

# Right to Water: in Indian Legal Perspective

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## Abstract

Water is essential for existence of human being; most of the civilizations of world had been developed nearby river. Importance of water can be judge where denial of water would imply denial of existence of right to life. Right to water is not clearly mentioned under Constitution of India, but it is the right interpreted by Supreme Court of India in different landmark judgments, as in the judgment of Subash Kumar vs. State of Bihar the Supreme Court of India has guaranteed right to water as a fundamental right, a inherent right under Article 21 of the Constitution Right to life. The importance of water may be judge by famous poet Rahim Das "Rahiman Pani rakhiye, bin Pani sab soon. Pani gaye a ubarahi Moti, Manus Choon". The Government required implementing the effective provisions for availability of safe water for all.

**Keywords:** Right to water, Water as fundamental Right, Right to life & Right to Water.

## Introduction

In the last hundred years, India has witnessed a major setback, in making a civil society, where all people enjoyed the benefit of their resources equally and used them productively. Among all natural resources, one which is the most vital for life is water. Indian state has absolute right over all natural water of India. A state having absolute power over the life of other is totalitarian state, not a democratic, but economically and especially from the point of view of the most vital resource for life namely is water.(1). Right to water has been recognised by Supreme Court of India as a fundamental inherent right under Article 21 of the Constitution under Right to Life. Right to life has been expanded its significance over the last three decades by Supreme Court of India through its landmark judgement and included the right to water as fundamental Right.

## Concept and importance of right to water

Water is necessary for survival and existence of human being; most of the civilizations of world had been developed near by the river bank, where drinking water was easily available for human beings and for their pets. Importance of water can be judge where denial of water would imply denial of existence of right to life. Right to water is not clearly mentioned under Constitution of India, but it is the right interpreted by Supreme Court of India in different landmark judgements. In the judgement of Subash Kumar vs. State of Bihar (2), not only national level but internationally United Nations Organization observes 22 March of every year as world water day. The theme for United Nations 2020 is "Water and climate Change". Due to supporting the importance of right to water United Nations Organization has passed water conference in 1977 as under "All people, whatever their stage of development and their social and economic condition, have right to access to drinking water in quantum and of a quality equal to their basic needs" (3).

## Objective of the study

The human right to water entitles to sufficient safe acceptable, accessible and affordable water for person and domestic use. An adequate amount of water is necessary to prevent death from dehydration, to reduce of water related diseases and to provide for consumption, cooking personal and domestic hygienic requirements. The right to food certainly includes the right to water, it is contended that right to life does not include "right to livelihood", the right to an adequate means of livelihood enshrines in Article 39 (a) (4), which lays down that the citizens, men women have the right to adequate means of livelihood is certainly part of right to food, and right to food includes right to water as inalienable right for existence of human

being. Supreme Court of India and several High Courts has upheld that right to have a clean drinking water is fundamental right as per Article 21 Right to Life (5). The analysis leads us that "right to water", "right to food" and "right to health" must be treated as basic fundamental human rights, even it has not been expressly mentioned in the Constitution of India, but many International Conventions and declaration has mentioned these rights are basic and inalienable rights must be guaranteed for all people of all nations.

#### **Review of literature**

The research paper of Mamta Kyatannanavar & Dr M.S.Benjamin on "A legal Regime of Water Law an Overview" (6), has been studied where both authors have elaborated the national and international provisions for water and commissions setup in India for protection of water. Research paper of Dr. Mamta Kyatannanavar "National and International framework on water law" (7), has studied and find out the international policy on water law, International Conventions which guaranteed this basic right for existence of the life of all the people of world wide. Further author has right to livelihood in India under article 39 (a), which lays down that the citizens, men and women, equally have right to an adequate means of livelihood" this Article imposed duty on state government to guaranteed and available the "right to food" "and right to water" as part guaranteed under Right to life. The paper of Dr. Ravi Kumar "Right to food in India, whether a protection under fundamental Rights"(8) where author has find out that right to food incorporates the right to food, and right to water. A research paper of Dr.V.S, Mishra "National water policy and need for a national legislation on water in Indian Scenario was studied during the research (9).

#### **Constitutional provision for right to water**

Constitution of India has not expressly guaranteed right to water as fundamental right but there are many Articles in Constitution which makes duty of appropriate Government to make policies to protect the of right to water and food.

Article 15 lays down "prohibition of discrimination on the ground of religion, race, caste, sex or place of birth or any of them"

Article 15 (2) no citizen shall on ground only of religion, race, caste,, sex, place of birth, or any of them be subjected to any disability, liability restriction or condition with regard to-

1. Access to shop, public restaurants, hotels and places of public entertainment.
2. The use of wells, tanks, bathing Ghats, roads and places of public resort maintained wholly or partly out of state fund or dedicated to use the general public.

Article 21 "Protection of life and personal liberty" no person shall be deprived from his life and personal liberty except according to procedure established by law

Article 47- "Duty of state to raise the level of nutrition and standard of living and improve public health"

Article-246 "Notwithstanding to anything in clause (2) and clause (3) Parliament has exclusive

power to make laws with respect to any of the matter enumerated in list I (Union List) of Seventh Schedule of Constitution.

#### **View of Supreme Court of India on Right to Water Subash Kumar vs. State of Bihar (10)**

in this leading case petitioner filled a PIL claiming against two Iron and Steel companies, West Bokaro Collieries and Tata Iron and Steel, because alleged that it created health risk to public dumping waste from their factories into nearby Bokaro River. The petitioner also claimed that State Pollution Control Board has failed to take appropriate action for preventing the pollution. The judgement was delivered by Justice K.N.Singh and Justice N.D.Ojha, the opinion was that matter was related to personal interest of the petitioner and petition was dismissed. Further Supreme Court observed that Article 21 right to life has been increased by incorporating people's right to live with pollution free environment and everyone has right to full enjoyment of air and water inherent right under right to life. If anything endangers or impairs that quality of life in derogation of laws, a citizen has right to have recourse to Article 32 of the Constitution or removing the pollution of water or air which may be determinate to quality of life.

#### **Hamid Khan vs. State of Madhya Pradesh (11)**

A Public Interest Litigation was filled by Mr Hamid Khan a practicing lawyer in Mandala District, Madhya Pradesh, for the apathy of State Government, or rather a grass negligence on the State Government in not taking proper measures before supplying drinking water from hand pumps, which has resulted in colossal damage to the large number of people of Mandala District. The hand pump which has been sunk by state Government for supply of drinking water has excessive fluoridise. Therefore this cause has been brought by public spirited advocate before this court and notice were issued to the respondents.

Under Article 47 of Constitution of India, it is the responsibility of every state to raise the level of nutrition and the standard of living of its people and improvement of public health. It is incumbent on state to improve the health of the public by providing unpolluted drinking water; the state in present case has failed to discharge its primary responsibility. It is also covered by Article 21 Constitution of India, and it is the right of every person to have protection of his life and to have pollution free air and water. As has been held in Subash Kumar vs. State of Bihar honourable Supreme Court has held " right to life include right to live with properly and have the benefit of all the natural resources namely un polluted air and water".

#### **Vishala Kochi Kudivella Samarkshana Samiti vs. State of Kerala (12)**

These petition were filled in nature of PIL ventilating the grievances of people of the West Kochi who have been clamouring for supply of potable drinking water to them, for the last more than three decades. They have approached this court as last resort, their lamentation before the power that be having fallen on deaf ear. Water is one of the primary needs of man, second only to air, water is basic need of life, any Government whether proletarian or

bourgeois and certainly a welfare state committed to cause of common man to provide drinking water to the public, which should be the foremost duty of the State Government. We have no hesitation to hold that failure of the state to provide safe drinking water to citizens in adequate quantities would amount to a violation of fundamental right to life enshrined in Article 21 of the Constitution of India and would be a violation of human rights. Therefore every government which has it priorities right should give foremost importance to providing safe drinking water even at the cost of development programmes. Nothing shall stand on its way whether it is lack of funds or other infrastructure.

#### **Vellore Citizens Welfare Forum vs. Union of India (13)**

This was the landmark decision of Supreme Court of India which dealt with compensation to the victim of water pollution caused by tanneries. The Supreme Court pronounced the principle of "Polluter Pays" as an integral part of domestic environmental law, with the fundamental right to life in Indian Constitutional law, imposing the duty of government to prevent and control pollution the Supreme Court held that Constitution and statutory provisions protects a person's right to fresh air, clean water and pollution free environment, but the source of the right is inalienable common law right.

#### **M.C. Mehta vs. Kamal Nath (14)**

Supreme Court declared that our legal based on English Common law includes the public trust doctrine as part of its jurisprudence. The state is the trustee of all natural resources which are by meant of public use and enjoyment, the public at large is beneficiary of seashore, running waters, air, forest and ecologically fragile lands. The State as trustee is under a legal duty to protect the natural resources. These resources meant for public use cannot convert into private ownership.

A.P. Pollution Control Board vs. Prof. M.V. Nayadu & Others 1999 (15)

The court held that right to access to drinking water is fundamental right to life and that the state has duty under Article 21 to provide clean drinking water to its citizen.

#### **M.C. Mehta vs. Union of India (16)**

Supreme Court of India recognised that groundwater is a public asset, and that citizen have right to use of air, and earth as protected under Article 21 of the Constitution

#### **Narmada Bachao Andolan (17)**

The fundamental right to water has evolved in India not by legislative action but through judicial interpretation, Indian Supreme Court decision guaranteed such right implied in Article 21 the right to life .Uploading the Indian government's decision over 3000 dams to construct on the river Narmada. The Supreme Court of India stated that "water is basic need for the survival of human beings and is part of right to life and human rights as enshrined in Article 21 of the Constitution of India". Supreme Court of India has clearly mentioned connection between public access to natural resources, including water, healthy environment and right to life under Article 21

of the Constitution. The Supreme Court of India has imposed duty on state Governments not to pollute the water sources and coastlines, and restitution of soil and ground water. The court had also applied the "Pecuniary Principles" to prevent the water pollution from the industrial pollutants.

#### **Human Right to water and Sanitation**

The Human Rights to water and Sanitation (HRWAS) have been recognised by General Assembly of United Nations on July 28, 2010. The HRAWS has recognised right to water and sanitation through various international treaties for protection of human right to water. The HRWAS included the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) 1979, and Convention on Rights of Child and UN Human Council 2010, acknowledged right to water and sanitation as basic right of human beings.

#### **Inter-state water conflicts**

Constitution of India under Articles 262 lays down that Parliament may by law provide for the adjudication of any dispute or complaint with respect to use of water , water distribution, or control of water in any inter-state river or valley. Pursuant to the power conferred by such Article 262 of the Constitution Parliament enacted the Inter- state water Dispute Act 1956(18), to provide the adjudication of disputes relating to water of inter- state river and valleys. The Central Government had constituted a Water Dispute Tribunal for adjudication of water dispute on receiving of request by state parties. The parliament has enacted the River Board Act 1956 under entry 56 of Union List of Seventh Schedule, which provides for establishment of inter- State river and river valleys. Under this Act on a request received from the state Government or otherwise, the Central Government may establish a Board for "advising the Government interested". In relation to such matter concerning the regulation or development of an interstate river or river valley as may be notified by Central Government, different Boards may be establish for different inter- State river or river valleys dispute. This Board constituted with a Chairman and such other member as Central Government thinks fit to appoint.

#### **Recommendations of Sarkaria Commission**

Central Government appointed the Sarkaria Commission to look into the issues relating to inter-state water disputes among other terms of reference; it is gratifying to note that the Inter-state water dispute Act 1956 has been amended in 2002 incorporating the recommendations of Sarkaria Commission. This Act has amended to make sure that the Tribunal shall investigate the matters referred to it and forward to the central government a report setting out the facts as founded by it and giving its decision on the matter referred to it within a period of three years, provided that if the decision cannot be given for un voidable reasons within a period of three years, the central Government may extend the period for a further period not exceeding two years. Apart from this a new Section 9A has been inserted in the section on maintenance of data bank and information. The Central Government is now required to maintain a data bank system at national level for each river basin

which shall include data regarding water resources, land, agriculture, and matters relating thereto, as it may prescribe from time to time. The State Government shall apply the data to central Government or to an agency appointed by Central Government for the purpose as and when required. The Central Government has power to verify the data supplied by the state Government.

#### **Conclusion & Suggestion**

For being a welfare state India has naturally tried to implement most of the international treaty and obligations which are required to be full fill by the members of United Nations Organisations on right to water. Supreme Court of India has guaranteed right to water as a fundamental right under Article 21 of the Constitution. Inter - State water dispute tribunals established under constitutionally or under Act for adjudication of water disputes for river or river valley are required to work with proper responsibility. The draught can swallow the life of peasant, cattle and human beings. In the light of all observations it may be concluded with the remarkable stanza of famous poet Rahim Das "Rahiman Pani rakhiye, bin Pani sab soon. Pani gaye na ubarahi Moti, Manus Choon" these above lines explains the importance of water, without water existence of human being came in danger. Government required implementing the effective provisions for availability of safe water for human beings.

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