

## **Chapter Three**

### **The Concept of Right to Water: Background, Understandings and Major Elements**

#### **Introduction**

The main focus of the present chapter is to explore the meaning of Right to Water. The chapter primarily focuses on key questions as to what are the main perspectives on rights and how the idea of Right to Water has been conceptualized in the discourse of rights. The discussions are developed in the light of the understanding that to analyze union water policies of India, a comprehensive understanding about the notion of Right to Water is a must. For this purpose, international and regional understandings are discussed here in the context of right to water. Importantly in this chapter, international and regional considerations are not undertaken as a guarantee to the right; rather the chapter has analyzed them as an instrument to define the meaning of Right to Water. The chapter presents how the idea of Right to Water is conceptualized as a process and argued at the international, regional and national levels.

The chapter is divided into four sections. The first section provides the basic idea about rights and discusses the key perceptions on them. This includes understandings evolved in the tradition of liberalist, Marxist, Feminist and human rights. The second section highlights the observations drawn from modern political thought that have presented water as a right. To understand the international undertakings on the matter, the chapter highlights the growth of the concept of Right to Water, including theoretical arguments and institutional frameworks that further discuss the meaning of right to water offered by international organizations such as the United Nations<sup>xxii</sup> (hereafter U.N.) and World Health Organization (hereafter WHO)<sup>xxiii</sup>. In this regard, the chapter lays special focus on General Comment 15, (hereafter Comment 15) as

it has offered principles and aspects of right to water that are essential to understand the meaning and scope of Right to Water.

To highlight the regional interpretation of Right to Water, the chapter further discusses the regional declarations and highlights the national constitutions that have adapted right to water as a constitutional and legal right. In reference to these many interpretations, the chapter offers meanings of Right to Water and analyses the significance and meanings of right based approaches that is used as an instrument of critical analysis of Right to Water in the union water policies in India.

Thus, this chapter investigates the meaning of Right to Water in five steps. In the first step, the chapter discusses the concept of right itself. The second step brings out the ideas present in modern political thought which argue that water is a right. The next step is divided into two parts: it first highlights the claim of Post-neoliberalism argument which criticises neoliberal practices of water supply management. The second part of this step discusses the process of institutionalization of Right to Water which is further followed by the right based approach, a tool that will be used for further analysis<sup>xxiv</sup>.

### **3.1. Backdrop to the Concept of Rights in Modern Political Thought**

The discourse on rights<sup>xxv</sup> argues that the regime of rights<sup>xxvi</sup> requires a responsible state, which is essentially accountable to its inhabitants. In philosophical discourse, demands for rights have taken different purposes and contexts. The endeavour is to identify the meaning of rights, what ought to be and can be considered as right and what can justify rights as right (purpose). This implies that the state, with most rational arguments, has to assure certain conditions as positive and negative rights<sup>xxvii</sup> that are claimable as natural, moral, legal and human rights.

#### **3. 1.1 Different Key Perspectives on Rights**

In modern political thought the idea of rights is developed as a discourse. As a concept, it is advanced with different perceptions within the liberalist, Marxist,

Feminist and human rights framework. Each of these schools of thought have conceptualized rights with different reasoning and offered different meanings to the idea of rights. For instance, in the liberal view, rights basically imply the rights of individuals. According to Marxism, rights are a condition for a classless society that aims to bring equal satisfaction to all and in the feminist perception rights essentially signify the rights of women. In the tradition of human rights claim on rights as right is a claim of humans for humanity and hence the human rights perspective has not specified right in favour of any one individual, group or community. Notably, this concept has emerged during the post World War era, that has amalgamated all the ideas, argued in different schools of thought. Theoretically, it has not excluded any area.

Notably, the views that emerged in the four schools of thought are different in their argument and have evolved as critical responses to each other. To present these critical observations, the chapter discusses the Perspective in an order i.e. liberalism, Human Rights, Marxist and Feminist. As Marxist interpretations on rights are developed against liberalism and are also critical on the idea of Human Rights, in this chapter, the perceptions of Marxism are discussed after a discussion on liberalism and human rights. Feminist perspective is discussed at last because it has rejected all the three notions and argued for a new principle of right.

It is known that the conceptualization of rights, in these schools, is a result of contradicting views, observed within and in between the thoughts. This study has noted that in rights studies, the trend of argumentative discussions is popular. However, the present chapter will not provide a critical commentary on the perceptions. It is important to note that the argumentative discussions are ignored in favour of the core focus of the present research, i.e. Right to Water.

### **3. 1.1.1. Liberal Perspective**

Exploring the history of political thought one finds that in modern political thought, the idea of rights is primarily discussed and claimed as freedom. In the discourse on rights, it evolves as liberalism<sup>xxviii</sup>. The liberal perspectives on

rights are conceptualized with two ideas known as natural theory of rights and the idea of utility i.e. utilitarianism<sup>xxix</sup>. Since both the understandings are distinct in their purposes and arguments, it is essential to discuss them separately.

#### **3.1.1.1.1 Natural Rights**

In the notion of natural rights (also known as classical rights), rights are defined and argued as pre-state phenomena i.e. being in existence since the pre-political state of nature. It argues that rights are enjoyable because they are given by nature. Initially, the notion described and argued rights as the will of God (Hugo, 1625). The idea has underlined that rights are primary, unchangeable, absolute and inalienable and the status of “prima facie” of them is preserved and protected by natural law (Gierke, 1950). Since the idea has put dominance of God over the individual, it has been opposed and replaced by an idea that insists that rights are the will of individuals. The fundamental argument is that it is actually the will of individuals that makes rights a right (Hobbes, 1651; Locke, 1690). The notion argues that rights are claims that emerged<sup>xxx</sup> with the common will i.e. “common consent on common principles” that are commonly accepted by the people living in primitive state<sup>xxxix</sup>. In the concept, appeared individualism has established rights as ends and means (Paine, 1791), the purpose of rights here is to “escape from inconveniences” and to have right to self –preservation and self -defence (Hobbes, 1651) that includes right to life, liberty and property (Locke, 1690). Since having life is the first right of individuals, the rights that ensure peaceful life are supreme and inalienable (Frankena, 1955) and are enjoyed without duties and obligations (Paine, 1791). The concept of natural rights establishes rights as equal freedom (Hart, 1955) and universal entitlement (Gunnar, 2006) which makes individuals free, equal and independent. It is argued that in a political society, understandings of natural rights subsist without conflict because they are passed by man in virtue of being man, which ensures that he cannot be a subject of another without his own consent (Hobbes, 1651; Locke, 1690)<sup>xxxii</sup>. Clearly, the initial purpose of natural rights is to establish rights, prior to the establishment of the state, and introduce rights as per the value of

political justice. For this purpose, the idea of natural rights has classified rights as moral and civil rights (Ryan & Boland, 1940). It insists that rights are moral claims, constant to personal good and are positive or legal rights that spring directly from individual rationality (Ryan & Boland, 1940).

### **3.1.1.1.2 Utilitarianism**

The second perspective regarding rights in liberalism is known as utilitarianism. In utilitarianism, the idea of right has emerged in response to a questioning of the natural theory of rights<sup>xxxiii</sup>. The response has questioned two fundamental arguments of natural rights. The first is related to the conception of rights as pre-state phenomena and the second, on the reasoning for the same.

While arguing against natural theories of rights, utilitarianism has reconceptualized the reasons of rights and stated that rights are the reflections of human reasoning. In the utilitarian view, rights are enjoyable as rights because their logic is shaped, endorsed and ensured by the state (Burke, 1790; Canavan, 1961). Accordingly, even though rights are the stimulation of human reasoning, their entitlement depends on the consent of the state, as they can be considered as a legitimate claim only in a state (Burke, 1790)<sup>xxxiv</sup>. Opposing natural rights, idea of utilitarianism argues that rights are the ‘child of laws’ that are introduced and survive only in a system of the state (Bentham, 1973). In utilitarian perspective rights are defended as valid claims that are permitted by society to protect ‘something’ which is realized as essential for good life<sup>xxxv</sup> (Mill, opening sentences of his thesis “Utilitarianism”, 1861: chapter V). It appears that for utilitarians, rights are possible only with social consensus, consent on which is given by the state.

For utilitarians, the second logic “to have rights as rights”, lies in the interest that is the inherent part of rights. Accordingly, rights are naturally preferred by individuals because they represent real interest to them (Bentham, 1973; Mill, 1861), the value of which is clearly visible in all spheres of life<sup>xxxvi</sup>. This means for utilitarians, rights are rights, because they have utility to create benefits in form of pleasures (Bentham, 1973) and happiness of security that

assures individuals a freedom from injury (Mill, 1861)<sup>xxxvii</sup>. In a way, they are good in themselves because they are useable as effective tools that produce maximum pleasure for maximum people (Bentham, 1973)<sup>xxxviii</sup>.

Evidently, in utilitarianism, the idea of rights is of secondary importance. In society they are accepted as benefits that hold social responsibility along with liberty (Devlin, 1965). Importantly, in the notion, rights are defined and accepted as act of utility (Sidgwick, 1874), where self-evident maxims are supposed to be the fundamental principles and must underlie the more specific maxims of common morality (Schneewind, 1977). In this sense, rights in utilitarianism are non-discriminatory and represent collective individualism (Hamilton, 2002). Accordingly, for utilitarians, rights are moral actions that are protected by the state through the law. Fundamentally, utilitarianism has valued utility above all other aspects, including morality.

### **3.1.1.2. Human Rights Perspective**

The notion of human rights describes rights as the question of human dignity (Belden, 2003)<sup>xxxix</sup> and argues for the revival of the concept of rights of man as a right of humans, including both, man and woman (Freeman, 2002). Discussions evolved in the human rights traditions are different in context. However, in the present study, the researcher insists to considering human rights as concrete struggle for equal rights (Belden, 2003) as it has framed a higher set of moral principles<sup>xl</sup>. The argument in reference to the present investigation is found important because, with regard to philosophical consciousness, scholars of human right tradition have argued rights as claims, possessed by *all* human beings. Thus, rights, in human rights, are justified in the reference of morality and are argued in reference of human relevance (Baier, 2002). It holds language of humanity (Baxi, 2006) and has established its significance as international (Beitz, 2001) as well as universal (Nussbanm, 1998). Unlike utilitarianism, the idea has found rights to be self-evident (Michael, 2012), unrestricted moral claims (Gewirth, 1978, 1982 and 1992), a voice of the voiceless (Ignatieff, 2001:70) and trumping power of individuals (Dworkin, 2000)<sup>xli</sup>. Importantly, to argue rights as right, the concept has

covered almost all aspects of human life. It is claimed that the notion of human rights has offered, maintained and preserved rights as a therapy, to minimize human suffering (Baxi, 2000).

Clearly, unlike natural rights and utilitarian understandings on rights, the human right tradition has conceptualised rights as a tool, to be used against prevailing injustices. The discourse on human rights insists that to remove injustice, it is important to introduce and establish rights as a system that works universally to diminish unjust practices, mainly inequalities<sup>xlii</sup>. Hence, to implement the idea, the notion of equality is defined and established as a core value of a global system that fundamentally argues for global justice (Rawls, 1993)<sup>xliii</sup>. In the conception of rights, human rights tradition argues that what is right for one person must be right for any similar person in a similar situation (Gewirth, 1964). Thus, the objective of rights, in the discourse of human rights, is to establish equality among the equals and to treat them as humans. To attain equality as an objective, it obligates the state to create a positive environment to maintain his/her dignity as a human being. Accordingly, in human rights, unlike utilitarianism, rights are not interests but are found relevant because they offer, maintain and preserve equal entitlements and assure equality which is unconditional, unalterable (Feinberg, 1973) and even beyond legislation (Sen, 2004; Cohen, 2000, 2006, 2008 and 2011). Thus, understandings of the notion argue to ascertain rights as universal principles of humanity (Arendt, 1950)<sup>xliv</sup> and as instruments to protect human dignity. By rejecting the dichotomy between negative and positive rights (Shue, 1980; Donnelly, 2003), it emphasises that all rights are positive rights (Holmes and Sunstein, 1999), the intention of which are general and are accepted with least contradictions (Rawls, 1993).

Significantly, like liberalism, in human rights, rights are the right of all individuals. However, the major concern of the arguments developed in human rights is to balance liberties with equalities (Rawls, 1993; Habermas, 1969)<sup>xlv</sup>. Importantly, the core focus of rights, in human rights, is to establish and assure universal equality as justice (Rawls, 1993; Freeman, 2012; Belden, 2003; Baxi, 2006; Beitz, 2001, 2009). The idea as evolved in the mentioned

contexts has established rights as an absolutely essential (Cohen, 2006, 2011) and urgent requirement (Risse, 2013). As a trumping power (Dworkin, 2000) it is absolute and possessed by all humans simply by the virtue of belonging to humanity (Frankena, 1952; Simmons, 2001; Griffin, 2001, 2008; and Beitz, 2009).

### **3.1.1.3. Marxist Perspective**

Rights, in the Marxist perspective, emerged as an ideological product of social struggle (Michael, 2012). The perspective presents that rights are influenced by the mode of production and are developed in the course of history; therefore, they do not hold philosophical reasoning but are the consequence of social construction (Plamentatz & Wokler, 1962). Importantly, arguments of Marxism argue against liberalism and human rights and took a stand for the rights of proletarians<sup>xlvi</sup>. While condemning the ideas, Marxism insists that the notions, developed in these perceptions, have conceptualized rights in a way that has made rights mere rights of capitalists. Consequently, instead of creating natural rights, it has created natural privileges<sup>xlvi</sup>. The arguments further highlight that the working principles suggested by liberalists are used as tools to exploit others because in the given set of social relations, everybody does not enjoy similar rights<sup>xlvi</sup>. To rectify the situation, Marxist notion of rights has extended the idea of equality and insists that rights must not only be given but should have virtue to satisfy people equally<sup>xlvi</sup>. Marx insists that rights must be contextual and a correct position can be established only in a society that is based on the principle “to each according to his ability, to each according to his needs”<sup>1</sup>.

It is noted that the primary idea of Marxism has not taken up the task to define what rights are<sup>li</sup>. However, in the discourse of rights, it evolves as a theory of need, which implicitly suggests what rights should be (Nordahl, 1985). The interpretations explained by neo-Marxists (Nordahl R., 1982) present that Marxism has understood and defined rights in two ways. The first argues against the idea of universality of rights, offered by human rights and focuses on the question as what can be claimed as rights and which right can be



claimed as significant to which society. The second view is a rectification of liberalism that redefines the meaning of equality and freedom. The first understanding prescribes that primary needs including food and shelter are claimable as fundamental rights<sup>lii</sup>. Since they are basic requirements of human life, their claim-ability is universal<sup>liii</sup> that deserves to be entitled even before right to freedom or autonomy (Burke, Crocker & Legters, 1981)<sup>liv</sup>. The notion has understood that the requirement, other than basic needs are claimable, but they are supposed to be viewed, entitled and claimed in social and economic contexts. Significantly, rights included in this category can have different meanings and significance. This implies that the meaning of rights, other than the fundamental ones must be understood differently in different societies (Plamenatz & Lamont, 1950; Heller, 1976). For instance, in an interdependent industrial society, the real rights of an individual will be right to job, right to get appropriate remuneration, and right to education. For pre industrial society, the right like right to land will be the real right and in a post industrial society the real right will be right to participate in industrial management (Nordahl, 1982). Clearly, in Marxism, the argument of universalisation of rights is different from liberalism and human rights, which insists that to justify rights, it is essential to identify rights in the right context and accordingly ensure them as absolute (Nordahl, 1982). In Marxism, rights are argued as less contradicting because unlike in liberal perception, in Marxism, rights are communitarian in nature. As a principle, Marxism holds that people have created rights not for their personal enlightenment but have adopted them to satisfy the needs that are equal for the entire community.

The second interpretation of rights, in Marxism, has offered an explanation on ideas of freedom and equality that are notably different from liberalism. In Marxism, the idea of freedom and equality are seen as social construction created by society, under specific conditions, the purpose of which is to return to their true nature as social beings (George Klaus & Manfred Buhr, 1974). In this view, right to equality is argued for as a value and content that have to make humans self-sufficient individuals. The purpose of equality, in Marxist perception, is to have equal right to participation in social decisions and to

access the means of self-realization which includes equal opportunities to attain social position and offices. On the other hand, right to freedom is argued as an enjoyed result of self-sufficiency<sup>lv</sup>. Accordingly, for Marxism, freedom is not absolute but it is a right that allows a person to do everything for one's own growth that harms no one. Clearly, ideas emerged in Marxism are not only committed to the principle of equal freedom but the notion has reconstructed the idea of right by holding a view that people have certain rights (Peffer, 1990).

#### **3.1.1.4. Feminist Perspective**

In the feminist notion, rights are argued in the context of absence of rights<sup>lvi</sup>. Fundamentally, feminism asks if women too have rights. Feminist response to this question points that rights as claim and entitlement are privileges of men. In the social, political and economic structure, this has been used against women<sup>lvii</sup>. Feminism insists that the content of rights in natural rights, Marxist or human rights is incomplete and so the ideas have failed to understand the nature of inequality prevailing in social, political and economic life. According to feminist perception, it is essential to realise that inequality does not really exist between man and man but it is between man and woman that is based on socio-cultural and economic power structure and has nothing to do with biological difference between the sexes (Nussbaum, 2000). Feminism primarily argues that women are human beings and are equally rational as men. Thus, as per the logic of a rational being, they must be entitled to the same rights of liberty and self-determination which males usually claim for themselves (Wollstonecraft, 1792). Feminist thought urges that in order to confer equal rights to women, the idea of society should be organized on the principle of 'reason'. It insists upon suspending the 'accidents of birth', and argues that sex should be declared as irrelevant<sup>lviii</sup>. To reargue rights in favour of women, feminism has used popular terminological aspects of rights, developed in Liberalism, Marxism and Socialism<sup>lix</sup>. It has basically re-conceptualized the popular arguments and persistently argued for liberation of women. In the discourse of rights, it has offered three meanings of rights,

described and argued as liberal feminism, Marxist feminism and radical feminism<sup>lx</sup>.

The arguments evolved in the three versions are different in context and reasoning. However, in academia they hold equal value that take a stand in support of women and have rigorously argued for the civil, social and personal rights of women. Value of civil rights, argued in liberal feminism, insists that equality is the first right of women (Eisenstein, 1981; Humm, 1992)<sup>lxi</sup>. This widely includes right to equal pay, equal educational opportunities, legal independence and freedom from contraception and abortion and most importantly right to define her sexuality so that she can experience and enjoy full identity and freedom (Brody, 1992). Marxist feminism adds component of civil rights. It has added social values to rights and has described rights in term of class struggles and emphasised the need to transform the mode of employment (Sacks, 1974). To present feminist perspective on rights, it has highlighted the economic aspects of patriarchy and argued that patriarchy operates in tandem with capitalism that has created gender subordination and class inequality. Significantly, Marxist feminism has not defined what precisely the rights of women are but it emphasises that to actually entitle women with real rights, it is essential to overthrow capitalism, absence of which will automatically bring equality in the family structure and establish social equality in a wider sense. The idea of social equality is redefined and reconceptualised through radical feminism that insists upon overthrowing patriarchy<sup>lxii</sup>. Equality in family structure is the core value here, which insists on equality of women in family and personal life. While redefining the concept of freedom it explains that the real freedom of a woman is her freedom from coercive sex which includes pornography and prostitution (Hoffman, 2001). Accordingly, for radical feminism, the first right of a woman is over her body (Brown, 1995). The rights argued for in liberal feminism and Marxist feminism are combined by radical feminism. For radical feminists, rights are of two types that are public and private rights. Here, public rights include right to have equal opportunities in politics and economy and private rights are right to have control of her own body, freedom

from coercive sex, forced motherhood and freedom in choice of marriage (MacKinnon, 1979).

Clearly, in feminist perspective rights are argued mainly for women. In modern political thought, these arguments have created a new discipline that has highlighted the suppression of women and has used rights as a tool for women's liberation. Unlike liberalism and Marxism, the idea and claim of universality of rights in feminism is not a right of individuals but to entitlement of women as human.

The above discussion shows that the idea of rights has emerged and evolved with different reasoning and arguments. However, the purpose of rights is common to all schools of thought, i.e. to have and use right to attain good life. The researcher believes that goodness is the most common feeling, observed equally in all four schools, i.e. in liberalism, Marxism, human rights and feminism<sup>lxiii</sup>. In the discourse of rights, the idea of goodness as the ultimate purpose of right is discussed with different arguments. In liberal perception, rights have been evolved and argued as 'agreed conditions' which entitles an individual to have a life with freedom. In the notion of human rights, rights are argued with the feature of equality, which is the only good thing, universally claimable by all. For Marxism, good life is to have rights that can satisfy the needs of a society while for Feminism, good means the absence of discrimination and end of dominance of men over women.

Viewing the requirement of the present research, the researcher proposes that the purpose of rights to satisfy human needs is important as it creates space to consider needs as rights and offers logical reasoning to discuss that water is a right. With regard to needs, the idea that water is a right is fundamentally inarguable, because it is a common requirement of human existence (Gleick 1999, 2007; Scanlon, Cassar and Nemes, 2003). The idea is simple but in modern times the argument of "common requirement of human survival" requires further clarifications. With the notion that development is a need, the task is becoming difficult as the idea of development has observed water as multidimensional and has argued its use for multiple purposes. Due to this

reason, it is increasingly difficult to see water as a need, as the question arises: Water is whose need and for what purposes? Is it a biological need or a need for development and growth or a need of the environment itself? To attain a clear understanding on the subject, one obviously has to look at modern political thought as in academia; it is considered as the starting point of the rights discourse. Discussions, developed in modern political thought, are even otherwise important because as a discourse it has argued rights as a relationship, existing between state, individuals and natural resources, which further decide on issues concerning policy frameworks.

### **3.1.2. Water as a Right: Major Observations from Modern Political Thought**

In modern political thought water is considered as a right<sup>lxiv</sup>, the idea, however, is evolved without a theoretical advancement.<sup>lxv</sup> The researcher has observed that in modern political thought, the fact that water is a right is mainly discussed in three contexts: (i) need of/for life; (Hobbes, Locke) (ii) ownership (Locke, Blackstone) and (iii) essential element of development (Nozick). In Hobbesian and Lockean thesis, water is considered as a need of life. Considerably, Hobbesian account addresses why water is required to be considered as a right, Lockean perspective, on the other hand focuses on how the same can be established as a right.

While answering the why of the question, Hobbes explains that water is one of the basic necessities of life and is essential for human survival. He highlights the significance of water in his tenth natural law, and writes: *“As it is necessary for all men who seek peace to lay down certain rights of nature, that is to say, not to have liberty to do whatever they like, so it is also necessary for man’s life to retain some rights—the right to take care of their own bodies, to enjoy air, water, motion, ways to go from place to place, and everything else that a man needs if he is to live, or to live well”*<sup>lxvi</sup>

For Hobbes, water is a right; the use of water is a liberty that is essential to maintain peace (opening words of chapter XV). For him, right on water is claimable because it comes under the category of right to self preservation

(Jack, 1981). In his writing he explains that man has the right to have a body which includes protection of body as well. For him, it is the first right of man, which obviously includes all basic needs, including water. In this sense, his argument of right to self-preservation is a right to have water. His idea of self-preservation is a claim for water not merely for life but for a good life.

The idea is further expanded through Lockean perception. Locke explains how water as a right can be attained. For him, having a right over water as a right to life is not a plain right but enjoyment of it is attached with labour. In his work, he explains that:

*“Though the water running in the fountain is every one's, yet who can doubt, but that in the pitcher is his only who drew it out? His labour hath taken it out of the hands of nature, where it was common, and belonged equally to all her children, and hath thereby appropriated it to himself”<sup>lxvii</sup>.*

Like Hobbes, his texts accept that water is a gift of nature and belongs to all. However, his idea of everyone's right is not a natural right but it is a right that can be enjoyed only if it has added human labour. Thus for him, water is common until labour is not added to it; added labour gives a sense of ownership on water, which indeed is not a choice or a matter of dominance. In Section 33, he explains this in the following words:

*“Nobody could think himself injured by the drinking of another man, though he took a good draught, who had a whole river of the same water left him to quench his thirst: and the case of land and water, where there is enough of both, is perfectly the same”.*

The expression explains that having ownership of water, as a result of labour is negative freedom on use and claim on water. Since human labour has natural limitations, there is an obvious limitation of right over water as well. He clarifies that right over water can be claimed as “just” only if it has satisfied a proviso that is based on a principle that enough must be left for others. Clearly his views on use of water are based on morality, which insists that sufficient and good amount of water must be left for others and there must

be no wastage. The researcher thinks that these two statements together provide Locke's understanding about water and offer three basic elements which together argue for a proviso. The first understanding states that water is the most significant element for the existence of life. The second insists that water be made available to all and that water can be enjoyed only by adding labour to it; and the last argues that water is available to all and should not be owned by one to deprive others.

The Lockean idea of labour is redefined by Blackstone, which he calls "law of labour" i.e. based on the principles of law of nature. Blackstone, while reflecting on the idea, infers that water is a moveable thing, therefore, ownership, attained by adding labor into it, cannot be permanent in nature, and changes with the change of labourer. This means that one who will add his labour to fetch water will own it. Thus, in his concept, the idea is defined with reference to temporary ownership. He writes: *Water is a moveable, wandering thing, and must of necessity continue common by the law of nature; so that I can only have a temporary, transient, usufructuary property therein*<sup>lxviii</sup>. Unlike, Lock and Blackstone, in Getzler's view water is a real right and is a subject of personal property that is measured on the basis of its transient quality. He explains this in the following words: *Water is a subject to real rights, but its transient qualities give it some of the character of personal property* (Getzler, 2004). For Cicero<sup>lxix</sup> and Pufendorf<sup>lxx</sup>, however, so is not the fact. They argue that fresh water, like fire and council, should be given free because it is useful to the receiver and of no trouble to the giver.<sup>lxxi</sup> Similar thoughts are expressed by Adam Smith (1776). For him water is a basic need and so is a public good. He suggests that there can be no price on water<sup>lxxii</sup>.

In the discussions on water as a right, Hegel's argument is interestingly a claim against Lockean proviso of labour. For Hegel, water is a free right. According to him, water is the only raw material which does not need to be worked on before use; we can drink it as we find it. Therefore, there can be no claim on water as a right to property, even a claim as a result of labor is not permissible (Bell, 2012)<sup>lxxiii</sup>. Nozick, in his expression of justice, rejects what

Hegel opined and follows the Lockean proviso with certain limitations. He has viewed water as a use right and argued it as an individual property, which ultimately allows an individual to do what s/he wants to do with (1974). His understanding about right to property has made water an absolute right of an individual, transfer of which requires consent of the owner. Noticeably, in Nozick's (1974) works, the idea of self is dominating, which indeed is different from Locke's understanding<sup>lxxiv</sup>, Nozick has re-interpreted Lockean proviso in individualist terms and states that "enough and as good be left for others, but in case of dry his/her ownership on his/her own resources can't be denied, rejected or challenged by any authority". He explains this as: *This excludes ...his using it in a way, in coordination with others or independently of them, so as to violate the proviso by making the situation of others worse than their baseline situation. ... Thus a person may not appropriate the only water hole in a desert and charge what he will. Nor may he charge what he will if he possesses one, and unfortunately it happens that all the water holes in the desert dry up, except for his, this unfortunate circumstance, admittedly no fault of his* (1974).

Evidently, unlike Locke, Nozick is not concerned with the adverse impacts of private ownership. His extreme individualism makes survival of others difficult as they don't have any other source of water. For him, as everything is better off after appropriation than that appropriation is just (1974). Here, Nozick, values water for its inherent virtue of "all-purpose means" that satisfy vital necessities and offers a "well-being achievement" that however, is selectively in favour of water owners.

The discussions point out that political thought has accepted that water is a right. However, the same is explained with two different views. One of these states water as a free right and the other argues it as a right that is the result of labour and has linked it with right to property. Since these views have as yet not turned into theory, it is unwise as well as inconvenient to look upon them as a conceptual background that can be used as a policy framework. However, even with the existing limitations, the researcher believes that in comparison to all other views, Lockean understanding about water can be taken as the



beginning of the modern conception of Right to Water. Like modern states, Locke's major concern is to define and assure the ability to access water. In policy making, the idea can be evolved as a concept that insists upon guaranteeing that no single individual or institution will have entire control over water. In the situation of water stress, guarantee of such nature is essential as in reality of the "many uses of water" (Smith, 1776), it protects the individual's right to have water. The researcher believes that the understanding is even otherwise worth considering as Locke's idea of labour is reinterpreted in the nineteenth and twentieth century, where labour is seen as efficiency. Notably, the revision is not the revision of proviso, as in the new argument water is not merely seen as life but is considered and treated as a utility which does not argue about leaving enough water for others. Globally, principles developed under this view are known as Thatcherism<sup>lxxv</sup> and Washington Consensus<sup>lxxvi</sup>.

In political philosophy, principles introduced by Thatcherism and Washington Consensus have evolved new trends that has added new values to liberalism. The principles insist that water is a right because it has many utilities. This ultimately has created an argument that as water has multiple uses, it is essential to protect and preserve it efficiently. Importantly, the requirements considered in the neoliberal perspective have made a universal call to adopt neoliberal values in water management. It has ascertained that water is not a free right but a right which includes cost of labour, i.e. management. The idea has valued labour more than water itself and has encouraged states in the move towards water privatization (Barlow, 1999; Bond, 2000; Cleaver and Elson, 1995; Lipschutz, 1998; McAfee, 1999; Spiertz and Wiber, 1996). Since the idea has created a threat to water equality, it has received notable objections from different discourses including neo-Marxism, eco-feminism and post neo-liberalism. Significantly, the discussions that have emerged in the form of objections have created new discourses and together they have promoted the idea that water is a right. However, instead of offering meanings and aspects of right to water, these have debated the justifications of their own arguments. For instance, while justifying water as a right neo-Marxism argues

that water is a common need and not merely a utility resource as neoliberalism insists. To counter the idea of water privatization, Marxism insists that water be considered as a free right (Bernstein, 2001; Bridge, 2004; Mansfield, 2004; McAfee, 2003; McCarthy, 2004; McCarthy and Prudham, 2004; Goldman, 2005; Perrault, 2006). Feminist discourse argues against neoliberalism and neo-Marxism and insists that water is the need of all but foremost the right of women. Notably, in water studies, such arguments have evolved under eco-feminism (Griffen, 1978; Gray, 1979; Spretnak, 1982; Shiva, 1983; Plumwood, 1993; Bleisch, 2006). Different from these arguments, the human rights discourse argues for water equality and water justice. Globally, the idea has evolved as an argument against neoliberalism and is known as Post-neoliberalism (Gleick, 1999; Noemes, 2004; Salman and Alice, 2004; Lankford, 2004; Bourquaim, 2008; Riedel, 2008; Saden, 2009; Brand, 2009; Oxhorn & Robert, 2009; Escobar, 2010; Sandbrook, 2011; Risse, 2013 and Winker, 2014)<sup>lxxvii</sup>.

During this study, the researcher observed that in these discourses the meaning of right to water is not discussed much but the arguments are articulated to find out to whom water should be given and how. Since there is an absence of a specific meaning of right to water, in all the four schools of thought, i.e. neoliberalism, neo-Marxism, Eco-feminism and post-neoliberalism, emergence of the concept of Right to Water cannot be claimed as a result of theoretical advancements (D'Souza, 2010). As political theory has left out the question that asks the meaning of Right to Water, it is important to seek answers from other discourses that are equally political in nature. The researcher, while searching for the initial point of evolution of the concept of Right to Water, found that in the discourse of rights, no certain meaning of Right to Water is available but an understanding can be derived from different philosophical arguments and Declarations, Resolutions and Constitutional arrangements. The researcher believes that the study of these arguments, Resolutions and Declarations is essential as they together have advanced the idea of Right to Water and also offered essential elements of it. This has helped to conceptualize Right to Water in a larger sense that is indeed helpful

for water policy analysis. The researcher noted that the area of study is vast as the idea is presented and argued at different levels and evolved in different contexts. To explain each of these levels, the next section of this chapter elaborates on the conceptual evolution of Right to Water.

### **3.2. Conceptual Evolution of the Idea of Right to Water**

The researcher noted that in water literature, (not in the sense of direct discussion) the concept of Right to Water evolved as a process<sup>lxxviii</sup> and has emerged in the context of international, regional and national arguments, events and undertakings. The events and declarations together have created three understandings on right to water, respectively effective for international, regional and national water governance. Since they collectively propose a definite meaning of right to water, this section discusses undertakings that took place at all the three levels i.e., international, regional and national. The section, for this purpose, is divided into three subsections. The first part offers international understanding and discusses the idea of Right to Water in two contexts: normative discussions and institutional frameworks. It analyzes the major arguments, landmarks and undertakings developed at the international level. The second part of this section sheds lights on the regional undertakings and the last part brings the national constitutions and national laws that have defined water requirements in the context of Right to Water<sup>lxxix</sup>.

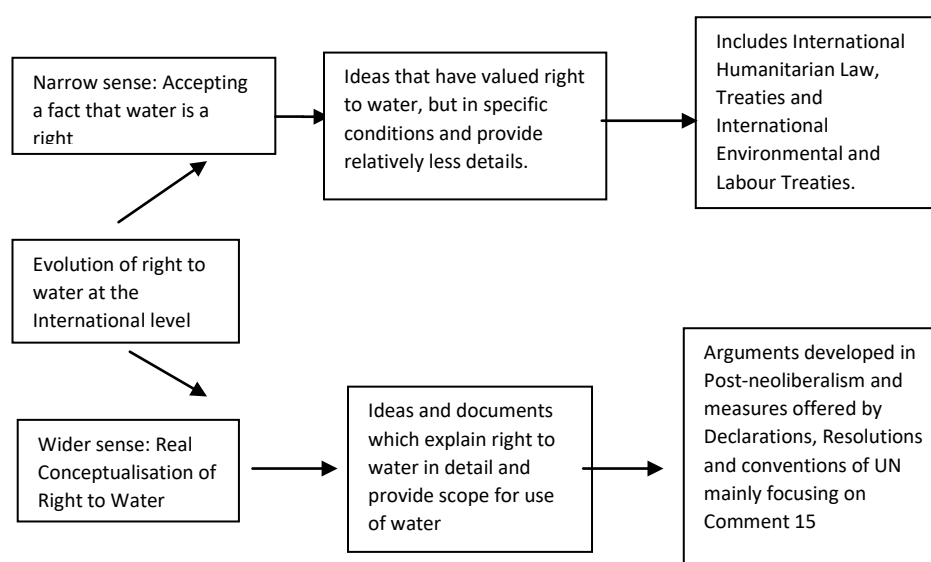
#### **3.2.1. International Level: The Idea of Right to Water**

The idea of Right to Water covered under this heading has a vast background. Since every aspect within it cannot be covered, the researcher has decided to illustrate the major aspects of international undertakings that have actually offered the meaning of the term<sup>lxxx</sup>. In relation with major undertakings, the researcher observes that the idea that can be called as Right to Water is presented, argued and evolved in two discourses. The first discourse argues that the idea has emerged and evolved along with the process of insitutionalisation of the idea. Internatonal insitutions have identified and dicussed that water is a right and have assured right to water through international documents. However, the other discourse which evolved as part

of the water justice movement, rejects the claim by saying that the real contributors are water scholars and water activists as they put pressure on states to assure right to water to all. Both the understandings have their own place and significance. Since the purpose of the present chapter is to explore the meanings of Right to Water, instead of investigating the authenticity of the arguments, the researcher has chosen to focus only on meaning proposed by these understandings. For this purpose, the researcher has divided them into two and mentioned them as normative support and institutional frameworks. Normative support presents arguments against neoliberalism<sup>lxxxix</sup>. Institutional framework, on the other hand, arises as a consequence of institutionalization of the idea of Right to Water, major provisions of which are offered by international institutions, mainly by the United Nations.

Importantly, this study has noted that all the ideas and provisions that are developed within institutional frameworks do not focus on the conceptualization of Right to Water. Hence, to get a precise meaning of Right to Water, the researcher has understood evolution of the idea in two senses and categorized them as narrow and wider senses. Here, narrow sense refers to the mere mention of right to water. Since it has limited details on Right to Water, the provisions mentioned in this category cannot be claimed as emergence of the concept of Right to Water. The wider sense, on the other hand, represents greater details on the subject. For the study like the present they are important as they offer the meaning and scope to Right to Water (see figure 3.1.). The researcher believes that since the wider sense has all the required details on the notion, it can be recognized as the conceptual emergence of the notion of Right to Water.

**Figure 3.1: Dividing understanding on right to water: At global level**



As Figure 3.1 explains, in the present research, the researcher has considered International Humanitarian Law Treaties and International Environmental and Labour Treaties as narrow interpretations and the claims against neoliberalism, i.e. Post-neoliberalism and Declarations, Conventions and Resolutions undertaken by United Nations, in the wider sense. The researcher, while putting UN initiatives in wider category argues that provisions of General Comment 15 requires for especial attention as it synthesises the values of individualism and collectivism (Langford, 2006)<sup>lxxxii</sup>.

In the figure, categorization of narrow and wider senses is based on the logic of the concerns, reflected in the contents of the arguments and documents. It is

found that in the International Humanitarian and Criminal Law Treaties<sup>lxxxiii</sup> and in International Environmental and Labour Treaties<sup>lxxxiv</sup>, the scope of entitlement of right to water is limited. These ensure water as a right in specific conditions only, as for instance, providing water to war prisoners and to employees at the work place<sup>lxxxv</sup>. Since the objective of these treaties is not to guarantee right to water to all, required details, of the concept are obviously missing from the documents.

The figure presents that at the international level, argumentative discussions emerged and evolved with Post-neoliberalism and measures offered by the Declarations, Resolution and Conventions of UN offers wider Perspective on the idea can be called as Right to Water and offers meaning of right to water and defines the scope of the same. The researcher believes that since wider Perspective holds greater details on right to water, it is essential to discuss them in detail. Following section in this respect describes the wider Perspective as an argument against neoliberalism and elaborates undertakings of UN, with a major focus on Comment 15.

The researcher thinks that an exceptional focus on the provisions of Comment 15 is essential for three reasons. Firstly, because the core objective of the present research, i.e. to define Right to Water is well described in Comment 15<sup>lxxxvi</sup> and other documental developments evolved after it, are more or less its repeat and so discussion on all the developments will not be logical<sup>lxxxvii</sup>. The second reason lies in the status of Comment 15. It is a fact that even without being a legal force, it holds considerable weight of authoritative interpretations of treaties made between different states<sup>lxxxviii</sup>. The third reason lies in the requirement of the present research. The researcher found that this document offers the required normative standards that are useful to create and analyze standards of water policies. In the present research such standards will be reframed and used as measures to analyze water policies of the union government of India, discussions on which will be presented in Chapter Five of this research study.

Here, it is important to note that in this research the arguments put by post-neoliberalism and the Resolutions, Conventions and Declarations made by U.N. are used as an instrument to define the meaning of Right to Water and to identify the component and scope of the same, as mentioned in the introduction of this chapter. Therefore, details other than right to water are not discussed.

### **3.2.1.1. Emergence of the Concept as an argument against Neoliberalism: Background and Idea**

With the support of the previous understandings on right to water (mainly the works of Shiva, Bakker, Iyer, Desuza and Cullet), the present study argues that the concept can be called as Right to Water is evolved not as theory but is developed along with the argument which insists on ascertaining water as a right of all<sup>lxxxix</sup>. The argument has emerged and evolved around three developments that has changed traditional understandings of water management, globally. The first two developments are ideological in nature, known as Thatcherism and Washington Consensus. The third development importantly is the consequences of an International Conference on Water and Sustainable Development, known as the Dublin Conference of 1992<sup>xc</sup>. The ideas developed in these contexts, have argued water as a source of profit and presented it as essential for economic development. For the purpose of development, the ideas, in above three, have argued to treat water as a commodity and suggested the use of the principle of pay and use in water management<sup>xc<sup>i</sup></sup>. Significantly, these ideas were reinforced by the World Bank in 1996<sup>xc<sup>ii</sup></sup>. The documents released by the World Bank emphasised that water can be entitled as a right only if efficiency is maintained in water supply<sup>xc<sup>iii</sup></sup>. Global partners in this regard argue that the efficiency in water supply can be assured only by using a neoliberal approach in management processes<sup>xc<sup>iv</sup></sup>. Since efficiency in water management is the basic requirement of developing states, states, even with limited water resources have adopted the idea with a hope that the claimed efficiency will entitle every individual with water. However, the expectation has proved wrong as neoliberal practices in water management have made life of commons miserable<sup>xc<sup>v</sup></sup>. Bolivian experiences

has endorsed on the miseries of neoliberalism<sup>xcvi</sup>. Globally, experiences, gained from neoliberal practices, draws new arguments, which argues that the claim that right to water is a gift of international declarations is wrong and misleading (Balakrishnan, 2003; Barlow, and Clarke, 2002; Bakker, 2002, 2010; Shiva, 2002; Baxi, 2007; D'Souza, 2006, 2008). The arguments made by water activists, in this regard shows, that in reality, the understandings developed after 1992 Dublin Conference has created “neoliberal globalizers” (Smith, 2006), whose principles and values are not concerned with water justice. Since principles has valued water as a commodity, instead of creating water equality it has given rise to an economic fascism that has destroyed people’s rights to resources (Shiva, 2002). It is been argued that valuing water as commodity and managing it with the principle of pay and use, has made water unaffordable. Consequently, water has become inaccessible to the poor. To highlight the problems of neoliberal practices in water management, water scholars and water activists, insist on deconstructing the principles of pay and use. They reject the claimed efficiency of neoliberalism and urge assurance of water to all. To attain global attention they started a movement against neo-globalizers<sup>xcvii</sup> and put pressure on states and international organizations to consider water as a basic need. They emphasise that water as a right be conceptualised in a way that can assure and protect rights of commons over water resources.

The discussions mentioned above illuminates that in academia the idea that can be identified as Right to Water has emerged and evolved to condemn the principles of Thatcherism, Washington Consensus and policy strategies of World Bank<sup>xcviii</sup>. While condemning the principles of Thatcherism, Washington Condenses and strategies of World Bank, water scholars and activists argue that the three together shape Water Rights and not Right to Water (Lindquist and Gleick, 1997; Shiva, 2002; Iyer, 2010; Sangameswaran, 2007; Khadka, 2010). They argue that developments made in these three are the domino effect of industrialisation which observe water as a demand for development and allow treatment of water as a commodity that can be sold. The arguments, put by them insists that the use of water for trade often work



against securing a “right to water”, particularly for the marginalized, poor and vulnerable populations (Sangameswaran, 2007; Khadka, 2010)<sup>xcix</sup>. According to water scholars and water activists, profit oriented tendencies and the ideas presented and endorsed as efficiency cannot be considered as an assurance to right to water as they ignore the most basic requirements of human beings as drinking, food, sanitation and health (Iyer, 2007). Notably, arguments given by water scholars and water activists are further advanced in philosophical debates and discussed and argued as post neo-liberalism (Saden, 2009; Brand, 2009; Burdick, Oxhorn, & Robert, 2009; Escobar, 2010) and upheld as Post Washington Consensus (Sandbrook, 2011). The concerns expressed in Post-neoliberalism emphasize interpretation of right to water in the context of social and ecological conditions and its assurance as a right to all<sup>c</sup>.

The present study noted that the values discussed and argued in post-neoliberalism are not keen to offer a common definition of right to water. Nevertheless, the objective is to protect local water sources from government or corporate abuse. Actually, here, the goal of the post neoliberal arguments is to search for a dignified life beyond neoliberal practices in water distribution<sup>ci</sup> (Marston, 2013) and persist upon the use of the theory of “equitable distribution” in water management<sup>cii</sup>. The researcher thinks that since arguments presented in Post-neoliberalism are deeply concerned with common good, values of it have shaped the theoretical foundations for the idea of Right to Water. However, the offerings of the arguments are limited to what Right to Water ought to be and are less interested in presenting what the right entails. And hence to understand the meaning and scope of Right to Water, one has to look at the discourses developed with the institutionalisation of right to water, evolved as institutional framework. At the international level, the contribution of declarations<sup>ciii</sup>, conventions and resolutions made by U.N. are critical in this regard. The researcher believes that suggestions made under the declarations, conventions and resolutions are adoptive because globally, they are considered as an international call for ascertaining water as a biological need and persist to ensure water as a right of the commons. The undertaking is even otherwise, noteworthy as it provides a legal base to the idea. Considering to the

significance, the following section focuses on the undertakings of U.N. and identifies its major contribution to the concept, with major focus on Comment 15.

### 3.2.1.2. Emergence of Normative Content: General Comment 15

At the international level, initiatives made by U.N. are significant as it has institutionalised the idea that can be called as Right to Water and offered mechanisms to ensure water to all in all situations<sup>civ</sup>. It is noted that initially right to water was not guaranteed as an independent right but presented only as a supportive right<sup>cv</sup>. In different documents water was provisioned as a right in different contexts and for different reasons. It is found that the idea was stated in multiple references, including, **environment** (*Conference on the Human Environment held in Stockholm in 1972*,<sup>cv</sup> *Mar del Plata Conference held in 1977*<sup>cvi</sup> & *Conference on Environment and Development, called Rio Summit held in June 1992*<sup>cvi</sup>), **food and health** (*Convention on the Rights of the Child adopted in November 1989*,<sup>cix</sup> & *Conference on Population and Development held in September 1994*<sup>cx</sup>), **development** (*Water and Sustainable Development held in January 1992 called Dublin Conference*<sup>cx</sup>, *Conference on Population and Development held in September 1994*<sup>cxii</sup>, *Resolution A/Res/54/175/ adopted in December 1999*<sup>cxiii</sup> and *World Summit on Sustainable Development held on September 2002*<sup>cxiv</sup>), **dignity** (*November 2002, General Commit No 15*.<sup>cxv</sup>), **assurance against discrimination** (*Convention on the Elimination of all forms of Discrimination Against Women adopted in December 1979*<sup>cxvi</sup> & *Convention on the Rights of Persons with Disabilities, 2006*<sup>cxvii</sup>) and **Human Right to Water** (*UN GA Resolution A/Res/64/292, 2010*<sup>cxviii</sup>). Significantly, to ensure water as a right, the U.N. has offered guidelines (*the Right to Water and Sanitation, E/CN4/Sub2/2005/25, 2005*<sup>cxix</sup>) and given suggestions to decide on the obligations of the parties responsible for water management (*Paper of the UN High Commissioner for the Human Right on the scope and content of the relevant human rights 2007*<sup>cxx</sup>). The practice was continued even after 2010. One of the major developments after 2010 is the HR Council Resolution A/HRC/RES/16/2 adopted in April 2011<sup>xxxi</sup>. The task was further taken up in

2013 when the UN passed two important Resolutions, one was passed by the General Assembly, called the Human Right to Safe Drinking Water and Sanitation, 2013 (A/RES /68/157), and the second Resolution with same objectives was adopted by the Human Rights Council, without vote and known as The Human Right to Safe Drinking Water and Sanitation, 2013 (A/HRC/RES /24/18)<sup>cxxii</sup>.

The researcher thinks that in comparison to other documents Comment 15 adopted by the United Nations Committee on Economic, Social and Cultural Right in 2002 and the U.N. General Assembly Resolution A/Res/64/292 adopted in 2010 are the major landmarks.

The researcher, like other water researchers, believes that provisions offered by Comment 15 are considerable for the fulfilment of right to water because it is the first elaborative document on right to water<sup>cxxiii</sup> that defines water as the right of everyone “to sufficient<sup>cxxiv</sup>, safe<sup>cxxv</sup>, acceptable<sup>cxxvi</sup>, physically accessible<sup>cxxvii</sup> and affordable”<sup>cxxviii</sup> water for personal and domestic uses<sup>cxxix</sup>. The declaration while redefining the International Covenant on Economic, Social and Cultural Rights (known as ICESCR) held in 1966, states that water is indispensable for leading life with dignity (Article 1.1). It has described right to water as everyone’s right and claimed it as essential to attain adequate standard of living, including adequate food, freedom from hunger (Article 11), and highest standard of physical health (Article 12)<sup>cxxx</sup>.

The researcher believes that in respect to the fulfilment of right to water, the UNGA Resolution A/RES/64/292, adopted on 28 July 2010 is the second major development<sup>cxxxi</sup> because provisions of it has transformed the value of right to water as human right to water and endorsed it as universal. The Resolution has stated water as “The Human Right to Water and Sanitation”<sup>cxxxii</sup> and insists to “recognize human right to water<sup>cxxxiii</sup> with two other rights i.e. right to safe and clean drinking water and right to sanitation. To pursue for these rights in a fair and equal manner, on the same footing and with the same emphasis (para 6), it gives two instructions to states: to ‘Acknowledge’ the importance of equitable access to safe and clean drinking

water and sanitation as an integral component of human right to water<sup>xxxxiv</sup>. To ensure accountability in water management, the resolution has ‘*Reaffirmed*’ the responsibility of States for the promotion and protection of all human rights. In order to scale up the efforts to provide safe, clean, accessible and affordable drinking water and sanitation for all (Para 8), the resolution insists on international assistance and corporation for which it has called upon states to provide financial support and technology transfer.

This study has noted that in policy matters, the idea and content expressed in Comment 15 and UNGA Resolution A/RES/64/292 are used as the directive principles of State policies. However, the content offered in Comment 15 is relatively more popular among the water scholars, as in the works of Langford (2006), Cahill (2005), Salman & Lankford (2004), Kiefer & Brolmann (2005) and Pierre Thielborger (2014). In the water discussions, content of Comment 15 is argued as global and independent because it has lifted the right to water from the shadow of other associated human rights and has synthesized the values of individualism and collectivism<sup>xxxxv</sup>. The scope of right to water in Comment 15 is comprehensively clear<sup>xxxxvi</sup>; along with effective and equal supply it insists on fresh and drinkable water and states that women and children need to be ensured as the first beneficiary of right to water. It states that water should be free from microorganisms, chemical substances and radiological hazards because it would constitute a threat to human health. It explains that “*An adequate amount of safe water is necessary to prevent death from dehydration, to reduce the risk of water related diseases and to provide for consumption, cooking, personal and domestic hygienic requirements*”<sup>xxxvii</sup>. Comment 15 thus maintains human right to water as an independent right essential for good health (para12b) and for leading a life with dignity (Para 3). To maintain universal claim on right to water it has emphasised on the values of ‘non-discrimination’, ‘equality’ and ‘non-retrogression’. It insists upon ‘immediate obligations’, ‘utilization of maximum available resources’ and to ‘undertake steps to progressively realize the right of all’<sup>xxxviii</sup>. It further holds that states must be accountable<sup>xxxix</sup>, transparent<sup>cxl</sup> and open in their actions<sup>cxli</sup>. Importantly, in the plan of action, these principles obligate states

beyond borders<sup>cxlii</sup> and enhance fulfilment of right to water as a global responsibility, of which national and international organizations including NGOs, World Bank and World Trade Organizations are the co-parties (para 37). Article III (17-18) of Comment 15 insists that the national and international parties have “constant and continuing duty” to move “as expeditiously and effectively as possible towards the full realization of the right to water”<sup>cxliii</sup>. The duties mentioned in Comment 15 are further elaborated in the document released by World Health Organization in 2003. The document offered certain measures of right to water and has developed certain guidelines for the states. For effective enjoyment of rights, the document has classified obligation in different categories that work at different levels. The principles insist that both the parties, i.e. the public and the private, have an obligation to *respect*<sup>cxliii</sup>, *protect*<sup>cxliv</sup> and *fulfil*<sup>cxlv</sup> right to water<sup>cxlvi</sup>.

Further, to make right to water a complete right, the document significantly emphasizes on people’s participation<sup>cxlvii</sup> and insists on making it an integral part of any strategy, program and policy<sup>cxlviii</sup>. For effective participation it insists that water users, including individuals and groups, must be made aware of participatory processes and must be informed about the functions performed by different mechanisms<sup>cxlix</sup>. It urges states to take steps to ensure that women should not be excluded from decision-making processes of water resources and entitlements (Para 16)<sup>cl</sup>.

The above discussions show that principles of Comment 15 have indeed enriched the idea and content of right to water, values of which are subsequently underlined by U.N. However, since water is a local issue, such constant discussions cannot be a guarantee to right to water as usability of international documents have limitations of cultural relativism and along with, realities of availability of water resources places major restrictions. The researcher believes that the international undertakings ensure humans rights over water resources, but while doing so, is not offering a meaning of Right to Water. In such case, the internationalization of right to water will either remain an empty promise or due to heavy requirement of water management, will encourage external intervention which is not a favourable condition for

developing states. It is a fact that merely placing any right in the human rights category cannot ensure it as a right of all commons, especially in the case of a resource like water. In the view of this reality, present study argues that while the idea that can be called as Right to Water, evolved at international level, can be used to interpret the meaning of right to water, interpretations are incomplete if they are not developed in the reference of regional and national realities.

The researcher thinks that since regional documents, in the form of legal and non-legal provisions are important sources of right to water as their policy designs and provisions are often close to regional realities, a discussion on them with regard to the idea of Right to Water, is essential. In the view of their significance, the following section presents the regional undertakings and attempts to explore the regional understanding on right to water. It is important to note that even with the realisation of the significance of regional undertakings, the researcher decided to limit the discussions on regional suggestions. This has been done because of three reasons. Firstly, because regional realities vary from region to region and the explanation of each will add unnecessary details to the Chapter. The second reason lies in the fact that as the international and regional undertakings, more or less, share common spirit on right to water, a discussion on both will create confusion and there is a high possibility of duplication. Also, since the critical analysis in the present research is mainly based on the measures offered by Comment 15, the following section does not offer the details of all regional developments, but presents the milestones achieved at the regional level and outlines the major features of the same<sup>cli</sup>. It is important to note that the concern of the following discussion is not to find which document comes first i.e. international or regional, but to gain an understanding that can be claimed as contextual.

### **3.2.2. Regional Level: Constitutional and Legal Undertakings**

This section begins with the belief that water is a regional problem (Jeffords & Minkler, 2014) and hence entitlements to right to water can be more decisive only within the frameworks offered by regional documents<sup>clii</sup>. Importance of

regional documents in fulfilment of right to water is considered as inarguable mainly because they are prepared taking into consideration the cultural and geographical realities and comprise beliefs that represent cultural similarities of a region (Bakker, 2010; Shiva, 2001). Since provisions of the documents express and protect the values of cultural relativism and generally pinpoint to specific regional requirements, the level of possibility of water assurance is relatively very high<sup>cliii</sup>.

This study noted that while ensuring right to water to all, regional documents very often follow and supplements the international objectives and endorses the ideas presented by international organizations<sup>cliv</sup>. The documents of regional organizations such as the European Union and African Charter are some examples of this. Like the U.N.'s initial initiatives, regional undertakings of the African Charter also see water as an essential part of other rights including, **right to environment** (*African Charter in Human and People's rights 1981: Art.24<sup>clv</sup>*), **right of children** (*Rights and Welfare of the Child 1990: Art 14:1<sup>clvi</sup>*) **right of individual** (*African Charter on Human and Peoples' Rights 1995: Art 16<sup>clvii</sup>*) and **Women** (*Protocol to the African Charter on Human and Peoples Rights on the Rights of Women in Africa 2003 Art 15: a<sup>clviii</sup>*).

Notably, in the Protocol of San Salvador (1988), right to water is stated with reference to the environment. The Protocol states that every individual should have the right to live in a healthy environment (Article 11:1) and it is the duty of the state to promote the protection, preservation and improvement of the environment (Article 11:2)<sup>clix</sup>. The obligations of states are further explained in the Declaration of the Forum on Human Rights called the 'Summit of the Americans' (2001). Article 4 of this declaration proclaimed that the state must take measures to ensure complete fulfilment of the right of all people to free determination, food, health care, access to water, land and other resources under conditions of equality.

Importantly, in the European discourse on right to water, States are made responsible to take measures for equitable access to water, adequate in terms

of both, quality and quantity. European thought urges that water should be provided to the whole population, especially to those who suffer social disadvantage and exclusion. To remove poverty it insists upon use of water for development (*The protocol of Water and Health: (1992) and the Convention on the use of Transboundary Water-resources and International Lakes declared by United Nations for Europe ECE; Art, 4(2) 1999*)<sup>clx</sup>. In the year 2000, the idea of development was added to sustainable development. In this regard, the European Council of Environmental law (ECEL, 2000) opined that access to water is part of the policy for sustainable development and cannot be regulated by market forces alone. Article 1 continued with the provision that the right to water cannot be dissociated from the right to housing, food and health. Each person has the right to water in sufficient quantity and quality for one's life and health<sup>clxi</sup>.

It is noted that declarations and resolutions made by the European Union are contemplating right to water as an essential aspect of the welfare state (*European Parliament of European Commission 2003*). They clarify that the cost of water management is associated with the production and utilization of water resources. Therefore, the supply of water shall be subjected to payment and the state should supply water without any discrimination<sup>clxii</sup>. It is claimed that the objective of the European declarations is to entitle the deprived to right to water and ensure them food security against hunger (*Madeira Declaration on the Sustainable Management of Water Resources (ECEL) 1999*<sup>clxiii</sup>, *the European Charter on Water Resources 2001*<sup>clxiv</sup> & *the Recommendation 14 of the Committee of Ministers of the Member States*). In respect to the objectives, the need for a legal framework was realized in 2011. The European Commission of Citizen's Initiative pinpoints that the promise of right to water must be legalized by making a legislation on the same<sup>clxv</sup>. Due to the European Citizen's Initiative, one million signatures from at least a quarter of the EU Member States within a period of 12 months agreeing on the matter, the core idea of which is refined by Regulation 211/2011.

For the Asia- Pacific region, assurance to right to water is embedded in a concern for human security. In 2007, Asia-Pacific leaders agreed to recognize



people's right to safe drinking water and sanitation as a basic human right and a fundamental aspect of human security. In the Abuja Declaration 2006, Heads of State and Government declared that they would promote the right of their citizens to have access to clean and safe water and sanitation within their respective jurisdictions.

The declarations on matter of water management made by regional organizations are not legally binding on member states (except European Commission's conventions passed in 2012, by the committee as a legislature). However, in legal and policy frameworks, they are approved as collective moral consensus that is indeed an expression of political will of regional parties. A recent meeting (held on 28 and 29 January 2014) of the Heads of State and Government of the Latin America and the Caribbean States in Havana Cuba<sup>clxvi</sup> is one such example of political will. In the meet, the participant states collectively accepted the significance of right to water and sanitation in human life and placed human right to drinking water and sanitation in their Post-2015 Development Agenda<sup>clxvii</sup>.

The researcher noted that to study water policies in the context of Right to Water, regional and international understandings and undertakings are getting nearly equal importance, but have some limitations as well. Like international undertakings, regional arrangements offer guidelines to preserve water as a right to all and suggest what to do, why and how. However, since assurance of the right to water is a national subject, it is obvious that guarantees given by regional institutions cannot be feasible without effective support from the national frameworks. There is a need for national understanding on the issue. In the present study, the researcher has given special importance to national undertaking as this is the level where promise of right to water will be executed, enjoyed and preserved. In this view, the following section presents a list of nations that have endorsed right to water through either constitutional provisions or legal frameworks. The presentation is again limited as the present research focuses only on the Indian perspective of right to water, which will be elaborated in the next chapter<sup>clxviii</sup>.

### 3.2.3. National level: National Constitutions and National Laws

The researcher realizes that the endorsement of right to water at the national level is the actual realization of Right to Water. This understanding is driven from the fact that water is a domestic issue. The researcher further believes that the core values of Right to Water, as entitlement, accessibility and affordability and promises of participation and non-discrimination can be ensured and maintained at the state level only. Significantly, declarations made by international and regional institutions also suggest the same. It is noted that guidelines offered by them mention private sectors as the obligator but that does not relieve the states from the obligation of ensuring right to water to all. In the documents it is clearly stated that the ultimate responsibility for providing water lies with the states governments, even if water supply is maintained by a private sector. It is further noted that at the national level, right to water is guaranteed by constitutional provisions and maintained by legal frameworks. The Constitutions as the *Constitution of the Commonwealth of Massachusetts*<sup>clxix</sup>, *the Constitution of the Commonwealth of Pennsylvania*<sup>clxx</sup>, *the Constitution of Republic of Uruguay*<sup>clxxi</sup>, *the Constitution of the Federal Republic of Ethiopia*<sup>clxxii</sup>, *Constitution of Uganda*<sup>clxxiii</sup>, *Constitution of Republic of the Gambia*<sup>clxxiv</sup>, *Constitution of Republic of South Africa*<sup>clxxv</sup>, *Constitution of Zambia*<sup>clxxvi</sup> and *Constitution of Republic of Venezuela under Bolivarian Republic of Venezuela*<sup>clxxvii</sup>, are important in this regard as their understanding on the idea that can be consider and place as Right to Water was developed prior to the U.N. declarations<sup>clxxviii</sup>. However, *Congo*<sup>clxxix</sup>, *Ecuador*<sup>clxxx</sup>, *Maldives*<sup>clxxxi</sup>, *Kenya*<sup>clxxxii</sup>, *South Sudan*<sup>clxxxiii</sup>, *Egypt*<sup>clxxxiv</sup> and *Zimbabwe*<sup>clxxxv</sup> have brought major changes in their Constitutions only after 2002, the year when Comment 15 acknowledged water as a right<sup>clxxxvi</sup>.

The researcher argues that in comparison to national laws, Constitutional provisions are thin documents, mainly because they emphasis only the core value of right to water that many times miss the deciding details that are

essential to identify the elements of Right to Water<sup>clxxxvii</sup>. The present study noted that the required elements, as recognition and entitlement of right to water, availability, accessibility, affordability, quality, participation in decision making and non-discrimination in water supply, are easily evident in national laws<sup>clxxxviii</sup>. Laws developed by different nations offer important meanings of Right to Water and highlight important aspects of it. These includes

(a) Right to access water from natural resources (*Swaziland's Water Act, the Mauritanian Water Code, Costa Rica's Water Law, Kyrgistan Water Code or South Africa's National Water Act*),

(b) Exemption from having to apply for a licence to access water from a water body that is adjacent to the land that they occupy, if this water is used for personal and domestic uses (*South Africa's Basic Water Policy*),

(c) Equal allocation and availability (*Legislation of Chad, Costa Rica, Indonesia, Lithuania and Kazakhstan*<sup>clxxxix</sup>),

(d) Recognise and assure water needs for all regions and in all legal cultures (*Indonesian Regulation*<sup>cxc</sup>, *South Africa's Basic Water Policy*<sup>cxc</sup>, *Georgia's Water laws, Tajikistan's Water Code prescribe and China's Water laws*),

(e) Prohibit the use of water of drinking water quality for non-domestic purposes (*laws of Brasília*<sup>cxcii</sup>, *Georgia and Kazakhstan*<sup>cxciii</sup> *China, Kyrgistan and Tajikistan*<sup>cxciv</sup>),

(f) Preserve and ensure good quality and quantity of water (*Brazilian Law on Sanitation, nation laws of China, Kyrgistan and Tajikistan*<sup>cxcv</sup>, *Finland Water Services Act, Indonesia Government Regulation No. 82 of 2001*<sup>cxcvi</sup>),

(g) Ensure that water will be accessible, affordable and acceptable (*France's Law on Water and Aquatic Environment in 2006*<sup>cxcvii</sup> and *Law No 2005-95*<sup>cxcviii</sup>),

(h) The safety of water resources and a common right over it, including assurance of physical accessibility and affordability of water (*South Africa's*

*Water Services Act<sup>ccix</sup>, Costa Rica's Law on the Regulating Authority for Public Services, Nicaragua's General Law on Drinking Water and Sanitation Services, Peru's General Law on Water and Sanitation Services and in Water Code of the Republic of Congo, Venezuela's Organic Law, Chile's Law 18.778<sup>cc</sup>, Australian Utilities Act, United Kingdom's Water Industry Act, Finland's Water Service Act<sup>cci</sup>, South African Water Services Act, and Indonesia's Regulation No. 23/2006 Indonesia's Regulation No. 23/2006<sup>ccii</sup>),*

(i) Water for the poor and the weak and freedom from disconnection of water supply (*United Kingdom' Water Industry Act<sup>cciii</sup> and South African Water Services Act*),

(j) Participation of people in decision making (*Australian Utilities Act, the South African Water Services Act, Brazilian Law on Basic Sanitation, Malaysian Water Service Industry Act and New Zealand's Local Government Act. Laws*),

(K) Right to have information (*Brazilian Law<sup>cciv</sup> South Africa's Water Services Act<sup>ccv</sup> ),*

(L) Non-discrimination and especial entitlement is assured for vulnerable groups (*regional Canadian Human Rights Codes, Colombia's Law 142, Guyana's Public Utilities Commission Act, Mexico's Water Law of the Distrito Federal or Niger's Decree 2003-145/PRN/MHE/LCD, United Kingdom' Water Industry Act and South African Water Services Act<sup>ccvi</sup>*),

The aspects presented above show that the understanding evolved at national level are comprehensive, which the researcher finds is more relevant as they represent ground realities that build greater possibilities in favour of right to water. The emergence and evolution of Right to Water at all levels are significant and developed in effective collaboration. This study argues that understandings evolved at international (both, arguments and institutionalisation), regional and national levels are not separate, but are interdependent. Importantly, the values advanced by them are common which creates notable relations between them.

### **3.2.4. Conceptual Evolution of Right to Water: Expansion and Relation**

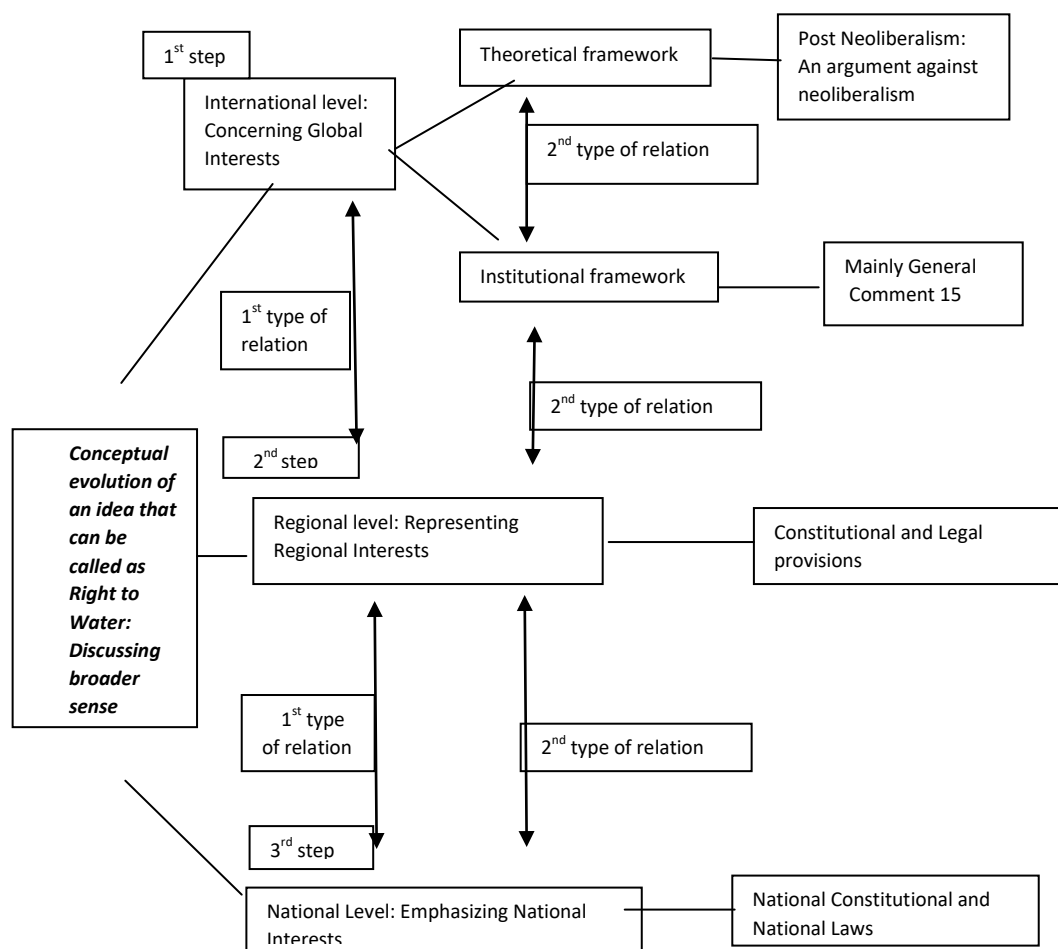
From the above discussion the researcher draws the conclusion that the concept of Right to Water is not an independent phenomenon as an idea it has evolved at different levels, each of which has its own significance. The development at the three levels does not represent isolation of ideas but its progress is a process that has established an unavoidable relationship in between. It is found that the relationship between theoretical perspective and institutional frameworks are interacting argumentatively for constructive purposes. The researcher realized that even though policy suggestions offered by institutional frameworks are critically observed by theoretical perceptions i.e. post neoliberalism; the links between them are positive and offer supplementary ideas to each other. The researcher, in this respect, believes that the arguments put by Post-neoliberalism has set a moral pressure on international, regional and national organizations to take steps to assure right to water to all and make it available, accessible, and affordable for all. It has actually offered an idea to be worked on. Similarly, the ideas developed within institutional frameworks have strengthened the theoretical discourse by offering global implications on the idea of Right to Water. Due to the internationalisation and institutionalisation of the idea, theory (not in the traditional sense) has reached and argued globally. Thus, it flows two ways, as

Theoretical Discussions  $\longleftrightarrow$  Institutional Frameworks

The researcher noted that the ideas developed at different levels have preserved the concept that can be called as Right to Water with almost the same understanding and there is no serious contradiction between them (only with reference to that is discussed). The present study argues that the relations between the regional understandings and constitutional and legal provisions

are effectively connected with the international declarations and also with each other. It would be incorrect to say that only international declarations have inspired the regional and national undertakings. In some cases, it is just the opposite: there are some regional and national initiatives that are noted much before international declarations (see endnotes of above discussion). The researcher understood that there is a relation between the ideas and the initiatives. The flow of influence is as follows-

**Figure 3.2: Conceptual Evolution of an idea can be called as Right to Water: Expansion and Relation**



**Note:** Curves show the levels of growth, simple lines show the emerging points of the idea, and arrows with two directions represents relationship. Notably, steps do -not represent hierarchical growth of idea.

Figure 3.2 demonstrates the conceptual evolution of an idea that can be called as Right to Water. It denotes three features: the emerging point of Right to Water, its growth and the relation between various aspects attached with the idea. Step 1 shows development at an international level. At this level the idea that can be called as Right to Water has emerged in two contexts. First, which the researcher calls theoretical framework, has emerged as an argument against neoliberalism called post-neoliberalism and the second which the researcher calls the institutional framework, is offered mainly by Comment 15. Step 2 presents the regional development. It shows the ideas stated in the two documents known as constitutional and legal provisions. Similarly, Step 3 shows emergence of Right to Water at the national level as evolved from national Constitutions and national laws.

In the figure, all the three levels or steps have arrows in two directions. This represents two types of relations: first, the connection between the three levels and second, the relations between the theoretical ideas and institutional frameworks as have emerged and evolved at different levels. The arrows (in two directions) which represent the “first type of relations” interprets that the conceptual evolution of an idea can be called as Right to Water at three levels, i.e. international, regional and national is positively interconnected (at least in documentation and arguments) because they are all equally concerned to entitle water as a right. It is already mentioned that they are inter-influential, and in the researcher’s observation, there are no noticeable contradictions in their understandings (in this the researcher has not included understandings developed in World Bank and Monetary Fund etc. as their initiatives represent Water Rights and not Right to Water).

Similarly, the arrows in two directions represent the “second type of relations”, i.e. between theoretical arguments and institutional frameworks, being constant and in the same flow. This signifies that the influence of

theoretical arguments can be observed at each level and each level simultaneously influences the theoretical arguments. The researcher noted that Post-neoliberalism has strengthened the institutional frameworks by offering theoretical justification to the concept and at the same time, institutional frameworks have brought theoretical aspirations into reality. The researcher thinks that this argument has a point because the values put by post neoliberals, like water to all, right to participate in decision making and non discrimination in water supply find place in Comment 15 and are mention in the document, periodically released by international, regional and national institutions<sup>ccvii</sup>. Similarly, the contents of various documents have created new dimensions in theoretical arguments. The expected role of the private sector mentioned in Comment 15 and other documents is a subject of theoretical debates. Karen Bakker's (2010) conceptual discussion on the subject of obligation and her objection to the use of the term Human Right to Water is one such example. It is noted that in theoretical debates the content offered by Comment 15 is discussed as 'revisionist'<sup>ccviii</sup> and 'unreflective'<sup>ccix</sup>.

From the discussion, the researcher draws the conclusion that the theoretical framework and normative content developed at the three levels offers a comprehensive meaning to right to water. It finally helps to conceptualise the idea of Right to Water in a way which deserves to be placed in policy design.

### **3.3. Discussing the meaning of Right to Water**

The discussions so far show that attaining the meaning of Right to Water is difficult. Since the idea has evolved as a process, it is difficult to get at its actual real meaning immediately. This is because of the fact that in the process of modernisation, water as a right is viewed and argued in multiple contexts, and in management processes this has justified multiple uses of water. In the conception of Right to Water, multiplicity of water uses creates problems of priority. This is becoming more problematic where water is found to be limited. If right to water regards the fulfilment of water as a basic need then what should be the limit of this basic need always remains a question. Thus, there is an obvious divide of what right to water includes and what it does not.



### **3.3.1. What Right to Water is: The Popular Offerings**

The present study argues that to have a precise understanding on Right to Water it is important to examine different viewpoints. For this purpose, the researcher has derived meaning of right to water from three perceptions that are developed in different contexts. The first view defines water as for commons (Shiva, 2000; Anand, 2007; Bakker, 2010; Iyer, 2010) that implies that the concept of Right to Water is based on freedom and its claimability is universal. The second perspective underlines that the meaning of freedom to “use” is not unlimited; however, the scope of freedom to use water is based on the priority of requirements (Anand, 2007; Salman, 2002). It insists on water being a free resource and its use is endorsed primarily for the biological needs (international, regional and national understandings emphasise this). The third view emphasises the duty part of right to water. It insists that to enjoy right to water as freedom it is important to maintain an effective balance between its uses and users (Anand, 2007). This essentially requires some duties to be performed by both, the individuals and by the states.

It is important to note that to attain a meaning of Right to Water, in such favour, the researcher has synthesized the understandings and arguments developed by Anand (2007: right to water as rights and duties) and Shiva and Bakker (2002; 2010: water for commons). To present the scope of right to water, the researcher has used the guidelines offered in Comment 15 and the documents released by the World Health Organization (2002) <sup>ccx</sup>. This is further discussed with reference to the interpretations advanced by Cahill (2005). The researcher insists that amalgamation of all three views is important because each of them offers significant discussion on right to water that helps to understand the concept of Right to Water correctly. The scope of right to water, attained by the discussion, informs an individual what s/he is entitled to. This makes people aware about what they can lay claim on and what is under the preview of entitlement. The second view on right to water, i.e. correlation of rights and duties supports the first view. It insists that

without fulfilling obligations (by states and private parties) and duties (by peoples), one cannot enjoy water as a right. The meaning of water for commons is the consequence of the two. It shows that only knowing its scope and the correlating of rights and duties together can assure water for commons which is the ultimate objective of the idea of Right to Water. This can be interpreted in yet another way: first ensure that water is for the commons and illustrate the scope accordingly and decide that to enjoy right to water, each party has to perform its duty.

The amalgamation of the three views presents that the concept of Right to Water is required to be seen and argued as the basic need of life. The concept underlines that while entitling commons to claim water as their right, it is essential to consider women, children, weak and refugees as its first beneficiaries. This further clarifies that claims on water as a right is not unlimited. However, it is a matter of priorities which entitles individuals with equal freedom to use water to fulfil and satisfy their basic needs as drinking, food, health, sanitation, housing, employment (fishing only) and cultural requirements. The researcher thinks that use of water for small-scale agriculture is the first priority as agriculture fulfils the requirement of food. Use of water for other needs, mainly industrial, is allowed only if the primary priorities of life are satisfied. Special considerations to individual priorities provides that the concept of Right to Water has described and argued right to water as the trumping power of individuals. It entitles individuals and obligates governments to guarantee and preserve the entitlements. However, the researcher noted that right to water does not end with governmental obligations but actually pinpoints to the obligations of parties who use water. The discourse has identified many parties as obligators of right to water, including states, private sectors, NGOs and even researchers (WHO, 2003). The researcher believes that identifying obligations as collective is important for the entitlement of right to water. Since it is a resource on which nature has clear dominance it is more essential to discuss it in the context of the idea which insists that rights and duties are linked (Hohfeld, 1923; Anand, 2007), where duties are of the governments as well as of individuals. The present

study argues that performance of duties of the concerned parties can convert right to have water into right to enjoy water for without a perfect correlation of right and duties right to water would remain an empty promise. Clearly, the concept of Right to Water derived from these arguments holds many important aspects that can be understood as follows-

**Figure 3.3: What is Right to Water (derived through Theoretical Argument and establishments evolved through process of institutional framework)**

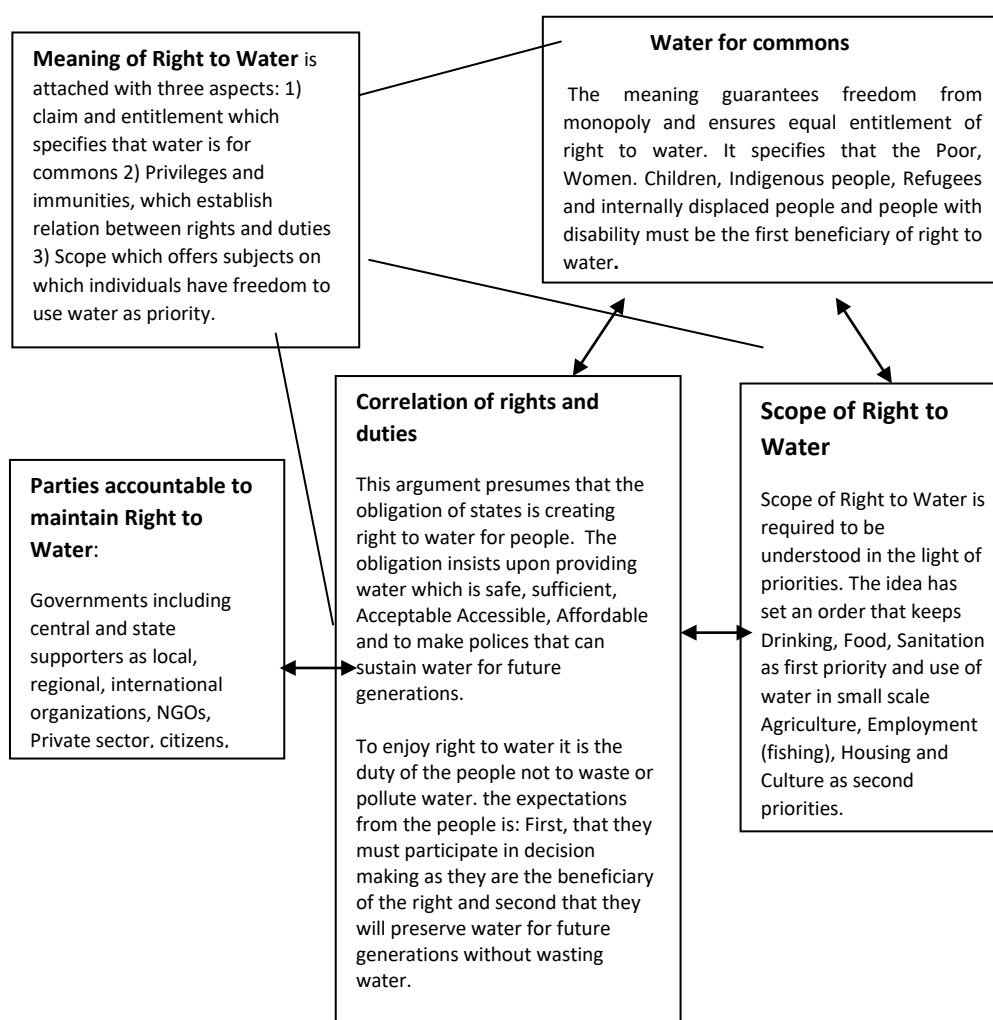


Figure 3.3 proposes that the meaning of Right to Water is comprehensive because it has created a chain of rights and responsibilities and presents a rights–duty pairing. The researcher noted that the idea holds four arguments:

First Argument: Water is for Commons.

Second Argument: Right to Water is not unlimited; in fact, it is claimable within the limit of its scope.

Third Argument: The first and second arguments pinpoint to the requirement to establish a relation between right to water and duties to water.

Fourth Argument: All the three arguments are inter-related and endorse the idea of Right to Water.

The researcher insists that the explanations of the above arguments are not self-supporting. For a precise understanding on Right to Water, it is important to read them in relation to each other. The researcher believes that a study in co-relation entails multiple promises, including freedom of enjoyment of water with equality.

Here, the researcher insists that it is less convenient to discuss right to water as a human right to water (like Bakker, 2010). Since claims on water as a right depends on the local conditions, the researcher prefers to use the term right to water over human right to water. The present chapter argues that as water availability is mainly dependent on nature and so the required universality of the principle is not possible. Even the distinction of right and wrong interpretation by COHRE (Centre on Housing Rights and Eviction, 2008) has pointed to the same argument.

### **3.3.2 What Right to Water is Not: The Rejection of Claims**

The discussion above provides details on what is right to water. However, like others, the researcher found the details insufficient. Water scholars and international organizations engaged in water studies pinpoint that the biggest challenge to entitlement of right to water is not water scarcity but myths and misconceptions that are attached with the notion<sup>ccxi</sup>. Water, in the reference of Right to Water, is misunderstood as a free and limitless right. This makes entitlement difficult as it allows wastage of water. It is important to realize that “free” here does not mean absolute and limitless quantity of water for all needs and wants. The right is limited to fundamental uses relating to the

adequate protection of human life and health, hygiene and sanitation. It does include the right to water for commercial, industrial or large scale agriculture or irrigation activities as they are important but are secondary priorities<sup>ccxii</sup>. Similarly, when the state is made responsible for the entitlement of water, it is obligated as the last but not as a solo party. In the process of water management, the state is supposed to be assisted by public or private enterprises, by NGOs and community-based organizations. A permanent duty of governments is to exercise effective control on unequal water supply, pollution and water wastage and to assure availability, accessibility, affordability and quality of water services. Similarly, the meaning of universal claim-ability on water as a right does not mean sameness of legal provisions. It means that each country can choose a legal service provision it should ensure the claim-ability of water<sup>ccxiii</sup>.

### **3.3.3. Meaning of Right to Water**

The discussion of what right to water is and what it is not, together, draws a balance between the different claims on right to water. From the discussions so far it is clear that the idea and practice of right to water is essentially egalitarian in nature. It primarily presents that people are entitled to use water. To satisfy their basic biological needs, they are equally free to claim water and water resources as their right. Accordingly, the idea primarily has four aspects: entitlement, equality, freedom and claims. In the situation of water stress and water scarcity, entitlements and claim on equal freedom on use of water becomes a matter of immunity, which insists on realising duties to right to water<sup>ccxiv</sup>. Clearly, in condition of water scarcity, the four mentioned aspects of right to water get new additions that include immunities and duties as inseparable part of it. This shows that instead of making right to water as an absolute right, the notion has placed essential limits as water not only has multiple uses but the fact is that all everyone users. The limitations state that if “A” is entitled to have water and freedom to use it, “B” also have the same right. The idea insists that enough must be left for others. The principles applied on “A” and “B” are also applicable on other water users as agricultural and industrial sectors. Significantly, water users in the sectors of agriculture

and industry face more limitations than individuals as their claim on water is justified only after the satisfaction of the basic needs of drinking, sanitation, food and health.

Since enjoyment of right to water requires management, the entry of government mechanisms as legitimate authority is expected to act as water manager. The entry here is allowed with a restriction which instructs governments to make water available, accessible and affordable to the commons. The idea insists that the governing bodies (both, public and private) should make laws and policies, implementation of which can ensure right to water as a sustainable right and preserve water for future generations. The researcher believes that Right to Water is not a mere concept but is a process which establishes a system that ensures efficiency and justice in water supply.

**Table 3.4: Meaning and flow of Right to Water**

<b>Rights of individuals are the duties of the government</b>	↔	<b>Duties of individuals</b>	→	<b>Priorities</b>	→	<b>Create a condition of</b>
<b>1. Water is for all: Available</b>		<b>1. To preserve water</b>		<b>1. Drinking</b>		<b>1. Efficiency</b>
<b>2. Water to all: Accessible</b>		<b>2. Do not spoil water</b>		<b>2. Food (Agriculture and environment)</b>		<b>2. Absence of Exploitation</b>
<b>3. To have water: Affordability</b>		<b>3. Not to control water</b>		<b>3. Health</b>		<b>3. Absence of monopoly</b>
<b>4. To use water equally: equal entitlement</b>		<b>4. Do not pollute water</b>		<b>4. Employment (Industry)</b>		<b>4. Non discrimination</b>
<b>5. To have claim on water: freedom</b>		<b>5. Participate in decision making</b>		<b>5. Culture</b>		<b>5. Sustain water for future generations</b>

Table 3.4 presents that the concept of Right to Water is a process that is interlinked with many aspects, including rights, duties and priorities. Successful interlinking between them creates conditions essential to have water well-being<sup>ccxv</sup>. With reference to table 3.4, the researcher argues that entitlement and enjoyment of right to water requires mutual understanding between governments and individuals. The researcher believes that the real entitlement and enjoyment of water depends on the common consensus attained and maintained in a society, as one can hardly reject the claim that water is a right. The consensus on uses establishes a co-relation between rights and duties and upholds right to water as a privilege for the future generations. The researcher thinks that the idea of shared responsibility has sustained the idea of Right to Water as an entitlement. It is an idea where all parties agree to

fulfil their duties because they know that the duty will ultimately come back to them as rights. Thus, it is a two-way process where duties are performed from top- down (government's duty to supply water) to bottom-up (people's duty to protect and preserve water and not to waste). The results attained from the process encourage participation as each individual finds oneself as a beneficiary of the decision. Thus, common consensus stands for common consent that accepts that all uses of water cannot have equal privileges to be entitled under the heading of right to water. As a water user one knows that the first priority of water use is for biological need. In this view, the researcher thinks that the concept of Right to Water is a promise which enables each one to use water for basic needs and obligates everyone to protect and respect water availability for others. The right has further involved government and private sectors as a legitimate authority of water management. The right obligates the governments to ensure that water will reach each person at an affordable price (as free will encourages wastage) and in useable condition. The researcher insists that it is not wise to analyse right to water with a claim that rights are prior to duties or duties are prior to rights but that water has to be ensured as a claim that rights and duties are simultaneous. The researcher thinks that an understanding like this is important as it creates a condition, where absence of exploitation, monopoly and discrimination is viewed as efficiency that ultimately helps to sustain water for future generations and also for environment, as figure 3.4. presents.

In the view of the above discussion, this chapter argues that the idea and concept of Right to Water is not just a definition but a process which creates a condition that preserves water and guarantees its availability, accessibility and affordability to all, even in future. To maintain this condition, it is important to ensure and preserve water through legal and policy structures. To draft water policies in favour of right to water, water policy experts and organizations have explored multiple approaches, as rights based approach, need based approach, human rights approach, utility deriving approaches and service delivery approaches etc. Each of these offers a framework to measure water as a right in favour of all. Importantly, to fulfil the idea of Right to Water,



each of these presents a different perspective and offers different techniques<sup>ccxvi</sup>. To analyze Right to Water in the context of the water policies of union government in India, which is the core interest of present research, the researcher has used a Right based Approach (hereafter RBA) evolved by the international body called Water Aid in 2005<sup>ccxvii</sup>. It is chosen over all other approaches because it encompasses all values stated in other approaches and considers water as a right even in the absence of legal frameworks.

### **3.4. Rights Based Approach: Meaning and Significance**

Right based approaches are developed in the context of development. They argue that the demand of development must be considered as a right and in the process of entitlement, the poor must not be treated as a beneficiary but must be considered as right holders<sup>ccxviii</sup>. Significantly, in the discourse of human rights, the approach has started a trend of “New Rights Politics” that emphasizes that all that is essential for life must be considered as a right<sup>ccxix</sup>. Accordingly, it insists on expanding the idea of rights and compelling governments to expand their role and undertake new responsibilities (Musembi and Cornwall, 2004). To ensure expansion in the direction of rights, it further suggests the resetting of norms, principles, standards and goals in favour of all. In the rights discourse, New Rights Politics focuses on a particular set of rights (Musembi and Cornwall, 2004) and underlines accountability, transparency and sustainability by putting stress of principles as justice, change, inclusiveness, participation and development (Gabel, 2016). Since principles of RBA are used by international institutions, in the rights discourse, their significance is viewed as universal and dynamic (Bebbington, 1999; Carney, 1998; DFID, 2000; Moser and Norton, 2001; Sen 1999, 2000; UNDP, World Development Vol. 30; Boesen and Martin, 2007).

The researcher has noted RBA as futuristic and in policy discourse it is used as a tool to find what rights are and how to ensure them for all. Its function has two dimensions: content and process. The content, offered by RBA, provides a language of rights to a policy. This includes reasons and justifications that entitle individuals to enjoy their rights appropriately. Process, on the other

hand, suggests activities and explores processes to empower right holders. Dimensions as content and process have two objectives. Firstly, they suggest to the government what is to be done and secondly, makes people aware about their rights and provides information on issues on which they have a right to claim. Thus, the concept works in two directions: it empowers rights holders to claim their rights and enables duty bearers to meet their obligations.

#### **3.4.1. Significance of Rights Based Approach in the Present Research: The Rationale**

In water studies, Right based Approaches have evolved as a set of normative principles that underline that water is a right. As a concept it suggests guidelines and frameworks in water governance that are often used to design water policy and drafting water laws. Since policies are relatively flexible in nature, it offers detailed suggestions for policy making which includes justifications for what, why, when and how of the policy. RBA proposes goals which pinpoints what is required to be attained, for whom it should be attained, and who should be made accountable for the same. Accordingly, it focuses on two aspects of a water policy: content and process. To orient policy contents to rights, it suggests what should be the language of a policy document and what kind of content can ensure right to water. To make right to water a reality, it further offers patterns required to be followed as a process. The approach additionally answers questions as what kind of mechanisms are required and what types of duties are expected from states to perform. Since the RBA approach offers comprehensive details on water policy design, it is preferably used, mainly for two purposes. Firstly, to enrich content of water policy in favour of right to water and secondly, to propose nature of activities which are required to be performed for its attainment.

In the light of the above features, the researcher believes that for the present research, use of the RBA as a tool is exceptional. As it is already mentioned, this research is not a plain analysis of water policies of the union government of India, but the purpose is to study them in the context of Right to Water. Accordingly, this research is based on an approach that provides a language of

rights, the attainment of which is essential to endorse needs as rights and can also provide standards, goals and principles that are useable for policy analysis. The researcher believes that RBA fulfils both the requirements. The use of RBA is more appropriate than other approaches for the following reasons –

1. RBA is a tool that justifies that water is not just a need but is a right of human beings. Since the objective of RBA is to see and ensure essentials of life as rights, the researcher believes that the RBA suits and is the best line for the requirement of the present research.
2. It offers directive principles to state policies that helps to standardize the value of Right to Water, and helps in policy making and policy analysis.
3. This approach has additional values of obligation, accountability, respect and transparency that require practical documentation of right to water which is essentially the subject of the present research.
4. The approach conceptualizes overarching elements of human dignity without arguing much on moralities.
5. It insists on immediate compliance that is least affected by cultural pluralism and social beliefs and practices in which other approaches, including human right approach, is not always grounded (Beitz, 2001:279).
6. The approach helps in setting priorities for water policy to ensure that no person is deprived of sufficient water supply<sup>ccxx</sup>. As a process it obligates the state to facilitate citizens with basics considered as a must for human survival with dignity. Even in the most contradicting situations of acute differences, right based approach remains oriented to empower people to claim rights and entitlements.
7. The use of rights-based approach has a legitimate tradition in India. For instance, in different jurisdictions, Indian courts have developed this approach in the early 1980s (Thielbo'rger, 2014).

Additionally, the principles offered by RBA have established “minimum standards to ensure right to water”. With it, it is easy to set specific priorities for water policy. For the research as the present, a major support to use RBA is received from the World Health Organization (2003). To explain and endorse the idea of Right to Water, organisation has used RBA. A document titled “Right to Water” states that to ensure right to water, RBA be used by the states. The document shows that the values offered by RBA have the potential to create maximum possibilities to ensure right to water to all. In view of the above, to analyze Right to Water in the context of water policies of the union government of India, right based approach will be used as a major tool in this study.

### **3.5. Summary**

This chapter presents the meaning of Right to Water and offers scope for it in policy making. Firstly, it discusses the discourse of rights and argues that claim on water be considered as a right. As a second stand, it describes how the concept of Right to Water is conceptualized and what it means. The chapter discusses the process of conceptual evolution of the idea of Right to Water and then presents its meaning(s). The chapter explains that water is globally considered as a right. Ideas elaborated in it emphasise that international assurances can be considered as values and suggestions that help to establish water as a right but they alone cannot be a guarantee of the right. With this understanding, the chapter has taken international and regional undertakings not as the guarantor of right to water but as interpreter of Right to Water. It holds the view that institutionalization of right to water is a consequence of internationalization, regionalization and nationalization. In the researcher’s perception, right to water is not a mere right but is linked with duties as well. She insists that since water resources are controlled by nature, it is essential to treat Right to Water with a shared right and enjoy claims on it as a shared responsibility. The chapter proposes that it is not enough to treat and ensure water as a need but there is a requirement to endorse it as a right. Further, to ensure right to water in policy frameworks, the chapter emphasises the use of right based approaches.

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## End Notes

<sup>xxii</sup> For the discussion on water as a right, analysis of international standards, introduced by United Nations is found relevant because the resolutions, conventions and declarations made at the international level are the key source of water policy (Shiva 2001; Baker 2009; Bakker 2010; Iyer 2010). By defining water as a right and by providing empirical reasoning to the subject, water has been institutionalized as a human right of all. Here, the researcher has not included the Declarations made by the World Bank because the World Bank does not consider the idea of Right to Water but argues in the category of Water Rights. Some details of it will be mentioned in the section titled “The Meaning of Right to Water”.

<sup>xxiii</sup> Opinion of WHO on Right to Water is highlighted in Water as Human Right? (2004), John Scanlon, Angela Cassar and Noemi Nemes, IUCN Environmental Law programme paper 51, UK, page 20.

<sup>xxiv</sup> It should be noted that in the discussion capital R and W represent the concept and small r and w stands for the right itself.

<sup>xxv</sup> Here, discourse of rights includes only political discussions that have explicitly argued for the idea of right. It is important to note that the researcher is aware that in the religious discourse, there is mention of water as a source of life. However, since the key interest of the present thesis is to read and analyze water in a policy framework, religious interpretations offered by different religions are not included. This is the primary reason why Indian, Islamic and Christian philosophy on water is not discussed or even mentioned.

<sup>xxvi</sup> The term is taken from Yash Ghai ‘s article. For details see: Yash Ghai, ‘Rights, Social Justice, and Globalization in East Asia’, in Richard Falk, Hilal Elver and Lisa Hajjar (Eds.), *Human Rights: Critical Concepts in Political Science Vol II*, pages 66-88, Routledge Publications, New York.

<sup>xxvii</sup> Harel (2015) has considered rights as negative when they limit governance and positive when they advocate strong governance to support a person’s actions. An elaborate account is found in Warren S. Quinn (1989) who argued that the principles of negative rights are often admired by capable societies where as positive actions of state are demanded by incapable societies (Warren S. Quinn, 1989). For Quinn, negative rights are claimable against harmful intervention, interference, assault, aggression and might therefore naturally seem to proscribe harmful positive agency, whether by action of the agent himself or by action of some object to which, by strategic inaction, he lends a hand. Positive rights, on the other hand, are claim rights to aid or support and would therefore seem to prescribe harmful negative agency (Actions, Intentions and Consequences: The Doctrine of Doing and Allowing; *Philosophical Review*, pages 287-312)

<sup>xxviii</sup> Liberalism is allied with three fundamental principles. The first principle is that man is a free and intelligent agent. As he is endowed with reason, no one other can decide his best interest on his behalf. The second principle is that man should fundamentally have economic freedom, i.e. *laissez faire* and the third is, that the minimum state is the best state i.e. a police state (Adam Smith (1776) and Ricardo (1817).

<sup>xxix</sup> Researcher has chosen natural rights as the notion of natural rights is the oldest argument on rights. As an idea it has argued for the values of freedom, equality and fraternity that had inspired the American (influence of Lockean account on rights) and French revolutions (influence of Rousseau’s conception of rights) and established democratic governance in the world at least so is claimed rigorously. The significance of natural rights is well narrated by Jeremy Waldron. In his work, *The Decline of Natural Rights*, he ascribes natural rights as rationalistic in its method, individualistic in its foundations, universal in its scope and hypercritical in its politics. Similarly, utilitarianism is taken for its

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idea of utility which is found influential in policy making. The values of utilitarianism are strongly recognized and placed in the process of policy making especially with the spread of globalization, as Harvey (2002) argues.

<sup>xxx</sup> There is no evidence of historical development of natural rights; Donnelly found a starting point in Locke, whereas N. Bibbio (1993) presents that the theory of natural rights is born with Hobbes. Knud Haakonssen has discussed the role of Grotius as an innovator and for Michel Villy; William Ockham was the true "father of subjective rights".

<sup>xxxi</sup> Jeremy Waldron has explained the situation as it is as rights, duties and contract (Waldron, 1984).

<sup>xxxii</sup> Till 1947, for discussion of rights, the term 'Man' was used as a subject; Eleanor Roosevelt suggested in 1947 that the term 'Rights of Man' be changed to 'Human Right'. It is a term which was coined by Thomas Paine in the French Declaration of the Rights of Man and Citizen (1789).

<sup>xxxiii</sup> Critics of Natural Theory observe that natural rights have ignored the fact that human happiness is indeed the proper goal of rights that are possible only in the presence of a system of law. They argue that due to this ignorance even as the first expression of rights, the core elements of natural theory have actually posed a threat to the liberty of an individual. They have actually encouraged holism, totalitarianism or authoritarianism (Popper, 1962). Bentham argued that since natural rights presume rights in the absence of law, their rights are not real but imaginary rights and so they are "simple nonsense". For a detailed study, see: Randall B. Ripley, Adams, Burke, and Eighteenth-Century Conservatism in *Political Science Quarterly*, June 1965, pp. 216-235. Also see Urger & Mangabeira, (1976): *Law in Modern Society*, New York: Free Press.

<sup>xxxiv</sup> Burke is called pro-utilitarian by William Lecky, Charles Vaughan, George Sabine and Plamenatz. See further endnote.

<sup>xxxv</sup> Here, the term 'something' includes values like freedom, justice, knowledge and beauty (G. E. Moore, 1903), and preferential satisfactions (Arrow, 1951). Addition has classified utilitarianism as classical and contemporary, in which classical took pleasure to be the measure of values whereas contemporary notion is focused on human welfare through idea of preferences. For details, see Chapter 2 and 3 of Quinton (1989) in *Utilitarian Ethics*, London: Duckworth.

<sup>xxxvi</sup> See "John Stuart Mill and the Ends of Life," *Four Essays on Liberty* (Oxford 1969), p. 193.

<sup>xxxvii</sup> In the very last sentence of his thesis on Utilitarianism, Mill asserts that the sentiment attached to justice, defined in terms of rights, is to be "distinguished from the milder feeling which attaches to the mere idea of promoting human 'pleasure' or convenience". Also see *On Liberty*, Chapter 1.

<sup>xxxviii</sup> Mill understands this as a situation where everyone is to count for one and no one is to count for more than one (Mill, 1993, p. 64). It should be noted that Utilitarianism as a theory assumed that man by nature is future-oriented. Therefore, any action of his is based on the thought which can give maximum pleasure as a result. The prescription has connected utilitarianism with hedonist psychology, which infers that human beings always want to increase pleasure and reduce pain. It has started the debate on consequentialism, which I have not included in the discussion here as its arguments are not the focus of the present thesis.

<sup>xxxix</sup> It is essential to note that in academia, the fundamental idea of human rights is divided and subdivided into different versions as liberal human rights, Marxist human rights and

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feminist human rights, however here I am concerned just with the fundamental idea of right.

<sup>xl</sup> As Charles Beitz has pointed out, human rights play “the role of a moral touchstone—a standard of assessment and criticism for domestic institutions, a standard of aspiration for their reform, and increasingly a standard of evaluation for the policies and practices of international economic and political organizations.” See “Human Rights as a Common Concern,” p. 269.

<sup>xli</sup> Here, the researcher is not denying the possibility to have more classifications; however, since this chapter is not intended to present a historical document on rights, other classifications do not suitably fit in the present thesis.

<sup>xlii</sup> For scholars like Baxi they are post-war phenomena.

<sup>xliii</sup> To have more details on this idea, see Michael Freeman (2012), *Human Rights: An Interdisciplinary Approach*, Polity Publications, Cambridge, page 198-211.

<sup>xliv</sup> Hannah Arendt (1950) in her work “Origins of Totalitarianism” calls it the universal principles of humanity.

<sup>xlv</sup> Rawls has not elaborated extensively on human rights; however, his conception on justice is rights centric.

<sup>xlvi</sup> Marxist criticism of rights is not the criticism of the idea itself but it has raised serious objections against the bourgeois conception of rights. See John Plamenatz and W.D. Lamont (1950), *Rights in Ethics and Logics*, pages 77-110; A. Sichel (1972), *Karl Marx and Rights of Man, Philosophy and Phenomenological Research*, Vol. 32 and Clark, T. (2010), “Human Rights and Radical Social Change: Liberalism, Marxism and Progressive Populism in Venezuela” *Student Pulse*, 2(03). Retrieved from <http://www.studentpulse.com>.

<sup>xlvii</sup> The idea has condemned human rights as well, it argues that it has not considered the structure of social relations and the level of production. They further explain that by making things universally common, the notion has systematically preserved the interests of a few that have not gone beyond the egoistic man (who is born due to the entitlement of natural rights). To criticize human rights from its basic arguments, new interpretations of Marxism argue that the idea of universality in human rights has created a system where an individual withdraws into himself, into the confines of his private interests and private caprice, and is separated from his community.

<sup>xlviii</sup> The ideas are discussed in K. Marx, *Economic and Philosophical Manuscripts of 1822*, and in K. Marx and Engle, *Collected Works*, Vol.3, London 1975.

<sup>xlix</sup> Marx has discussed this idea in *The Holy Family*, 1844; details are cited by Cohen (1978).

<sup>l</sup> This is the popular slogan of Karl Marx, it clarifies that Marxism, equality is not the same as equality defined in the idea of natural rights. While re-conceptualizing the idea of equality, Marxism explains that equal labor and equal share have no meaning if needs have not been considered taking into account the differences of context and situation. Marxism offers that the economic status of a man depends on his marital status and on the number of the members he is supposed to feed. Certainly, the needs of a married man with children will be more than of a man who is single or married but with no children. As a result, a worker with similar wages can be richer than others because he has less social responsibilities than others. For details, see Agnes Heller (1976), *The Theory of Need in Marx*, Allison and Busby, London and Marx K., *The Economic and Philosophical Manuscripts* section on Alienation Labor and Capital Vol. 1.

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<sup>li</sup> The idea is reconceptualized by Nordahl, 1991 and Burke, Crocker, & Legters, 1981 along with others.

<sup>lii</sup> There is disagreement on the list of rights; some scholars believe that Marxism has not discussed security as a right (Richard Nordahl 1991). However, some scholars believe he has (Marcel H. Van Herpen, 2012). Since this chapter is not a discursive discourse on rights, to not get into the debates the researcher has taken just two rights on which almost all scholars are in agreement.

<sup>liii</sup> For detail see Marx K., *The Economic and Philosophic Manuscripts* section on Alienation Labor and Capital Vol-1.

<sup>liv</sup> Here again, Marx seems critical of liberalism, as he insists that the entitlement of physical life needs is wrongly promised in bourgeois societies as many times people do not know there are real needs.

<sup>lv</sup> Marx persists that the idea of freedom has meaning only if it allows gaining control on the conditions of one's own existence by allowing one to recognize one's aim. For details, see Maria Hirszwicz (1965), *The Marxist Approach to Human Rights*, Round Table Meeting on Human Rights, organized by United Nations Educational Scientific and Cultural Organization.

<sup>lvi</sup> To criticize the existing notion of rights, Feminist like Mackinnon argues that the existing notion of right is ideational, abstract and falsely systematic (Mackinnon 1979: 219). Cited in John Hoffman and Paul Graham (2006), *Introduction to Political Theory*, Dorling Kindersley, New Delhi, (page 518).

<sup>lvii</sup> For details, see *The Subjection of Women* (1869), in *Essays on Equality, Law and Education* (Collected Works of John Stuart Mill, xxi), ed. J. M. Robson (1984), Toronto University Press, Toronto.

<sup>lviii</sup> For details, see *The Subjection of Women* (1869), in *Essays on Equality, Law and Education* (Collected Works of John Stuart Mill, xxi), ed. J. M. Robson (1984), Toronto University Press, Toronto.

<sup>lix</sup> See: Bryson, V. (co-edited with Campling, J.), *Feminist Political Theory: An Introduction* (Basingstoke: Macmillan, 2003).

<sup>lx</sup> For details see: Freedman (2002), *Feminism*, New Delhi: Viva Books Private Limited and Marysia Zalewski (2000), *Feminism after Postmodernism*, London: Routledge.

<sup>lxi</sup> According to David Miller, the concept of women's human rights and women's equality are different. Here, the researcher has not discussed the details as it is not a part of the present discussion. For details see David Miller "Introduction to Susan Moller Okin", *Sex Rights: Oxford Amnesty lectures 2002*, (ed.), Nicholas Bamforth Oxford University Press, 2005) and Charles R. Beitz: *The Idea of Human Rights* (2009), Oxford University Press, New York (page 191).

<sup>lxii</sup> See for details, Squires, J (1999), *Gender in Political Theory*, Cambridge and Malden: Polity Press.

<sup>lxiii</sup> Commonality is claimed more between natural rights and human rights. Roland Pennok (1981) has called it a moral kinship. Like natural rights believers, Rubin established that rights are valued because they arise from the essential and non-governmental nature of human beings (Rubin 2008 & Donnelly 1981) that are as important as mother's milk for the international community (Falk, 2004). A similar discussion is found in Edward L. Rubin thesis who argues in his article "*Rethinking Human Rights*" that human beings possess

natural rights in their pre-social state, rights which stem from their mere identity as human beings and not from any system of positive law. Identical closeness is more clear in Janet Coleman 's article "Are there any individual rights or only duties?" She highlights that in the early modern period, dominant tradition led more directly to talk of rights as claims, whereas neo-Augustinians are seen to be interested in submerging rights, previously known as duties that has influence on certain early modern theories as well (Rubin, 2003). Nussbaum too, like naturalist theorists, argued that rights are "prepolitical" and "not merely artifacts of laws and institutions", however important those laws and institutions may be in securing their fulfilment (Nussbaum, *Frontiers of Justice*, 85).

<sup>lxiv</sup> Scholars like H. Ingram, J. M. Whiteley and R. Perry argue that Greek philosophers like Plato and Aristotle too have addressed water as a right. For Plato, water is the most basic need of human beings and for Aristotle water is a priority for life over other uses of water. See H Ingram, J. M. Whiteley and R. Perry, *The Importance of Equity and the Limits of Efficiency in Water Resources*, in H. Ingram, J. M. Whiteley and R. Perry eds, *Water, Place and Equity* Cambridge, Mass: MIT Press 2008 1, 8-9.

<sup>lxv</sup> For this idea, see Pierre Thielbo"rger (2014), *The Right(s) to Water: The Multi-Level Governance of a Unique Human Right* Springer, London.

<sup>lxvi</sup> For details see: *Leviathan chapter XV, page 70*.

<sup>lxvii</sup> See: *Second Treaties of Government 1690, Chapter 5 Sec. 29* page 211

<sup>lxviii</sup> In his work called *Commentaries on the Law of England*" Chapter 2:18. For detail see <http://www.lonang.com/exilbris/blackstone/>; and <http://www.yale.edu/lawweb/avalon/blackstone/blacksto.hmt>

<sup>lxix</sup> See: his work called *On Duties*, in Book I, 52.

<sup>lxx</sup> See: *Two Books on the Duty of Man and Citizen* Book 1.8.4.

<sup>lxxi</sup> Quoted by Grotius in, *On the laws of war and peace* book 2.2.1.1.

<sup>lxxii</sup> Cited in Manuel Couret Branco and Pedro Damiao Henriques (2008), *The Political Economy of The Human Right to Water*, page4 Working Paper03, <http://www.cefage.uevora.pt>, accessed on 8/12/14.

<sup>lxxiii</sup> First Published: by G Bell, London, 1896. Translated: by S W Dyde, 1896. Preface and Introduction with certain changes in terminology: from "*Philosophy of Right*", by G. W. F. Hegel 1820, Translated. Prometheus Books; Remainder: from "*Hegel's Philosophy of Right*", 1820, translated, Oxford University Press; First Published: by Clarendon Press 1952, Translated: with Notes by T. M. Knox 1942

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<sup>lxxiv</sup> Expressed in the *Second Treaties of Government 1690, Chapter 5*

<sup>lxxv</sup> In the process of water supply, principles of Thatcherism constitute a system of formal rules and regulations that decides on buying, selling and leasing of water use, practice of which is based on market values. Since the idea is introduced by the Prime Minister of United Kingdom, Mrs. Margaret Thatcher in 1980s, globally it is propagated as Thatcherism. For details see, Harvey, *A Brief Hisory of Neoliberalism* , 2007 and Harvey, *The New Imperialism* , 2003, Oxford University Press.

<sup>lxxvi</sup> The term, 'Washington Consensus', is coined by John Williamson. The term represents a set of economic principles. Basically, the idea refers to the design of a standard reform package for countries that are in need of help. It is administrated by Washington-based institutions like Indian Monetary Fund, World Bank, and the U.S. Treasury Department. In



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policy analysis, the term is used to describe a range of policies broadly associated with expanding the role of market forces and limiting the role of the state.

<sup>lxxvii</sup> The core objective of the present research is to identify the meanings of right to water and investigate its elements in water policies of union government of India, it is therefore important to focus on the evolution of the concept of Right to Water, for this reason the researcher has ignored the discussions developed in argumentative tradition. To explore the meaning of Right to Water, the researcher has focused on the evolving points at the global, national and regional levels.

<sup>lxxviii</sup> The researcher calls it a process because even after the declaration of right to water as a human right, the struggle of using water as a right is not over. In this sense the movement for water justice and declarations which are periodically made are simultaneous and supportive. This argument of the researcher is seen developed in the works of scholars as Gewirth (1983), McCaffrey (1992,1999), Gleick (1998), Shiva (2001), (Scanlon, Cassar & Nemes, 2003), Gleick (2007), Anand,(2007), Cultte (2010), Iyer (2010), Baxi (2012), Thielborger (2014) and Asathan (2014).

<sup>lxxix</sup> The features taken for such discussion are available at <http://www.unhchr.ch/html/menu3/b/91.htm> and [www.chore.org/legal\\_resources](http://www.chore.org/legal_resources)

<sup>lxxx</sup> Gleick explains that international measures help in area of water disputes. He provides suggestions to resolve conflicts over the use of shared water by identifying minimum water requirements and allocations for all basin parties. Since this thesis is not focusing on the dispute factor of water, the discussion is not taken further. The rational of the selection will develop with the progress of the chapter.

<sup>lxxxi</sup> The researcher has observed that normative support is noticed at all the other levels as well; however, in the present research, the researcher explains them as global water movement.

<sup>lxxxii</sup> For details, see Langford M (2006) Ambition that overleaps itself? A Response to Stephen Tully's Critique of the Comment 15. Neth Q Hum Rights 24(3):433–459, Also Expectation of Plenty: Response to Stephen Tully. Neth Q Hum Rights 24 (3):473–479 and Pierre Thielborger (2014): Right(s) to Water; The Multi-Level Governance of a Unique Human Right, Springer, Germany.

<sup>lxxxiii</sup> Globally, recognition of water as a right is first noticed in International Humanitarian and Criminal Law Treaties, which govern the actions of States and other actors in times of war or occupation, set out obligations to respect and ensure access to water for prisoners of war, interned persons and the civilian population. The idea is explicitly noted in several treaties. The first is noticed as **Geneva Convention (III) relative to the Treatment of Prisoners of War, 1949** Article 20, 26, 29 and 46 of it collectively states that the Detaining Power shall supply prisoners of war who are being evacuated with sufficient food and potable water, and with the necessary clothing and medical attention.... (Article 20, 29 & 46). The basic daily food rations shall be sufficient in quantity, quality and variety to keep prisoners of war in good health and to prevent loss of weight or the development of nutritional deficiencies.... (26). Article 29 insists that all sanitary measures necessary to ensure the cleanliness and healthfulness of camps and to prevent epidemics. Prisoners of war shall have for their use, day and night, conveniences which conform to the rules of hygiene and are maintained in a constant state of cleanliness. In any camps in which women prisoners of war are accommodated, separate conveniences shall be provided for them. Also, apart from the baths and showers with which the camps shall be furnished, prisoners of war shall be provided with sufficient water and soap for their personal toilet and for washing their personal laundry; the necessary installations, facilities and time shall be granted them for that purpose.

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The second major acknowledgement is observed in the **Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War, 1949**. The convention elaborates on sanitation articles like 33, 85, 89, and 127 and is important in this regard as it insists on safeguards as regards hygiene, cleanness and health. For this purpose, it emphasises that detaining power shall be provided with sufficient water and soap for their daily personal toilet and for washing their personal laundry; installations and facilities necessary for this purpose shall be granted to them. Showers or baths shall also be made available. The necessary time shall be set aside for washing and for cleaning. Articles 89 and 127 instruct that the daily food rations for internees shall be sufficient in quantity, quality and variety to keep internees in a good state of health and prevent the development of nutritional deficiencies. Account shall also be taken of the customary diet of the internees.... Sufficient drinking water shall be supplied to internees... Expectant and nursing mothers and children under fifteen years of age shall be given additional food in proportion to their physiological needs.

The third mention is observed in **Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 1977**. Article 54 of which confirms protection of objects indispensable to the survival of the civilian population, the instructions are classified in clause 1, 2, 3 and 4. It collectively states that starvation of civilians as a method of warfare is prohibited. The prohibition further includes to attack, destroy, remove or render useless objects indispensable to the survival of the civilian population, such as food-stuffs, agricultural areas for the production of food-stuffs, crops, livestock, **drinking water installations and supplies and 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. Clause 3 b declares that if not as sustenance, then in direct support of military action, provided, however, that in no event shall actions against these objects be taken which may be expected to leave the civilian population with such inadequate food or water as to cause its starvation or force its movement.

Another major development in the same year is noticed in the **Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 1977** Article 5 of which concerns for the Persons whose liberty has been restricted. Clause 1 (a) emphasises that the wounded and the sick shall be treated in accordance with Article 7; (b) The persons referred to in this paragraph shall, to the same extent as the local civilian population, be provided with food and drinking water and be afforded safeguards as regards health and hygiene and protection against the rigors of the climate and the dangers of the armed conflict. Article 14 further provides protection of objects indispensable to the survival of the civilian population. It insists that the starvation of civilians as a method of combat is prohibited. It is therefore prohibited to attack, destroy, remove or render useless for that purpose, objects indispensable to the survival of the civilian population such as food-stuffs, agricultural areas for the production of food-stuffs, crops, livestock, drinking water installations and supplies and irrigation works.

<sup>lxxxiv</sup> The treaties made under International Environment and Labour explain that the right to water and sanitation requires States to assess the impacts of actions that may impinge upon water availability, natural ecosystems and watersheds, such as climate change, desertification and loss of biodiversity. For assurance to this the first treaty was made in 1994 called **United Nations Convention to Combat Desertification in Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa, 1994**. While highlighting its objective Article 2 (1) states that the aim of this Convention is to combat desertification and mitigate the effects of drought in countries experiencing serious drought and/or desertification, particularly in Africa, through effective action at all levels, supported by international cooperation and partnership arrangements, in the framework of an

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integrated approach which is consistent with Agenda 21, with a view to contributing to the achievement of sustainable development in affected areas. Clause (2) pinpoints that this will involve long-term integrated strategies that focus simultaneously, in affected areas, on improved productivity of land and the rehabilitation, conservation and sustainable management of land and water resources, leading to improved living conditions, in particular at the community level. Article 10 of the treaty called National Action Programmes specifies the respective roles of government, local communities and land users and the resources available and needed. The second major development in this regard happened in 1997, known as the **UN Convention on the Law of the Non-Navigational Uses of International Watercourses, 1997**. Article 5 of the Law insists for the equitable and reasonable utilization and participation; clause (1) states that that Watercourse States shall in their respective territories utilize an international watercourse in an equitable and reasonable manner. In particular, an international watercourse shall be used and developed by watercourse States with a view to attaining optimal and sustainable utilization thereof and benefits there from, taking into account the interests of the watercourse States concerned, consistent with adequate protection of the watercourse. Article 6 in this respect, pinpoints to the factors relevant to equitable and reasonable utilization; clause (1) presents that the Utilization of an international watercourse in an equitable and reasonable manner within the meaning of Article 5 requires taking into account all relevant factors and circumstances, including: (a) Geographic, hydrographic, hydrological, climatic, ecological and other factors of a natural character; (b) The social and economic needs of the watercourse States concerned; (c) The population dependent on the watercourse in each watercourse State; (d) The effects of the use or uses of the watercourses in one watercourse State on other watercourse States; (e) Existing and potential uses of the watercourse; (f) Conservation, protection, development and economy of use of the water resources of the watercourse and the costs of measures taken to that effect; (g) The availability of alternatives, of comparable value, to a particular planned or existing use. For the application of article 5, clause (2) insists on entering into consultations in a spirit of cooperation and (3) emphasises to determine what is a reasonable and equitable use; all relevant factors are to be considered together and a conclusion reached on the basis of the whole. Article 7 focuses on the need of obligation not to cause significant harm clause (1), in this respect insists that Watercourse States shall, in utilizing an international watercourse in their territories, take all appropriate measures to prevent the causing of significant harm to other watercourse States. It is understood that this requires for a different kind of use as article 10 suggest. Clause (1) highlights a fear that in the absence of agreement or custom to the contrary, no use of an international watercourse enjoys inherent priority over other uses. Clause (2) suggests that conflicts shall be resolved with reference to Articles 5 to 7, with special regard being given to the requirements of vital human needs, which insists to pay special attention to providing sufficient water to sustain human life, including both drinking water and water required for production of food in order to prevent starvation.

The meaning of Vital Human Needs is elaborated in **The International Law Association's Berlin Rules on Water Resources (2004)**. Article 2(20) clarifies that "'Vital human' needs means waters used for immediate human survival, including drinking, cooking, and sanitary needs, as well as water needed for the immediate sustenance of a household." Article 14 further states that "[i]n determining an equitable and reasonable use, States shall first allocate waters to satisfy vital human needs. No other use or category of uses shall have an inherent preference over any other use or category of uses." Article 17 finally recognizes the right to water, clause (1) of which states that every individual has a right of access to sufficient, safe, acceptable, physically accessible, and affordable water to meet that individual's vital human needs. Clause (2) says that States shall ensure the implementation of the right of access to water on a non-discriminatory basis. Clause (3) emphasises that States shall progressively realize the right of access to water by: a. Refraining from interfering directly or indirectly with the enjoyment of the right; b. Preventing third parties from interfering with the enjoyment of the right; c. Taking measures to facilitate individuals

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access to water, such as defining and en-forcing appropriate legal rights of access to and use of water; and d. Providing water or the means for obtaining water when individuals are unable, through reasons beyond their control, to access water through their own efforts. 4. States shall monitor and review periodically, through a participatory and transparent process, the realization of the right of access to water.”

With regard to the Labour treaties the first Convention is made in 1985 called **Occupational Health Services Convention, 1985 (No. 161)** Article 5 of it states that it is the responsibility of each employer for the health and safety of the workers in his employment, and with due regard to the necessity for the workers to participate in matters of occupational health and safety, occupational health services shall have such of the following functions as are adequate and appropriate to the occupational risks of the undertaking: ... (b) surveillance of the factors in the working environment and working practices which may affect workers' health, including sanitary installations, canteens and housing where these facilities are provided by the employer; ...

Other than above there is a treaty that has highlighted the rights of indigenous and Tribal Peoples the Convention made in 1989 is significant in this regard, which called **Indigenous and Tribal Peoples Convention, 1989, (No. 169), article 15 (1) of it states the rights of the peoples on the natural resources** pertaining to their lands shall be specially safeguarded. These rights include the right of these peoples to participate in the use, management and conservation of these resources. 2. In cases in which the State retains the ownership of mineral or sub-surface resources or rights to other resources pertaining to lands, governments shall establish or maintain procedures through which they shall consult these peoples, with a view to ascertaining whether and to what degree their interests would be prejudiced, before undertaking or permitting any programmes for the exploration or exploitation of such resources pertaining to their lands. The peoples concerned shall wherever possible participate in the benefits of such activities, and shall receive fair compensation for any damages which they may sustain as a result of such activities.

<sup>lxoxv</sup> Source of this discussion is: LEGAL RESOURCES FOR THE RIGHT TO WATER AND SANITATION: International and National Standards – 2nd edition available at [www.chore.org/legal\\_resources](http://www.chore.org/legal_resources).

<sup>lxoxvi</sup> The meanings and scope are well defined in Comment 15. The crux of Comment 15 is explained by WHO. Recently UN Special Rapporteur, Catarina de Albuquerque, has elaborated guidelines for Right to Water in realizing the human right to water and sanitation (For details see 9 hand books with the title ‘Realising the human rights to water and sanitation: A Handbook by the UN Special Rapporteur Catarina de Albuquerque, (2014). She emphasized on water planning which is participatory and transparent. She offers that the role of small informal and small-scale providers should be considered to build supportive mechanisms that make right to water a possible right. She adds that policies should be set nationally with some flexibility to be adapted to local realities. It is important to inform people by radio, newspaper, internet or any other medium of communication so that they know about the standards of right to water and can claim the same. This would further help them to take part in decision making which consequently confirms the accountability of government. To confirm effective accountability and to make it corruption free, the state should put in place impartial and independent administrative complaint procedures, including regulatory bodies, to guarantee that government officials implement laws, regulations and policies correctly and consistently which should have based on the principles like non-discrimination and equality. For active, free and meaningful participation in the design of policies and planning on water and sanitation related issues, she emphasized on democratic engagement through community councils and participatory budgeting.

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<sup>lxxxvii</sup> The researcher is arguing so because the obligations mentioned in 2002 are further redefined and reargued in the U.N.'s Guiding Principles on Business and Human Rights (2011). For details, see Guiding Principles on Business and Human Rights, "Implementing the United Nations "Protect, Respect and Remedy" Framework," <http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusiness.pdf>

<sup>lxxxviii</sup> Since Comment 15 is mentioned in the Convention, it enjoys a legal status at the international level.

<sup>lxxxix</sup> Here, the researcher is using ideas of global water justice movement as the argument. Since a movement cannot be considered as a theory until documentation of the argument, the researcher prefers to call it an argument.

<sup>xc</sup> The four key Dublin Principles were: (1) Fresh water is a finite and vulnerable resource, essential to sustain life, development and the environment; (2) Water development and management should be based on a participatory approach, involving users, planners and policy-makers at all levels; (3) Women play a central part in the provision, management and safeguarding of water; and, (4) Water has an economic value in all its competing uses and should be recognized as an economic good. The fourth principle has argued water to be maintained by market approach. For details, see The Dublin Statement on Water and Sustainable Development, International Conference on Water and the Environment (A/CONF.151/PC/112).

<sup>xci</sup> International Conference on Water and the Environment, Dublin, Ir., Jan. 26-31, 1992, The Dublin Statement on Water and Sustainable Development (June 1992). For details see SALMAN & MCINERNEY-LANKFORD, *supra* note 11, at 9.

<sup>xcii</sup> In 1944, the Bretton Woods Agreements created two international financial institutions to help in aiding development and providing economic stability – the World Bank and the International Monetary Fund (IMF). The World Bank's Toolkits for Private Participation in Water and Sanitation" which is the major source of basic guidelines, was published in 1997. For the role of World Bank in water management, also see Madeline Baer (2015) From Water Wars to Water Rights: Implementing the Human Right to Water in Bolivia, *Journal of Human Rights*, 14:3, 353-376, DOI:10.1080/14754835.2014.988782

<sup>xciii</sup> For details see: WATER RESOURCES –MANAGEMENT (1993) International Bank for Reconstruction and Development / THE WORLD BANK 1818 H Street, N.W.Washington, D.C available at [www.worldbank.org](http://www.worldbank.org).

<sup>xciv</sup> For details, see release of World Bank titled "Water and Development: An Evaluation of World Bank Support, 1997-2007.

<sup>xcv</sup> Here, the researcher is arguing in reference of African, Asian and Latin American countries, the researcher is not denying the fact that there are some counties like Chili where water privatization has a documented success story.

<sup>xcvi</sup> Cochabamba, the third largest city of Bolivia (South America's poorest nation), is among the first that has experienced the negatives of neoliberal practices in water policy management. Bolivian history provides that in late 1980s the city's public water system, SEMAPA (Servicio de Agua Potable y Alcantarillado de Cochabamba) was incapable of keeping up with the demand for expansion of the population. To meet the increasing demands, the World Bank, which had given various packages of financial aid to the local water company over more than a decade, decided to make the public water system private and made it clear to Bolivian officials that privatization is the price that Bolivia needed to pay for Bank financial assistance in the future. In February 1996, World Bank officials told Cochabamba's Mayor that it was making a \$14 million loan to expand water service

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conditioned on the city privatizing its water. In June 1997, Bank officials told Bolivia's President that \$600 million in international debt relief was also dependent on Cochabamba. Looking at the debt amount, the Bank advised the Bolivian government that, "No public subsidies should be given to ameliorate the increase in water tariffs in Cochabamba..." In other words, Cochabamba residents, including the poor, should pay the full price that the market demanded in order to provide them with water. In 1999, the Bolivian national government, having been given a clear ultimatum from the Bank, initiated a process to put Cochabamba's public water system in private hands. In a closed-door process with just one bidder, Bolivian officials signed an agreement leasing off Cochabamba's water for 40 years to a mysterious new company named Aguas del Tunari – which would later turn out to be a subsidiary of the California giant, Bechtel. The agreement guaranteed the company an average profit of 16% per year every year and increasing water bills for locals. Within weeks of its takeover of the water, Bechtel's company hit local families with rate increases of up to 200%. The local resistance to the water price hikes was fierce as workers living on the local minimum wage of \$60 per month were told to pay as much as \$15 just to keep the water running from the tap. Consequently, there was wide protest in Cochabamba demanding that the water price hikes be rescinded.

<sup>xcvii</sup> The term Neoliberal globalizers refers to the fact that the neoliberal practices in water management are globally accepted. For details, see Sunding (2000), Milton Friedman (2002) and Richter (2014).

<sup>xcviii</sup> The World Bank Water Resources Management Policy Paper (1993) is significant in this regard.

<sup>xcix</sup> According to Sangameswaran (2007) and Khadka (2010), the idea and practice of water rights refers to property rights. To make water accessible, they emphasise on specific mechanisms and insist upon developing mechanisms other than that of the state. They insist that rise of new mechanisms has defined water as a property and commodity be sold. In this sense "water rights" often work against securing a "right to water", particularly for the marginalized, poor and vulnerable populations. In Iyer's thesis, such differences are fundamental. He states that the difference between right to water and water right is so vast that there can be conflict between them (2010: 616). He highlights the differences in the following words: "Right to Water is not the same thing as water rights, latter term generally refers to use right in the context of economic use of water such as irrigation and industry" (Iyer, 2007: 142). For Iyer, the idea of right to water is different as it does not include the industrial claim on water as a right<sup>xcix</sup>. To avoid industrial claim on water, he insists that terms like "demand" and "supply" should not be used as they may dilute the idea of Right to Water and would mislead a state to assert water as commodity like other goods. He argues that the economic use of water is concerned with the ability to pay, which consequently creates a culture of water markets. Since markets are profit oriented, their meaning of right is not a common right but restricted to the right of a few. He explains: "When the World Bank and other economist talks about right or titles they mean something like property rights. This allied to the doctrinaire advocacy of water market i.e. state should step out from the area of water management and leave it to market for cost recovery, such paradigm shifts converts life right into trade right" (page 142-43). Thus, Iyer, in his writings highlights the contradiction between human rights, i.e. right to water and trade right, i.e. water rights. Like Iyer, Lindquist and Gleick (1997) have discussed the idea in the reflection of the differences between need and demand. In their thesis, the concept of "need" exists independently and focuses on use of water as a basic biological need. On the other hand, the concept of water rights has established water as a "demand". By nature, it has economic preferences, which insists on use water to increase productivity and profit. In this reference, claim on water is considered as a kind of special right to use, as Li Baizhang (2000) argues.

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<sup>c</sup> Scholars like Laura Macdonal and Arne Ruckert (2009) pinpoint that the concept of Post-neoliberalism is meant to capture the discontinuity within the continuity of policies. In the case of water policies, they are against water privatization that is the policy offered by neoliberalism. (For detailed understanding, see *Post-neoliberalism in Americas*, Palgrave Macmillan).

<sup>ci</sup> Water activist and scholars insist on identifying life beyond neoliberalism because as an idea, neoliberalism is deeply problematic. It is an incoherent term that has multiple and contradictory meanings, problems with it are not merely conceptual but also real (Doug, McCarthy and Zald, 1988; Bakker, 2003; Kaika, 2003).

<sup>cii</sup> This is the term which is used by Vandana Shiva to explain international water rules. For details, see: Shiva (2002), *Water Wars: Privatization, Pollution and Profit*, Indian Research Press (page 78).

<sup>ciii</sup> ‘Declarations and Recommendations’ are generally documents of intent, which constitute political commitments, but in most circumstances do not entail obligations that are legally binding upon the countries that have voted for or signed onto them. Declarations and resolutions cannot be ratified in the same way as Covenants, Conventions and Treaties can be. However, they can be used to help interpret international treaties and national Constitutional and legislative provisions.

<sup>civ</sup> The researcher found them significant because the terms ‘Covenant’, ‘Convention’, and ‘Treaty’ are synonymous and refer to instruments that are legally binding upon the Governments that have ratified or acceded to them. Even the Governments that have signed but not yet ratified a particular Covenant, Convention or Treaty are not legally bound to enforce that instrument, but are under an obligation not to undertake activities that violate its object and purpose. If a Government is a State Party to any of the Covenants, Conventions or Treaties listed in this guide, it has legal obligations to implement the provisions of that instrument. <http://www.ohchr.org/english/bodies/cescr/index.htm>.

<sup>cv</sup> While identifying the reasons, Rose Francis (2005), in her research claimed that since water was found as abundant, nobody thought that water was necessary to write down as a human right when the Human Rights Convention and later documents were written, it is not even considered to be important enough to be considered as a right. Similarly, Stephen McCaffrey, a legal commentator on right to water, has noted that the human right to water was not explicitly acknowledged in the UDHR because, like air, it was considered too fundamental to be mentioned. However, right to food may have been taken by the UDHR drafters to broadly refer to “sustenance”, which includes water.

<sup>cvi</sup> For the full text of the Stockholm Declaration, see Declaration of the United Nations Conference on the Human Environment, June 16, 1972, U.N. Doc. A/CONF.48/14/Rev.1, Sales No. E. 73.II.A.14 (1973); reprinted in 11 I.L.M. 1416 (1972). See also Harald Hohmann (1999) *Basic Documents of International Environmental Law*, 21 (Graham and Trotman).

<sup>cvi</sup> For detail see: report of the U.N. Water Conference, Mar del Plata, 14–25 March 1977, E/CONF.70/29, 1977. The researcher is aware that water is considered as a right in International Humanitarian Law Treaties and International Environmental and Labour Treaties much before 1977. The researcher has considered these two conferences as the first mention of idea because these are the treaties where states are directed and instructed to provide water to individuals in specific conditions like war and at work place. Besides these two mentioned conferences, water is not instructed as right but is assured as right.

<sup>cvi</sup> Chapter 18 of Agenda 21 endorsed the Resolution of the Mar del Plata Water Conference that all people have the right to have access to drinking water, and called this “the commonly agreed premise”.

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<sup>cix</sup> The Convention explicitly mentions water, environmental sanitation and hygiene. Article 24(2) states: “States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures: ...it has 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; ...it has to ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents”.

<sup>cx</sup> The Programme of Action of the UN International Conference on Population and Development affirms that all individuals “Have the right to an adequate standard of living for themselves and their families, including adequate food, clothing, housing, water and sanitation”.

<sup>cxii</sup> Principle 4 of the Dublin Conference states that “... it is vital to recognize first the basic right of all human beings to have access to clean water and sanitation at an affordable price. It provides four principles: 1. Water is a finite, vulnerable and an essential resource which should be managed in an integrated manner. 2. Water resources development and management should be based on a participatory approach, involving all relevant stakeholders. 3. Women play a central role in the provision, management and safeguarding of water. 4. Document insisted that water has an economic value and should be recognised as an economic good, taking into account affordability and equity criteria.

<sup>cxiii</sup> The Programme of Action of the UN International Conference on Population and Development affirms that all individuals: “Have the right to an adequate standard of living for themselves and their families, including adequate food, clothing, housing, water and sanitation”.

<sup>cxiiii</sup> Article 12 of the Resolution affirms that “in the full realization of the right to development, inter alia: (a) The rights to food and clean water are fundamental human rights and their promotion constitutes a moral imperative both for national Governments and for the international community.

<sup>cxv</sup> The Political Declaration of the Summit states: “The Johannesburg Summit focuses on the indivisibility of human dignity and takes decisions on targets, timetables and partnerships to speedily increase access to basic requirements such as clean water, sanitation, energy, health care, food security and the protection of biodiversity”.

<sup>cxvi</sup> The Right to Water: General Comment 15 interprets the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR) confirming the right to water in international law. This Comment provides guidelines for the interpretation of the right to water, framing it within two articles, Article 11, the right to an adequate standard of living, and Article 12, the right to the highest attainable standard of health. The Comment clearly outlines the State’s obligations to the right and defines what actions would constitute as a violation. Article I.1 states that “The human right to water is indispensable for leading a life in human dignity. It is a prerequisite for the realization of other human rights”.

<sup>cxvii</sup> Globally, 186 Countries were party to the treaty (excluding USA, Iran, Somalia, Sudan, Nauru, Palau and Tonga). The Convention sets out an agenda to end discrimination against women, and explicitly has references on both water and sanitation within its text. Article 14(2)(h) of CEDAW provides: “States parties shall take all appropriate measures<sup>cxviii</sup> to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right: ... (h) To enjoy adequate living



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conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communication.

<sup>cxvii</sup> Article 28 - Adequate standard of living and social protection, 1. States Parties recognize the right of persons with disabilities to an adequate standard of living for themselves and their families, including adequate food, clothing and housing, and to the continuous improvement of living conditions, and shall take appropriate steps to safeguard and promote the realization of this right without discrimination on the basis of disability. 2. States Parties recognize the right of persons with disabilities to social protection and to the enjoyment of that right without discrimination on the basis of disability, and shall take appropriate steps to safeguard and promote the realization of this right, including measures: (a) To ensure equal access by persons with disabilities to clean water services, and to ensure access to appropriate and affordable services, devices and other assistance for disability-related needs.

<sup>cxviii</sup> July 2010, UN GA Resolution A/Res/64/292: This UN Resolution formally recognizes the right to water and sanitation and acknowledges that clean drinking water and sanitation are essential to the realization of all human rights. The Resolution calls upon States and international organizations to provide financial resources to help capacity-building and technology transfer to help countries, in particular developing countries, to provide safe, clean, accessible and affordable drinking water.

<sup>cxix</sup> July 2005, Draft guidelines for the Right to Water and Sanitation, E/CN4/Sub2/2005/25: These draft guidelines contained in the report of the Special Rapporteur to the UN Economic and Social Council, El Hadji Guissé, and adopted in Sub-Commission on the Promotion and Protection of Human Rights, are intended to assist government policymakers, international agencies and members of civil society working in the water and sanitation sector to implement the right to drinking water and sanitation. These Guidelines do not legally define the right to water and sanitation, but rather provide guidance for its implementation.

<sup>cxx</sup> August 2007, Paper of the UN High Commissioner for the Human Right on the scope and content of the relevant human rights obligations related to equitable access of safe drinking water and sanitation under international Human Right instructions. Following decision 2/104 of the Human Rights Council, the Report from the High Commissioner for Human Rights states that “It is now the time to consider access to safe drinking water and sanitation as a human right, defined as the right to equal and non-discriminatory access to a sufficient amount of safe drinking water for personal and domestic uses... to sustain life and health.

<sup>cxxi</sup> The Human Rights Council decides “to extend the mandate of the current mandate holder as a special rapporteur on the human right to safe drinking water and sanitation for a period of three years” and “Encourages the Special Rapporteur, in fulfilling his or her mandate... to promote the full realization of the human right to safe drinking water and sanitation by, inter alia, continuing to give particular emphasis to practical solutions with regard to its implementation, in particular in the context of country missions, and following the criteria of availability, quality, physical accessibility, affordability and acceptability.

<sup>cxxii</sup> UN General Assembly and the Human Rights Council both reaffirmed recognition of the human rights to water and sanitation in consensus.

<sup>cxxiii</sup> Comment has not created a new right but it has interpreted the meaning of right to water and has offered the guiding tools for same. It is not considered as a creator of new rights but because it has extrapolated the normative and practical bases of a human right to water within the fabric of the International Covenant on Economic, Social and Cultural Rights as Salman and Salman argue.

<sup>cxxiv</sup> Sufficient assures Availability which means that water and sanitation facilities must meet peoples’ needs now and in the future. It includes that the water supply for each person must

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be sufficient and continuous for personal and domestic uses. It will normally constitute 50-100 litres daily per person, and an absolute minimum of 20 litres.

<sup>cxv</sup> The term quality specifies that water required for each person's personal or domestic use must be safe. It must be free from micro-organisms, chemical substances and radiological hazards that constitute a threat to a person's health.

<sup>cxvi</sup> This indicates good water quality.

<sup>cxvii</sup> This insists that the water source must be within 1 kilometre, or about 30 minutes' collection time.

<sup>cxviii</sup> The terms 'accessible' and 'affordable' indicates four assurances. These include physical accessibility which states that water should be within safe physical reach for all sections of the population; economic accessibility which connotes that the costs and charges associated with securing water must be affordable. This requires that the government should intervene when water suppliers cut off the supply of water to people unable to pay for those services. Non-discrimination implies that the government should ensure that the most vulnerable or marginalized sections of population must have access to water facilities and information accessibility that stands for a procedural necessity for the implementation of the right to water.

<sup>cxix</sup> It is significant to note that the General Comments themselves are not binding *per se* because the Committee on Economic, Social and Cultural Rights does not have authority to create new obligations for the States Parties to the ICESCR. However, those Comments, as Craven noted (see: *The International Covenant on Economic, Social and Cultural Rights: A Perspective on its Development* (Clarendon Press 1995, para 73, at 91.), carry significant legal weight. Mainly because there is an absence of any other authoritative body or procedure for settling interpretative questions related to the ICESCR. Theodore Meron in this view opines that interpretations of comments shapes the practice of States in applying the Covenant and may establish and reflect the agreement of the parties regarding its interpretation (see: Theodor Meron (1986) *Human Rights Law-Making in the United Nations*, Oxford University Press).

<sup>cxx</sup> 29th session in Geneva from 11–29 November 2002 (based upon Articles 11 and 12 of the International Covenant on Economic, Social and Cultural Rights).

<sup>xxxi</sup> The official records of UNGA, The human right to water and sanitation, A/RES/64/292, 3 August 2010, op. par. 1, provides that the declaration is favored by 122 countries including Afghanistan, Algeria, Andorra, Angola, Antigua and Barbuda, Argentina, Azerbaijan, Bahamas, Bahrain, Bangladesh, Barbados, Belarus, Belgium, Benin, Bhutan, Bolivia (Plurinational State of), Brazil, Brunei Darussalam, Burkina Faso, Burundi, Cambodia, Cape Verde, Central African Republic, Chile, China, Colombia, Comoros, Congo, Costa Rica, Côte d'Ivoire, Cuba, Democratic People's Republic of Korea, Democratic Republic of the Congo, Djibouti, Dominica, Dominican Republic, Ecuador, Egypt, El Salvador, Equatorial Guinea, Eritrea, Finland, France, Gabon, Georgia, Germany, Ghana, Grenada, Guatemala, Haiti, Honduras, Hungary, India, Indonesia, Iran (Islamic Republic of), Iraq, Italy, Jamaica, Jordan, Kuwait, Kyrgyzstan, Lao People's Democratic Republic, Lebanon, Liberia, Libyan Arab Jamahiriya, Liechtenstein, Madagascar, Malaysia, Maldives, Mali, Mauritius, Mexico, Monaco, Mongolia, Montenegro, Morocco, Myanmar, Nepal, Nicaragua, Niger, Nigeria, Norway, Oman, Pakistan, Panama, Paraguay, Peru, Portugal, Qatar, Russian Federation, Saint Lucia, Saint Vincent and the Grenadines, Samoa, San Marino, Saudi Arabia, Senegal, Serbia, Seychelles, Singapore, Slovenia, Solomon Islands, Somalia, South Africa, Spain, Sri Lanka, Sudan, Switzerland, Syrian Arab Republic, Tajikistan, Thailand, the former Yugoslav Republic of Macedonia, Timor-Leste, Togo, Tunisia, Tuvalu, United Arab Emirates, Uruguay, Vanuatu, Venezuela (Bolivarian Republic of), Viet Nam, Yemen, Zimbabwe. There was no vote *against* the resolution

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however 48 countries including Armenia, Australia, Austria, Bosnia and Herzegovina, Botswana, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark Estonia, Ethiopia, Greece, Guyana, Iceland, Ireland, Israel, Japan, Kazakhstan, Kenya, Latvia, Lesotho, Lithuania, Luxembourg, Malta, Netherlands, New Zealand, Poland, Republic of Korea, Republic of Moldova, Romania, Slovakia, Sweden, Trinidad and Tobago, Turkey, Ukraine, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America, Zambia remain absent. It is significant to note that forty-eight countries abstained in the voting on Resolution 64/292. These include the water rich and industrially developed countries as Japan, United States, United Kingdom, Commonwealth of Australia, Kingdom of Netherlands, Federal Democratic Republic of Ethiopia and Canada. For details, see General Assembly Debates on July 28, 2010.

<sup>xxxii</sup> Resolutions are, however, considered to constitute persuasive views on international law and often affirm principles of customary international law or articulate emerging international legal principles. Furthermore, when a Government votes for a resolution, it indicates at the very least a political willingness to work towards achievement of the resolution's contents.

<sup>xxxiii</sup> The use of the term 'realizes' is suggested by Bolivian representative in the discussion. The term is replaced with "declare".

<sup>xxxiv</sup> For details see: HRC, Human rights and access to safe drinking water and sanitation, A/HRC/RES/15/9, 6 October 2010, op. par. 3.

<sup>xxxv</sup> For details, see Langford M (2006) Ambition that overleaps itself? A response to Stephen Tully's critique of the comment 15. *Neth Q Hum Rights* 24(3):433–459, Also, Expectation of plenty: response to Stephen Tully. *Neth Q Hum Rights* 24 (3):473–479 and Pierre Thielborger (2014): *Right(s) to Water; The Multi-Level Governance of a unique Human right*, Springer, Germany.

<sup>xxxvi</sup> 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.

<sup>xxxvii</sup> CESCR, General Comment No. 15 (E/C.12/2002/11), para. 12 (a).

<sup>xxxviii</sup> *Ibid.*, para. 10, and CESCR, General Comment No. 15 (E/C.12/2002/11), para. 37

<sup>xxxix</sup> Accountability refers to the fact that the State has the primary responsibility to guarantee human rights, but it is not a solo actor in water management. It insists that states must create additional mechanisms that can be ascertained as accountable for the maintenance of right. States should have accessible and effective judicial or other appropriate remedies at the national level. States should further ensure that policies and laws are consistent with the international human right to safe drinking water and sanitation and are effectively implemented.

<sup>cxl</sup> This indicates openness to access to information, without the need for direct requests. Like, for example, dissemination of information via the radio, internet and official journals.

<sup>cxli</sup> For details see: Who will be accountable? Human Rights and the Post-2015 Development Agenda (2013), p. ix: <http://www.ohchr.org/Documents/Publications/WhoWillBeAccountable.pdf>.

<sup>cxlii</sup> CESCR, General Comment No. 15 (E/C.12/2002/11), para. 30-36.

<sup>cxliii</sup> The duty to respect requires governments that to ensure the activities of its institutions, agencies, and representatives do not interfere, directly or indirectly with a person's access to water. It includes the following aspects: A person must never be placed in a situation of

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going without water. There is need to maintain the water infrastructure system or provide social assistance to purchase water services. The removal of these mechanisms should be permitted in restricted circumstances. Respect further includes wise use of water which can preserve water for the future. For detail, see U.N. Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 15, The Right to Water, U.N.Doc. E/C.12/2002/11, 26 November 2002, p. 9, par. 21.

<sup>cxliv</sup> The obligation to protect insists that the state should prevent third parties such as corporations, from restricting the right to water by polluting, damaging or privatizing water resources. It insists on the following actions: Firstly, to regulate the actions of third parties, governments must enact legislations that can penalize violations of the people's right to water. Secondly, it holds that the principle of public participation and accountability cannot be compromised even in private managements. The state has to regulate the private sector and establish mechanisms capable of independent monitoring. In case of water management being in the hands of the private sector, then the state must ensure that private operators do not deprive individuals of access to water and sanitation altogether.

<sup>cxlv</sup> Obligations like fulfilling the right indicate that the state parties must adopt the necessary measures to achieve the full realization of right to water. For instance, it has to expand network areas which are not served yet, or develop tariff structures which ensure water and sanitation services, affordable to everyone. The obligations to fulfil water to all is further divided into the responsibility to facilitate, promote and provide right to water to all. It elucidates the points: facilitate, promote and provide. *Facilitate* requires governments to take positive measures to assist individuals and communities to enjoy this right. *Promote* requires the government to take steps to educate people about the hygienic use of water, protection of water sources and methods to minimize water wastage and contamination. *Provide* insists that the right must be assured even when an individual or group is unable to exercise it or even when for various reasons, the enjoyment of right is beyond their control.

<sup>cxlvi</sup> The details of the terms are directly taken from WHO's publication that is available with the title 'Right to Water'. Also see World Health Organisation (2003) *The Right to Water* (Geneva: WHO) available at [www.who.int/hhr](http://www.who.int/hhr).

<sup>cxlvii</sup> It indicates that processes like planning, designing, maintenance and monitoring of water services must be participatory and there must be transparency of information.

<sup>cxlviii</sup> Article 21 (a), UDHR; article 25, ICCP R; article 12.

<sup>cxlix</sup> Article 21 (a), UDH R; article 25, ICCP R; article 12, CRC. CESCR, General Comment No. 15 (E/C.12/2002/11) para. 48. For other details see: Realising the rights to water and sanitation (Lisbon: ERSA R, 2012), p. 206. See: [www.ohchr.org/EN/Issues/WaterAndSanitation/SRWater/Pages/SRWaterIndex.aspx](http://www.ohchr.org/EN/Issues/WaterAndSanitation/SRWater/Pages/SRWaterIndex.aspx)

<sup>cl</sup> For details, see Right to Water, Published by World Health Organization, available at [www.who.org](http://www.who.org).

<sup>cli</sup> Discussion of regional documents is taken from John Scanlon, Angela Cassar, and Noemi Nemes, published under IUCN Environmental law Programme, Research Policy Paper, 2004, Page 41-42.

<sup>clii</sup> It is significant to note that since this study does not concern with international water dispute, this chapter does not offer a documentary on the existing treaties.

<sup>cliii</sup> There are some regional organizations that have pinpointed water as a right much before the declaration made by the U.N. It is indeed impossible to ignore the impact of Universal Declaration of Human Right to Water on regional organizations as with the inspiration of

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U.N., African, American and European countries have developed a series of regional treaties and have made declarations that are fundamentally based on the proclamation of the U.N.

<sup>cliv</sup> To find such commonness, see objectives mentioned as Article 1 in the London Protocol on Water and Health to the 1992 Convention on the Protection and Use of Transboundary Watercourses and International Lakes, 1999, and in Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, 'Aarhus Convention', 1998.

<sup>clv</sup> Article 24 of the African Charter in Human and People's Rights (1981)<sup>clv</sup>, states : All peoples shall have the right to a general satisfactory environment favourable to their development.

<sup>clvi</sup> Article (14.1) states that every child shall have the right to enjoy the best attainable state of physical, mental and spiritual health.

<sup>clvii</sup> Article 16 declares that the failure of the government to provide basic services, such as electricity and drinking water is a "serious or massive" violation of Article 14. It has extended the right of child as a right of an individual. The extension states that every individual shall have the right to enjoy the best attainable state of physical and mental health. In accordance with this article, state parties should take the necessary measures to protect the health of their people. For detail see African Commission on Human and Peoples' Rights, Free Legal Assistance Group and Others vs. Zaire, Communication No. 25/89, 47/90, 56/91, 100/93, October 1995, [http://www.achpr.org/files/sessions/18th/communications/25.89-47.90-56.91-100.93/achpr18\\_25.89\\_47.90\\_56.91\\_100.93\\_eng.pdf](http://www.achpr.org/files/sessions/18th/communications/25.89-47.90-56.91-100.93/achpr18_25.89_47.90_56.91_100.93_eng.pdf)

<sup>clviii</sup> This Article identified that after child, woman is the first beneficiary of Right to Water. See Art. 14(2)(c) Africa, 11 July 1990, OAU, Doc. CAB/LEG/24.9/49 (1990), entered into force 1990, which demands that "State parties [ . . . ] shall take measures to ensure the provision of adequate standard of nutrition and safe drinking water" and Art. 15(a) Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, 11 July 2003, <http://www.africaunion.org/root/au/Documents/Treaties/Text/Protocol%20on%20the%20Rights%20of%20Women.pdf>, entered into force in 2005, according to which "State parties shall provide women with access to clean drinking water".

<sup>clix</sup> The declaration is also known as the protocol to the American Convention on Human Rights in the Area of Economic Social and Cultural Rights.

<sup>clx</sup> Article 4(2) of the Convention 1999, states that the parties shall, in particular, take all appropriate measures for the purpose of ensuring the two, i.e. (a) adequate supplies of wholesome drinking water and (b) adequate sanitation. Similarly, Articles 5 and 6 describe that parties shall be guided to work as per the egalitarian principles. Preamble to the European Union Water Framework Directive, 2000, states that Water is not a commercial product like any other but, rather, a heritage which must be protected, defended and treated as such.

<sup>clxi</sup> Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishes a framework for Community action in the field of water policy, OJ 2000, L 327, 1; Fabender (2001), p. 241. The European Union Directive remained important in the water field for several decades.

<sup>clxii</sup> Here obligation of water supply is on both, i.e. on public and private sector.

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clxiii This declaration pinpoints that the notion of Right to Water drives an assurance that no person may be deprived of the amount of water needed to meet his basic needs.

clxiv Recognizes that the fundamental right of all human beings to be free from hunger and to have an adequate standard of living for themselves and their families (Para 5). It includes right to a minimum quantity of water of satisfactory quality from the point of view of health and hygiene. However, here the idea of right to water is cost oriented. Para 19.

clxv In 2011, one of the first European Citizens' Initiatives ("Water is a Human Right") invited the European Commission to initiate legislation to implement the human right to water and sanitation. See, for the status of signatures, the official website at <http://www.right2water.eu>. See also European Commission, European Citizens' Initiative hits 1 million signatures, Press release IP/13/107, 11 February 2016. Background information to the European Citizens' Initiative is available at <http://ec.europa.eu/citizensinitiative/public/welcome?lg=en>.

clxvi This was the occasion of the II Summit of the Community of Latin American and Caribbean States (CELAC).

clxvii The meet has highlighted three important points :(1) Invite States and international organizations to provide financial resources, capacity building and technology transfer, through international assistance and cooperation, particularly to developing countries. (2) Assure equitable access to drinking water and sanitation as an integral component of the realization of all human rights. (3) Propose to exchange experiences, including best practices and difficulties in the implementation of the human right to drinking water and sanitations. For details see: [www.http/doc\\_3.21\\_declatacion\\_agua\\_y\\_saneamiento\\_ingles.pdf](http://www.http/doc_3.21_declatacion_agua_y_saneamiento_ingles.pdf).

clxviii It should be noted that the choice of selected constitution is based in the survey done by COHER in 2004. In the section only a few nations are discussed as they are found more pertinent for the discussion.

clxix In 1780, Art. XCVII for details see: <http://www.malegislatuire.gov/Laws/Constitution>,

clxx Art 27 in 1978, [http://sites.state.pa.us/PA\\_Constitution.html](http://sites.state.pa.us/PA_Constitution.html).

clxxi The Constitution of the Republic of Uruguay was drafted in 1967 and amended in 2004. Article 47 of the Constitution states: The protection of the environment is a matter of general interest.... Water is a natural resource that is essential for life. Access to drinking water and access to sanitation constitute fundamental human rights. Clause1. Water policies must establish priorities for the use of water by regions, basins or parts of these, whereby the first priority will be the provision of drinking water to the population. Clause further states that any authorisation, concession or permission that in any way violates the above provisions is without effect. 2) Surface waters as well as subterranean waters, with the exception of rain water, integrated into the water cycle constitute a unitary resource that is subject to the public interest, which, as the public hydraulic domain, forms part of the public domain of the State. 3) The public service of sanitation and the public service of water provision shall exclusively and directly be provided by legal persons of public law. 4) A country, facing water scarcity, can be authorised to have water by law, adopted with a three-fifths majority of all members of each chamber. <http://www.parlamento.gub.uy/constituciones/const004.htm> (Spanish version).

clxxii In 1994, Art. 90(1) [http://www.africa.upenn.edu/Hornet/Ethiopian\\_Constitution.html](http://www.africa.upenn.edu/Hornet/Ethiopian_Constitution.html)

clxxiii In 1995 Art. XIV (b), (Preamble) XIII. Protection of Natural Resources: The State shall protect important natural resources, including land, water, wetlands, minerals, oil, fauna and flora on behalf of the people of Uganda.

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XIV. General Social and Economic Objectives: The State shall endeavour to fulfil the fundamental rights of all Ugandans to social justice and economic development and shall, in particular, ensure that- (i) all developmental efforts are directed at ensuring the minimum social and cultural well-being of the people; and (ii) all Ugandans enjoy rights and opportunities and access to education, health services, clean and safe water, work, decent shelter, adequate clothing, food security and pension and retirement benefits.

[http://www.ugandaembassy.com/Constitution\\_of\\_Uganda.pdf](http://www.ugandaembassy.com/Constitution_of_Uganda.pdf).

<sup>clxxiv</sup> Art. 216(4) in 1996 <http://www1.umn.edu/humanrts/research/gambia-constitution.pdf>

<sup>clxxv</sup> Section 27.1(b), 1996 Article 27 (1) Everyone has the right to have access to ... (b) sufficient food and water; and ... (2) The state must take reasonable to make water available. <http://www.info.gov.za/documents/constitution/1996/a108-96.pdf>.

<sup>clxxvi</sup> Art. 112, 1996 <http://www.refworld.org/docid/3ae6b5610.html>, note that same is enlarged in 2012 under Art. 70(2) the Constitution of Zambia (Draft), 2012, [http://www.zambia.co.zm/downloads/draft\\_constitution.pdf](http://www.zambia.co.zm/downloads/draft_constitution.pdf)

<sup>clxxvii</sup> In 1999, <http://venezuelanalysis.com/constitution>.

<sup>clxxviii</sup> In the growth of the idea of Right to Water, three Constitutions have significant contribution. These are: Uruguayan, which proposed a constitutional amendment for this purpose. Following a referendum on 31 October 2004, provisions on access to drinking water and sanitation as fundamental human rights are incorporated in the text of the Constitution. The Uruguayan initiative inspired movements in other states, in accord with many international conventions and agreements. It insists that water supply services should meet social criteria that are incompatible with market principles. The State of Ecuador *Article 261 of the Constitution, in point 11, provides that the central state shall have exclusive jurisdiction over water resources (taken to include water sources, watersheds, and waterways). This guarantees the public nature of water and its consideration as a national asset that is inalienable, imprescriptibly, not subject to appropriation, and essential for life, as provided in Article 12. The Constitution also gives exclusive competence to the autonomous regional governments (Articles 244 and 251) to secure watershed management (reservoirs, dams, canals) and to foster the creation of watershed councils, pursuant to the law. Chapter III does not mention these councils, and its Article 55 provides only for associations of users. However, limiting participation to water user's associations would be contrary to the principle of equality stated in Article 11, point 2, which emphasizes citizen participation, as detailed in Article 95 of the Constitution. Article 411 establishes the responsibilities of the State with regard to water: "The State shall guarantee the conservation, recovery and integrated management of water resources, watersheds and ecological flows associated with the water cycle. All activities that can affect the quality and amount of water and the equilibriums of ecosystems shall be regulated, especially in water replenishment sources and zones. Similarly, in 2006, Bolivia and four other Latin American countries signed a manifesto calling for water to be declared a human right. This was presented to the 150 countries attending the Fifth World Water Forum in 2009 with a view to having this vital element declared a right, in order to promote its protection and appropriate use and secure commitments to cooperate in joint activities on the issue "The sustainability of ecosystems and human consumption shall be priorities in water use and development."*

<sup>clxxix</sup> Art. 48 Constitution of the Democratic Republic of the Congo, 2006. Article 48: The State guarantees the right to a decent dwelling, access to potable water and electricity. For details, see <http://www.constitutionnet.org/files/DRC%20-%20Congo%20Constitution.pdf>.

<sup>clxxx</sup> Art. 3(1) and Art. 12 Constitution of the Republic of Ecuador, 2008, Article 23: Without prejudice to the rights established in this constitution and the effective international instruments, the State shall recognise and guarantee to the people (20) The right to a quality

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of life that ensures health, feeding and nutrition, potable water, a clean environment, social education, work, recreation, housing, clothing and other necessary services. Article 42: The State shall guarantee the right to health, its promotion and protection through ... the provision of potable water and basic sanitation ... in accordance with the principles of equity, universality, solidarity, quality and efficiency. Article 249: The State shall be responsible for the provision of public drinking water and irrigation services ... The State may provide those services directly or by means of delegation to mixed public-private companies or private companies, through concession, association, capitalisation, or other contractual forms. The contractual conditions may not be unilaterally modified ... The State shall guarantee that public services, supplied under its control and regulation, conform to the principles of efficiency, responsibility, universality, accessibility, continuity and quality; and shall safeguard that their rates or tariffs are equitable.

<http://pdpa.georgetown.edu/Constitutions/Ecuador/english08.html>

<sup>clxxxi</sup> Art. 23(a) Constitution of the Republic of the Maldives, 2008,  
<http://www.maldivesinfo.gov.mv/home/upload/downloads/Compilation.pdf>.

<sup>clxxxii</sup> Art. 53(1)(d) Constitution of the Republic of Kenya, 2010, 65: Water- Every person has the right to water in adequate quantities and of reasonable quality. 66: Sanitation- Every person has the right to a reasonable standard of sanitation.  
<http://www.kenyalaw.org/klr/index.php?id=741>

<sup>clxxxiii</sup> Art. 35(2) Transitional Constitution of the Republic of South Sudan, 2011,  
[http://www.sudantribune.com/IMG/pdf/The\\_Draft\\_Transitional\\_Constitution\\_of\\_the\\_ROSS\\_2-2.pdf](http://www.sudantribune.com/IMG/pdf/The_Draft_Transitional_Constitution_of_the_ROSS_2-2.pdf)

<sup>clxxxiv</sup> Art. 68 Constitution of the Arab Republic of Egypt, 2012,  
<http://niviensaleh.info/constitutionegypt-2012-translation>. As an example of the critique on the Constitution, see Amnesty International, "Egypt's new constitution limits fundamental freedoms and ignores the rights of women", 30 November 2012,  
<http://www.amnesty.org/en/news/egypt-s-new-constitution-limits-fundamentalfreedoms-and-ignores-rights-women-2012-11-30>

<sup>clxxxv</sup> Art. 77(a) Constitution of Zimbabwe (Final Draft), 2013,  
<http://www.gta.gov.zw/index.php/documents/constitution-of-Zimbabwe>

<sup>clxxxvi</sup> In some legislations, amendment regarding right to water is pending. To get the list of such legislations please visit: [www.cohre.org/water](http://www.cohre.org/water). The Constitutional details are taken from Pierre Thielbo"rger's book: The Right(s) to Water-The Multi-Level Governance of a Unique Human Right Springer New York, 2014, page 39-40.

<sup>clxxxvii</sup> For details see: LEGAL RESOURCES FOR THE RIGHT TO WATER AND SANITATION: International and National Standards – 2nd edition. Document is available at [www.cohre.org/water](http://www.cohre.org/water).

<sup>clxxxviii</sup> Pierre Thielbo"rger (2014), in his work called The Right(s) to Water: The Multi-Level Governance of a Unique Human Right, Springer provides a comparative study of European and Non European nations including, Germany, Belgium, France, South Africa and India. His observations provide that in the German Constitution there is no direct mention on Right to Water, however the right is confined through Federal Water Act and Criminal Code states in section 324. In Belgium, Belgian courts are protector of right to water, as the Resolution called Water Resolution adopted by Belgian parliament in 2005 is not yet a constitutional feature. Senate in this regard argues that article 23, which states that all citizens should be able to live in a dignified manner and therefore have the right to the protection of a safe environment and health.



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<sup>clxxxix</sup> This includes countries like ALGERIA Water Law no. 05-12, 4 August 2005, ANGOLA Water Act, 21 June 2002 ARMENIA Water Code of the Republic of Armenia, 2002 AZERBAIJAN Water Code of the Azerbaijan Republic, 1997, CHINA Water Law of the People's Republic of China, 2002, FINLAND Water Services Act (119/2001) THE GAMBIA National Water Resources Bill, 2001 271 GHANA Water Use Regulations, LI 1692 of 200, 1 INDONESIA Law No. 7/2004 on Water Resources, promulgated 8 March 2004 and KENYA Water Act, Act No. 8 of 2002

<sup>cxc</sup> To assure water to all the Indonesians, Regulation 23/2006 sets a standard for basic drinking water needs at 10m<sup>3</sup> per family member per month or 60 liters per person per day.

<sup>cxc</sup><sup>i</sup> In South Africa the “basic” level of water supply is set at 25 liters per person per day.

<sup>cxc</sup><sup>ii</sup> Provisions of water services mentioned in Law on Sanitation, comply with minimum quality standards, including regularity and continuity.

<sup>cxc</sup><sup>iii</sup> For details see: Georgia’s Water Law or Kazakhstan’s Water Code and Kyrgistans ‘s Law No. 1422-XII.

<sup>cxc</sup><sup>iv</sup> To assure quality and quantity, nation laws of different states has established safety zones around drinking water sources to ensure the protection of water resources. For details see, China’s Water Law, Kirgizstan’s ‘s Law No. 1422-XII or Tajikistan’s Water Code.

<sup>cxc</sup><sup>v</sup> Nations have established safety zones around drinking water sources to ensure the protection of water resources. For details, see China’s Water Law, Kirgizstan’s ‘s Law No. 1422-XII or Tajikistan’s Water Code.

<sup>cxc</sup><sup>vi</sup> FINLAND Water Services Act (119/2001) INDONESIA Government Regulation No. 82 of 2001 concerning Water Quality Management and Water Pollution Control 339 MALAYSIA Water Services Industry Act (Act 655), 20 July 2006 341.

<sup>cxc</sup><sup>vii</sup> France has enacted a Law on Water and later embedded it in the Environmental Code. Details are available at:  
<http://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006072050&dateTexte=20130301>.

<sup>cxc</sup><sup>viii</sup> The insistence for international cooperation in water management including sanitation.

<sup>cxc</sup><sup>ix</sup> The Act ensures that all consumers or potential consumers in its area of jurisdiction have efficient, affordable, economic and sustainable access to water services. It instructs authorities to draw up a development plan, indicating a timeframe for achieving universal access to basic water supply and sanitation.

<sup>cc</sup> Venezuela’s Organic Law on the Provision of Potable Water and Sanitation Services and Chill’s subsidy system for water and other utilities has established a system of public subsidies in order to help low-income users afford their basic water and sanitation.

<sup>cci</sup> Here, taking Finland is confusing because Finland’s Water Service Act provides dual standards. It calls for a longer delay in disconnection when failure to pay is due to financial difficulties caused by serious illness, unemployment or such cause through no fault of the user, and the water provider has been notified. However, this provision would appear to be in conflict with the right to water and sanitation, which does not permit any disconnection in such circumstances.

<sup>ccii</sup> Resolution states that expenses for the satisfaction of the standard basic drinking water need of 10m<sup>3</sup> per family member per month or 60 liters per person per day must not exceed 4% of the subscribers’ income.

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- <sup>cciii</sup> Act of United Kingdom has restricted the disconnections for certain types of water users, such as domestic households, hospitals, schools and other such public institutions.
- <sup>cciv</sup> Law insists that internet must be used as a tool.
- <sup>ccv</sup> Act emphasises to establish a national information system on water services that provides information in an accessible format.
- <sup>ccvi</sup> It should be noted that there are nations that have explicitly and implicitly accepted right to water as a fundamental right of human beings. However, since the present research has limitation to explore and discuss the meaning of right to water, the researcher has not mentioned all the constitutions and legal frameworks. For details, one may visit [www.Coher.org](http://www.Coher.org).
- <sup>ccvii</sup> Scholars like Balakrishnan, R. 2003; Baxi, U. 2007; Törnquist-Chesnier, M. 2004 argue strongly that the GJMs have played an important role in drawing attention to the human consequences of neo-liberal transformations and thereby contributed to changes in international law.
- <sup>ccviii</sup> See: Tully, 'A Human Right to Access Water', above quoting Michael J Dennis and David P Stewart (2004), 'Justifiability of Economic, Social and Cultural Rights: Should There Be an International Complaints Mechanism to Adjudicate the Rights to Food, Water, Housing and Health?', *American Journal of International Law*, 462-93.
- <sup>ccix</sup> See: Stephen Tully (2006), 'Flighty Purposes and Deeds: A Rejoinder to Malcolm Langford', *24 Netherlands Quarterly of Human Rights*.
- <sup>ccx</sup> Source of this detail is WHO document "Right to Water" published in 2003, Geneva. Available at [www.who.org.com](http://www.who.org.com).
- <sup>ccxi</sup> Discussion in this regard is following understandings offered by BMZ 2010: 10 and COHRE 2008: 14, 162.
- <sup>ccxii</sup> The researcher disagrees with Konya's (2010) argument which insists that industry and agricultural use of water does not include right to water. The researcher thinks that since water requirements are multiple, government has to take care of those too as human beings not only want to live but also desire development.
- <sup>ccxiii</sup> The details of what right to water is, is described in Legal Resources for the Right to Water and Sanitation: International and National Standards published by Centre on Housing Rights and Eviction (COHRE) in January 2008. The document is available at [cohre@cohre.org](mailto:cohre@cohre.org). Ideas are clarified again in 2010, for details see: BMZ (2010). Human rights in practice – Factsheets on a human rights-based approach in development cooperation, available at [http://www.bmz.de/de/publikationen/themen/menschenrechte/BMZ\\_Informationsbroschuere\\_07\\_2010.pdf](http://www.bmz.de/de/publikationen/themen/menschenrechte/BMZ_Informationsbroschuere_07_2010.pdf).
- <sup>ccxiv</sup> To get these three understandings see works as- Bakker, K. (2010). *Privatizing Water: Governance failure and the world's urban water crisis*. Delhi: Orient Blackswan Anand, P. B. (2007). Right to Water and access to water: An assessment. *Journal of International Development*, 511-526. Asthana, V. (2009). Water policy process in India: Discourse of Power and resistance. New York: Routledge Bakker K (2004). *An Uncooperative Commodity: Privatizing Water in England and Wales*. Oxford: Oxford University Press. Baxi, U. (2012). The Human Right to Water: Policies and Rights. In R. R. Iyer, *Water and The Laws in India* (pp. 149-166). Delhi: Sage Brand, S. U. (2009). Postneoliberalism: catch all word or valuable analytical and political concept? *Development Dialogue*, 5-13 Getzler, J. (2004). *A History of Water Rights at Common Law*. New York: OUP Press. Gleick, P. H. (2000). The changing water paradigm – A look at twenty-first century water resources development. *Water international*,

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<sup>ccxv</sup> It is to be noted that this figure is an improvised version of the understanding offered by the World Health Organization. For the original document visit [www.who.int/hhr](http://www.who.int/hhr).

<sup>ccxvi</sup> In regard to right to water, human rights approach offers a set of principles which focuses on what ought to be done i.e. it provides a powerful normative framework to orient development cooperation. Whereas a needs-based approach focuses on securing additional resources for delivery of services to marginalised groups, Utilitarian driven approaches focus on aspects such as "low cost high impact" project approach and cost-benefit analysis. Rights-based approaches are aimed at facilitating a process whereby citizens are empowered to hold the state accountable to honour their human rights and legal entitlements. In short, RBA favors the human right approach because it conceptualizes overarching elements of human dignity without arguing much for confusions on moralities (for more see thin and thick moralities explained by Michael Walzer 1994: *Thick and Thin: Moral Argument at Home and Abroad*.) prevailed in human right philosophy.

<sup>ccxvii</sup> WaterAid (2011) Rights-based approaches to increasing access to water and sanitation. WaterAid Discussion paper

<sup>ccxviii</sup> For details, see works like: CARE, 2002, 'Defining characteristics of a rights-based approach', in CARE, Promoting Rights and Responsibilities newsletter, February, CARE 2001, Rights-based and Sustainable Livelihoods Approaches: Divergences and Convergences, [available at [www.livelihoods.org/info/docs/RBA\\_Khanya.do](http://www.livelihoods.org/info/docs/RBA_Khanya.do)], Eyben, R. and Ramanathan, U., 2002, 'Rights-based approaches to inclusive development: perspectives on the implications for DFID India', mimeo, Ferguson, C., 1999, 'Global social policy principles: human rights and social justice', London: DFID Harris-Curtis, E., 2003, *The Implications of Adopting Rights-Based Approaches for Northern NGOs: A Preliminary Exploration*, Oxford: INTRAC, Sida, 2002, *Perspectives on Poverty*, Policy Department, Stockholm: Sida, World bank 1998, *Development and Human Rights: The Role of the World Bank*, Washington, D.C.: World Bank, 2003, *World Bank 53*, World bank 1994, *Governance and Development: The World Bank's Experience*, Washington, D.C.: World Bank and "What is the "rights-based approach" all about? Perspectives from international development agencies', Working Paper Celestine Nyamu-Musembi and Andrea Cornwall, November 2004.

<sup>ccxix</sup> For more details on rights-based approach, see Peter U. V. in, *Human Rights and Development* (Kumarian Press, 2004) and Rosalind Eyben, *The Rise of Rights: Rights-Based Approaches to International Development*, both have studied subject of right based with

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reference to development (IDS Policy Briefing 17, 2003), available at <http://www.ids.ac.uk/ids/bookshop/briefs/Pb17.pdf>

<sup>ccxx</sup> A rough estimate of the water required to meet the daily food needs of an individual is 2700 litres. For details see: Gleick, P.H. (1996), "Basic Water Requirements for Human Activities: Meeting Basic Needs." *Water International*, Vol. 21, pp. 83-92.