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3rd Year, B.A. LL.B. (Hons.)**RIGHT TO GET WATER- THE RECENT DEVELOPMENT AND
CONSTITUTIONAL FRAMEWORK**

De Jure Nexus

Abstract

In this article right to get water has been discussed and delved upon in detail. It starts with characterising the right to water and how the scope of right to life is something that has been much expanded over the years to include many diverse areas such as right to clean environment. It then highlights why right to water needs to be discussed and how it would also flow from the constitutional framework in particular the right to life and certain directive principles. It then talks about the judicial intervention related to right to water and how it has been mostly related to right to environment. Afterwards, certain limitations with the present regime and the impacts of the same are covered about in detail. How the change should come about is also talked about in brief and what exactly this right to water would look like. Lastly, a conclusion is provided along with how the steps with regards to the right to water can have a positive impact for all.

Introduction

One article in India whose scope has been most significantly expanded over the years has perhaps been Article 21¹ or the Right to Life, wherein new multiple and diverse facets have been added towards its interpretation. These have been extremely diverse in their nature ranging from right to health² to a right to clean environment³ on one end; while on the other end from right to privacy⁴ to right to clean drinking water⁵. In this regard right to get water or right to accessibility of water is something that should also effectively stem from the right to life itself as any survival without water is impossible for human beings. What this would effectively mean in its practical sense is that the State would have an obligation to provide not only clean drinking water in everyday life but also ensure the ready, uninterrupted supply of water in places where perhaps water is not readily available. This disruption in the availability of the water itself can be itself due to several aspects such as drought like conditions or perhaps problems related to accessibility or even groundwater being exhausted. The lack of water in several places in India has been a major concern that needs to be addressed and is often overlooked not only by the central government but also the state government. Another aspect that needs to be taken a look at in this regard is clean water as right to clean water is another important aspect considering that waterborne diseases are a grave threat that can cause significant damages and do more harm than actual good such as cholera, dysentery or even typhoid.

Constitutional Framework

Simply speaking from a constitutional standpoint article 21⁶ is very specific and only talks about right to life and personal liberty wherein the expansion has by and large only occurred on the grounds of the fact that right to life does not mean a mere animal existence which is abject of everything. It means an existence of a dignified life and thus such existence in turn requires many other aspects that need to be catered to. For instance, right to livelihood⁷ has been found to be inclusive of the right to life simply because it is not possible for an individual to exist without having a means for his or her own sustenance or for the sustenance of his or her family. This implies that right to life would in turn include a right to water because it is not

¹The Constitution of India, art. 21.

²*Francis Coralie Mullin v. The Administrator Union Territory of Delhi*, AIR 1981 746.

³*MC Mehta v. Kamal Nath*, (1997) 1 SCC 388.

⁴*Justice KS Puttaswamy v. Union of India*, AIR 2017 SC 4161.

⁵*Bandhua Mukti Morcha v. Union of India*, AIR 1984 SC 802.

⁶The Constitution of India, art. 21.

⁷*Olga Tellis v. Bombay Municipal Corporation*, 1985 SCC (3) 545.

possible to exist without water and thus state having an obligation to fulfil the right to life of the people it would also have a responsibility to work on the aspect of right to access to water or right to water in general.

Apart from article 21 which is perhaps the cornerstone in this regard, even certain directive principles of state recognize the importance of having equal access to certain common goods that are in the interests of the general public and in the benefit of all. In particular Article 39(b)⁸ of the Indian Constitution categorically talks about the State's mandate to ensure that the distribution of resources is done for the general welfare of the public and the people. Therefore, it focusses on the aspect of equity. What this means with regards to the right to water is that the accessibility of water and the availability of the same should be done to the common public as it is a common good that is necessary and required by all. Considering, that in some places water is considered to be just an everyday commodity which is even wasted at times and not given the respect it deserves this is a much-needed understanding that needs to take effect. Further, considering that there are two extreme ends of the spectrum where in one has great abundance of water and the other side has extremely low levels of the same one can understand that this directive principle has not been properly taken into effect.

In the case of *Vishakha v. State of Rajasthan*⁹; although the case dealt with sexual harassment the importance of international conventions and norms was emphasised especially for the interpretation of certain articles in the constitution such as Article 21¹⁰. This means that even international commitments that talk about right to accessibility of water or the availability of the same to the general public or populace of a country would also have a major impact and should be taken a due note of. For instance, even the UN Charter¹¹ and the Universal Declaration of Human Rights¹² talk about the aspects of higher standards of living and adequate health and well-being. Although, water is not specifically mentioned one can assume that a lot of the goals mentioned there in such as having a high living standard or even the aspects related to health would directly or indirectly require adequate supply of not only water but also water of good quality.

Judicial Intervention

⁸The Constitution of India, art. 39(b).

⁹*Vishakha v. State of Rajasthan*, AIR 1997 SC 3011.

¹⁰The Constitution of India, art. 21.

¹¹The United Nations Charter, art. 55.

¹²The Universal Declaration of Human Rights, 1948, art. 25.

The judiciary has been vigilante and active in an expansive understanding of Article 21¹³ of the Indian Constitution and has focussed on several important aspects that were earlier missing and lacking in the explicit constitutional framework. In the *Bandhua Mukti Morcha v. Union of India*¹⁴ the supreme court protected and emphasised on the importance of a health environment and how the same would require clean and hygienic water conditions to effectively come into effect.

Further in the case of *Narmada Bachao Andolan v. Union of India*¹⁵ it was observed by honourable Supreme Court that water is a basic necessity and is essential for the survival of human being and thus is undoubtedly a part of Article 21. Further, right to a health environment and importance of sustainable development were also thereafter emphasised and expanded upon. Another, landmark judgement in this regard was the *Vellore Citizens' Welfare Forum v. Union of India*¹⁶ wherein compensation was awarded to the victims who had suffered the ill impacts of water pollution caused because of the tanneries which has contaminated the nearby water bodies. Thus, the court has also recognized that in violation of the same a sort of tortious liability arises and hence adequate compensation must be awarded to minimise the negative repercussions of the same.

The Supreme Court in cases such as *M.C. Mehta v. Union of India*¹⁷ also focussed and emphasised on the need of cleaning river bodies because of their importance that these water bodies have in our everyday lives and therefore the necessity of the same.

It is worth noting herein that even the right to food has been found to be a part of right to life under Article 21¹⁸ and the same has been enforced in the case of *Peoples Union for Civil Liberties (PUCL) v. Union of India & Ors.*¹⁹ In this particular case because of drought like situations in many states the Supreme Court mandated that public distribution systems should ensure that hunger and starvation are prevented and the food is readily available for and to all. Thus, ideally right to water should also flow from the same line of argumentation based on all of the judgements above.

Impacts and Limitations

¹³The Constitution of India, art. 21.

¹⁴*Bandhua Mukti Morcha v. Union of India*, AIR 1984 SC 802.

¹⁵*Narmada Bachao Andolan v. Union of India*, (2000) 10 SCC 664.

¹⁶*Vellore Citizens' Welfare Forum v. Union of India*, (1996) 5 SCC 647.

¹⁷*MC Mehta v. Union of India*, AIR 1988 SC 1037.

¹⁸The Constitution of India, art. 21.

¹⁹*Peoples Union for Civil Liberties (PUCL) v. Union of India*, WP (Civil) No 196 / 2001.

The problem that still remains in all of the judgements and why right to water is not on the same footing as that of right to water might be something that remains hidden in the face value. However, upon a careful perusal of the judgements above one can understand that right to clean water has come as an extension to a right to clean environment and not as a separate right altogether. What this means is that in cases of enforcement one cannot necessarily hold the government accountable if the places where they reside in does not have access to water in the first place. Thus, a right to water in this regard still remains a far-fetched idea more so in terms of its enforceability. This places a much grim limitation in terms of only protecting the citizens indirectly in terms of a clean environment which itself has had not much in terms of concrete changes and impacts; considering that pollution is still at an all-time high and there is no respite in terms of the same.

What thus would entail a proper right to water is another important aspect of discussion therefore so that the limitations imposed can be properly worked upon. This would in essence mean the accessibility which is to say that everyone has a physical access to water and the facilities of the same reach not only the upper populations but also and especially the vulnerable, downtrodden and the marginalised communities. Apart from this affordability should also be catered to as making such as essential commodity too expensive can again make its accessibility a distant dream. Hence, the cost should be the least possible amount which can make it easily affordable and accessible to all. Lastly in case of violations of the same such as not in terms of any infringements and the water being tarnished there should be some sort of a protection mechanism in place.

The impacts that such a definition would thus have would also be multiple. First of all, it would ensure a state liability for the protection and enforcement of a proper right to water and not only a mere extension of a right to environment. This would not only lead to the central and state governments working more in tandem with each other to ensure that water is accessible and affordable to all but also that the benefits of the same reach to all the population. Further, this liability being in place would ensure that the States are also answerable for their shortcomings and their actions and thus there would be better incentive in terms of also the accountability that states have in general towards their population.

Conclusion and The Way Forward

The issue that still then crops up is the enforceability aspect. This means that even though the scope of Article 21²⁰ has repeatedly been expanded over the years still there is a lack of safe and healthy environment. Still, there are people who do not get proper and adequate food and proper nutrition. Still, the right to clean drinking water is a major issue that needs to be tackled. Thus, making the right to water an accessible and affordable right under the scope of right to life would merely be a first positive step in this direction. It would not automatically mean that all and every problem would thus also get resolved in this regard.

First and foremost, either a judicial intervention or some changes by the legislatures of our country would be required. Secondly the whole mechanism and semantics related to effective allocation related to the division of water resources from the top bottom and all the other levels would have to be reworked. Thirdly it has to be ensured that these benefits actually have far reaching benefits for even the poorest of the poor and the accessibility for them does not remain halted. The disconnections that are there in terms of connectivity especially when it comes to some hilly areas or other such places would also have to be paid special attention to and reworked as a positive step in this regard. Fourthly, in cases of laxity proper remedial measures and mechanisms with regards to calculation of liabilities should also be worked upon. Lastly, all of these changes can only come about if all the functionaries work together and effectively. Although the same should not be an issue any longer as water is a basic necessity and even without recognizing it as a fundamental right there should be effective safeguards in place. Perhaps, acknowledging the importance of water and explicitly mentioning it in the interpretation of the constitution would lead to a more tangible change and outcome.

²⁰The Constitution of India, art. 21.