieved August 14, 2014

²⁹

<http://www.fao.org/docrep/003/x9419e/x9419e09.htm>