

**RECOMMENDATIONS FOR INTRODUCING
THE WATER PRESERVATION AND DISTRIBUTION ACT
IN THE STATE OF GUJARAT**

—:OBJECTS AND REASONS:—

Various schemes for preserving the rain water are not properly implemented and not giving results. Hence, it is necessary to have legal framework for preserving and harvesting rain water. Thereafter, there should be statutory schemes for distribution of water so that in a year when there is scanty rainfall, priority of distribution of the water should be given for drinking purposes. There should be statutory provisions for maintaining ponds, wells, small talavadis (તાલાવડી) by village panchayats, and the direction that a talavadi admeasuring at least 30X30 meters and 5 feet deep should be maintained, in each and every field admeasuring more than 10 acres of land. Enactment may be on the basis of the Draft National Water Framework Act prepared by the sub-group on a National Water Framework Law set up by the Planning Commission's Working Group on Water Governance for the Twelfth Plan (**Annexure: A**) by including the recommendations made hereinafter.

CHAPTER: I

**NECESSITY FOR ENACTING
THE WATER PRESERVATION
AND
DISTRIBUTION ACT**

**(i) LEGAL DUTY TO PROTECT
NATURAL RESOURCES:—**

The State is the trustee of all natural resources which are by nature meant for public use and enjoyment. Public at large is the beneficiary of the seashore, **running waters**, air, forests and ecologically fragile lands. The State as a trustee is under a legal duty to protect the natural resources. These resources meant for public use cannot be converted into private ownership'. [**M. C. Mehta v/s. Kamal Nath (1997 [1] SCC 388]**

Natural resources have got to be tapped for the purpose of social development but one cannot forget at the same time that tapping of resources has to be done with requisite attention and care so that ecology and environment may not be affected in any serious way;

there may not be any depletion of water resources and long-term planning must be undertaken to keep up the national wealth. It has always to be remembered that these are permanent assets of mankind and are not intended to be exhausted in one generation. [**Rural Litigation and Entitlement Kendra v/s. State of U.P. (AIR 1987 SC 359)**]

Since time immemorial, natural objects like rivers enjoyed a high position in the life of the society. They were considered as Goddesses having not only the purifying capacity but also self-purifying ability. Fouling of the water of a river was considered a sin and it attracted punishments of different grades which included, penance, outcasting, fine, etc. The earth or soil also equally had the same importance, and the ancient literature provided the means to purify the polluted soil. The above are some of the many illustrations to support the view that environmental pollution was controlled rigidly in the ancient time. It was not an affair limited to an individual or individuals but the society as a whole accepted its duty to protect the environment. [**K. M. Chinnappa v/s. Union of India (AIR 2003 SC 724)**]

(ii) **BASIC NEED FOR SURVIVAL:—**

Water is one of the most basic requirements of life guaranteed under Article 21 of the Constitution of India which provides that, “*No person shall be deprived of his life or personal liberty except according to procedure established by law.*”

The aforesaid fundamental right under Article 21 is elaborately discussed in various judgments by the Hon’ble Apex Court.

Protection of rights mean not only the negative protection of violation of rights but also positive protection, hence, the right to water can be extended not only to mean that people should not be denied access to water **but also that in areas where no access to drinking water is provided by the State, the constitutional right to life guarantee would impose a duty on the State to positively provide water.**

The right to shelter is a fundamental right available to every citizen and it was read into Article 21 of the Constitution of India as encompassing within its ambit, the right to shelter to make right to life more meaningful. The right to live guarantee in any civilised society implies **the right to food, water**, decent environment, education, medical care and shelter. These are basic human rights known to any civilised society. All civil, political, social and cultural rights

enshrined in the Universal Declaration on Human Rights and Convention or under the Constitution of India cannot be exercised without these basis human rights. [**Chameli Singh v/s. State of U.P. (AIR 1996 SC 1051)**]

In the case of **Narmada Bachao Andolan v. Union of India [(2000) 10 SCC 664]** wherein the Supreme Court [Kirpal J.], observed that “*Water is the basic need for the survival of human beings and is part of the right to life and human rights as enshrined in Article 21 of the Constitution of India. ... and the right to healthy environment and to sustainable development are fundamental human rights implicit in the right to “life”.*”

Supreme Court, in case of **A. P. Pollution Control Board II v/s. Prof. M. V. Nayudu [(2001) 2 SCC 62]**, had referred to India’s participation in UNO water conference and held that the right to access to **drinking water is fundamental to life and there is a duty on the State under Article 21 to provide clean drinking water to its citizens.**

Apart from the aforesaid case laws, during the United Nations Water Conference in the year 1977, even United Nations Organization resolved as under:—
“*All people, whatever their stage of development and their social and economic conditions, have the right to have access to drinking water in quantum and of a quality equal to their basic needs.*”

(iii) CONSTITUTIONAL AND LEGAL PROVISIONS:—

It is the duty of the State Government by virtue of Entry 17 of the State List, which provides that, “*Water, that is to say, **water supplies**, irrigation and canals, drainage and embankments, **water storage** and water power subject to the provisions of entry 56 of List I.*”

In the State of Gujarat, with regard to distribution of the water, there are following enactments:—

- (a)** Bombay Irrigation Act, 1879;
- (b)** Gujarat Water Supply and Sewerage Board Act, 1978;
- (c)** Gujarat Fisheries Act, 2003;
- (d)** Gujarat Water Users’ Participatory Irrigation Management Act, 2007;
- (e)** Gujarat Regulation for the reuse of water, 2012; and
- (f)** Gujarat Irrigation and Drainage Act, 2013.

For the purpose of this report, it would be necessary to quote Sections 14 and 15 of the Gujarat Water Supply and Sewerage Board Act, 1978:—

“14. Duties and functions of the Board

The duties and functions of the Board shall as follows, namely:—

- (a) to **prepare**, execute, promote and finance **the schemes for supply of water** and for sewerage and sewage disposal;*
- (b) to render all necessary services in regard to water supply and sewerage to the State Government and local bodies and on request to private institutions or individuals also;*
- (c) to prepare draft State Plans for water supply, sewerage and drainage on the directions of the State Government;*
- (d) to review and advise on the tariff, taxes, fees, and charges of water supply and sewerage systems, in the areas comprised within the sphere of the operation of the water supply and sewerage services of the Board and in the areas of the local bodies which have entered into an agreement with the Board;*
- (e) to assess the requirements of materials and arrange for their procurement and utilization;*
- (f) to establish State standards for water supply and sewerage services;*
- (g) to review annually the technical financial, economic and other aspects of water supply and sewerage system of every scheme of the Board or the local bodies which have entered into an agreement with the Board;*

- (h) *to establish and maintain a facility to review and appraise the technical, financial, economic and other pertinent aspects of every water supply and sewerage scheme in the State;*
- (i) *to operate, run and maintain any water works and sewerage system, if and when directed by the State Government, on such terms and conditions and for such period, as may be specified by the State Government;*
- (j) *to assess the requirements for man-power and training in relation to water supply and sewerage services in the State;*
- (k) *to carry out applied research for efficient discharge of the duties and functions of the Board;*
- (l) *to perform such of the duties and functions, which are being performed by the Gujarat Public Health Engineering Service, as may be specified, from time to time, by the State Government;*
- (m) *to perform and discharge such other duties and functions as are allotted to the Board under other provisions of this Act or as may be entrusted to it by the State Government.*

15. Powers of the Board

- (1) *The Board shall, subject to the other provisions of this Act, have power to do anything which may be necessary or expedient for performing its duties and discharging its functions under this Act.*

- (2) *Without prejudice to the generality of the foregoing provisions, such powers shall include the power—*
- (a) *to inspect all water supply and sewerage facilities in the State by whomsoever they are operated;*
 - (b) *to obtain such periodic or specific information from any local body and operating agency as the Board may deem necessary;*
 - (c) *to provide training for its own personnel as well as for employees of the local bodies;*
 - (d) *to prepare and carry out schemes for water supply and sewerage;*
 - (e) *to lay down the schedule of fees and other charges for all kinds of services rendered by the Board to the State Government, local bodies, institutions or individuals;*
 - (f) *to enter into contract or agreement with any person or persons as the Board may deem necessary, for performing its duties and discharging its functions under this Act;*
 - (g) *to adopt its own budget annually;*
 - (h) *to approve tariffs for water supply and sewerage services applicable to the areas comprised within the sphere of operation of such services of the Board*

and within the jurisdiction of such local bodies as have entered into an agreement with the Board;

- (i) to manage all its affairs so as to provide the people of the area within its jurisdiction with wholesome water and, where feasible, efficient sewerage service;**
- (j) to take such other measures as may be necessary, to ensure water supply in times of any emergency;*
- (k) to acquire, possess and hold lands and other property and to carry any water or sewerage works through, across, over or under any highway, road, street, or place and after reasonable notice in writing to the owner or occupier into, through, over or under any building or land;*
- (l) to abstract water from any natural source and dispose of waste water;*
- (m) to raise, borrow or secure money on such terms and conditions as may be expedient, and in particular by way of loans and advances, deposits and issue of debentures and obtain subventions or mortgages from public institutions like the Life Insurance Corporation of India, Banks and any international organizations or from the State and Central Government, for drinking water supply and sewerage schemes or any*

other schemes for improvement of sanitation;

- (n) to receive grants from the State Government, the Central Government and the local bodies for water supply and sewerage or any other sanitation improvement schemes;*
- (o) to repay installments of loans and pay interest on the principal thereof to the lenders as per mutually agreed terms and conditions;*
- (p) to advance loans to the local bodies or Government for their water supply and sewerage schemes on such terms and conditions as may be specified by the Board;*
- (q) to recover from the local bodies or Government principal and interest thereon in respect of loans advanced to them by the Board;*
- (r) to incur such expenditure as the Board may deem necessary for performing its duties and functions under this Act;*
- (s) to exercise such other powers as are conferred on the Board under other provisions of this Act.”*

—:RECOMMENDATIONS:—

For exercise of duties and functions of the Gujarat Water Supply and Sewerage Board, namely,

- (i) to prepare, execute, promote and finance the schemes for supply of water and for sewerage and sewage disposal; and
- (ii) to manage all its affairs so as to provide the people of the area within its jurisdiction with wholesome water and, where feasible, efficient sewerage service,

it is absolute necessary to have sufficient water which could be supplied to the people at large.

In State of Gujarat, in some areas, such as, Saurashtra and Kutch, it is said that for most of the time during summer, there is scarcity of drinking water. It is further said that drinking water, on occasion, is supplied after two to three days or once a week.

It is also known fact that during monsoon, there are heavy rains, water logging all throughout, loss of immovable properties and loss of standing crops at various places. That rain water is wasted within few days. There is no legal framework to see that the rain water is preserved.

For the aforesaid object and purpose, statutory provisions should be made for preserving, harvesting and storing the rain water, in addition to maximum utilization of river waters and distribution in such a manner that there is no shortage of drinking water during the lean period.

- (a) For the aforesaid malady, water harvesting, efficient use of water for drinking and irrigation, and increasing capacity of storage of water in reservoirs, **are the only solution for facing the challenge of shortage of drinking water in the State of Gujarat.**

On number of occasions, it is mentioned that rain water should be harvested during the monsoon season. **Collection of rain water recharges water tables, allows easier accessibility to water resources and increases availability for irrigation throughout the year which leads to improve village life.**

- (b) It is to be stated that in the State of Gujarat, as such, in the country as a whole, for centuries, big lakes, ponds, wells as well as step wells were constructed from time to time by various rulers for preservation and supply of water.

Hence, it should be made compulsory to each and every Village Panchayat to construct and maintain a pond for collecting and preserving the rain water. This function should be assigned to the Village Panchayat and if required, cost be borne by the State Government. The Village Panchayat should also be directed to increase the capacity of existing talavs (તાલાવ).

It shall be the duty of the District Panchayat to find out an area where big lakes can be constructed and maintained by it. For such lakes or ponds, if the inflow of rain water is hindered or obstructed because of any reason, appropriate legal steps should be taken for removal of that obstruction.

- (c) Further, a law be enacted, directing each and every occupant of the agricultural land, admeasuring more than 10 acres to construct and maintain small talavadi (તાલાવડી), at least admeasuring 30X30 meters and at least 5 feet deep, for harvesting the rain water. This water would at least percolate and ground level of water would increase. Apart from it, after monsoon season, it can be utilized for irrigation purposes.
- (d) In addition, previously, the citizen themselves were constructing something like water tanks (ટાંક) in their houses/premises so that rain water can be collected and preserved in the house itself for the year.

Considering the present trend of having societies, and in number of cases multi-storeyed buildings where water is used to a large extent without any restriction, harvesting of the water should be made compulsory in such societies by framing appropriate schemes which is technically feasible.

(d/1) In addition, supply of water in the premises should be measured by affixing a meter and appropriate amount should be charged. This would reduce the waste of water to a large extent.

(e) Not only this, immediate steps are required to be taken for desilting and deepening lakes, ponds, check dams and wells by the Government or by the District Panchayats. Wherever check dams can be constructed, immediate steps should be taken by the Government for the said purpose.

(f) In addition, the competent authority i.e. Gujarat Water Supply and Sewerage Board should take decision in advance with regard to water use, whenever there are scanty rains so that supply of water for life is not affected, i.e. sufficient water could be made available for drinking purposes. That is to say, in such cases, priority of water use should be restricted so that it can be used mainly for drinking purpose.

(g) Supply of water should be measured and water charges should be levied so that waste of water could be effectively controlled. **It is stated that irrigation sector consumes approximately 80% of water use. Similarly, it is stated that industrial water use is 8%. Probably, this does not take into account extraction of ground water by bore-well in the factory premises itself.** On occasions, for extracting water, tube-wells are constructed. That water is required to be measured and proper water cess be levied on it.

(h) Recycling of the waste water

Wherever possible, waste/used water should be recycled and supplied.

—:CONCLUSION:—

Finally, it is to be reiterated that for avoiding shortage of water for drinking purposes, the State is required to take immediate steps for constructing new lakes & ponds on Government waste land and to maintain existing lakes, ponds and wells in each village through Village or District Panchayat. If the inflow of water is obstructed and hindered, that obstruction or hindrance is required to be removed by taking appropriate legal steps. Further, with regard to agricultural land, occupant of the land should be directed to construct a small pond which can preserve rain water, in his field. This would finally be helpful in storage of water and its adequate supply for drinking purposes. For the aforesaid purpose, appropriate enactment should be made and implemented at the earliest.

CHAPTER: II

For enacting the law, draft National Water Framework Act prepared by the Sub-Group on a National Water Framework Law set up by the Planning Commission's Working Group on Water Governance for the Twelfth Plan can be taken into consideration. Some portion thereof is reproduced as under:—

- (i) Firstly, it would be pertinent to mention the relevant part of the explanatory note, as stated to the Draft National Water Framework Act, which is as under:—

“I. Why is a national water law necessary?”

1. *Water, like air, is one of the most basic requirements for life. If a national law is considered necessary on subjects such as the environment, forests, wildlife, biological diversity, etc., a national law on water is even more necessary. Water is as basic as (if not more basic than) those subjects.*
2. *Under the Indian Constitution water is primarily a State subject, but it is an increasingly important national concern in the context of:*
 - (a) *the right to water being a part of the fundamental the right to life;*
 - (b) *the perception of a water crisis because of the mounting pressure on a finite resource;*

(c) ...

(d) *the threat to this vital resource by the massive generation of waste by various uses of water and the severe pollution and contamination caused by it;*

...

(e) *the equity implications of the distribution, use and control of water: equity as between uses; users; areas; sectors; States; countries; and generations;*

...

5. *Finally, the idea of a national water law is not something unusual or unprecedented. Many countries in the world have national water laws or codes, and some of them (for instance, the South African National Water Act of 1998) are widely regarded as very enlightened. There is also the well-known European Water Framework Directive of 2000. The considerations behind those national or supra-national documents are relevant to India as well, although the form of a water law for India will clearly have to be guided by the nature of the Indian Constitution and the specific needs and circumstances of this country.”*

- (ii) Secondly, certain Sections of the said Draft Act are reproduced as under:—

“... WHEREAS water is essential for the sustenance of life in all its forms; an integral part of the ecological system, sustaining and being sustained by it; a basic requirement for livelihoods; a cleaning agent; a necessary input for economic activity such as agriculture, industry, and commerce; a means of transportation; a means of recreation; an inseparable part of a people’s landscape, society, history and culture; and in many cultures a sacred substance, being venerated in some as a divinity;

...

4. Water as Sustainer of Life

(1) Water in its primary aspect as a sustainer of life shall take precedence over water in any other aspect.

(2) Other uses of water, such as agricultural, industrial, commercial, and others, though important, **shall not be such as to jeopardise or diminish the role of water as sustainer of life.**

...

7. Water as a Scarce Resource

(1) *Having regard to the growing pressure on the finite availability of freshwater in nature, the prime principles governing water-use of all kinds shall be equity, economy, efficiency, minimisation of waste, resource-conservation, and ecological sustainability.*

- (2) *The theft of water from public supply systems, the unauthorised power-driven lifting of water from rivers, lakes and other water bodies and from aquifers, and the pumping of water from river beds, shall be prevented through stringent measures, while ensuring that such measures do not have the effect of impinging on the right to water for life assured in Section 10 of this Act or the social justice provisions of Section 20 of this Act.*
- (3) *It shall be the duty of the state at all levels, the citizens, and all categories of water-users, to endeavour to reduce their water footprint at every level, and thereby the water footprint of India.*

...

9. Water-use and Land-Use

- (1) *Water-use decisions shall have due regard to the land-use appropriate to the relevant area, and in turn, the proper land-use for an area shall be decided with due regard to the availability of water.*
- (2) *In decisions on land-use for various purposes, due regard shall be had to the protection of water sources, catchments, and drainage paths.*
- (3) *Where water sources, catchments or drainage paths have already been interfered with, efforts shall be made to stop further interference, and reverse the adverse impact of interferences already made, to the utmost extent possible.*

...

11. Priorities in Water Allocations

- (1) *In all allocations of water by governments at any level, or by any other duly authorised body or agency or institution, public or private, **the first and over-riding priority shall be for water for life**, followed by water required for all other uses, viz., water for livelihoods for vulnerable sections, water as a social good, and water for agricultural, industrial, commercial, recreational and other uses.*

- (2) *The inter se priorities in allocations for different water-uses other than water for life shall be as determined by the appropriate authorities or agencies with reference to local circumstances such as local climate, land and soil characteristics, water availability, prevalent activities and livelihoods, and the land-uses indicated by those circumstances.*

...

21. Water and Women

- (1) *The state at all levels shall take all appropriate steps to protect the rights, interests, and special water and sanitation needs of women.*

- (2) *The access of villages to nearby sources of water shall be improved, making it unnecessary for women to bring water from distant sources.*
- (3) *Women shall be full participants in all water-related institutions at all levels, and their participation in such bodies shall be non-exclusionary, with no reference to title to property or other restrictive criteria.*
- (4) *The state at all levels shall endeavour to enhance the effectiveness of the participation of women in all water-related institutions.*

...

24. Floods

- (1) *In relation to periodical river floods, the emphasis shall shift from structural flood-control measures to the following approach:*
 - (a) *learn to live with periodical river floods and minimise loss and damage;*
 - (b) *ensure that land-use practices are such as to minimise and not aggravate the adverse impact of floods;*
 - (c) *install adequate and timely advance warning systems;*

- (d) *be ready with disaster avoidance and management plans;*
 - (e) *learn relevant lessons from traditional coping practices;*
 - (f) *if dams are built for flood moderation among other purposes, ensure that a flood cushion is built in and actually maintained;*
 - (g) *as far as possible, refrain from confining a river within embankments; and*
 - (h) *make flood control and embankment projects, if any, subject to the requirement of Environmental Impact Assessment studies under the Environment Protection Act 1986 and the EIA Notifications thereunder.*
- (2) *A vast, well-equipped, technologically advanced network of stations for observing and analysing precipitation and flows and drawing conclusions, and for the instant ('real time') communication of such information and predictions to downstream areas, shall be established by expanding existing facilities and enhancing their quality and technological status.*

- (3) *Timely information is necessary but not enough; it shall be followed by prompt, adequate, equitable, efficient and humane response.*
- (4) *The thrust of the relief programme shall be, not to reduce people to a state of dependence, but to enhance their ability to help themselves.*
- (5) *Potential or actual conflicts in the context of dealing with floods or administering flood-relief measures, arising between upstream and downstream areas within a State, or between upstream and downstream States, shall be obviated or minimised or resolved by consultations in advance, timely sharing of information, and cooperative or joint efforts and institutional arrangements.*
- (6) *Interferences with natural channels and drainage paths that result in the blocking of storm water drainage and cause or aggravate urban floods shall be avoided.”*

The complete Draft National Water Framework Act with the explanatory note, stated therein, is annexed herewith at **Annexure: A**.

Date : **th May, 2016**

Place : **Ahmedabad**

JUSTICE M. B. SHAH

Former Judge, Supreme Court of India

AND

Chairman, Gujarat State Law Commission