

DE JURE NEXUS LAW JOURNAL

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RIGHT TO GET WATER -THE RECENT DEVELOPMENTS & CONSTITUTIONAL FRAMEWORK

Water is one of the most significant substance on earth. All plants and animal must have water for survival. If there is no water there would be dream of life on earth. Other than drinking even water has many uses which is essential to deal day to day activities. The basic reason is body loses water through the activities such as breathing, sweating and most important digesting the food. That is why it is important to rehydrate by drinking liquid and eating food containing water. Everybody needs it to maintain the temperature of body by using through cells, organs and all tissues and proper maintaining of other functions of body.

Lack of access to safe drinking water is a situation that plagues approximately 783 million people, many of them being among the world's poorest. Additionally, 2.5 billion people lack access to improved sanitation. The use of contaminated water causes many serious diseases, which results in the death of millions of people every year. The lack of adequate quantities of safe water prevents people from obtaining the basic essentials for living, such as proper hygiene, adequate food, and improved sanitation.

Former United Nations (UN) Secretary-General Kofi Annan said, "*Access to safe water is a fundamental human need and, therefore, a basic human right. Contaminated water jeopardizes both the physical and social health of all people. It is an affront to human dignity.*"

The language of 'rights' has acquired a centrality in modern thinking that cannot be ignored. In the traditional societies, people might not have needed the language of rights; customs and conventions had the force of law. However, in the legalistic societies of today 'formal law' has become more important, and that is why it is important to talk about the 'right to water'¹

Water is the essence of life. Hence, any denial of water would imply a denial of right to life. The right to water it is not enshrined in the Indian Constitution as an explicit Fundamental Right but the Indian Judiciary, both at the state as well as at the centre, has in several judgments interpreted Article 21 of the Constitution to include a right to clean and sufficient water, a right to a decent and well life, a right to live with dignity and with peace, and a right to a humane and healthy environment which would certainly imply a right to water to all the members of

¹ Ramaswamy R. Iyer, Former Secretary, Ministry of Water Resources, India.

the society be it is a human or animal. As we know that socio-economic justice is the foundation stone of the Preamble of the Republic of India. Part 3 of the Indian Constitution deals with Fundamental Rights like right to equality, right to freedom, right against exploitation, right to freedom of religion, cultural and educational rights and right to Constitutional remedies. Hence, the Indian judiciary has widened the scope of these Fundamental Rights in order to achieve environmental justice.²

Parliament and the Indian state legislatures have the power to make laws within their respective jurisdictions, according to the Constitution. This power in nature is not absolute. In the judiciary, the Constitution holds the power to judge the constitutional validity of all laws. If any provision of the Constitution is violated by a law made by Parliament or the state legislatures, the Supreme Court has the authority to invalidate or ultra vires such a law. The founding fathers, despite this check, wanted the Constitution rather than a rigid governance framework to become a flexible constitution which can become accommodate to the necessitate changes.³

Judicial interpretation by the Supreme Court of India of Article 21 of the Indian Constitution and its activism has played a key role in interpreting Article 21. It examines the reasons for the creativity of the judiciary and justifies the role played by India's Supreme Court in protecting citizen's basic freedoms when the legislative and executive failed to fulfill their responsibilities. It will be available not only to all the citizens of that country, but also to be a person who is not a citizen of that country, according to the tenor of the language used in Article 21. Through the constitutional regulations, even those who are not a citizen of this nation and come here simply as visitors or in other capacities are entitled to their life. As in the event of **Chairman, Railway Board v. Chandrima Das**⁴, they also have a right to "Life" in this nation.

The Court, in a recent judgment (1 December 2000), had observed that 'in today's emerging jurisprudence, environmental rights which encompass a group of collective rights are described as "third generation" rights'⁵. An important ruling of the Indian Supreme Court was the case of **A.P. Pollution Control Board II v. Prof. M.V. Nayudu**. In this case, the AP government had granted an exemption to a polluting industry and allowed it to be set up near two main reservoirs in Andhra Pradesh – the Himayat Sagar Lake and the Osman Sagar lake, in violation of the Environment Protection Act 1986. The Supreme Court struck down such exemption and held that the "*Environment Protection Act and The Water (Prevention and Control of Pollution) Act 1974 did not enable to the State to grant exemption to a particular industry within the area prohibited for location of polluting industries.*"

Recent Developments

² Shruti Jain, 'Concept of Social Justice under Indian Constitution' (Lawyersclubindia) <<http://www.lawyersclubindia.com/articles/Concept-Of-Social-Justice-Under-Indian-Constitution-3685.asp>> accessed 26/07/2021.

³ 'Bhavnani-Laksha.Pdf' <<http://jurip.org/wp-content/uploads/2017/05/Bhavnani-Laksha.pdf>> accessed 26/07/2021.

⁴ Chairman, Railway Board v. Chandrima Das AIR 2000 SC 998.

⁵ A.P. Pollution Control Board II v Prof. M.V. Naidu and Others (Civil Appeal Nos. 368-373 of 1999). Cited from John Lee 'Right to Healthy Environment', Columbia Journal of Environmental Law, Vol. 25, 2000.

➤ **Public Interest Litigation (PIL)**

Most of the cases related to enforcement of peoples' and communities' rights to water have been filed in the form of Public Interest Litigations. This form of litigation is different from the conventional form of litigation where normally the conflict is between two private parties. PIL is normally resorted to where the rights of a larger public have been violated by a state action or inaction. In a PIL, any public spirited individual or organisation championing the cause of public can approach the court for the benefit of society and especially for those underprivileged and poor.

➤ **Court decisions**

The intention of the judiciary to reinforce the right to pollution-free waters is implicit in **the M.C. Mehta case**⁶ (1988) where the tanning industries located on the banks of the river Ganga were alleged to be polluting the river. The Court issued directions to them to set up effluent plants within six months from the date of the order. It was specified that failure to do so would entail closure of business. The Court also issued directions to the Central Government, UP State Pollution Control Board and the District Magistrate. Although this judgment has made no reference to the right to life, the supporting judgment has noted that the pollution of river Ganga is affecting the life, health and ecology of the Indo-Gangetic Plain.

➤ **The Central Water Commission**

It is a technical organization in the field of water resources in India. It is now being working as a part of Water Resources, Government of India. The responsibilities are to initiate, coordinate and furthering in consultation of the State Government concerned, schemes for control, conservation and utilization of water throughout the country for the purpose of flood control, irrigation, navigation, drinking water supply and water power development. The main aim is to promote integrated and sustainable development and management of India's water resources.

➤ **Supreme Court Judgement**

The Supreme Court on 13th January, 2021. Wednesday said pollution-free water is a fundamental right which a welfare state is bound to ensure, and issued notices to the Centre, CPCB and five states including Delhi and Haryana on the issue⁷. *“The effect of water pollution on human health is not the only adverse factor and this pollution can seriously harm the aquatic life in water bodies”*, it said.

The order referred to a 2017 judgement and said it was directed that the norms for generating funds, for setting up and operating the 'Common Effluent Treatment Plant' as well as 'Sewage

⁶ MC Mehta v Union of India, AIR 1988 SC 1037.

⁷ Available at: https://wap.business-standard.com/article-amp/current-affairs/pollution-free-water-a-fundamental-right-state-bound-to-ensure-it-sc-121011301388_1.html Last Updated at January 13 2021
Last visited on 27th July 2021.

Treatment Plants' shall be finalised on or before January 31, 2017, so as to be implemented from the next financial year of that date.

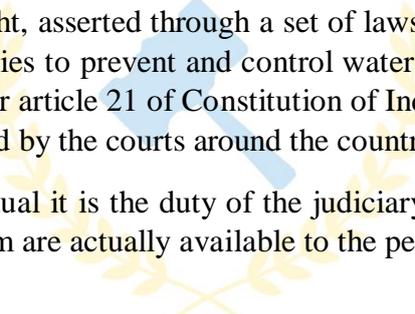
It was directed that for the purpose of setting up these plants, the state government will prioritize such cities, towns and villages, which discharge industrial pollutants and sewer directly in rivers and water bodies, the order said.

Conclusion

The inadequate (or denial of) access to water and sanitation to the poor in India has been going on for a long time even before the advent of economic reforms. This has been happening despite the Supreme Court's rulings time and again that access to clean drinking water is a fundamental right as part of right to life in Article 21 of the Indian Constitution.

Right to Water in India is not expressly guaranteed either through the Constitution or any legislation. It is an implied right, asserted through a set of laws which confer a duty upon the state through its various agencies to prevent and control water pollution. Hence, the Right to clean water is guaranteed under article 21 of Constitution of India and no one can be deprived of it. The same has been upheld by the courts around the country.

According to me as an individual it is the duty of the judiciary and the government to see if that the rights provided by them are actually available to the people of the country or not.



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