

RIGHT TO DRINKING WATER IN INDIA

Dr.MAMATA KYATANNANAVAR¹

INTRODUCTION:

It is a license that tempts them to be a member of a state. Ambition is obvious as state is the only politically organized society that has all legitimate mechanism through which all possible equalities can be manage, given & maintain. An ideal state is a state that has highest capacities to provide highest equality in existed situation. In the contemporary political system the challenge before state is to interpret the meaning of equality of life. Confusion is that right to equal status of life includes as Luxuries or basic needs, unfortunate is that needs becomes luxury if they are limited. So is with water. According to the United Nations Development Program (UNDP) water is the stuff of life and a basic human right. Acceptance seems easier than providing as water is recognized as a crises on world map.

Water is precious because it in the root of the circle of the life. That is the reason that a state as an ideal state expected to assured water democracy along with the political, economic and social democracy: which means that each and every individual as being the member of the universe has right to have water with all pure means. The right to equality in this respect is so vast that it includes not only the human beings but the animals and plants as well: as they equally need water for their survival.

Water is limited resource in India

Sustainable development demands for perfect arrangements of natural & man made resources. Unfortunately water even after being accepted as a fundamental part of ecosystem, is completely ignored in the process of development. Water is wasted & polluted to that extend that it leads water as a stress. Shivering fact is 780 million people lack access to clean water that crisis claim more lives through disease than any war claims through guns. (www.water.org). Basic confusion is that water is continuously changing its shape (liquid, icecaps and glaciers) that is the reason measuring water is not easy. Fresh available water on earth is only .77 (ground water, lakes, rivers etc) for 7.47 billion people (facts made available by the US Geological survey). Situation

¹ Assistant Professor in Law, Vidyodaya Law college, Tumkuru

is grimmer in India as in 1951 the average water availability in India was 3450 cubic meters per person per year, which reduced to 1545 cubic meters as per the 2011 census. Challenge is.... As water availability is not same in India, that affect the water supply. Test for India is that it has voted for the democratic setups where constitutional promises are made for equality: inherent a scheme where a political system assures for equal distribution of life resources like water. India as an organized democracy has faced many challenges; water is most recent recognized challenge. By 2050 demand for drinking water is going to increase by double in India. India needs to tackle it in a different way: in the name of caste water management, much injustice had happened with lower caste. Now need to be changed in more positive constitutional way through proper management.

Constitution & right to equal water in India

The Judicial approach to water rights regime in India clearly showcases the urge of the Supreme Court and various High Courts to shelter the right to water thereby providing basic amenities of life to poorest of poor. There are a number of judgments by virtue of which the Judiciary in India has expressed their concern from time to time. The following analysis of some cases will highlight the journey of Judiciary in making right to water a fundamental right hidden in Art.21 of the Indian Constitution.

Chameli Singh V. State of UP² A Bench of three Judges of Supreme Court had considered and held that the right to shelter is a fundamental right available to every citizen and it was read into Article 21 of the Constitution of India as encompassing within its ambit, the right to shelter to make the right to life more meaningful.

The Supreme Court in this case observed: ‘That right to live guaranteed in any civilised society implies the right to food, water, decent environment, education, medical care and shelter. These are basic human rights known to any civilised society. All civil, political, social and cultural rights enshrined in the Universal Declaration on Human Rights and Convention or under the Constitution of India cannot be exercised without these basis human rights’ .

² (1996) 2 SCC 549: AIR 1996 SC 1051

Gautam Uzir & Anr. V. Gauhati Municipal Corp³ This was a case related to scarcity of water in the city of Guwahati. It was argued that the Municipal Corporation is liable for supplying sufficient and quality drinking water to all living in their jurisdiction. The Municipal Corporation contended that effective policies could not be adopted due to paucity of funds. The court made clear that „Water, and clean water, is so essential for life. Needless to observe that it attracts the provisions of Article 21 of the Constitution⁴“.

S.K. Garg v. State of UP⁵ Similarly, complaint was made to ensure regular supply of water to the citizens of Allahabad, the High Court reiterated the fundamental right to drinking water. ⁵

Delhi Water Supply and Sewage Disposal Undertaking v. State of Haryana⁶ A water usage dispute arose because of the fact that the state of Haryana was using the Jamuna river for irrigation, while the residents of Delhi needed it for the purpose of drinking. It was reasoned that domestic use overrode the commercial use of water, the court ruled that the State of Haryana make available the water for consumption and domestic use in Delhi. In this case the Supreme Court observed: „Drinking is the most beneficial use of water and this need is so paramount that it cannot be made subservient to any other use of water, like irrigation so that right to use of water for domestic purpose would prevail over other needs’

Subhash Kumar v. State of Bihar⁷ This is also one of the notable cases, where a discharge of sludge from the washeries into the Bokaro River was petitioned against by way of public interest litigation. the Court found that the right to life, as protected by Article 21 of the Constitution of India included the right to enjoy pollution free water. Thus, the entire scope of water rights and laws in India has been widened and a positive approach has been adopted by the Indian judiciary thereby reflecting the international norms and standards.

Indian constitution under article 15 (2) states that no citizen shall be subjected to any subjected to any restriction with regard to “the use of wells, tanks and bathing ghats”. That was strengthened by the Supreme Court by a verdict (Narmada Bachao Andolan Vs Union of India (2000)) that

³ (1999 (3) GLT 110.

⁴ Upadhyay Videh, „Water Rights and the „New“ Water Laws in India: Emerging Issues and Concerns in a Rights Based Perspective“ available at last retrieved on 2-3-2021

⁵ (1999 ALL. L. J. 332.

⁶ (1996) 2 SCC 572: AIR 1996 SC 2992.

⁷ (1991) 1 SCC 598.

“water is the basic need for the survival of human beings & is part of right to life. For instance in *MC Mehta v Kamal Nath (1997)*, the Supreme Court declared that “the State is the trustee of all natural resources”; as a trustee, the State has “a legal duty to protect the natural resources,” and “these resources meant for public use cannot be converted into private ownership”. Article 39 (b) lays down that: ‘The State shall, in particular, direct its policy towards securing that the ownership and control of the material resources of the community are so distributed as best to subserve the common good.’ Article 51-A (g) says it is the fundamental duty of every citizen ‘to protect and improve the natural environment including forests, lakes, rivers...’

Hence, the government has the right as well as the *duty* to regulate use of groundwater in the interests of justice, equity and environmental protection. This duty was emphasised by a Supreme Court order that directed the Centre to constitute a groundwater authority. Accordingly, the Central Ground Water Authority was set up in 1986.

It has also been implicitly accepted since Independence that central and state governments have a primary responsibility for providing water for drinking, and, subsequently, for other purposes. Provisions for supplying drinking water have been made in all the Five-Year Plans, and the responsibility was made explicit in the Twenty-Point Programme drafted in 1975 and modified in 1982 and 1986.

Water is equal to all

Democracy means existence of rights; that are the privileges given to human beings by nature and state, for being human. Under the constitutional framework citizens enjoy right to life that means citizens must provide all those rights that are essential for the flourishing life. Significance of democracy in this respect is that right to life is given along with right to equality: that refers to equal right to life to all. It includes equal right to have food, clothes and shelter. Above right has hidden promise to have right on water: without it life can't be dream. The main obligation on the state as democratically organized unit is to make water available and computable to all. Only challenge is the possibility of equal arrangement as it is accepted and realized as limited. The problem is universal& it is taken as a challenge before humanity.

The breath taking fact is that there are more than 30 countries in the world which are facing water stress or water scarcity. Unbeatable argument in this respect is that political and social democracy is useless without water democracy. Obvious question is that how equality will be managed when there is already crises of the subject, which is water in present case. After liberalization answer for perfect management was tried to seen in market, Unfortunate in this respect is that combination of shortage of water and privatized water supplying arrangements has created more confusion. World seems divided in to the different believe blocks mainly after 2003 when there was a meeting of world water ministers in Kyoto. Group of the ministers were finding solutions of water crisis in the commercialization of water. In the sharp contrast to that social activist were opposing the idea of privatization and were demanding for water democracy. It is found by the empirical research that in the countries where privatization was or is in practiced that water privatization is creating new conflicts and has created new classes one which can have plenty of water and so can misuse it. And other is a class which has to walk for miles or stand in a queue for hours for even a small pot of water and that even is not peaceful. How can an individual as a member of society can feel treated equally with these arrangements. The crisis of water creates a new power maps eg. in Turkey water means power(Shiva Vandana *water wars*).

In democratic India, citizens are able to enjoy equal water rights not as a social community but as a political community, which is much wider as a concept. Indian governments seem failing in respect of all fair and equal arrangements. Management authority over water is understood under the light of Article 246 with entry 17, list 11 that gave especial status to the states: exclusive jurisdiction over water that are located within their territories. That gives automatic claim of state on water supply. It is a subject where less uniformity is found as supply is based on the availability: Which is highly uneven, sometimes due to less or irregular rain and many times because of mismanagement. Water supply Injustice is common in India: the longest duration of supply was 12 hours per day in Chandigarh and the lowest was 0.3 hours per day in Rajkot. Delhi residents receive water only a few hours per day because of inadequate management of the distribution system. Condition of poor can't even visualize as they have no proper government machinery for water supply a have no money to buy water at market cost. A study made by Asian Development Bank in 2007 finds that no city had continuous supply in India.

That indicates that situation of poor is universal in India. Because of inadequate management Indians as poor: forced to fight for every day not for agriculture or other commercial use but even for the domestic purposes which is just 9% of overall use {sources Earth Trends 2001, World Resources Institute} Indian constitution with the democratic setups has made institutional arrangements for the idea of justice, which combined with water justice. All available facts putting big question mark on water justice.

Conclusion:

Democracy is dynamic so it has inherent power to adjust itself with the demands of the society. Still one thing which is constantly present in it is a fair desire of justice for all: may be with new means. That includes all those possibilities that can sustain equally among unequal. The argument could be when we need justice & how and who will define it? Especially when there are as many perspectives about justice as many minds. The simplest answer could be when there is unbiased distribution of resources. Article necessitate more attention when it is life giving but is limited. In democracy justices includes all shades like social, political and economic justice. The right to pollution free water, right to have access to safe drinking water and the right to use the water are the very basic rights the protection of which is required at all expense. The Government must make policies towards realization of these rights and Judiciary must balance the rights of the citizens and must also take care of other aspects relating to water governance laws and regulations throughout the country.

Bibliography

1. African Vision for the Environment (PAVE).
2. Akpan, Anthony Johnson. 2004. "Water and Privatization: An Overview of Case Studies From Around the World: What Lessons for Nigeria." in the Pan
3. Azad, Maulana Abul Kalam 1988. India Wins Freedom New Delhi: Orient
4. Chambers, N.C. Saxena, and T. Shah. 1989. To the Hands of the Poor: Water and Trees. London: Intermediate Technology Publications.
5. Chapter 13: Water Supply and Sewerage (PDF). Economic Survey of Delhi,
6. Dellapenna, Joseph W & Gupta, Joyeeta, „The Evolution of the Law & Politics of Water“, Springer Netherlands Publication, 2009
7. Ed. Koi Wegerich & Jeroen Warner, The politics of Water: A Survey. 2010
8. Gardner, A, Bartlett, R & Gray, J, „ Water Resources Law ‘, Lexis Nexis Butterworths 201
9. Getches David, „Water Law in a Nutshell‘, St. Paul Minn, West Publishing Co, 1997
10. Iyer Ramaswamy R, „ Water & The Laws in India“, Sage Publications Pvt Ltd , 2009
11. Justice T.S. Doabia, „Environmental and Pollution Laws in India‘ Lexis Nexis India; 2nd Ed. 2010
12. Philippe Cullet & Sujith Koonan, „Water Law in India: An introduction to Legal Instruments“, Oxford University press, 2011
13. Shiva Vandana, 2002, “ Water Wars; privatization, Pollution, and Profit: India Research Press New Delhi
14. Upadhyay Videh, „Water Rights and the ‘New’ Water Laws in India: Emerging Issues and Concerns in a Rights Based Perspective‘, India Infrastructure Report 2011, also available at www.idfc.com