

LAW OPINION

The intersection of transboundary water conflicts and human rights

The convergence of transboundary watercourse law and human rights law creates a composite legal framework in which upstream states bear enforceable obligations toward downstream populations, not merely toward downstream states. It transforms the character of state responsibility. Breaches of watercourse obligations, violations of the no-harm rule, failure to cooperate, or inequitable water allocation simultaneously constitute human rights violations when they deprive populations of water necessary for life, health, and subsistence.

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When the United Nations General Assembly, in 2010, affirmed that 'the right to safe and clean drinking water and sanitation' (Resolution 64/292) is a human right, it impliedly recognised water as a fundamental legal entitlement connected to dignity, health, and life. However, across various river basins, such as the Teesta, the Nile, and the Euphrates, upstream states have often used water as tools of geopolitical leverage. This article highlights that complex and uncertain nature of the right's implementation despite its acknowledgment as a right.

The legal frameworks, such as the 1997 UN Watercourses Convention or the 1992 UNECE Water Convention, which govern transboundary watercourses mainly focus on several key principles, such as the fair and reasonable use of shared water resources, the obligation to avoid causing significant harm to other states, and the requirement for cooperation and notification before undertaking major projects that may impact transboundary waters. Importantly, Article 10 of the 1997 Convention requires that, in allocating uses of a river, 'special regard' be given to the requirements of vital human needs. The International Court of Justice in the Gabčíkovo-Nagymaros Project case between Hungary and Slovakia held that Czechoslovakia, by unilaterally diverting the course of Danube, deprived Hungary of its right to an equitable share of shared natural resources. Yet the law provides no formula for determining what constitutes 'equitable' when populations compete in the face of insufficient water, and most critically, with no compulsory mechanism for adjudicating this balance when parties disagree.

International human rights law already contains a firm basis for claims to water. The International Covenant on Economic, Social and Cultural Rights (ICESCR), read with General Comment No. 15 (2002), recognises that water is necessary to secure an adequate standard of living and the highest attainable standard of health; the water entitlement must be 'sufficient, safe, acceptable, physically accessible and affordable'. Child and gender-specific instruments (CRC Art. 24, CEDAW Art. 14) reinforce the special protection duty for vulnerable groups. These sources therefore impose on states obligations to respect, protect and fulfil access to potable water for their populations.

But two doctrinal complications arise when these obligations intersect with transboundary rivers. First, human rights law traditionally operates vertically i.e., it governs obligations a



state owes to persons within its jurisdiction. Second, remedies and enforcement for extraterritorial harms are weak. The Teesta River is a case study of these doctrinal limits. The river's seasonal lean flows are vital to northern Bangladesh's agriculture, livelihoods and food security. But international politics has frustrated Bangladesh's efforts to translate legal principles into flows. Bangladesh and India reached draft agreements on how to divide the Teesta River's water in 1983 and again in 2011. The 2011 draft proposed giving Bangladesh about 37.5% of the river's lean-season flows, but the agreements were never finalised. While Bangladesh has joined UNECE/UN instruments, showing willingness to implement international principles, India prefers bilateral agreements, and internal political factors have effectively blocked the implementation of any treaty.

The Teesta conflict is not an isolated phenomenon but part of a systemic pattern revealing how transboundary water wars violate the human right to water across multiple river basins globally. Turkey's Southeastern

Anatolia Project, which includes 22 dams such as the Atatürk Dam, has significantly reduced the Tigris-Euphrates' flow to Syria and Iraq by 30-60%. Turkish claims of sovereignty over its water rejecting the idea of shared water resources, has had severe human rights consequences, particularly in Iraq, where water shortages threaten the Mesopotamian Marshes, a UNESCO World Heritage site, and risk displacing communities. This situation undermines not only the right to water but also the rights to food, livelihood, housing, and cultural heritage.

Such cases illuminate the legal challenge between state sovereignty over watercourses and human rights obligations to people. The lack of compulsory dispute resolution is a key issue in transboundary water conflicts. The UN Charter's Article 33 calls for peaceful dispute settlement, but all methods require the consent of both parties. This means that an upstream state with greater power can simply refuse binding dispute resolution, leaving downstream populations with no remedy even as their basic rights are

violated. Thus, the downstream states have to either accept unfair bilateral agreements dictated by power, or take unilateral actions that may be seen as hostile and provoke further retaliation.

Water is the basis of the right to life (ICCPR Art. 6), the right to health (ICESCR Art. 12), and the right to food (ICESCR Art. 11). General Comment No. 15 of the ICESCR explicitly states that water is essential for the realisation of all other human rights. The Human Rights Committee's General Comment No. 31 affirms that ICCPR obligations may arise where a state exercises effective control over individuals, even outside its territory—a principle also reflected in the Maastricht Guidelines. When applied to shared rivers, these principles therefore, indicate that the victims of water diversion are not downstream states, they are downstream populations. More recently, the ICJ's Silala River judgment (Chile v. Bolivia, 2022) reaffirmed that the customary obligation to prevent transboundary harm applies to all shared waters. On the other hand, treaty bodies have recognised water access for downstream populations in situations

of armed conflict or occupation (e.g. CESCR and HRC citing Israeli control over Palestinian water).

The convergence of transboundary watercourse law and human rights law creates a composite legal framework in which upstream states bear enforceable obligations toward downstream populations, not merely toward downstream states. It transforms the character of state responsibility. Breaches of watercourse obligations, violations of the no-harm rule, failure to cooperate, or inequitable water allocation simultaneously constitute human rights violations when they deprive populations of water necessary for life, health, and subsistence. This dual character implies that remedies must address not only state-to-state relations but also the actual harm suffered by rights holders. In this sense, the governance of transboundary rivers must be guided by the principle that the basic needs and dignity of all people come before political convenience or power.

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LAW VISION

Recognising a judicially enforceable right to education

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Education has long been called the backbone of the nation, yet Bangladesh's Constitution refrains from recognising this basic human right in a way that would be meaningful for the people of the country. Article 17 of the Constitution promises free and compulsory education. However, this right has been placed, quite systematically, in Part II of the Constitution, as a Fundamental Principle of State Policy, rendering it judicially unenforceable. In simple terms, the right exists in writing, but the government cannot be held judicially accountable for not giving effect to it.

Currently, Bangladesh is suffering from a crisis of quality education as evidenced by the World Bank's Human Capital Index (2024). A Bangladeshi child entering school at age 4 can expect to complete around 10.2 years of schooling by age 18. Yet, when adjusted for learning outcomes by the Learning-Adjusted Years of Schooling (LAYS) metrics, this falls to only 6 effective years, i.e. a loss of nearly four years of education quality. The 2022 National Student Assessment revealed that nearly half of primary students cannot read Bangla at their grade level, and two-thirds cannot perform basic arithmetic operations. Other studies conducted by governmental and non-governmental agencies, such National Academy for Primary Education (NAPE), BRAC Institute of Governance and Development (BIGD) lend credence to this.

If there was an accountability framework in place, through a justiciable right to education, and if there was an accountability



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metric in place, through the LAYS and other formats, then that could strengthen rights-based governance. Ministries would be compelled to publish learning outcome data, audit resource use and justify any deviations. This would enable the civil society, concerned citizens, parents, and stakeholders to exercise their constitutional right to challenge government policy decisions, thus building a culture of participation and transparency.

On the other hand, a judicially enforceable right to education is supported by the people as well. A survey carried out by BANBEIS in 2024, revealed that an overwhelming number of the Bangladeshi people supported the inclusion of the right to education, amongst other rights, as a judicially enforceable

right in the Constitution. 98.4% of 45,925 respondents to the survey said they want food, clothing, shelter, education and healthcare to be constitutionally recognised.

Besides the above, the most compelling argument for the recognition of the positive right to education is that it creates a constitutional framework for accountability. Making it enforceable will imply that in the event the State fails to take adequate and necessary measures to protect it, citizens will be able to hold the government accountable by instituting a writ petition under Article 102 of the Constitution. Once education becomes justiciable, governments will be required to justify their actions, or lack thereof, against constitutional benchmarks.

Courts could demand periodic progress reports, ensure that funds are allocated fairly, and compel authorities to remove systemic barriers. The object of such judicial review is not to replace policymaking but to ensure that policy meets principle.

Critics often argue that Bangladesh lacks the resources to make education a fundamental right. However, international jurisprudence recognises that states are obligated to realise rights such as education within the resources available. Article 2(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) enunciates the principle of progressive realization of economic, social and cultural (ESC) rights. This approach is not theoretical. Globally, courts have veered towards recognising the justiciable right to

education despite resource constraints. Like in South Africa, the Constitutional Court in the Governing Body of the Juma Masjid Primary School v. Essay N.O. (2011) held that the state bears the duty to ensure access to education, even when resources are constrained. Notably, the court here distinguished between the right to 'basic' education and the right to 'further education' and held that basic education is unqualified and immediately realisable while further education should be progressively realised (emphasising the availability of resources argument).

Bangladesh can learn from its neighbour, India, as well. Because of similar constitutional provisions and identical socioeconomic and political scenarios, Bangladeshi jurisprudence often mirrors that of India. Yet, India has already constitutionalised the right to education by inserting Article 21A in the Constitution through its 86th Amendment. This came in line with the 1993 judgment of Unni Krishnan v State of Andhra Pradesh which recognised the right to education as a fundamental right.

Finally, a justiciable right to education will not merely strengthen institutions but also discipline political will and create a durable and sustainable accountability mechanism which may be used to keep education-related policymaking in check. For an array of social, legal and economic reasons, Bangladesh should recognise the right to education as an enforceable right.

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A justiciable right to education will not merely strengthens institutions, but also discipline political will and create a durable and sustainable accountability mechanism which may be used to keep education-related policymaking in check. For an array of social, legal and economic reasons, Bangladesh should recognise the right to education as an enforceable right.