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RIGHT TO SAFE DRINKING WATER -CONSTITUTIONAL PERSPECTIVE

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ABSTRACT

“The test of our progress is not whether we add more to the abundance of those who have much; it is whether we provide enough for those who have little” Franklin Delano Roosevelt.

‘Water is the essence of life, and safe drinking water is the indispensable necessity of human health’. The increasing number of population is the biggest threat to its existence and availability for our future generation. Our entire bio spare is dependent upon water so the wise use of this valuable natural resource is much essential. In this context the ever depleting water resource, the protection as well as consumption of clean and potable water to the human beings and other creatures is the biggest challenge. Right to clean drinking water is an implied right which has not been recognized clearly but our courts have given due extension of Article 21 which signifies Right to Life includes, right to health, right to clean environment and right to safe drinking water. In addition State being the protector of life possess certain obligations to give access of clean water and free from all contamination which is enshrined under Millennium Development Goals. Since Right to Life is fundamental human right which is extended to right to clean environment and right to health. Thus right of safe drinking water is part of above mentioned rights without which proper health and wellness cannot be ensured¹. Hence this research paper elucidates how far safe drinking water as fundamental rights has been articulated by Indian courts within the rubric of Article 21 of the Indian Constitution.

KEYWORDS

Drinking water, Constitutional perspective and Policies.

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INTRODUCTION

India is a peninsular which means it is covered by three portions of water and one portions of land. Water scarcity is biggest problem for the obvious reason that water existing in our country is neither used properly nor there is effective management for use of water. It is ironical that water has become commodity for sale.

The importance of water can be traced from the fact that most important civilization flourished on the banks of rivers and sea coasts. It was the realization of the dawn of civilized life that water is essential for all the needs. From the glorious history of civilizations it can be understood that water was considered as one of the five primary elements or roots from which all materials of the world are constructed. As far as old texts are concerned the purity of water has always been emphasized from time immemorial. In Rigveda, Atharvaveda it was found that many verses praise the lord Varuna and lord Indra, In yajurveda water was regarded as sources of life. Thus in vedic period it was considered as sacred and Manusmriti says "Water is creator and sources of life on earth". Therefore it was duty of every individual to keep water pure, destruction of water was recognized as an offence² despite with glorious history of water the state has done little to enforce judicial decision or initiated domestic legislations to bring it into conformity with India's laws. Not with standing constitutional mandates the millions of Indian in particular women and children do not have adequate access to water. According to the World Water Development Report 2003 in terms of quality of water availability India stands 120th among 122 countries. 17% of India's population does not have access to potable water.

In ordinary sense the SAFE DRINKING WATER means 'The water which does not adversely affect the health of living beings in society. The water is presumed to be a safe drinking though it contains few contaminations, which does not cause any kind of harm to man' in. Water is most important component for all living beings therefore the states have taken caution through their power of regulations and policy formulation for preserving the health of human beings through supply of safe drinking water. While in India over the years per capita availability of water has fallen drastically³. Thus the water availability and accessibility of safe drinking water for all is becoming a mere slogan and distant dream both constitutionally and statutorily in India.

RIGHT OF SAFE, DRINKING WATER UNDER CONSTITUTION OF INDIA

Rights are tool for social transformation; but this has become dubious notion today. On one hand it is argued that law protects the interest of few groups of society through its design, those few groups which have been controlling on others, it is further argued that if we comprise needs of human beings within the ambit of human rights framework than it meets the interest of very few. But most of the time from the logical point of view these arguments are unacceptable and averred wrong. The philosopher who recommends for the implementation of such approach at grass root level such kind of approach improves the situation of under privileged and empowers the same. It will defiantly secure their freedom. Therefore by considering the above aspects universal acceptance of equality and dignity of human being can be given a vast interpretation for making the claims of basic needs.

Water being vital resources calls for effective and accountable management. Since our constitution mandates a federal form of governance, water management became an important concern. Water is panacea for life, not only of human beings but also of all living organisms that require it in pure, safe and free from any type of contamination. The constitution marks off the sphere of action of each level of government by devising an elaborate scheme of distribution of legislative; administrative and financial power between the central and state⁴ the constitution makes water as state subject in express terms while in respect of interstate water dispute are dealt by the union. The general policies and principles for management of natural resources including water are incorporated in part III and part IV.

Right to water and right to life

A detailed review of many international treaties, conventions and agreements considers water to be fundamental resources, the right to food, right of healthy environment, human health and development cannot be attained or guaranteed without granting the right to access of safe drinking water. In recent years more manifest enunciation of the view supporting right to water has been made by resolution of United

Nation Organization passed during the United Nation Water Conference “all the people whatsoever their stage of development and social and economic conditions, have the right to have access to safe drinking water in quantum and of the quality to the basic needs”.

Under Indian constitution right to safe drinking water is drawn from right to clean environment, right to food and right to health all of which have been protected under right to life guaranteed by art21. The Supreme Court referred to the *Narmada Bachao Andolan v. Union of India*⁵ where 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 the 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. “In *M.V. Nayudu* case the Court did mention that all citizens had the fundamental right to have access to safe drinking water, but did not take the issue forward in order to explore whether that included the positive obligation of the state to provide clean drinking water to all citizens. Thus, one can see that the right to clean drinking water although not articulated as a separate right has been considered as an integral part of the right to clean environment and right to life. While the right to safe drinking water has been accepted by the Court to be a fundamental right under Article 21 it has only been articulated as part of the guarantee of the right to environment.

So what does the right to water specifically mean? Would it mean providing safe water to all those who need it, or would it mean something more? The Right to access to water can be seen to place *three* inter related but distinct obligations on the state.

It must ensure that all people have physical access to water. It means that facilities that give access to water must be within safe physical reach of all sections of the population, especially the vulnerable and marginalized sections.

It must ensure that all people have economic access to water. This implies that the cost of accessing water should be at a level that would ensure that all people are able to gain access to water without having to forgo access to other basic needs.

Where water is provided, i.e. the right is guaranteed, they should be protected against undue infringement⁶ Life is worth living only when a person has access to basic necessities of life. Central and State Governments have adopted various measures for the preservation and management of water and water related resources, but it has been found to be inadequate mainly because of the lacunae in laws and failure of proper implementation of laws. It is desirable to plug off loopholes for misuse of welfare funds and make adequate funds available so that basic necessities of life are made available to people⁷. The Constitution Review Committee recommended the inclusion of Right to Safe Drinking Water under Article 30D29. Article 30D of the Constitution give importance to right to safe drinking water, prevention of pollution, conservation of ecology and sustainable development. Every person shall have the right.

To safe drinking water.

To an environment that is not harmful to one’s health and wellbeing.

To have the environment protected, for the benefits of present and future generations so as to –

To prevent pollution and ecological degradation, to promote conservation

To secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development. The Ninth Plan (1997-2002) prepared by the Planning Commission of India is understood to have specifically designed to keep in view the goals of Agenda 21 as well as the Rio principles as integral parts of the development process. The main objectives of the Ninth Plan include:

Ensuring environmental sustainability of the development process through social mobilization as a participation of people at all levels.

Providing the basic services of safe drinking water, primary health care facilities, universal primary education and connectivity to all in a time bounded manner.

Ensuring food and nutritional security to all, particularly the vulnerable sections.

Taking into effect the this principles, judiciary stretched its arm to include the basic right to water as

part of Article 21. Potable water is a bare necessity without which life cannot sustain and this has rendered right to water as a basic human right.

At the same time Art 39 (b) of Directive Principle of State Policy relate to distribution of ownership and control of material resources, it recognizes the principles of equal access to the material resources of community. The term material resources has been given broad connotation by supreme court, which covers both natural and physical resources⁸. Part IV of the Indian constitution imposes duty on the state to equitably distribute the resources ensuring ecological improvements and preservation. To this effect the constitution imposes duty on citizens also for the protection and improvement of natural resources. Since water is basic human need in that context fundamental right to life gets greater significance for the optimum availability of water for all. Water appears both in the Union list and the State list. The role given to the Parliament in regard to the interstate river and river valleys is potentially an important one and this is reinforced by the use of the provisions of the Entry 20 in the Concurrent list namely, “Economic and medium irrigation projects, hydropower, flood control and multipurpose projects require the clearance from the Parliament. This has been questioned by some of the states, but the clearance requirement remains and there is of course the requirement of central clearance under the Forest Conservation Act and Environment Protection Act.

Article 40 of the Indian Constitution casts a duty on the States to take steps to organize village panchayats and endow them with such powers as may be necessary to enable them to function as units of self-government. However, current panchayat legislation as well as irrigation and forestry legislation continues to dilute the power of the panchayats by placing actual control over resources like water and forestry with different government departments. Though panchayats have de jure rights and duties for management of common property resources within their jurisdiction their rights are not backed by the corresponding power and autonomy in the resource use and investment decisions

SUGGESTIONS

We need integrated legal framework specially for surface and ground water

Decentralized water infrastructure development should be encouraged

Creating awareness and changing perception on water will definitely make behavioral change among the public.

The government and non government organizations should take initiation towards spreading awareness about rain water harvesting.

Transparency and accountability at government level is need of the hour.

Legal settings regarding water pollution lacks deterrent values therefore the water laws should be relooked.

Therefore regarding right to safe drinking water the constitution must be upheld and the explanation of the different dimensions of Art 21 is ongoing process and new horizons of Art 21 are coming up from case to case, government should also take effective steps for the accessibility of water. There is famous proverb which says “Jal Hai Tho Kal Hai” i.e for the survival of future generation water is very essential therefore every individual shall take step to conserve and protect our environment and water.

CONCLUSION

In India the right has been protected under the umbrella of article 21 through the constitution of India. Whether this right has been provided at ground level or not is biggest question before us. Water being one of the most important natural resources is depleting very rapidly. Still it is the most mismanaged natural resource because of this reason water was recognized as right. Every individual is entitled to get sufficient, safe, accessible and affordable water for personal and domestic uses. Though this right has not been given explicitly but it is implied constitutional protection.

It is evident that special legislations has been enacted by the legislature for checking the pollution of water, The Water (Prevention and Control of Pollution) Act 1974 contains the special penal provisions for polluting areas of industries. There are various cases where court took serious cognizance of the industries

which are flowing the toxic effluents and dirty water to the rivers and streams. At the same time judiciary has imposed obligation upon the state regarding availability and accessibility of safe drinking water. Despite of having all these legislations water infrastructure is not robust. Therefore steady solutions to the problem of safe drinking water can be attained by continuous monitoring and relentless up gradation of programmes and policies.

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CONFLICT OF INTEREST

We declare that we have no conflict of interest.

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