

RIGHT TO DRINKING WATER – A FUNDAMENTAL RIGHT – WATER MANAGEMENT NEEDS A PARADIGM SHIFT

By

—K. RAMACHANDRA REDDY, B.Com., M.L.

Advocate,
High Court of A.P., Hyderabad

Water the most precious gift of the Nature, is absolutely essential to all living creatures for their survival on the earth. It (water) forms the basis to the mankind for their whole existence. It is the water which makes a man rich or poor. Industrialisation, Immigration, urbanisation, density of population, agricultural farming *etc.*, are the effects of water resources. In the same manner hunger, starvation, squalor, poverty, unemployment, migration, *etc.*, are the consequences of water scarcity. In the next three decades the world population is expected to increase by two billion, almost all of this in developing countries, and the FAO says that world food production needs to increase by 60 percent to feed these people. Efficient water use, therefore, becomes vital.¹ “21st century has been declared the century of water and we have every responsibility to find proper solutions to water crisis witnessed all over the world now. A net work of firm action around the world is the need of the hour.”² The world water council said that all have a right to water, but more than 1.2 billion people don’t have access to water and more than 2 billion lack access to sanitation.³ While a person needed about four litres of drinking water every day, the water required to produce a person’s daily food requirements was between 2000 and 5000

litres.⁴ Agricultural was the biggest water user accounting for about 70 percent of all water withdrawals compared to the 20 percent by industry and 10 percent by domestic users.⁵

All living creatures on the mother earth have a right on the environment constituted with ‘Pancha Bhutas’ (Air, Water, Fire, Land and Sky) in order to survive themselves. According to Section 2(a) of the Environmental Protection Act, 1986 ‘Environment’ includes (i) water, air and land, (ii) the inter-relationship which exists among and between, (a) water, air and land, and (b) human beings, other living creatures; plants, micro-organisms and property. Obviously there is an inseparable relationship between man and environment. It is, therefore, our bounden duty to protect our environment for the peaceful survival of the mankind as well as flora and fauna. In order to protect the environment and the ecology of man, a special strategy has been started since Stock Home Conference on Human Environment, 1972. Since then Indian Government has also taken several legislative and executive measures in addition to the constitutional amendments to protect and preserve the environment. The judiciary has also played vital role for the environmental protection through its dynamic interpretation of Articles 21, 48-A and 51-A(8) of the Constitution of India.

Article 21 of the Indian Constitution guarantees to all persons a fundamental right to life. As Supreme Court observed that right to life is not confined to mere animal existence but extends to the right to live with

1. Threat to water scarcity looming large – The Hindu, dated March 15, 2003, page-13, Vijayawada Ed.

2. Crown Prince of Japan Naruhito in his opening address at the Third World Forum (WWF-3) on March 16, 2003 at Kyoto, Japan. See the Hindu, dated March 18, 2003 Vijayawada Ed. Multi-dimensional approach to water needed by G. Venkataramani.

3. Water crisis due to improper governance – The Hindu, dated 20th March, 2003.

4. Supra Note – 1.

5. Ibid.

basic human dignity.⁶ In *T. Damodar Rao v. The Special Officer, Municipal Corporation, Hyderabad*,⁷ A.P. High Court observed that enjoyment of life and its attainments and fulfillment guaranteed by Article 21 of the Constitution embraces the protection and preservation of the nature's gifts without which life cannot be enjoyed. The Court further observed that "Protection of environment is not only the duty of the citizens but is also the obligation of the State and all other State Organs including the Courts." In *Lakshmi Pathy v. State*,⁸ it is held that entitlement to a clean environment is one of the recognised basic human rights. It is, therefore, submitted that right to peaceful, pleasant, clean and happy environment is part and parcel of life guaranteed under Article 21 of the Constitution. Constitution Review Committee also recommended a fundamental right to safe drinking water to every person, and also an environment that is not harmful to one's health or well-being.⁹

Right to good drinking water/potable water – judicial perspective

Right to clean water is an essential attribute of the right to life under Article 21 of the Constitution of India. In *Atta Koya Thangal v. Union of India*,¹⁰ Justice Sankaram Nair observed that the right to sweet water and right to free air are attributes of the right to life, for, these are the basic elements which sustain life style. In *Subhash Kumar v. State of Bihar*,¹¹ the Apex Court held that "right to live is a fundamental right under Article 21 of the Constitution and it includes the right of enjoyment of pollution free water and air for full enjoyment of life. If anything endangers or impairs that quality of life in derogation

of laws, a citizen has a right to have recourse to Article 32 of the Constitution for removing the pollution of water or air which may be detrimental to the quality of life". In *Narmada Bacho Andolan v. Union of India*,¹² the Supreme Court held that right to water is a fundamental right under Article 21 of the Constitution. The Court further observed that water is the basic need for the survival of human beings and is part of the right to life and human rights as enshrined in Article 21 of the Constitution, and can be served only by providing sources of water where there is none. In *P.R. Subbas Chandran v. Government of A.P.*,¹³ the A.P. High Court held that "under the Constitution, the role of the State to provide every citizen with adequate clean drinking water and to protect water for getting polluted is not only a fundamental directive principle in the governance of the State, but is also a penumbral right under Article 21 of the Constitution of India." In this case the High Court issued certain directions to the Government of A.P. for solving the fluoris problem in several villages of Nalgonda District. In *M.C. Mehta v. Kamalnath*,¹⁴ the Apex Court observed that the doctrine of public trust demands the Sovereign to protect and regulate all environmental aspects of water and land.

It is apparent that in several judgments the judiciary directed the Government and its agencies and companies to take necessary steps and, if necessary, to close down industries in order to protect the environment and to provide pollution free air, water and land to the people, which are part and parcel of their right to life guaranteed under Article 21 of the Constitution of India.

Water management – legislative perspective in the State of Andhra Pradesh

In order to protect the water from pollution the Parliament passed a legislation

6. *Francis Coralie v. Union Territory of Delhi*, AIR 1978 SC 597.

7. AIR 1987 AP 171.

8. AIR 1992 Kant. 57.

9. Article 30-D of the Recommendations of the Constitution Review Committee.

10. 1990 KLT 580.

11. AIR 1991 SC 420.

12. (2000) 9 SCC 571.

13. 2001 (5) ALD 771 (DB).

14. (1997) 1 SCC 388.

on the request of some States legislative assemblies. This legislation is called The Water (Prevention and Control of Pollution) Act, 1974. The very objective of this Act is only prevention and control of water pollution and the maintaining or restoring of wholesomeness of water. It also provides machinery to take appropriate action to achieve the object of the legislation. It is humbly submitted that this Act is not exhaustive as to the planning and management of the underground water and streams as defined under this Act. At the same time it does not deal with prohibition of indiscriminate extraction of under ground water, harvesting and storage, of rain water, *etc.* It is submitted that the Water Act, 1974 shall be amended suitably in the aforesaid directions. However, the State of Andhra Pradesh passed a legislation called Andhra Pradesh Water, Land and Trees Act, 2002 dealing with the management of underground and surface water. This Act was passed to promote water conservation, and Tree cover and regulate the exploitation and use of ground and surface water for protection and conservation of water sources, land and environment and matters connected therewith or incidental thereto.

Andhra Pradesh Water, Land and Trees Act 2002 (hereinafter called 'Act') provides effective measures against erratic exploitation and for the protection and management of water (both surface and under ground). The Act prohibits water pumping, if such water pumping is likely to cause damage to the level of ground water or cause deterioration or damage to natural resources,¹⁵. A person can sink a well subject to the provisions of this Act,¹⁶. The Authority concerned under this Act may issued guidelines for improving the ground water by suitable measures in the over exploited ground water basins and such guidelines shall be followed by all,¹⁷. If any existing well is found to be adversely effecting

any public drinking water source, the authority concerned may prohibit the extraction of water for commercial, industrial, irrigation or any other purpose from such well. If necessary, orders can be issued to close or seal off such well forthwith,¹⁸. In order to curb unhealthy competition to tap water from deeper layers of ground water and to maintain ground water, the authority under the Act may issue directions specifying distance for sinking of wells from the existing well and depth for such sinking and such other conditions in areas other than over-exploited groundwater basins,¹⁹. To improve the ground water resources, by harvesting and recharge, guidelines may be issued for constructing appropriate rain water harvesting structures in al residential, commercial and other premises and open spaces,²⁰. No groundwater resources shall be contaminated in any manner by anybody including industrial, local bodies and aquaculture waste disposal,²¹. The Act provides protection to lakes, ponds and tanks against encroachments and dumping of water and pollutants,²².

The Act is clearly sensitive in regulating ground water as it regulates all extraction except those for drinking purpose. The Act also encourages public participation in resources management and in the long run shall show good results.

Reasons for the scarcity of drinking water

Despite in a catena of cases the High Courts and the Supreme Court observed that right to water is a fundamental right under Article 21 of the Constitution of India., still millions of people in India are clamouring for drinking water due to either acute shortage of water or pollution of water or any other reason. The main reasons for the scarcity of the drinking water may be the following:

15. Section 9(1) of the Act.

16. Section 10 of the Act.

17. Section 11 of the Act.

18. Section 12 of the Act.

19. Section 13 of the Act.

20. Section 17 of the Act.

21. Section 19(1) of the Act.

22. Section 23 of the Act.

- (a) indiscriminate exploitation of under ground water for commercial and agricultural purposes;
- (b) fresh water getting polluted by the industries;
- (c) lack of storage facilities for rain water,²³;
- (d) increasing salinity in the underground water,²⁴;
- (e) lack of planning and/or management of under ground waters and streams;
- (f) inherent defect of natural water (not fit for consumption); *etc.*

In addition to the above said reasons, the ever increasing human population, misuse of water and scarce rainfall has put a great amount of pressure on water resources which in turn has reduced the availability of water.

Suggestions and conclusion

In order to maintain under-ground water levels and to prevent pollution of water from industrial effluents and other things and also for planning and management of the water (both surface and underground), I would like to recommend the following suggestions :

1. Doctrine of public trust shall be extended to the deep underground water. Like other underground natural resources deep underground water shall also be under the full and absolute control of the State. No person shall be allowed to exploit underground water indiscriminatively for commercial purposes, except for drinking water.

23. Only 13 percent of rain water was being used in the country. The rest flowed into the sea. (The Hindu, dated March 23, 2003, Vijayawada Edition).

24. Just two percent sea water entering an aquifer is sufficient to make the ground water too salty to drink or use for irrigation. (N. Gopal Raj, How safe is our water ? The Hindu, 24th August 2003, Vijayawada Edition).

2. The concept of inter-generational equity, evolved in the Stock Home Declaration, 1972 shall be applied in the water management. This concept consists of two principles such as (a) man has the fundamental right to freedom, equality and adequate conditions of life in an environment of quality that permits a life dignity and well being, and he bears a solemn responsibility to protect and improve the environment for the present and future generations. (b) The natural resources of the earth including the air, water, lands, flora and fauna and especially representative samples of natural eco-systems, must be safeguarded for the benefit of the present and future generations through careful planning and management.

3. Ground water extraction at any place should not be below the sea level,²⁵.

4. Harvesting and conservation of rain water is essential for staving off water scarcity.

5. There is an urgent need to implement the recent direction of the Supreme Court as to the linkage of all national rivers in order to avert acute drinking water shortage in several parts of the country.

6. Recently Government of Andhra Pradesh started several water management scheme under 'NEERU-MEERU' (Water-People) Programme, to prevent wastage of rain water and to improve ground water level in the State. State of Andhra Pradesh passed a model legislation also called A.P.

25. A study undertaken by the Central Groundwater Board has indicated that among the 14 coastal states and union territories Tamil Nadu, Pondicherry, Daman and Diu and Lakshdweep were facing severe salinity incursion due to high extraction of ground water. (The Hindu, March 19, 2003, Aarti Dhar "Bid to check ground water extraction on coast").

State Water, Land and Trees Act, 2002 to augment underground water and to protect surface water, as discussed in the earlier part of this article,²⁶. This type of model legislation is needed for the entire nation to regulate the exploitation and use of underground and surface water for protection and conservation of water sources.

A fundamental right to live sans right to drinking water remains incomplete. Hence, if the right to drinking water is not effectively implemented the other fundamental rights such as right to health, right to shelter, right to air,

right to good environment *etc.*, would also become futile. "Water is essential for broad based agricultural and rural development in order to meet the Millennium development goals to improve food security and poverty alleviation. That challenges of sustainable water use and enhancing the partnership of all stake holders in all aspects of agricultural water use, development and management and in providing increased access to water resources by all will be recognised and assigned top priority",²⁷. In this connection we must remember the Gandhian Philosophy emphasizing that "Nature has proved everything for our need but not for greed."

THE ISSUE (PHENOMENON) OF "CONVERSION" — The Legal Perspective – An analysis

By

—K. SUGUNAKAR RAO, B.Sc. (Ag.), L.L.B.

Advocate,
Hanamkonda

The following letter addressed by Smt. *Jaya Sree Savnathana* native of Hosur (Tamilnadu) to the 'Hindu' Provides the Key to this right-up.

"In his letter (The Hindu dated 29th June) Mr. N. *Senthil Murali* while expressing concern over the attacks on christian missionaries, has said what many common people as also proclaimed secularists have been saying all along. Even I was one among them to subscribe to the view that a true Hindu need not be affected by the so called conversion meetings and that if at all a person decides to convert, he has every right to do so, until the issue of conversion rocked an orthodox Hindu family very close to me.

The two daughters of his family, on coming back from their studies in a city

college in Tamilnadu, have said that they have converted into christianity and wished their parents to do the same (because one can see and speak to God if one becomes a true christian). They claimed that they have been impressed, (euphemism for influence) by the preaching that they used to hear very often within the study campus and attracted by the preaching they started attending meetings conducted by the preachers. This ultimately led to their decision to convert. Today the family is in tatters. One must see in person the agony, the anguish and the sense of loss and helplessness that their parents and relations are currently experiencing to understand the impact of what every one

26. Water management – Legislative perspective in the State of Andhra Pradesh.

27. This is the essence of the declaration adopted by the Ministerial Meeting on Water for Food and Agriculture at the third World War Forum on 21st March 2003 at Shiga, Japan (See The Hindu dated 22nd March 2003, Vijayawada Edition, 'water vital for rural development' by G. *Venkataramani*).