

## **Right to Water - The Recent Development and Constitutional Framework with reference to Punjab, Haryana, Rajasthan, and Himachal Pradesh and a comment on SYL canal.**

### **Introduction**

The Justiciability of social rights, looking particularly at the Right to Water as part of the all-encompassing Right to Life. In India, the Right to water has been protected as a fundamental human right by the Indian Supreme Court as part of the Right to Life guaranteed under Article 21 of the Indian constitution. The right to life has been expanded significantly over the last three decades to include the right to health and the right to a clean environment which can include the right to clean drinking water.

In India, there have also been significant developments in protecting the Right to Food through judicial intervention. The Right to Food has been specifically enforced under the Right to Life guaranteed to all citizens under Article 21 of the Constitution by the Supreme Court of India. By protecting the right to food, the Indian Supreme Court not only gave a declaration as to its justiciability, but through its orders also directed the state governments to positively provide mid-day meals to children in state schools and to implement food schemes. **Can this protection of the right to food be extended to guarantee access to water under the protection of the Right to Life?** I argue that it can be extended. If protection of rights mean not only the negative protection of violation of rights, but also positive protection, then I argue that the right to water can be extended not only to mean that people should not be denied access to water but also that in areas where no access to drinking water is provided by the State, the constitutional Right to Life guarantee would impose a duty on the State to positively provide water.

### **Right to Water comes from Right to Life**

In recent years, more explicit articulations of this view supporting the right to water have been made such as resolution of the UNO passed during the United Nations Water Conference in 1977 as under:

*“All people, whatever their stage of development and their social and economic conditions, have the right to have access to drinking water in quantum and of a quality equal to their basic needs.”*

In India, the constitutional right to access to clean drinking water can be drawn from the right to food, the right to clean environment and the right to health, all of which have been protected under the broad rubric of the Right to Life guaranteed under Article 21 of the constitution. In addition to article 21, Article 39 (b) of the directive principles of state policy (DPSP), which the Constitution declares to be non-justiciable, recognizes the principle of equal access to the material resources of the community. Article 39 (b) mandates that ‘the State shall, in particular, direct its policy towards securing that the ownership and control of the material resources of the community are so distributed as best to sub serve the common good.

### **Right to Water In India**

Under fundamental rights in the Constitution of India, Article 21 entitled ‘protection of life and personal liberty’ states that ‘no person shall be deprived of his life or personal liberty except according to procedure established by law’. This has popularly come to be known as Article on ‘right to life’. In view of the scope of this right, environmental, ecological, air and water pollution gets violated in Article 21 of the constitution of India. Further, ‘the entitlement of citizens to receive safe drinking water (potable water) is part of the right to life under Article 21. As early as in 1984 (in *Bandhua Mukti Morcha vs. Union of India* case), the Supreme Court derived the concept of right to ‘healthy environment’ as part of the ‘right to life’ under Article 21. 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’. 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.*”

The Court recently reiterated again that ‘the right to access to clean drinking water is fundamental to life and there is a duty on the state under Article 21 to provide clean drinking water to its citizens’. The State is duty bound not only to provide adequate drinking water but also to protect water sources from pollution and encroachment. Any act of the State that allows pollution of water body ‘must be treated as arbitrary and contrary to public interest and in violation of the right to clean water under Article 21’.

### **Enactments**

A large number of enactments regarding water and water based resources have been passed concerning water supply for drinking purposes, irrigation, and rehabilitation of evacuees affected by the operations of schemes for water resources management. However, none of these laws enumerate an explicit ‘right to water’. Instead, some of the laws have expressly abolished structured (rights to use a resource) and customary rights. It is largely clear from the case law that people and communities have had to claim these rights back from the authorities. In addition, the Indian Legal System provides four further legal routes to address water pollution and water quality problems, thus helping to reinstate the rights of people and other living beings to clean and unpolluted waters.

There are basically two main enactments passed by the legislation. They are being listed as follows:

1. Prevention and Control of Pollution Act, 1974
2. Provisions of the Environment (Protection) Act, 1986
3. Indian Easements Act, 1882

### **Recent Developments**

## **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 (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.

## **What is the Satluj-Yamuna Link (SYL) canal?**

On December 31, 1981, Punjab, Haryana and Rajasthan entered into an agreement to share between them the waters of the Ravi, the Beas and the Satluj. The agreement also said the waters would be shared with Delhi and Jammu and Kashmir. It was agreed that Punjab would construct the Satluj-Yamuna Link canal in its state within two years.

On April 6, 1982, the then Prime Minister Indira Gandhi had made the first dig of SYL canal at Kapori village. Major portions of the SYL canal were even completed in the 1990s at a cost of over Rs 750 crore.

However, the project never got completed.

## **Punjab moves SC over SYL canal**

With the rise of terrorism in Punjab, the SYL canal became a sensitive issue and politicians started squabbling about water-sharing. However, the Supreme Court, in January 2002, directed Punjab to continue digging for the SYL canal and ordered it to make the canal

functional within a year. Punjab sought a review of this order. The SC dismissed the review in March 2002.

Undeterred, Punjab filed an original suit in 2003 seeking discharge from its obligation to construct the SYL canal.

The SC in its final judgment of June 4, 2004, directed the Union government to mobilize a central agency to take up construction of the canal in Punjab under the supervision of a high-powered committee and directed Punjab to hand over land to the central agency.

### **Punjab assembly passes law scrapping water-sharing agreement**

In 2004, the Congress government in Punjab scrapped the water-sharing agreements with neighbouring states and refused to give any water to other states, especially to Haryana. A presidential reference was sought after the Punjab assembly unilaterally passed the Punjab Termination of Agreements Act 2004, that categorically stated that it was nullifying all agreements on water sharing and that no water would be given to Haryana.

When the matter was finally taken up for hearing by the SC, 12 years later, Punjab was going to the polls and most political parties agreed to the legislation that was aimed at frustrating the SC's decree to construct the canal. The new legislation by the Akali-BJP government intended to cancel the land acquired for the SYL canal and return it to farmers if they paid back the compensation.

### **SC orders to maintain status quo**

In a setback to Punjab, the Supreme Court on Thursday directed maintenance of status quo on the land meant for the SYL canal, after Haryana alleged that attempts are being made to alter its use by levelling the land.

The apex court, in its interim order, appointed Union home secretary and Punjab's chief secretary and director general of police (DGP) as the 'joint receiver' of land and other property meant for the SYL canal until the next date of hearing on March 31.

The SC passed the order on an urgent application moved by the Haryana government submitting that the Punjab assembly, on March 14, passed a bill against the construction of the contentious SYL canal. Haryana said the bill also provided for the transfer of proprietary rights back to the landowners free of cost.

The court order would affect the transfer of 3,928 acres of land -- along a 122-km stretch of the SYL Canal in Punjab -- to the farmers from whom it was acquired for the construction of the canal to transport 3.5 MAF of water to Haryana.

### **Why is Punjab against the SYL canal?**

Punjab says that the SYL share of water to Haryana was based on 1920 data and now the situation has radically changed. The Punjab Assembly on March 14 passed a bill (Punjab Termination of Agreements Act, 2004) against the construction of the canal. "Punjab does not have a drop of water to spare and there is no question of our accepting or implementing any decision which deprives us of our fundamental right under the riparian principle,"

## **SUTLEJ-YAMUNA LINK CANAL**

Sutlej Yamuna Link (SYL) Canal running about 121 km in Punjab and 90 km in Haryana envisages conveying 3.45 MAF out of 3.5 MAF of Haryana's average annual share of surplus Ravi-Beas waters ( as per 1981 agreement). It will irrigate an area of 4.46 lakh ha. in Haryana and also benefit Punjab in terms of irrigation to an area of 1.28 lakh ha. and in terms of power, a total of 50 MW of power generation at two power houses. Haryana portion of the canal is complete. Punjab portion of the canal was targeted for completion by March 1991. By July, 1990 when a major portion of the works had been completed, the works came to a standstill following the killing of the Chief Engineer and a Superintending Engineer of the project on 23.7.1990. As the works were not resumed, Government of Haryana filed Original Suit No. 6/ 1996 in the Hon'ble Supreme Court of India with a prayer for immediately restarting the work and completing the SYL Canal. Supreme Court delivered its judgement on 15.01.02 directing the State of Punjab to complete the canal within one year failing which, the Government of India to complete the canal as expeditiously as possible through its own agencies.

Govt. of Punjab filed an Original Suit No.1/2003 in the Supreme Court on 13.01.03 citing certain changed circumstances and praying for dissolution/discharge of the obligation to construct the canal. The Hon'ble Supreme Court in its judgement dated 4.6.2004, dismissed the suit filed by Punjab and directed the UOI to carry out its action plan for completion of the SYL canal within the specified time frame. In compliance, UOI nominated CPWD as the construction agency and also set up an empowered committee within the time frame specified. Govt. of Punjab was also requested to get in touch with CPWD to finalize the details of handing over/taking over of the canal works. After some initial response, the State of Punjab on 12.7.2004 enacted the Punjab Termination of Agreements Act, 2004 terminating the Agreement dated 31.12.1981 and all other agreements related to Ravi Beas waters and protecting all existing and actual utilization through the existing systems. Govt. of Punjab on 13.07.04 also informed Ministry of Water Resources that any step taken in furtherance of the 31.12.1981 agreement would be against the legislative mandate of the Act.

A Presidential Reference in the matter related to constitutional validity of the Act was subsequently filed on 22.7.2004, on which the Hon'ble Supreme Court has rendered its opinion on 10.11.2016 and has held that PTAA, 2004 is not in accordance with the provisions of the Constitution. Government of Haryana has filed an IA No. 6/2016 in Original Suit No. 6/ 1996 in the matter regarding the construction of Satluj Yamuna Link Canal and the same is pending in the Hon'ble Supreme Court of India.

### **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.