

Water As Human Rights: Laws and Policies in India

Shashi Kumar

Asstt. Professor
Department of Human Rights, B B Ambedkar University, Lucknow
Email : shashibbau@gmail.com

*“Access to safe water is a fundamental human need and, therefore, basic human right .
Contaminated water jeopardizes both the physical and social health of all people.
It is an affront to human dignity.”*

Kofi Annan

Former U. N. Secretary- General Assembly

Introduction

Water is essence of human life and is essential component for human survival and development. It is now becoming an increasingly scarce natural resource and its shortage has become problem for humanity. In the last few decades the consequences of population growth, industrialisation and urbanisation, and the increasing consumerist culture, have disturbed the natural hydrological cycle of rainfall, soil moisture, groundwater, surface water etc. This invariably led to overuse, abuse and pollution of our vital water resources and has disturbed the quality and the natural cleansing capacity of water.

The statistics indicate that about 1.4 billion people lack access to clean drinking water and by 2025, three billion people will be suffering from water shortage. Every year, more than two million people die due to lack of drinking water or diseases caused by polluted drinking water. Efficient and equitable use of water resources has become one of the major concerns for nation states in their socio-economic developmental planning. Access to water is a fundamental human right implicitly supported by international law, declarations, and state practice.

Water as Human Rights

Given the significance of Water for human survival and development, let us find out whether the water is recognized as human rights. There are both expressive and implicit reference of water as a human rights is recognized in the various international instrument of human rights and public laws.

United Nation Bill of Human Rights

The traditional instruments of human rights like Universal Declaration of Human Rights (UDHR), 1948, proclaims under art. 25 “everyone has a right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing and medical care and necessary social service...” it is understood that for satisfying the standards of living adequate well-being and healthy life the importance of water cannot be ignored, so water as a human rights is implicitly mentioned in this article.

The legally binding human rights covenants of 1966, the International Covenant on Civil and political Rights (ICCPR) and the International Covenant on Economic, Social and cultural Rights (ICESCR) implicitly recognize a right to water as human rights.

Though both these covenant do not specifically defined the right to water but indirectly it is applicably by drawing interpretation from the right to life. Right to water can be deduced from article 11 of right to an adequate standard of living, and article 12, the right to health. Virtually all states parties to ICESCR have acknowledge in political declarations that the right to an adequate standard of living necessarily includes water and sanitation. Thus they need to take adoptive measures through their national laws for the enforcement of right to water.

Declaration on Right to Development, 1986

It is recognized that Right to Development is a “universal and inalienable right and an integral part of fundamental human rights”. Art. 8(1) of the Declaration on Right to Development says that “States should undertake, at the national level, all necessary measures for the realization of the right to development and shall ensure, inter alia, equality of opportunity for all in their access to basic resources.” While interpreting this article, the General Assembly clarified under the resolution 54/175 that “the rights to food and clean water are fundamental human rights and their promotion constitutes a moral imperative both for national government and for the international community.”

Stockholm Declaration, 1972

The Declaration is one of the earliest environmental instruments that recognizes the fundamental right to “an environment of a quality that permits a life of dignity and well-being” and also that “the natural resources of the earth including water must be safeguarded for the benefit of present and future generations.”

Mar del Plata Action Plan, 1977

In 1977, the United Nations Water Conference held at Mar Del Plata which recognized water as a right

declaring that all people have the right to drinking water in quantities and of a quality equal to their basic needs. Significantly the conference had declared International Drinking Water Supply and Sanitation Decade (1980-1990) with the slogan, “Water and Sanitation for All.”

Right to Water in India: Legal Prospect

Constitutional Provision

The constitution of India, which is the supreme law of the land, has imposed an obligation to protect the natural environment both on the state and on the citizens. But right to safe and clean water is now here mentioned in the constitution. Nevertheless, on an analysis of various provision of our constitution, we find that right to clean water is implied in the right to wholesome environment.

Article 39 (b) provides that the state shall direct its policy to see “That the ownership and control of the material resources of the community are so distributed as best to sub serve the common good.” The term ‘material resources of the community’ embraces all things, which are capable of producing wealth for the community. In fact, article 39 (b) is a very significant constitutional provision which talks about the distribution of the material resources of the community in such a way as to secure equitable distribution of community resources. The expression “material resources” includes precious element of the nature, that is, ‘water’.

Another constitution mandate in the shape of Article 47 imposes a duty upon the state ‘to raise the level of nutrition and the standard of living of its people and improve public health’ In *Municipal Council, Ratlam v. Vardhichand*’ the Supreme Court observed:

“The state will realize that article 47 makes it a paramount principle of governance that steps are taken for improvement of public health as amongst its primary duties. The standard of living can only be improved by providing basic amenities to the citizens like employment, shelter and clean and safe water”.

1. Assam Sillimanite Ltd. v. union of india AIR 1992 S C 938

2. AIR 1980 SC 1622

Article 48-A, a specific provision for environment which is added to the Constitution by the 42nd Amendment 1976, expressly directs the State “to protect and improve the environment” the term ‘environment’ includes water. When state strives to preserve and protect the natural resources of water like rivers and ponds, the water will also be saved from pollution and common people can have access to it by proper water management.

Considering the preservation and protection of the natural resources including fresh water as fundamental human responsibilities the article 51 A (g) of part IV-A, says that it shall be the fundamental duty of a citizen of India ‘to protect and improve the natural environment including forests, lakes, rivers, and wildlife and to have compassion for living creatures’. Thus, a citizen has fundamental duty to preserve and protect water resources.³

In Part –III of the constitutional, Article 21 provides that every person has right to life and personal liberty. Similarly, Article 14 provides that right to equality is fundamental right of the person. The higher judiciary of India has interpreted article 14 and article 21 in such a liberal and pragmatic manner that, now it is well established that right to clean and wholesome environment which includes the right to access to clean and safe water, is a fundamental right. Article 15 Prohibition of Discrimination on grounds of religion, race, caste, sex or place of birth. Article 15(2) provide that “the use of wells, tanks, bathing Ghats, roads and place of public resort maintained wholly or partly out of state funds or decided to the use of the general public.”⁴

Judicial Approaches

Expansion of Article 21

In the various cases the apex court of the country

has considered right to water as a fundamental right under Art-21 of the Indian constitution. In case *Chhetriya Pardushan Mukti sangarsh Samiti v State of U.P*⁵ Clean air and fresh water, necessary for the very survival of life, was explicitly reiterated by the Supreme Court in the case of *Subhash kumar v State of Bihar* as the fundamental right under Article 21 of the constitution.

In another case *F. K. Hussain v Union of India*⁶ the High Court of Kerala Suggested for the conservation of water resources.

Kerala high Court in *Antony v Commissioner, corporation*⁷ of Cochin got another opportunity to deliberate upon this issue. The Indian judiciary has shown unprecedented dynamisms by expanding the scope of article 21 by including in its right to wholesome environment. This feat is remarkable insofar as even some of the developed countries have yet to achieve such distinction. It still remains to be seen as to whether a developing country like India can sincerely and effectively allow enforcement of this fundamental right to live in a clean environment, nonetheless such innovative approach would certainly help to prevent further degradation of our environment. This judicial activism was the aftermath of *Maneka Gandhi v Union of India*⁸ case which opened new frontiers in Article 21 Various High Courts in some cases have observed environmental degradation as violate of the fundamental right to life. *Subhash Kumar vs. State of Bihar*,⁹ the apex court explicitly recognized right to wholesome environment included in Article 21 of the Constitution when it held: “Right to live is fundamental right under Art. 21 of the Constitution and it include the right of enjoyment of pollution free water and air for full enjoyment of life. If anything endangers or impairs that quality of life in derogation of laws, a citizen has right to have recourse to Art.32 of the Constitution for removing the pollution of water or air which may be detrimental to the quality of life.

3. Article 51 A (g) the constitution of India 1950

4. Article 15 (2) the constitution of India, 1950

5. AIR 1990 SC 2060 (2062)

6. AIR 1990 Ker 321

7 (1994) 1 KLT 169

8. AIR 1978 SC 597

9. (1991) 1 SCC 598

Right to life being the most important of all human rights implies the right to life in a healthy environment. Fortunately the higher judiciary in India has interpreted the existing constitutional provisions, viz., the right to life guaranteed under Article 21 to mean and include the right to live in a healthy environment. The courts have intervened by writs, orders and directions in appropriate cases and recognized the constitutional right to a healthy environment.

It is important to note that Indian Constitution has not specifically provided fundamental right to unpolluted water. However, by liberal interpretation of various provisions of Constitution, the apex court and High Courts carve out the right to clean and safe water. Starting from Rural Litigation case where the Supreme Court for the first time, indirectly, recognized the right to clean and healthy environment. It was only in 1991 in Subhash Kumar's Case; the apex court for the first time enlarged the scope of right to life and easily included the right to enjoyment of pollution free water for full enjoyment of life.

The Supreme Court in M. V. Naidu's case referred to in the Resolution of the UNO passed during the United Nations Water Conference in 1977 to which India is a part and observed 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."

The U.N. Water Conference, 1977 resolved unanimously 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."

In *Subhash Kumar v. State of Bihar*¹⁰ the Supreme Court recognized that the right to life 'includes the right of enjoyment of pollution free water and air for full enjoyment of life'. In the Sardar Sarovar case, the Supreme Court directly derived the right to water from Article 21, stating that 'water is the basic need for the

survival of the human beings and is part of right of life and human rights as enshrined in Article 21 of the Constitution of India *Narmada Bachao Andolan v. Union of India* 2000." In Narmada Bachao's case 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 can be served by providing source of water where there is none."

*F. K. Hussain vs. Union of India Kerala*¹² High Court held that: "The right to sweet water and the right to free air, are attributes of the right to life, for, these are the basic elements which sustain life itself."

*Hamid Khan v. State of Madhya Pradesh*¹³ It is the right of the citizens of India to have protection of life, to have pollution free air and pure water. It was the duty of the State towards every citizen of India to provide pure drinking water.

In *M.C. Mehta v. Union of India (Groundwater Case)*¹⁴ the court held a landmark decision the falling levels of groundwater (from 4 meters to 8 meters) in Delhi were complained in this case and appropriate remedy was sought.

Government Policies and Programme to Protect Rights of Water

1. Center policies

1.1 The Government of India Act 1935:

Water law in the post-colonial period is shaped by the legacy of colonial times, constitutional and federal developments, specific rules on surface and groundwater irrigation, human rights, social and environmental issues, issue about dams, and questions of water cooperation with neighboring countries.

Since independence in 1947, most states have regulated territorial water bodies, embankments, drinking water supply, irrigation, floods, water conservation, water pollution, rehabilitation of the

10. AIR 1991 SC 420.

11. Narmada Bachao Andolan vs. Union of India, Writ Petition (Civil) No. 319 of 1994, Supreme

12. Court of India, Judgment of 18 October 2000, AIR 2000 SC 3751.

13. AIR 1990 Ker 321

14. Para 6, AIR 1997 MP 191

displaced, fisheries, and ferries while significant novel aspects were introduced, the evolution from colonial water law the basic was slow.

1.2 The National Environmental Policy, 2006¹⁵

Stated that India's freshwater resources comprise the single most important class of natural endowments enabling its economy and its human settlement patterns the freshwater resources comprise the river systems, groundwater, and wetlands. Each of these has a unique role, and characteristic linkages to other environmental entities.

1.3 National and State Water Policies

The national and state policies are based on similar principles: water as a natural or economic resource that can be harnessed to foster the productive capacity of the economy, from irrigation water for agricultural production to water for hydropower; and drinking water, irrigation, hydropower, ecology, agro-industries and non-agricultural industries, navigation and other uses.

1.4 National Water Policy, 1987

The National Water Policy (NWP) was adopted by the National Water Resources Council during its 2nd meeting held on 9th September 1987. This policy guided the formulation of policies and programmes for water resources development and its management.

1.6 National Water Policy (2012)¹⁶

The objective of the National Water Policy is to take cognizance of the existing situation and to propose a framework for creation of an overarching System of laws and institutions and for a plan of action with a unified national perspective. The present scenario of water resources and their management in India has given rise to several concerns, important amongst them are;

1. Large parts of India have already become water stressed. Rapid growth in demand for water due to population growth, urbanization and changing lifestyle pose serious challenges to water security.

2. Access to safe drinking water still continues to be a problem in some areas. Skewed availability of water between different regions and different people in the same regions is iniquitous and has the potential of causing social unrest.
3. Groundwater, though part of hydrological cycle and a community resource, is still perceived as an individual property and is exploited inequitably and without any consideration to its sustainability leading to its over-exploitation in several areas.

Water Sector Reforms in India

1. The River-Linking Project

1.2. Rajiv Gandhi National Drinking Water Mission:

1.3. Swajaldhara Yojana, 2002

2. State Policies

2.1. Uttar Pradesh State Water Policy 1999¹⁷

Water is a prime natural resource, a basic human need and a precious asset. Planning and development of water resources of the state need to be governed by the development perceptions of the state. Water for drinking and domestic use has the highest priority while allocating the water resource of the state. The state has to provide adequate drinking water facilities (both for people and livestock) to the entire population in both urban and rural areas up to the year 2025.

2.2. The Uttar Pradesh Nagar Mahapalika Adhiniyam, 1959

The Municipal Corporation has been an appropriate institution at the local level to take steps to control the water pollution until the Pollution Control Boards were established. The municipal corporation can initiate criminal proceeding against the persons committing violation of the provisions of the Municipality act.

2.3 The U.P. Water Supply and Sewage Act, 1975

The U.P. Water Supply and Sewerage Act, 1975

15. www.envfor.nic.in visited on 05.04.2013

16. [min.nic.in/policy/NWP 2012 PDF](http://min.nic.in/policy/NWP%202012%20PDF) visited on 05-04-2013

17. available at www.ielrc.org/content/e9904.pdf 3-04-2013

contains certain provisions which are relevant and directly connected with the problems of water pollution in the cities. For this purpose the state government, under section 3 shall constitute a corporation by name of U.P. Jal Nigam.

The legislation imposing duties, laying down functions and powers of the Municipal authorities regarding the water pollution problem arising out of the citizens refuse are seemingly sufficient and can be appreciated as the only legislation containing provisions specifically designed to check the water pollution.

Conclusion

People all over the world have a human Right to water as the most fundamental prerequisites for living a life in dignity Without it the realization of other human rights is impossible. Since water resources are limited and unevenly distributed a clear responsibility rests on all states and other public or private non-state actors to secure access to safe, secure, affordable and acceptable, drinking and fresh water resources for all.

Several national constitutional mandates protect the right to water or provide a general responsibility of

the state to ensure access to safe drinking water and sanitation for all. Even the judiciary have also adjudicated several cases related to the enjoyment of the right to water, pollution free and clean environment that protect human rights of citizens. Without clean and portable water other rights such as - right to health, Right to food, right to work, right to life, and right to development cannot be accomplished.

At present, environmental challenges of industrialization, urbanization, climate change and increasing population counter of ecological balance and create have posed major problem of water crisis in the world.

To conclude , it could be suggested that the state shall take active steps to ensure that everyone can enjoy the right to water. It is the political obligations of the state to facilitate, promote and provide conducive to arrangement to enjoy the right to water in substantive manner. Most importantly there is utmost need to have appropriate educational awareness program for people in concerning the hygienic use of water, protection of water sources and methods to minimize water wastage.



Humming bird drinking water

"The value of something is before you get it... after you have lost it.."