

THE INDIAN SUPREME COURT'S PIONEERING ROLE IN PROMOTING WATER CONSERVATION AND ENVIRONMENTAL JUSTICE

Written by Dr. Anil Kumar Saini,

Assistant Professor, Government Law College, Churu, Rajasthan

If there is magic on this planet, it is contained in water.

– Loran Eisely, *The Immense Journey*, 1957

ABSTRACT

As a country facing a water crisis, today water conservation has become a key element of any strategy that aims to reduce the water scarcity crisis in India. In the same light, the Union, as well as the State Government, have started looking at the means of reviving the traditional systems of water conservation-harvesting in the country. While such methods are environmentally friendly for the most part, they are not only highly effective for those who rely on them but they are also good for the environment at large.

A human rights dimension complements the existing legal framework relating to water. Although the Constitution does not specifically recognize the fundamental right to water, the court's decisions recognize the right to be enshrined in Article 21. Further, Article 39(b) states that the State shall, in particular, direct its policy to ensure that the ownership and control of the material resources of the community are distributed in such a way that the public is served. Can go Article 51-A (g) places a fundamental duty on every citizen of India to protect and improve the natural environment including forests, lakes, rivers, wildlife and to have compassion for living beings.

KEYWORDS: CONSTITUTION, HUMAN RIGHTS, CONSERVATION

INTRODUCTION

The right to live in any organized society does not ensure a human being as meeting only the animal needs of men. It is safe only when it is assured of all the features to be developed and is free from restrictions, which prevent its development. All human rights are designed to achieve this subject. The guarantee of the right to life in any civilized society refers to the right to food, water, a decent environment, education, medical care and shelter. These are the basic human rights that are known to any civilized society. All civil, political, social and cultural rights enshrined under the Universal Declaration of Human Rights and Convention or the Constitution of India cannot be exercised without these basic human rights.

Air and water, the most precious gifts of nature, are very essential not only for mankind but also for flora and fauna. All living beings on earth have a right to the environment to survive. According to section 2(a) of the Environment Protection Act, 1986, 'environment' includes (i) water, air and land (ii) the interrelationships that exist between and between, (a) water, air and land, and (b) human beings, other living beings, plants, microorganisms and property.

There is an inseparable relationship between man and the environment. Therefore, it is our utmost duty to protect our environment for the peaceful existence of the human race as well as flora and fauna. A special strategy to protect the environment and the ecology of man has been introduced since the Stockholm Conference on the Human Environment, 1972. Since then the Indian government has taken several legislative and executive measures apart from protecting constitutional amendments. and protect the environment. The judiciary has also played an important role in environmental protection through its dynamic interpretation of Articles 21, 48A and 51A(G) of the Indian Constitution. The Indian scenario is a paradox concerning the availability of water.

The country has 2.45 per cent of the total land area and 4 % of the world's water resources. Nevertheless, water is a scarce national resource whose demand is increasing due to a growing population of more than a billion.

Since water is a scarce resource, its sharing and distribution require a regulatory framework, which is brought about not only through written laws but also through traditional

and customary practices. In terms of statutory development, irrigation law has historically been the most developed part of water law. Statutory water law also includes several pre-and post-independence Acts in various fields. These include laws on embankments, drinking water supply, irrigation, flooding, water conservation, river water pollution, resettlement of displaced and displaced, fisheries and wharves.

Article 21 of the Indian Constitution guarantees the fundamental right to life to all persons. As the Supreme Court said, the right to life is not limited to the existence of animals only, but the right to live with basic human dignity. The AP High Court observed that the enjoyment of life and its attainment and fulfilment, as guaranteed by Article 21 of the Constitution, includes the protection and preservation of the gifts of nature, without which life cannot be enjoyed. The court further observed that the protection of the environment is not only the duty of the citizens but also the duty of the state and all other state organs including the courts. The Supreme Court while considering Article 21 of the Constitution said that the necessity of a decent and civilized life includes the right to food, water and a decent environment.

SUPREME COURT OVERVIEW

“Water is the gift of nature. A human hand cannot be allowed to convert this reward into a curse, oppression. The primary use of which is being used for drinking water is forcing people to make fun of nature. The Supreme Court further observed that the most beneficial use of water is drinking and the necessity is so paramount that it cannot be made subject to any other use of water such as irrigation. Therefore, water for domestic purposes because of other needs. the right to use will be lost.”

In general, water law in India is largely state-based. This is because of the constitutional scheme, which since the Government of India Act, 1935, has in principle empowered the states to make laws in this area. Thus, states have special power to regulate water supply, irrigation and canals, aqueducts and embankments, water storage, hydropower and fisheries.

However, there are restrictions regarding the use of interstate rivers. In addition, the union is entitled to legislate on certain issues. These include powers to regulate the use of tidal

and territorial waters as well as navigation and navigation on national waterways. The Constitution also provides that the Union can make laws regarding the adjudication of inter-state water disputes. While no actual clause could be adopted at the time of adoption of the Constitution, a specific Act, the Inter-State Water Disputes Act, 1956, was adopted. It introduces a procedure for resolving disputes between states relating to inter-state rivers, resolved through negotiations.

The water right can be read as being enshrined in the recognition of the right to a clean environment. In *Subhash Kumar v State of Bihar*ⁱ, the Supreme Court held that the right to life includes the 'right to enjoy pollution-free water and air for the full enjoyment of life. In the *Sardar Sarovar case*ⁱⁱ, the Supreme Court went further and directly derived the right to water from Article 21. It states that water is a basic necessity for human existence and is part of the right to life and human rights. It is enshrined in Article 21 of the Constitution of India. While the recognition of the fundamental right to water by the courts is clear, its implementation through policies and acts is not that advanced.

Water is the most important of the elements of nature. Supreme Court in the *State of Himachal Pradesh v. Umaid Ram Sharma*ⁱⁱⁱ has held that Article 21 of the Constitution provides that every person has the right to live, that he too has the right to his own life under Article 21 and that Article 21 has no right to live. It includes not only the physical existence of life but also the quality of life.

The function of the State Board under Section 17(1)(a) of the Water Act^{iv} shall be to plan and secure the execution of a comprehensive program for the prevention, control and abatement of pollution of rivers and wells in the State. These provisions indicate the concern of the legislature to maintain the quality of water for which standards need to be set. The above constitutional and statutory provisions lay down the supreme duty of the State Government, Municipal and Panchayat Authorities, Area Development Authorities and other statutory authorities to protect and improve water bodies as a part of the environment and to ensure supply bring to the fore. As the trustee of all-natural resources intended for public use, including lakes and ponds of water safe for the public, the state is under a legal duty to protect them. This obligation is positive, requiring the State including Area Development Authorities and local bodies not only to protect the common heritage of the people's lakes, ponds, reservoirs

and rivers, but also to protect and rejuvenate them from extinction. also required. and needs to be protected. By harvesting rainwater quantitatively and setting and implementing their water standards qualitatively.

There is ample legislation to arm these authorities with the power to preserve these natural resources and prevent their abuse. The duty of the State in this regard is spelt out by the Apex Court in *M.C. Mehta v. Kamal Nath*^v, and that of every citizen to protect the natural environment including lakes in *M.C. Mehta v. Union of India*^{vi}, The necessity to limit the construction activities in the close vicinity of the two lakes was recognized by the Supreme Court, as noted above. It is rather unfortunate that decades have passed with laws already governing the field being put to disuse by the apathy of the authorities to actively involve themselves in the protection and preservation of water bodies. The interim orders made in these petitions have, however, goaded them into some action and the final responses on behalf of the State Government, the Urban Development Authorities and the Municipal Corporation have raised a distinct ray of hope that may shortly glitter on the surface waters of the water-bodies that are promised to be reinforced and preserved.

Apart from all the laws, rules and regulations governing water, there is a large body of additional rules and regulations at the local level. These include several written or unwritten arrangements that govern the access and use of water for domestic purposes or irrigation. A range of different regulations, for example, govern access to accessible sources of drinking water. They operate based on caste in many cases, although other rules of access also exist. Regarding irrigation water, all human structures such as tanks and check dams involve a system of allocation. Access and control rules are often developed over a long period but are often unwritten or not formally recognized in the legal system. As a result, they often run parallel to 'formal' water rules and regulations. Another consequence of the lack of visibility of local-scale systems is that they can be easily displaced or extinguished by new laws that may also fail to acknowledge their existence.

The universal depiction is of a multiplicity of principles and rules, a multiplicity of tools and a lack of an overall framework. Though we have started making laws for the use of water resources since 1873, even today there is no competent statutory authority to make water policy. More than 90% of the laws made for the use of water resources are state-level laws. At

the time of the enactment of these laws, the environmental factor was not at all a matter of serious concern. Water use was a priority area rather than water conservation. In addition, the sharing of river waters in India between the states that constituted the republic has led to protracted legal battles. Among the early disputes over the sharing of water were disputes between the states of Gujarat, Madhya Pradesh, Maharashtra and Rajasthan over the sharing of the Narmada River waters.

So, in this new era of globalization, keeping in view the new developments, it becomes necessary to rethink our water policy. At present, though the Center makes the water policy, it has no constitutional authority to implement it, as water is a subject in the state list. While the law is primarily designed for an integrated approach, in practice its spirit has not been followed in the field of inter-state river disputes. The lack of coordination between various bodies and levels of government has also been noticed during the functioning of Pollution Control Boards. Therefore, in this new era of globalization, it became necessary to reconsider our water policy keeping in mind the new developments. At present, though the Center makes the water policy, it has no constitutional mandate to implement it, as water is a subject in the state list. While the law is primarily geared towards an integrated approach, in practice its spirit has not been followed in the area of inter-state river disputes. The lack of coordination between various bodies and levels of government has also been noticed during the functioning of Pollution Control Boards.

In PR Subhash Chandran Vs AP Government^{vii}, the AP High Court held that “Under the Constitution, the role of the State to provide adequate clean drinking water to every citizen and to prevent water from being polluted is not only a fundamental directing principle of the governance of the State”. But there is also a partial right under Article 21 of the Constitution of India”.

The legislative qualification for such an Act can be brought about by using the provisions of Article 252 and Article 263. Parliament can also empower itself under Article 249 to bring in an effective central statutory regulation for the effective management and conservation of India's water resources. Thus, India can learn from the experiences of countries like Australia where the Department of Environment and Conservation, a central body, has been effective in formulating policies and guidelines for the country as a whole.

The right to live without water right has no meaning. If the water right is not implemented properly then other fundamental rights like the right to health, right to shelter, right to air, right to a good environment, etc.; It will be in vain. In this regard we must remember Gandhian philosophy which emphasizes that: - Nature has provided everything for our needs but not for greed.

Generally speaking, although there is a definite tendency towards cooperative federalism and an integrated approach, given the enormity of the problem, its network should be widened and its full potential exploited. Many countries, such as Brazil and South Africa, have adopted water laws that seek to provide comprehensive regulatory answers to the problems identified. While the adoption of comprehensive federal water law is not a precondition for ensuring that water law achieves its social, human rights and environmental goals, it would be a suitable starting point for ensuring the proper management and protection of our water resources.

CONCLUSION

The Indian Supreme Court has played a pioneering and transformative role in promoting water conservation and environmental justice in the country. Through its landmark judgments and proactive interventions, the Court has recognized the critical importance of safeguarding water resources and ensuring their sustainable management. The Court's decisions have not only emphasized the intrinsic value of water as a precious resource but have also highlighted the interconnection between water conservation, ecological integrity, and social justice. By upholding the principles of sustainable development, intergenerational equity, and the fundamental rights of citizens, the Court has set a commendable precedent for balancing economic development with environmental protection.

Moreover, the Court's emphasis on environmental justice has been instrumental in safeguarding the rights of marginalized communities who are disproportionately affected by water scarcity and pollution. By acknowledging the socio-economic disparities associated with water-related issues, the Court has played a pivotal role in ensuring equitable access to clean water and mitigating environmental harm in vulnerable communities.

The Indian Supreme Court's pioneering role in promoting water conservation and environmental justice has not only influenced legal discourse but has also inspired policymakers, civil society organizations, and citizens at large to prioritize the sustainable use and protection of water resources. However, ongoing efforts and collaboration among all stakeholders are necessary to fully realize the Court's vision and ensure a future where water is conserved, justice is served, and the environment thrives.

ENDNOTES

ⁱ AIR 1991 SC 420.

ⁱⁱ *Narmada Bachao Andolan v. Union of India*, AIR 2000 SC 3751.

ⁱⁱⁱ 1986 AIR 847, 1986 SCR (1) 251.

^{iv} Section 17 in *The Water (Prevention and Control of Pollution) Act, 1974*.

^v 1997 (1) SCC 388.

^{vi} 1997 (3) SCC 715.

^{vii} 2001 (5) ALD 771, 2001 (6) ALT 133.