

SAFE DRINKING WATER IN INDIA: CONSTITUTIONAL AND JUDICIAL PERSPECTIVE

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Abstract

Clean and safe drinking water is very important for human health. It can reduce the burden of common illnesses, diarrheal and other diseases. Unfortunately, it is found that the people in villages and urban areas drank water that is not safe for their health. Drinking water which is also called potable water. The Supreme Court of India addressed in different judgments the sanitation difficulties in context of the Constitution and makes a liberal interpretation of the right to life in Article- 21. Supreme Court has interpreted that the right to life includes the right to safe drinking water.

Keywords: Drinking water, health, Constitution, right, Supreme Court.

1. INTRODUCTION

Water is a life for the existence of the human being as well as the living things. In the words of the United Nations Development Programme, Water is 'the stuff of life and a basic human right'. **Drinking-Water** is water which is taken from any source for human consumption and cooking purposes. Drinking water which is also called potable water is water that is safe to drink or use for food preparation. Water is an essential element for human life as well as for earth and having core concern in law. Safe drinking water is essential for a healthy life. Water is the cradle of life. To protect this precious resource there is a need for a stringent enforcement system for its conservation, sanitation and supply.

The United Nations Development Program emphasizes the importance of the human rights dimension of water. In practice, water law is made of several elements comprising a human rights dimension as well as economic, environmental or agricultural aspects. One of the central concerns of water law has been the development of principles concerning access and control over water. Drinking water is directly essential for human life which is also essential for agriculture. The central role has always been played by water in sustaining life and human lives. This is also due to the division of powers between the center and states. The water regulation is mostly in the hands of the states. Article- 21 has been liberally interpreted by the Supreme Court and said that right to life include the right to safe drinking water. The legal basis for the fundamental right was found in case law made by the Courts concerning environmental degradation and inadequate water supplies. Therefore, the Supreme Court of India addressed sanitation difficulties in the context of the Constitution and makes a liberal interpretation of the right to life. Supreme Court has interpreted that the right to life includes the right to safe drinking water.

2. INTERNATIONAL STANDARDS FOR DRINKING WATER

The International Standards for drinking water that must be followed are:

- **Fluoride:** The deficiency of fluoride causes tooth decay in humans. Water fluoridation is a method that ensures controlled the addition of soluble fluoride to the drinking water supply to bring its concentration up to 1 ppm. Excess fluoride causes a mottling of teeth and bone defects. It is added only up to the safety limits.
- **Lead:** The water supply pipes, plumbing fittings solders either contain lead or are made up of it. Excess lead has certain neurological effects. Long-term exposure can create health risks for pregnant women and infants. It can also damage the liver, kidney, etc. The permissible limit for lead concentration is 50 ppb only.
- **Sulfate:** Sulphate is often used for the control of algae in public water supply pipes. They are also discharged from mines into the water. Some sulfates are highly soluble in water. So even after water treatment, they may still be present in the water. Although it is harmless at a moderate level, if its concentration exceeds 500 ppm in water, it can cause dehydration, diarrhea, certain laxative effects, and gastrointestinal problems.

- **Nitrate:** Nitrates are used in fertilizers. They can reach surface and groundwater from agricultural fields. If the concentration of nitrates exceeds 50 ppm in water, the digestive system is affected. It also causes methemoglobinemia, commonly called the blue baby syndrome.
- **Other metals:** There are some other metals such as iron, copper, aluminum, zinc, etc., which have the permissible concentration of 0.2 ppm, 3 ppm, 0.2 ppm, and 5 ppm .

Basic Drinking Water Quality Standard Parameters as per WHO Guidelines

Following are some important drinking water quality standards in India.

1. Turbidity
2. Colour
3. pH
4. Taste and odor
5. Hardness
6. Total Suspended Solids (TSS)
7. Total Dissolved Solids (TDS)
8. Alkalinity
9. Chlorine
10. Nitrate
11. Sulfate
12. Fluoride
13. Zinc

3. LEGAL ASPECT OF WATER IN INDIA

Water remains the basic need of humanity. Despite the eternal value of water, the development of the right to water in India appears to be very slow. In India, water law consists of several elements at the international and national levels. Several government policies require thorough review and implementation issues are often asked without adequate solutions being provided. The main responsibility for the provision of clean drinking water lies with the state government and also with the respective local authorities. These governments and municipal companies are involved in their own governance problems and often complain the lack of funds, depriving the poor daily water use.

The water law is largely sectoral. In India, water law consists of different parts. It includes international contracts i.e. federal and state laws. It also contains several less formal regulations and water policies than the usual rules and regulations. India has the separate enactment i.e. Water (Prevention and Control of Pollution) Act 1981 and the Environmental Protection Act-1986 but existing water laws are made several different instruments. This is the case at the international level where only certain aspects of water law have been developed and where no international water law treaty exists. This is also the case within India where it remains difficult to identify a coherent body of comprehensive law concerning water. This is related to the fact that distinct concerns have been addressed in different enactments. This is also due to the division of powers between the centre and the states and water regulation is mostly in the hands of the states.

4. CONSTITUTIONAL PROVISIONS RELATED TO WATER

The Constitution of India while guaranteeing fundamental rights i.e. life recognizes the right to water is a fundamental right. The scope and content of this right have been highlighted by the Supreme Court in several cases. The gist of the right is adequate safe drinking water and water for domestic uses such as bathing washing purposes etc. Under the Directive Principles of State Policy, Article -41 impose an obligation on the state to raise the level of nutrition and the standard of living and to improve public health which also includes the safe drinking water. The supply of safe drinking water and maintenance of sanitation systems both in urban and rural areas is the responsibility of the state. Rural and urban areas face the problem of disproportionate distribution of water as well as poor quality water. Under the Constitution, water is a matter included in entry 17 of List II i.e. in the State list and it is subject to entry 56 of the Union list. Entry 17 provides that water, water supplies, irrigation, canals, drainage, embankments, water storage, and water power subject to the provisions of Entry 56.

“water” is a state subject and that states have jurisdiction to regulate and control water resources and supply. Article-21 and Article- 48A provide endeavors to protect and improve the environment. The Parliament has the power to regulate water resources. To improve the water supply and sanitation system by providing decentralization of power and to equip the states, the Constitution 73rd and 74th amendments empower Panchayat Raj institutions and municipal bodies to regulate water supply and sanitation. Article 243G read with entries 3, 11, and 23 in the eleventh schedule impose responsibilities on the Panchayats to provide for drinking water and sanitation. Article 243W read with entries 5 and 6 of the twelfth schedule impose responsibility on the municipal bodies.

5. CASES RELATING TO SUPPLY OF SAFE DRINKING WATER AS A FUNDAMENTAL RIGHT

The right to clean water and the right to access drinking water were read as part of the right to life under Article- 21 of the Indian Constitution. The Supreme Court of India liberally interpreted that the fundamental right to life includes the right to safe drinking water. The Supreme Court in its number of judgments directed that access to clean water and the right to clean water as a fundamental right in following cases.

The right to pollution-free water and the right to access to the safe drinking water have been read as a part of the 'Right to Life' under Article 21 of the Constitution of India. This has been possible because of a liberal interpretation of the fundamental right to life by the Supreme Court as well as the High Courts in several cases. In *Subhas Kumar Vs.State of Bihar AIR1981 SC420*

In this case, the Supreme Court held that the public interest litigation is maintainable for ensuring the enjoyment of pollution-free water and air which is included in the right to life under Article- 21 of the constitution of India.

In *M.C.Mehta Vs.Union of India(1987)4 SC463*

In this case, Supreme Court held that to close the tanneries at Jajmau near Kanpur which polluted the Ganga River. The court said that no effective step was taken by the government for the implementation of the Water (Prevention and Control of Pollution) Act 1981 and the Environmental Protection Act.

M.C.Mehta V.Union of India (2)(1988) SCC471

The petitioner brought public interest litigation against Ganga water pollution there is a need to take an effective step for preventing the water pollution. The polluting of the Ganga is a public nuisance. This is widespread and affects the lives of a large number of persons.

Chameli Singh v. the State of UP (1996) 2 SCC 549: AIR 1996 SC 105

The Supreme Court held that the right to life guaranteed in any civilized society implies the right to food, water, decent environment, education, medical care, and shelter. These are basic human rights known to any civilized 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 basic human rights.

Delhi Water Supply and Sewage Disposal Undertaking v. the State of Haryana AIR 1996 SC 2992. The Supreme Court said that since the matter involved technical expertise, the committee should consult experts also in this regard. If any complaints were made by the citizens of any locality that they were not getting water, the committee would look into it.

Narmada Bachao Andolan v Union of India (2000)

The Supreme Court declared that water is a basic necessity for human survival and part of the right to life and human rights established in Article- 21 of the Constitution of India. Several courts have confirmed that the right to safe and clean water is an aspect of the right to life. Courts do not constitute a law or a policy at best, they give instructions for formulating laws and policies. So far, no laws or policies have been formulated that the water is a fundamental and inviolable right that all citizens of the country enjoy.

In *Wasim Ahmed Khan v. Govt. of AP, 2002 (5) ALT 526 (D.B.)*

Water Rights and the new Water Laws in India have happened mostly in cases where inadequate water supply to different cities was legally questioned and challenged. In a case relating to the scarcity and impurity of potable water in the city of Guwahati, it was contended that the municipal corporation is responsible for supplying sufficient drinking water.

6. CONCLUSIONS AND SUGGESTIONS

The law relating to water supply and sanitation in India has to be built on modern water rights in respect to the supply of drinking water. The drinking water and water for domestic use must be treated as a Constitutional fundamental right as well as a human right. The constitution must be upheld and distinguished from any other ordinary legislation. The explanation of the different dimensions of Article -21 is an ongoing process and the new horizons of the Article- 21 are coming up from case to case. But the government should take the effective step for the implementation of the water and environmental protection laws. Clean drinking water is the need for living of healthily life. It is a famous proverb that 'Jal hai to kal hai'.i.e. for the survival of earth water is very essential. Every individual should take steps towards the conservation and protection of the environment and water.

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