



FUNDAMENTAL RIGHT TO CLEAN AND SAFE DRINKING IN INDIA: LEGAL PROVISIONS AND JUDICIAL INTERPRETATIONS

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Abstract

Water is invaluable gift for life on the earth, like air, soil etc. Without it the life is unimaginable. Our water resources are unhappily polluted and has become a great problem these days in terms of scarce availability and degraded quality of available water all over the world. In India, water pollution is at alarming stage in its implication for the health and wellbeing of public at large and public is paying for it in all the terms. Many of reasons have been found behind this problem, such as vast increase in population, number of industries, etc. and the situation becomes more typical, when the issue of economic development is being followed in unsustainable way. Taking into consideration the enormity of the problem, legal measures have been taken in India. The Water (Prevention and Control of Pollution) Act, 1974 is an important legal and administrative measure to control the problem. The Constitution of India is having an important right under Article 21, where through judicial interpretation the Court declared that the right to clean and safe drinking water is a fundamental right. In view of the above this paper endeavors to sketch the role of legislature in context to protect fundamental right clean and safe drinking water in India. To achieve enshrined objectives, this paper adopts the analytical approach of research. Relevant data has been collected from secondary sources of research along with internet resources.

Keywords: Fundamental Rights, Legal Mechanism, Water Pollution, Judicial Interpretation,



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Introduction

The progress of mankind has an obligatory correlation with the availability, utility and management of water resources. Water is required for all purposes like industrial, agricultural and domestic use. None of the above can runs without fresh water. Apart from the existence of life and maintaining the equilibrium of the eco system, water resource management is essential for all the sectors e.g.; agricultural production for its indispensability in irrigation, power generation, fisheries and other livelihood activities.¹ The management and protection of

¹ S. Kumar, Santha. *Introduction to Environmental Law*, 2nd Edn, 56. Nagpur: Lexis Nexis Butter Worths Wadhwa, 2010.

national water resources have reached at a crucial stage with the high speed of development started from 20th century. In the last several decades, it has become obvious to many that traditional water laws and policies are not up to the level to meet the challenges of the 21st century. New threats to the world's resources face water managers and policymakers with special reference to efforts legal fraternity. These threats include increasing surface and groundwater contamination from pollutants, global climatic changes that are already beginning to affect water supply and demand, resurgent water-related diseases, and the destruction and degradation of freshwater ecosystems.

India is having major issues with water pollution, predominately due to untreated sewerage. The extent of water pollution here is too obvious from the fact that all the 14 major rivers are highly polluted.² Rivers such as the Ganges, the Yamuna and Mithi Rivers, all flowing through highly populated areas, thus polluted.³ The rapid pace of industrialization and increasing population has brought in a host of environmental problems in India. Problem of water pollution is not only in international or national level problem but also a problem of local areas. Firstly, problem starts from local areas and then reached to National level and International level and it has also become a crucial question before us. At present developing countries have to take preventive measures for the control of water pollution otherwise they will have to face major problems by neglecting them.⁴ Very first the problem starts with access and adequate quantity of water, as on some areas families have to walk for a long distance to collect the safe drinking water. About 800 million people do not have access to clean drinking water.⁵ The second issue is about the quality of water. Polluted water undergoes physical, chemical or biological changes and thus these changes make it unfit for use. Contaminated water weakens the natural ecosystems, which leads to weaken support the human health, food production and biodiversity as well. Water-borne diseases kill millions people, particularly those under the age of five, world-wide every year. Statics show that near about 2.2 million children dies every year because of drinking of polluted water.⁶ Some of the effects of water pollution are blood diseases, problem with nervous system, and heart diseases. Some pollutant in water can also cause cancer.⁷ Livelihoods such as agriculture, fishing and animal husbandry are easily affected

² Kailash Thakur. *Environmental Protection Law and Policy in India*, 40. Deep & Deep Publication Pvt. Ltd. New Delhi.

³ Water Pollution in India, available at http://en.wikipedia.org/wiki/Environmental_issues_in_India#cite_note-ashoka-3, accessed on, 25 Jun. 2014.

⁴ Parmajit Jaswal and Nishtha Jaswal. *Environmental Law*, 219. Allahabad Law Agency, New Delhi, 2015.

⁵ Ibid.

⁶ Ibid.

⁷ Water Pollution, available at <http://wiki.answer.com>, accessed on 13 Nov. 2013.

by poor water quality. Biodiversity, especially of fresh water ecosystems is under threat due to water pollution.⁸

Keeping in view the increasing level of the water pollutions day by day, law and policymaker have enacted number of laws and policies to control the problem of water pollution for benefit of state or its citizens, pre and post-independence period. These include laws on embankments, drinking water supply, irrigation, floods, water conservation, river water pollution, rehabilitation of evacuees and displaced persons, fisheries and ferries.⁹ A brief discussion of Pre-independence and Post-independence are as follows:

Water Pollution Prevention and Control Measures during Pre-Independence Era in India

Common Law Remedies

Common law remedies are various types of remedies available under law of torts to provide justice. Tort is civil wrong and tortious action results in damage to property, person or reputation of another person and the affected party can claim damages or injunction or both.¹⁰ Nuisance, trespass, negligence and strict liability are the important tortious liabilities for environmental pollution issues and under Article 372 of the Constitution of India these are to be in force.

Legislative Measures during Pre-Independence

Before Independence number of Act's were passed by the lawmaker for the protection of the water. The Acts like the Shore Nuisance (Bombay and Colaba) Act, 1853, the Oriental Gas Company Act, 1857 and the Sarais Act, 1867 were the earliest statutes on control of water pollution in India. Some of the provisions of the Indian Penal Code 1860 (Section 277, 269 and 290) refer a systematic approach to water pollution control. The Northern Indian Canal and Drainage Act, 1873, provides that if any person interference or tries to alteration in the flow of water, of river, stream, or tries to endanger, damages it, will be punishable under this Act. Some of the provision of the Obstruction in Fair Ways Act, 1881 empowers the Central Government to suitable rules and laws to protect the fairways, and punish the person who tries to through rubbish thinks in the port. The Easement Act, 1882, "The right of every owner of land, that within his own limits, the water which naturally passes or percolates by, over through his land shall not, before so passing or percolating, be unreasonably polluted by other

⁸ Available at http://saiindia.gov.in/english/home/Our_Products/Noddy/Union/Report_21_12.pdf, accessed in 15 Jun. 2014.

⁹ Cullet Philippe, *Water Law in India Overview of Existing Framework and Proposed Reforms*, available at, <http://www.ielrc.org/content/w0701.pdf>, accessed on 3 Jul. 2014.

¹⁰ Parmajit Jaswal and Nishtha Jaswal. *Environmental Law*, 21. Allahabad Law Agency, New Delhi, 2015.

persons.”¹¹ Indian Fisheries Act, 1897, Under this Act, if any person puts poison, lime, noxious or any type of poisoning things into water to destroy, catch the fish, he will be liable for punishment with imprisonment which may be extent to two months, or with fine which may be two hundred rupees.¹² The Indian Ports Act, 1908 gives power to the government to make the laws to “regulating the manner in which oil or water mixed with oil shall be discharged in any such port and for the disposal of the same.” The Indian Forest Act, 1927, which was based on provisions of the Indian Forest Act, 1878 basically was to preserve the forest area and forest goods, natural resources, and animals’ and also to control water in forest area. This Act was also empower to State Government to make the rules and laws to control water and punish the person who tries to destroy water in forest area.¹³ The Indian Ports Act, 1908 provides for the provision to regulate water pollution by oil. Along with the above statutory control of water pollution, various rules and regulations were also enacted by several state and municipal corporations to regulate domestic, municipal or industrial discharge into water, a common problem with all these that there was not any administrative mechanism in respective measure. Therefore, all these were treated mere a written law and very few cases can be seen as taking actions to curb the problem.

Legislative measures during Post-Independence

Though there were some scattered provisions to control the water pollution at the time of independence in India but country was in dire need for a specific framework to regulate water pollution. Legal framework on water pollution was characterized by coexistence of a number of different principles, rules, policies etc. came over many decades. All of these were not appropriate to fill the gap that was coming with the high speed of development. Thereafter, in early years of independence, the concerns for water protection were reflected in the national planning process.¹⁴ Though, from first to eight five year plans were basically on industrialization, energy, transport, national income, population control, nutrition etc. and not directly to the fulfill the basic requirements of life like healthy and safe drinking water, environment and air. This has become the important feature of ninth five year plan (1997-2002), where the main focus was on the development in context to the basic dimensions of life i.e. quality of life, generation of productive employment, regional balance and self-reliance and it has included the word quality of life including the right of clean and healthy environment.

¹¹Sengar S. Dharmendra. *Environmental Law*, 151. New Delhi: PHI Learning Private Limited, 2012.

¹²Ibid.

¹³Ibid.

¹⁴Thakur, Kailash, *Environmental Protection Law and Policy in India*, 112-118. Deep & Deep Publication PVT. LTD., 2013.

Further, tenth to current five year plans set for the objective to achieve sustainability of natural resources, access to clean and safe drinking water, cleaning of all major polluted rivers, set urban treatment plant in urban areas etc. and also to achieve the millennium sustainable development goals.

First National Policy on Water was adopted in 1987 and which was amended first in 2002 as to National Water Policy, 2002 and again in 2012 as to national Water Policy 2012. The main concentration of these policies was to treat water as economic goods and to support water sources and for their management and discharge of effluent policies.¹⁵

It may be noted that at the time of independence the existing statues had limited application with general provision for the control of water pollution, means there was the requirement of specific provision and with administrative mechanism. Therefore the era of special laws on water pollution began with the Mines Act, 1952 which has provided for the mandatory provisions for arrangement of quality of water for drinking purposes.¹⁶ The Orissa River Pollution Prevention Act, 1953 has given the idea to control river pollution as to treat the rivers lifeline and after that the Rivers Board Act, 1956 came into existence to protect the river water and rivers valleys and to empower the central government to make the laws, regulation for the development of rivers, valleys under respective states. In 1969, the Maharashtra Prevention of Water Pollution Act became the sources of recent legislation dealing with water pollution by covering wide area of applications and defining pollution in elaborative terms.

In 1972, the Stockholm conference on Human Environment was held in which India participated to take appropriate steps for the protection and improvement of human environment. During this period, it was considered that the time has come to take appropriate steps to form uniform laws all over country for broad environmental problems endangering to the life, health and safety of our people as well as flora and fauna on the earth. The Water (Prevention & Control of Pollution) Act, 1974 has become the first enactment by the Parliament in this direction with the objective of prevention & control of pollution in India. Water Act also aims to maintain or restore the wholesome nature. For this the Act is featured with the establishment of central and state pollution control Boards and vested with powers, so as to enable them to carry out the purposes of the Act. Subsequently, the Government has enacted the Water (Prevention and Control of Pollution) Rules, 1975; the Central Board for the Prevention and Control of Water Pollution (Procedure for Transaction of Business) Rules,

¹⁵Dellapenna, Joseph. W. & Gupta, Joyeeta. *The Evolution of the Law and Politics of Water* 56. Dordrecht: Springer Academic Publishers, 2009.

¹⁶Ibid.

1975; the Water (Prevention and Control of Pollution) Cess Act, 1997 and the Water (Prevention and Control of Pollution) Cess Rules, 1978. Thus, now Indian legal system is having a comprehensive scheme of administrative regulation of water pollution.

In 1986 the Environment (Protection) Act was enacted with the objective of providing for the protection and improvement of the environment. It empowers the Central Government to establish authorities [under section 3(3)] charged with the mandate of preventing environmental pollution in all its forms and to tackle specific environmental problems that are peculiar to different parts of the country.

In 2010 the National Green Tribunal Act was enacted with objective to establish the Green Tribunal for effective and speedy disposal of the cases relating to the environment protection and other natural resources. This is also to hear all the previous pending cases in various courts and to enforce all the legal rights relating to the environment and for providing compensation and relief to effected people for damage of property.

Evolution of Fundamental Right to Clean and Safe Drinking in India

Constitutional Provisions and Judicial Interpretations

In India, the Constitution does not recognize a fundamental right to water in direct way but taking note of World Conference and growing awareness on the issues, the Indian parliament passed the Forty Second Constitution Amendment Act, 1976 and inserted Article 48-A and 51-A (g) to protect and improve the environment as fundamental duty of the citizens and directives for state respectively.

The Supreme Court interpreted Article 21 in the case of *Subhash Kumar v. State of Bihar*¹⁷ that 'Right to life is a Fundamental Right under Art. 21 of the Constitution and it include the right to enjoyment of pollution free water and air for full enjoyment of life'. In *Narmada Bachao Andolan*,¹⁸ the Supreme Court has given the concern on the feature of right to water, as "Water is the basic need for the survival of the human beings and is part of right of life and human rights as preserved in Article 21 of the Constitution of India. In the *Sardar Sarovar*¹⁹ case, the Supreme Court went further and directly derived the right to water from Article 21 and stated 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'. While the recognition of a fundamental right to water by the courts is unequivocal, its implementation

¹⁷ AIR 1991 SC 420.

¹⁸ (1998) 5 SCC 586.

¹⁹(2000) 10 SCC 664.

through policies and Acts is not as advanced.²⁰ In *Attakoya Thangal v. Union of India*²¹ the Kerala High Court considered two issues one is on the question of over exploitation of ground water, and second is the justification for the Village Council's decision to revoke the license. In 2005, High Court granted permission for the company to extract 500,000 liters from the common ground water per day in the year 2005-2006 and also affirmed that the Village Council was not justified in cancelling Coca Cola's license to operate until a full scientific assessment had been made of the facts.²² In *M. C. Mehta v. Union of India*²³ the Supreme Court held that the water is a social asset and citizens have absolute right to the use of air, water and earth as protected under right to life under Article 21 of the Constitution. In *Vellore Citizens Welfare Forum v. Union of India*²⁴ case the stands out in as far as it is explicitly concerns to the right to water. The case is based on a PIL filed by the Vellore Citizens Welfare Forum. The Forum was concerned about the water pollution caused by more than 900 tanneries in the State of Tamil Nadu that were discharging untreated effluent in agricultural fields, waterways and open land. The effluent ended up in the River Palar which was the main source of water supply to the residents of the area. In this case the court focused on the sustainable development and ordered the government to implement the precautionary and polluter-pays principles and to ensure that the compensation reaches the individuals and families who have suffered from the pollution with the interlinkage of Article 21 of Indian Constitution.

Conclusion

On the basis of the above analysis it is apparent that the Judiciary has developed the concept of environmental jurisprudence to provide justice to the people and to ensure the implementation of fundamental right to life. Right to live in a healthy and pollution free environment including right to clean and safe drinking water is a fundamental right to life under Article 21. It also appears from the above discussion that the laws, regulations and policies are sufficient but the execution mechanism needs to be strengthen. For this, more number of sub agencies and personnel's are required with capacity building programs. The analysis also indicates that the rapid growth of population, urbanization process, industrialization etc. are the major factors responsible and continuous development mechanism to solve the problem. Continuous policy review is required along with a good monitoring system. To implement the right to clean and safe drinking water to the persons,

²⁰ Cullet Philippe, *Water Law in India Overview of Existing Framework and Proposed Reforms* available at, <http://www.ielrc.org/content/w0701.pdf>, accessed on 3 Jul. 2014.

²¹ 1990 (I) KLT 580.

²² Ibid.

²³ 2004 (12) SCC118.

²⁴ AIR 1996 15 2715.

there is need to setting-up a separate mechanism which can work as a subsidiary institution to ensure the access of safe and clean drinking water to all.

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