

## **NEED FOR CONCEPTUAL SHIFT IN THE INDIAN LEGAL AND POLICY OUTLOOK FOR PROTECTING THE WATER RESOURCE COMMONS FROM COMMODIFICATION.**

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The water resources in India are increasingly being perceived as a commodity, rather than a common property resource, and are on the verge of being completely taken over by private control. Privatisation of water involves the private control over the supply and irrigational use of water amongst the control over other uses of water resources. Further it is also important to note that the privatisation of water shall lead to increased cost and tariff for the water, leading to exclusion of the poor and large section of Indian population from accessing water for their daily and livelihood needs. At a different level the over exploitation of ground water resources had even led to an instance of a local-self government unit retorting against a water intensive industry. The Indian water policy and laws increasingly perceive water as mere economic commodity that has to be put to use for maximum economic gain, rather than a common resource that need to be held in public trust which has to be made available for everyone's reasonable use. The Constitutional courts in India have accepted the importance of water as an inalienable need for human life and have interpreted it to be a part of right to life as enshrined in Article 21 of the Constitution of India. This situation has created a dichotomy between water as a commons and water as a commodity. Moreover, the additional dimension of considering water as a resource and water-based resource also needs to be analysed from legal and policy perspective. This paper intends to explore the current status of legal and policy outlook towards the water resources in India and emphasis on the need for conceptual shift in the legal and policy perspective towards protection of water resource commons.

**Keywords:** Water, Legal and Policy framework, Commons, India, Commoditisation and Privatisation

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## 1. Introduction

Water being now recognised as a scarce and finite resource is gaining ever increasing recognition at the international and national level as a significant theme in the developmental agenda.<sup>2</sup> The key to this aspect is to ensure that water resources are effectively and efficiently managed. This called for intervention in the governance and related enquiry into the present water governance mechanism. With the leading international financial institutions, who are the key players in the lending for social opportunity creations like water supply and the tagging of economic value to water<sup>3</sup> by way of international consensus developed at Dublin Conference<sup>4</sup> have led to a wave that have changed the perception towards water governance in India also. This changed perception has an effect on the law and policy relating to water resources in India, especially the policy relating to water supply in urban areas.

The wave that have led to the change of the perception claims that governance of water by the government departments have led to wastage of resources and not been effective at all.<sup>5</sup> It was part of this wave of change that the concept of privatization of water, rather commoditisation of water, has been popularised. Public Private Partnership in the water sector shows the present policy manifestation in this regard. The development discussed above can be considered to be instrumental in treating water to be an economic good and pricing for water became important. Along with this the issues regarding accessibility of water by the poor and marginalised arise. When the water is being priced highly, this will lead to exclusion of poor from accessing it, leading to lack of equitable distribution.

An important aspect we need to understand is that the tariff or price for water is not something that came into existence only due to the new wave of change/ reform in water sector. But even prior to this, the water supply legislations and rules have provided for charges for supply and connection.<sup>6</sup> Further meters were installed for reviewing the amount of water used and charges to be levied. Also, the number of people whom the water supply could reach is also well below percent of population,

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<sup>2</sup> Starting from the 'International Decade for Clean Drinking Water' from 1981-1990, further the Dublin Conference in 1992, Agenda 21 Declaration of Rio De Janeiro, 1992 to the Millennium Developmental Goals (though not directly indirectly importance of water could be traced into the goals emphasising upon the ending of poverty and observance of environmental sustainability) the importance of water have been repeatedly reiterated. At the national level National Water Policy, 2002, points out the importance of water resources.

<sup>3</sup> Principle IV: Water has an economic value in all its competing uses and should be recognized as an economic good drawn up at the Dublin Conference, 1992

<sup>4</sup> An important landmark in the water law and policy happened at Dublin Conference, with the drawing up of four principles that went on to be hailed as the touchstone of water law and policy-making.

<sup>5</sup> Karen Coelho, *The Slow Road to the Private: A Case Study of Neoliberal Water Reforms in Chennai*, Available at [http://www.ielrc.org/activities/workshop\\_0612/content/d0601.pdf](http://www.ielrc.org/activities/workshop_0612/content/d0601.pdf) (Last Accessed on 21.11.2010)

<sup>6</sup> Meena Panickar, *State Responsibility In The Drinking Water Sector: An Overview Of Indian Scenario*, Available at <http://www.ielrc.org/content/w0706.pdf> (Last Accessed on 21.11.2010)

both in the urban and semi-urban areas. But at present, the scarcity of water has become a real issue, and the state responsibility, as part of human rights and social opportunity to be provided to all the citizens are asked for. The state responsibility to hold water and other natural resources in public trust is an important assertion of the human rights perspective to water and other natural resources. The need for paradigm shift in the conceptual thinking of perceiving water resource as economic commodity to common property resource is the prerequisite for this.

## **2. Legal Framework and Policy Concerning Water Resources in India**

The water law in India cannot be traced or found in a set of legislations, as there is no comprehensive law with relation to water in India. This is due to the fact that water being a state subject as per the Indian constitutional mandate and hence are mainly governed by the laws made each state government and even in almost all the states have different legislations dealing with different aspects. For elucidation, irrigation and drinking water supply would be dealt by different legislations and most of the times by different department look into the governance aspect. The simultaneous existence of different laws, rules and set of principles is a characteristic feature of Indian water law. Human rights perspective finds way into Indian water law framework due to recognition of the same by judiciary. Phillippe Cullet, have pointed out that *“The lack of an umbrella legislation at the national level has ensured that the different state and central legal interventions and other principles do not necessarily coincide and may in fact be in opposition in certain cases”*.<sup>7</sup> Phillippe Cullet further points towards the fact that legislations related to irrigation enacted by the British administration during the colonial time had played a significant role and hence most principles of water law trace back to the irrigation legislations.<sup>8</sup>

Another important aspect is of the creeping in of common law principle of right of the landowner upon the groundwater beneath the land into the Indian water law because of the colonial influence.<sup>9</sup> The linking of right to the underground water to the land is in anti-thesis to human rights perspective of the state holding the entire water resources in public trust thus indicating towards a common property resource regime. Even the constitutional law scheme as indicated in the Article 39(b) of Constitution of India, 1950, provides for the holding of material resources by the state in public trust for furthering the common interest. Even the earlier colonial time irrigation laws indicated towards commons concept with state holding the control over water of all rivers and streams flowing in natural channels, and of all lakes for the purpose of general benefit to the public.

### *2.1 Judicial Pronouncements*

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<sup>7</sup> Phillippe Cullet, Water Law In India An Overview Of The Existing Framework And The Proposed Reforms, Available at <http://www.ielrc.org/content/w0701.pdf> (Last Accessed on 21.11.2010)

<sup>8</sup> *Id*

<sup>9</sup> *Id*

As mentioned above, the human rights aspect to water in Indian context could be traced to judicial pronouncements invoking the umbrella provision of right to life under Article 21 of Constitution of India, 1950. Supreme Court of India, have held in a case<sup>10</sup> that access to pollution free water is important for the enjoyment of right to life and further in another case<sup>11</sup> went on to hold that water to be part of right of life and human rights as enshrined in Article 21 of the Constitution of India, 1950. Thus the Indian Supreme Court has raised the right to water to the level of fundamental right. But there is a huge gap that could be found in the current existing statutory laws, rules and policies concerning water and the requirement of treating water to be a fundamental right. Water as fundamental right also creates a positive responsibility upon the state to provide water to all. Further an interesting aspect is that Supreme Court have held that fundamental right to water in a larger context and has not restricted only to any one particular use of water such as drinking water.

## *2.2 Water Sector Policy Reform*

With the consensus and understanding at the global level regarding the scarcity of fresh water resources and importance of efficient management of water resource, we could see effects in the form of water governance reform in India, which also have ramification upon the water law and policy. This reform of water law and policy was first mooted by the World Bank study which came out in the form of a report know as 'Initiating and Sustaining Water Sector Reforms'.<sup>12</sup> This study pointed towards the need of reform in the various aspects such as ground water management, irrigation, rural, urban water supply and inter-sectoral water allocation. This report was made with the under pinning concept that water is a commodity having an economic value and that it needed to be allocated in a prioritised way, which will be taken care by trading of water. Further the important step towards implementing this economic value based concept of analysing water as commodity came in form of National Water Policy formulated at the central level by the Government of India in 2002.<sup>13</sup> The National Water Policy being from the focal point of commoditization of water, have mooted for the private participation in the water resource management. The main reason behind this policy shift is the perception that the private management will lead to efficiency and more number of people could be reached to.

## *2.3 Water privatization as Part of Reform Process.*

The process of private<sup>14</sup> participation is in effect taking place by vesting the control of either both the water resource and water management or vesting the control any one of the above to a private entity. This has various functions such as supply of water,

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<sup>10</sup> Subhash Kumar v. State of Bihar AIR 1991 SC 420

<sup>11</sup> Narmada Bachao Andolan v. Union of India, AIR 2000 SC 3751

<sup>12</sup> *Initiating and Sustaining Water Sector Reforms* (1999)

<sup>13</sup> See *Supra n.6* and also See *Supra n.7*

<sup>14</sup> Privatisation is defined as the 'process by which state owned economic enterprises and services, as well as common property resources are being transferred to private entities—local, national and transnational'. See P.Sampat, *Economic Globalisation Today* (2004).

hydropower generation, tariff collection, and general function of relating to operation and management and allied activities. This also involves many interventions such as water-related engineering and construction. In India, we mostly observe the model of Public Private Partnership (PPP) in the privatization of various sectors including water. Private entities come to play with the procurement of government contracts and tenders which are rolled out by the various state government agencies. These contracts have terms, which have now become synonymous with infrastructural projects, such as Build Operate Transfer (BOT), Build Own Operate and Transfer (BOOT).<sup>15</sup> Here the ownership during the period for which operation of that project till transfer to government shall vest with the private entity who takes up the tender or contract. Now an important aspect here is that private entities will incur a heavy cost in building the entire infrastructure for water supply or in the case of building of dams. These entities will have to recover the entire cost during the time period given to them for operate the project. Hence they will be supplying the water at a cost that would help them to incur the cost as well as to make profit. This will obviously lead to huge jump in the tariff of water at the hands of end user. The equity and human rights aspect are not the concern of a private entity, which have to recover the cost of running projects.

The main impact of privatization could be seen as that of affecting the accessibility of the poor and marginalised community to water, as the conceptualising of water to be commodity having economic value and privatization of governance would lead to pricing of water, which will exclude the access to poor and marginalised community. As academic writings of Amartya Sen have shown that the exclusion of poor communities and lack of social opportunities from access to water resources affect their freedom and capability in turn adversely affecting their livelihood and affect the spending on other important aspects such as education and diminishing the economic freedom and capability.<sup>16</sup> The denial of accessibility may even a contributory cause leading to the forced displacement of communities.

#### *2.4 International Framework on Right to Water*

As mentioned before, the recognition of Right to Water as a fundamental right could be traced to the judicial pronouncements of the constitutional courts in India. At the international level, we could trace back the recognition of right to water could be traced back to The United Nations Conference on the Human Environment, 1972 in Stockholm, which recognized water to be significant natural resources, accepted that *“The natural resources of the earth including the air, water, land, flora and fauna and especially representative samples of natural eco-systems must be safeguarded for the benefit of the present and future generations through careful planning or management, as appropriate”*.<sup>17</sup> A more specific recognition of right to water was

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<sup>15</sup> See [www.manthan-india.org](http://www.manthan-india.org)

<sup>16</sup> See Amartya Sen, *The Idea Of Justice* (2009), See also Amartya Sen, *Development as Freedom* (1999).

<sup>17</sup> Principle 2, Declaration The United Nations Conference on the Human Environment Stockholm 1972 Sourced at <http://www.unep.org/Documents.Multilingual/Default.asp?documentid=97&articleid=1503> (Last Accessed on 21.11.2010)

drawn at the 1977, the United Nations Mar del Plata Water Conference was held in Argentina. The Resolution II of the Conference<sup>18</sup> which is on Community Water Supply declared for the first time that *"all peoples, whatever their stage of development and their social and economic conditions, have the right to have access to drinking water in quantities and of a quality equal to their basic needs"* The Resolution highlighted that availability of safe drinking water and the disposal of waste water properly, *"are essential both for life and the full development of man, as an individual and as an integral part of society"*. In 1992, at Dublin Conference on Water and the Environment,<sup>19</sup> the accessibility and affordability of water was made clear by the statement, *"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"*. The Resolution of the Mar del Plata Water Conference was endorsed at United Nations Conference on Environment & Development held in Rio de Janeiro stating that *t* all peoples have the right to have access to drinking water, and called this 'the commonly agreed premise'. The Millennium Development Goals have also an interface with the right to water.<sup>20</sup>

### 3. Commodity-Commons Dichotomy

An analysis of Indian water legislations would show is that the resources except for that of ground water have been perceived to be under the control of the government, who is supposed to put the resource to use taking into consideration in public interest.<sup>21</sup> Further the constitutional courts in India, by way of pro-active approach have interpreted the fundamental right of right to life so as to include the right to water also<sup>22</sup> and had also emphasized upon the aspect that water resources need to be treated by the state in public trust<sup>23</sup>, thus in fact pointing towards the common property resource treatment of water resources. But the reform process of water resource governance and management have brought in the concept of treating water to an economic good that need to treated as a commodity for the purpose of efficient management of water resources. A fallout of this conceptualization was that water resource allocation need to have more private participation.

Suddenly from a point of having the water being allocated for drinking and irrigational purpose at a very subsidized rate, the Indian situation is shifting to that of an economical model of recovering the cost of operation and management from the

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<sup>18</sup> Report of the United Nations Water Conference, Mar del Plata, 14-25 March 1977 (United Nations publication, Sales No. E.77.II.A.12).Sourced at <http://www.ielrc.org/content/e7701.pdf> (Last Accessed on 21.11.2010)

<sup>19</sup> Dublin Statement on Water and Sustainable Development

<sup>20</sup> <http://www.un.org/millenniumgoals/>

<sup>21</sup> See Philippe Cullet, Jyoeeta Gupta, *India Evolution Of Water Law and Policy* in Joseph W. Dellapenna & Jyoeeta Gupta eds, *The Evolution of the Law and Politics of Water* (2009), also see *Supra n.7*

<sup>22</sup> As mentioned above in the case of Subhash Kumar v. State of Bihar AIR 1991 SC 420 Narmada Bachao Andolan v. Union of India, AIR 2000 SC 3751.

<sup>23</sup> The basis of the doctrine emanates from the property relationship. By considering natural resources as a property, the doctrine describes the right of the State and the individuals over it. The preliminary object of the doctrine was to impose a restriction upon the power of the government to transfer certain common properties to private hands.[*Illinois Central Railroad Company v Illinois*, 146 U.S. 387, 452 (1892)]

users.<sup>24</sup> This could be perceived as a natural implication of considering the water to be a commodity. Further this throws open a series of issues on the aspects of accessibility and exclusion due to financial constraint and the important issue of social equity and right of access to water.

### *3.1 Implications of Privatization of Water Sector*

Commoditisation of water, leading to increased private entity participation also has to address the problems of lack of substitute product to water, the relationship between the water infrastructure and that of urban development, the high capital intensive character of water sector and the multi-purpose and hydrologically interconnected nature of the water resource.<sup>25</sup> Further mere private sector participation in the water resource management would not automatically lead to effective management and political non-intervention. Feasibility of the community to pay for the water accessibility is also important, as the private entities will have to recover the cost of operation and management. The hands off approach of public sector are not at all possible when it comes to water sector due to the social, developmental and environmental impacts of water.<sup>26</sup> Studies on Madras Metropolitan Water supply privatization and Tirupur PPP projects throws light to the aspect of commoditisation and taking a sole economic outlook towards water shall only lead to a situation of lack of accessibility and affordability of water among large number of people.<sup>27</sup> Commons perspectives to water by necessary implication lead to the fulfilment of state obligation of guarantee of the water

At this juncture it is important to look at how the economic value concept of water has been evolved and whether it is advocating for commoditization of water. In 1992, at the Dublin Conference, an important landmark in the water law and policy happened - the drawing up of four principles that went on to be hailed as the touchstone of water law and policy-making. The Principle IV, which states that "*Water has an economic value in all its competing uses and should be recognized as an economic good*" could be considered the most controversial of all the four principles, as it calls for change of the very edifice of the concept of water being a free-resource. This principle tags an economic value to water, thus making it a commodity and removing the free good concept devoid of any value.<sup>28</sup> With the attaching of economic value to water, there will be prioritization in the use and thus effective management. This argument of prioritization of usage claims to rule out the wastage of water resources. But this also throws open an important issue of pricing of water leading to exclusion of certain community from the access to water.

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<sup>24</sup> See *Supra* n.6

<sup>25</sup> Judith A Reez, *Regulation and Private Participation in the Water and Sanitation Sector*, TAC Background Paper 1.

<sup>26</sup> *Supra* n.5

<sup>27</sup> *Id.*

<sup>28</sup> Peter Rogers, Ramesh Bhatia, *et al.*, *Water as a Social and Economic Good: How to Put the Principle into Practice*, TAC Background Paper 2.

The question that arises is that whether economic value being tagged to water, the only and most effective way of water management.<sup>29</sup> Couldn't there be other way of regulation of water which does not work on the economic value based mechanism which shall automatically lead to the prioritization is the main question? Other approaches such as common property resources need to be explored.

Hence there was the concept of adding social value also to that of water-resource, rather than just considering it to be having an economic value. By this social perspective also being added, an attempt is being made to clarify that tagging of economic value is not simultaneous with that of putting a price for water. It is rather, just a method of rational usage leading to prioritization. But in effect, economic value based concept have led to pricing of water and problems for poor to access water. But in India the state is trying to adopt hands off approach from the water sector by shifting its responsibility of a service provider to that of a mere facilitator in guise of decentralisation and community participation

### *3.2 Participatory Approach*

Water sector reforms in India also pointed towards the need for decentralisation and that of participation of the community in the decision making process, drawing from the Principle II of Dublin Principles.<sup>30</sup> But in effect there was no actual participation of community in the decision making process. All that could be effected was that of water governance modelled on the basis of economic value of water. Here, the Indian policy makers missed a big point that water need to be considered to be having socio-economic value and not solely economic value.

For this it is important to treat water resources as commons, since treating water merely as a commodity would lead to water being perceived only from economic value point of view and not from the social value perspective. Commons require not only the co-equal right of access but also the right to manage the commons property by the people who have a claim over it. Common management of property would help in effective management on the basis of priorities decided by the members of community. This helps to keep water resources out of the market forces and paying capacity of the people and hence would lead to better management than that of the private ownership of resources.

Effective participation should necessarily mean participation of stakeholders, including the community in the policy, planning, project design and management of the water infrastructure.<sup>31</sup> Further, the participation in the sense understood now, do not envisage all those who use water, but only those who have ability to pay when it comes to the drinking water sector and those who have right over the land when it comes to irrigation sector.

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<sup>29</sup> *Id.*

<sup>30</sup> Principle II of Dublin Principles read as: "Water development and management should be based on a participatory approach, involving users, planners and policy-makers at all levels".

<sup>31</sup> *Supra n.6.*



### 3.3 Water User Associations

Water User Associations (WUA), are participatory mechanism methods which allow the stake to take decision regarding water management, especially in the irrigation management, a trend that could be perceived to be the convergence of a number of policy implications including decentralization, privatization, participation and democratization.<sup>32</sup> Many states in India followed this trend as a part of the water sector reforms and have gone on to enact enabling laws.<sup>33</sup> But it is mainly pointed out that the law and policy relating to WUA never took into consideration the traditionally existing irrigational management systems thus leading to a system of the legal and management regime which were made for them not by or even through them and this despite the fact that they are at the centre of giving it operative effect.<sup>34</sup> Another significant problem is that the enabling legislations did not establish clear water rights for the WUA, which the State as a public trust need to supply to them.

### 3.4 Swajaldhara

*Swajaldhara* is a community based participatory scheme aimed at providing the drinking water facilities in the rural areas.<sup>35</sup> The scheme claimed to be demand responsive programme adopted for the empowerment of the communities by involving them in the decision making and implementation of the scheme. A principal premise of the *Swajaldhara* scheme is that community ownership and participation will emerge from the formation of village water and sanitation committees.<sup>36</sup> The community is responsible to share partial capital cost and fully liable for the operation and maintenance (O&M). One of the basic underlying suppositions of *Swajaldhara* is that cost sharing will lead to participation in implementation and ownership of the assets.

But studies have pointed out to significant concerns that through the introduction of shared cost and water tariffs the accessibility to water for all is hindered as only people who with resources who could pay for the cost sharing are left outside the ambit of the scheme. Further it points out to the fact that people are willing to pay for these basic necessities if they feel that is the only way of availing them and that it

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<sup>32</sup>Videh Upadhyay, *A Rights Based Approach to Water User Associations in India*, Available at [http://www.ielrc.org/activities/workshop\\_0612/content/d0620.pdf](http://www.ielrc.org/activities/workshop_0612/content/d0620.pdf) (Last Accessed on 21.11.2010)

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> Preeti Sampat, "Swa'-jal-dhara or 'Pay'-jal-dhara—Sector Reform and the Right to Drinking Water in Rajasthan and Maharashtra", 3/2 Law, Environment and Development Journal (2007), Available at <http://www.lead-journal.org/content/07101.pdf>, (Last Accessed on 21.11.2010)

<sup>36</sup> *Id.*

would improve access, but their 'willingness to pay' does not necessarily reflect their 'ability to pay'.<sup>37</sup>

The study concludes that: "*The application of user fees and shared cost of infrastructure seems only to ensure that one who has more money has more access to resources and this will worsen socio-economic inequities without the State acting even notionally as an unbiased protector (and guarantor) of rights.*"<sup>38</sup>

### 3.5 Issue Relating to Groundwater

The most controversial issue regarding the groundwater is the prevalence of common law principle and an aiding easement right which allows the control over all the water beneath the land.<sup>39</sup> An important point of concern is that there is link between the ground water and the surface water is not being perceived by this particular notion of control over ground water. Technological advancement making it possible to extract any amount of water so as leading to significant fall in water table is also not perceived by the prevalent legal position regarding the groundwater.

It is important from the perspective of water rights and state obligation of providing water accessibility to all, to conceptualise the ground water also to be common property resource. Without this conceptualisation, there is no particular mechanism of check and balance of misuse of ground water. In the landmark case of *Perumatty Grama Panchayat v. State of Kerala*<sup>40</sup> the Kerala High Court had held that groundwater cannot be misused for an individual companies benefit and that the state holds the water in public trust.

Commons perspective to groundwater should in the ideal situation, lead to de-linking of the right over groundwater from the land right. A sudden and drastic change of law cannot be adopted, which may lead to a knee-jerk reaction from the people. A pragmatic outlook towards groundwater management and regulation would be imposing a licence requirement for the use of groundwater and capping the maximum possible extraction and monitoring of the level of extraction. This would also mean any new digging of any form of well or structure for groundwater extraction, have to be done with the permission of the administration.

## 4. Need for the paradigm shift

Water as commons cannot be perceived with the state trying to play the role of only being a facilitator. As observed above the participatory approach envisaged under the Swajaldhara and Water Users Association schemes, cannot ensure the important aspect of accessibility of water to all. Here the state responsibility under

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<sup>37</sup> *Id*

<sup>38</sup> *Id*

<sup>39</sup> Sujith Koonan, *Legal Implications of Plachimada: A Case Study Available at* <http://www.ielrc.org/content/w0705.pdf> (Last Accessed on 21.11.2010)

<sup>40</sup> 2004 (1) KLT 731.

the law due to the fact of right of water being understood as part of right to life, need to be highlighted.

State cannot move away from the role of a service provider, who has the obligation to make sure the access of water is being made available to one and all. For this purpose state need to be hold water resources in public trust as well as have to ensure that the water supply mechanism is being equitability access to one and all. This once again points towards the fact that state cannot totally move away from the development of water infrastructure. State responsibility is in empowering the people to make decisions regarding the use of water as commons, at the same time ensuring that their capability of taking decisions and co-equal right over the water commons are not hindered by the market forces. This also requires a pro-active conceptual formulation that the water is shared and common resource, which need to be clearly provided for in the legal and policy framework. The human rights perspective and that of fundamental rights status of right to water need to be further elucidated in the water law and policy framework.

The market environmentalism which tries to addressing concerns over environmental degradation and inefficient use of resources by tagging the environmental resources with economic good perspective, being introduced to the water sector comes with the increasing involvement of private sector companies, whose primary premise of operation is profit.<sup>41</sup> But private involvement cannot be completely ruled out in the water sector and in fact their involvement should be used for the purpose of water infrastructure enhancement. There need to be via media of striking balance between profit concern and equity and accessibility concerns. The government need to hold even the water infrastructure in public trust and the private participation should be allowed in a benefit sharing mechanism. The private ownership of water related infrastructure will lead to commoditization of water as the profit concern of operation and management will the primary concern.

Commons perspective also conceives water to be is a flow resource essential for life and ecosystem health and that water has important cultural and spiritual dimensions that need to be understood with place-based practices.<sup>42</sup> Water democracy relying upon decentralized, community-based, democratic water management in which water conservation is politically, socio-economically and culturally inspired need to be provided importance. Be the principle of water policy based on Integrated Water Resource Management or on Responsible, Harmonious, Just and Wise Use of Water<sup>43</sup>, treating water resources to be common property resource is a pre-requisite.

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<sup>41</sup> See Karren Baker, *The "Commons" Versus the "Commodity": Alter-globalization, Anti-privatization and the Human Right to Water in the Global South*, 39 *Antipode* 432.

<sup>42</sup> *Id.*

<sup>43</sup> Ramaswamy R. Iyer, *Approach To A New National Water Policy*, *The Hindu* Friday, Oct 29, 2010.