

Human Rights for Potable Water in Meerut

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Abstract

The city of Meerut well represents the worsening water scarcity situation in the country. It once had abundance of irrigation canals. Due to ever increasing population there has been an abnormal growth in the demand for water. This in turn has led to the construction of tube wells and thus groundwater table is decreasing at an accelerated rate. Unlike four decades ago when groundwater was approachable even in a pit just two meters deep, the water table has now fallen down to 20 meters below the surface. Groundwater contamination is another area of concern. The abuse of non-degradable waste, slaughter houses waste, chemical waste from factories and sugar mills, unavailability of sewage system etc has worsen the situation in urban area and pesticides and chemicals in agriculture is the primary cause for groundwater pollution in rural areas. People are drinking polluted water containing high percentage of arsenic, chromium, nitrate and fluoride. Studying the situation of different places in Meerut, it was founded that the most fertile and Ganga Yamuna Duab area is suffering from such situation so that the community is not receiving fresh water. When this is in Meerut one can easily assess the situation at other places where there is shortage of water and the community is waiting for potable water. There is no doubt of the fact that the right to water is a fundamental human right and is protected as such. In India we need to push right to include the right to access to water. The implementation and enforcement of this right is crucial as it is often dependant upon resources available to guarantee such a right. Social and economic rights such as the right to water are notoriously politically sensitive since their effective elaboration requires the political branches to adjust their allocation and distribution of resources, sometimes at a highly systemic level, in response to judicial direction.

International Acceptance of Water as Human Right

Internationally the right to water is not directly recognized, although there is gathering momentum to do so. The adoption in 2002 of General Comment 15 on the right to water by the U.N. Committee on Economic, Social and Cultural Rights is understood as the defining moment in supporting a human rights approach, articulated as the "right to water [that] entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic

uses.¹ Subsequently, the United Nations Development Programme's (UNDP) 2006 Human Development Report recommended that countries should make water a human right.² Most recently, however, in March 2009 at the World Water Forum, countries have demonstrated a continuing reluctance to recognize water as a human right—notably the United States, Canada, and Russia all rejected a proposal to classify water as a human right.³ On 28 July 2010, the United Nations (UN) General Assembly (GA) adopted Resolution 64/292 The Human Right to Water and Sanitation⁵ explicitly recognising “the right to safe and clean drinking water and sanitation as a human right that is essential for the full enjoyment of life and all human rights”.⁴ The Resolution calls upon States and international organisations to provide financial, capacity, and technological resources to developing countries as part of global efforts to provide “safe, clean, accessible and affordable drinking water and sanitation for all”. GA Resolution 64/292 was quickly followed by Human Rights Council (HRC) Resolution 15/9 of 30 September 2010 Human rights and Access to Safe Drinking Water and Sanitation.⁵ The resolution recognised the right to water as instrumental to the realisation of other human rights and affirmed that the right is derived “from the right to an adequate standard of living” and is “inextricably related to the right to the highest attainable standard of physical and mental health as well as the right to life and human dignity”.

How Human Right to Water can be protected

Human right to water is included within the right to an adequate standard of living and the right to health in Articles 11 and 12 of the Covenant. In the introduction to their Comment, the Committee states that “Water is a limited natural resource and public good, fundamental for life and health. The human right to water is indispensable for leading a healthy life in human dignity. It is a prerequisite to the realisation of all other human rights”. The Comment legally defines this human

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¹ U.N. Econ. & Soc. Council [ECOSOC], Comm. on Econ., Soc., & Cultural Rights, Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights, 2, U.N. Doc. E/C.12/2002/11 available at [http://www.unhchr.ch/tbs/doc.nsf/0/a5458d1d1bbd713fc1256cc400389e94/\\$FILE/G0340229.pdf](http://www.unhchr.ch/tbs/doc.nsf/0/a5458d1d1bbd713fc1256cc400389e94/$FILE/G0340229.pdf). Visited on 09-09-2012

² U.N. Development Programme, Beyond Scarcity: Power, Poverty and the Global Water Crisis 4 (2006), available at <http://hdr.undp.org/en/media/HDR06-complete.pdf>. Visited on 09-09-2012.

³ Editorial, Clean Water Should be Recognized as a Human Right , <http://www.plosmedicine.org/article/info%3Adoi%2F10.1371%2Fjournal.pmed.1000102>, Visited on 09-09-2012

⁴ General Assembly Res 64/292, UN Doc A/RES/64/292, available at <http://daccess-ddsny.un.org/doc/UNDOC/GEN/N09/479/35/PDF/N0947935.pdf?OpenElement>, Visited on 08-09-2012.

⁵ HRC Res 15/9, UN Doc A/HRC/RES/15/9 6 October 2010, available at <<http://daccess-ddsny.un.org/doc/UNDOC/GEN/G10/166/33/PDF/G1016633.pdf?OpenElement>>, Visited on 08-09-2012.

right as “The human right to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses”.

The definition within this Comment reflects three key elements that always have to be fulfilled to meet the requirements of this fundamental human right. These elements are;

“ Availability “ the State must ensure that there is sufficient water for all basic domestic needs, and that the supply of this water should be continuous

“ Accessibility “ distances that are required to be travelled to access the water source should be reasonable

“ Quality “ the water should not threaten human health and should have acceptable taste, odour and colour.

The Comment outlines three basic obligations that a State must comply within in order to ensure compliance with this fundamental human right;

“ The State must respect its citizen’s rights to water, and must not itself destroy people’s access to water.

“ The State must protect its citizen’s water sources from being harmed by others, such as being polluted due to irresponsible industrial activities.

“ The State fulfills the obligations of this human right, by actively promoting the access to safe water, such as through provision of improved water supply systems.

The Covenant on Economic, Social and Cultural Rights requires a National government to progressively realize these obligations over time. States are required to use the maximum resources available for the realization of this human right for all its citizens, and must take immediate steps to implement change. The Covenant is clear that the ultimate responsibility for ensuring this human right is met, lies with the National State government, no matter which private organisations may have ownership, or which government departments may have conflicting interests.

International efforts however, so far, have been insufficient and states are not subject to any legally binding obligations to recognize water as a human right. General Comment 15 does not explicitly recognize the enforceability of a right to water. There is no enforcement mechanism; countries are merely required to take steps subject to “the maximum of their available resources.” Nevertheless, there have been some national governments that have invoked these international

commitments while interpreting economic, social, and cultural rights⁶. Arguably, international law has a normative impact on states as demonstrated by the adoption of international human rights norms by the Indian Supreme Court.⁷

Constitution of India and Supreme Court on Right to Water

The constitutional jurisprudence of the country developed by the judiciary has placed drinking water as a derivative right within the purview of right to life under Article 21.⁸ Whenever the shortage of drinking water was brought to the attention of the judicial bodies, their response reflected a deep concern about the issue in terms of basic human rights. This is evident from the observation by the court as given below:⁹

Water is a gift of nature. Human hand cannot be permitted to convert this bounty into a curse, an oppression. The primary use to which the water is put being drinking, it would be mocking the nature to force the people who live on the bank of a river to remain thirsty, whereas others incidentally placed in an advantageous position are allowed to use the water for non-drinking purposes.

In addition, the Constitution recognizes economic, social, and cultural rights under the Directive Principles of State Policy. Although non-justifiable, they are fundamental to the formulation of public policy, governance, and the interpretation of constitutional rights.¹⁰ Article 39 (b) provides: [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]¹¹ The Constitution obliges the State and all citizens to protect the environment.¹² It also emphasizes India's obligation to respect international law.¹³ The notion of water as a fundamental human right is fraught with political and economic tensions. The Indian Supreme Court has grappled with the question of whether the right to water is best understood as an independent human right or as a subsidiary right necessary to achieve other economic and cultural rights.

⁶ Narain, " Water as a Fundamental Right: A Perspective from India," Vermont Law Review , Vol. 34:917, at p 918, <http://lawreview.vermontlaw.edu/files/2012/02/narain.pdf> Visited on 07-09-2012.

⁷ Vellore Citizens' Welfare Forum v. Union of India, (1996) 5 S.C.C. 647,

⁸ S. Muralidhar, [The Right to Water: An Overview of the Indian Legal Regime], in Eibe Riedel & Peter Rothen eds., *The Human Right to Water*, Berlines Wissenschafts-Verlag, Berlin, 2006, p 66. Constitution of India Art 21 states [Protection of life and personal liberty] [No person shall be deprived of his life or personal liberty except according to procedure established by law.]

⁹ *Delhi Water Supply & Sewage Undertaking and Another v State of Haryana and Others* (1996) 2 SCC 572.

¹⁰ Constitution of India Art 37

¹¹ Id. at Art 39 (b)

¹² Id. at Art 51A (g)

¹³ Id. at Art 51C

The fundamental right to water has evolved in India, not through legislative action but through judicial interpretation. Indian Supreme Court decisions deem such a right to be implied in Article 21, the right to life, interpreted to include all facets of life and to also include the right to a clean environment to sustain life.¹⁴ While upholding the Indian government's decision to construct over 3,000 dams on the river Narmada, the Supreme Court stated in *Narmada Bachao Andolan*, that "water is the basic need for the survival of the human beings and is part of right of life and human rights as enshrined in Article 21 of the Constitution of India"¹⁵

Understanding the right to water as implied in the recognition of the right to a clean environment, the Supreme Court has repeatedly reaffirmed the connection between public access to natural resources, including water, the right to a healthy environment, and the right to life under Article 21 of the Constitution.¹⁶ The Water (Prevention and Control of Pollution Act), 1974 Section 24 prohibits the discharge of pollutants into water bodies beyond established standards (would render the water unsuitable for drinking). The aim of Water Act is to provide clean drinking water to the Citizens. Similarly Environment (Protection) Act, 1986 governs all kinds of pollutions including water pollution. Other legislations that protect water rights are Criminal Procedure Code which authorises Magistrate to issue orders to control and removal of pollution including water pollution (Section 133-144) and Indian Penal Code invoked to prevent water pollution in public springs or reservoirs (Section 277).

The Supreme Court has been proactive in the context of the State's duty to not pollute—ordering polluters to clean up water sources and coastlines, and restitution of the soil and ground water. The Court has also applied the "precautionary principle" to prevent the potential pollution of drinking water sources during industrial development.¹⁷ In *M.C. Mehta v. Union of India*, which concerned the pollution of the river Ganga, the Supreme Court reaffirmed the duty of the government, under Article 21, to ensure a better quality of environment and ordered the government to improve its sewage system.¹⁸ In *A.P. Pollution Control Board v. Prof. M.V. Nayadu*, the Court held that the right to access to drinking water is fundamental to life and that the state has a duty under Article 21 to provide clean drinking water to its citizens.¹⁹ In *M. C. Mehta v. Union of India*, the

¹⁴ *Francis Coralie Mullin v. Adm' r, Union Territory of Delhi*, (1981) 2 S.C.R. 516, ¶

¹⁵ *Narmada Bachao Andolan v. Union of India*, A.I.R. 2000 S.C. 375.

¹⁶ *Hinch Lal Tiwari v. Kamala Devi*, A.I.R. 2001 S.C. 3215.

¹⁷ *M.C. Mehta v. Kamal Nath*, (1997) 1 Suppl. S.C.C. 388.

¹⁸ *M.C. Mehta v. Union of India*, (1998) 2 S.C.R. 530.

¹⁹ *A.P. Pollution Control Bd. v. Prof. M.V. Nayudu*, 2000 S.C.A.L.E. 354.

Supreme Court of India recognized that groundwater is a public asset, and that citizens have the right to the use of air, water, and earth as protected under Article 21 of the Constitution.²⁰

A landmark decision is *Vellore Citizens' Welfare Forum v. Union of India*, which dealt with compensation to victims of water pollution caused by tanneries. The Supreme Court incorporated principles of customary international law—the Polluter Pays Principle and The Precautionary Principle—as an integral part of domestic environmental law, linking them with the fundamental right to life in Indian constitutional law. Emphasizing the duty of the government to prevent and control pollution, the Supreme Court held that “the Constitutional and statutory provision protect a persons right to fresh air, clean water and pollution free environment, but the source of the right is the inalienable common law right of clean environment.”²¹

Water as Basic Human Right in Meerut

Case Study: Jai Bheem Nagar

Jaibheem Nagar colony, located just 3 km from Meerut District Collectorate in Uttar Pradesh, was first established 20 years ago and has now grown to a population of over 10,000 people. Jaibheem Nagar is an economically poor colony. Majority of the community belongs to the socially and economically marginalised dalit caste, at the bottom of the Scheduled Caste structure and below the poverty line. Working predominantly as labourers for a daily wage, few residents have jobs or financial security.

Jaibheem Nagar falls within the limit of the Meerut District Nagar Nigam, the civil body responsible for development within city boundaries and as such Jaibheem Nagar residents are still required to pay development taxes. The colony has an elected municipal councillor and is formally represented by an elected town panchayat. However, the colony is the only area within Meerut town jurisdiction that does not have a safe supply of clean drinking water and there is no evidence of “development” as a result of their tax payments.

Water samples collected from all the handpumps during the Janhit Foundation survey were found to provide groundwater that failed basic World Health Organisation tests for acceptability. All samples were discoloured, odorous and foul tasting. Laboratory analysis of the handpump water also showed that all samples contained a range of metal contaminants (iron, cadmium, chromium, lead and mercury) to levels which exceeded National and International standards for safe drinking water by

²⁰ M.C. Mehta v. Union of India, (2004) 3 S.C.R. 128.

²¹ *Vellore Citizens' Welfare Forum v. Union of India*, (1996) 5 S.C.C. 647.

many orders of magnitude. Water was found to be unfit for human consumption at every private and government provided handpump tested within Jaibheem Nagar. The groundwater aquifer supplying the slum therefore exhibits severe heavy metals contamination over a wide geographical area.

Use of alternative drinking water sources has led to a situation of volatile social unrest due to prejudice, harassment and even physical violence against the already marginalised community of Jaibheem Nagar. Lack of safe drinking water is shown to have forced many, within the community, to migrate from Jaibheem Nagar to other slum localities, fracturing the community and increasing economic and social marginalisation. The Government of India seems to be violating the human right to water under the terms of International Human Rights Conventions by failing to protect the Jaibheem Nagar community from the pollution of their drinking water resources by external parties, and also by failing to fulfill obligations to provide water of suitable quality, which is easily available and accessible. The Government of India is seen to be in breach of Articles 21 of the Indian Constitution by denying Jaibheem Nagar community their fundamental right to life by failing to provide safe drinking water and a pollution-free environment²².

Case Study: Daurala

Daurala town is located within Meerut district, Western Uttar Pradesh, 14 km from district headquarters. Daurala is a largely rural community, established for around 900 years and is heavily financially dependant on the sugar cane crops grown in the region, and the sugar processing industries their crops supply. There are a significant number of small and medium sized industries in Daurala town, both formally registered and informal. Dominating industry within Daurala is DCM Shriram Industries Limited who operate a sugar processing plant, a distillery and an organic chemicals manufacturing plant, covering over 300 acres of land within Daurala. The "Daurala, Hell on Earth" report identified heavy metals including arsenic, lead, cadmium and cyanide within the groundwater underlying Daurala town, water which serves all the towns domestic and drinking water needs. The metals were present at levels far in exceedence of the maximum limits permissible in safe drinking water. Levels of lead in hand pump samples were, for example, identified at over 100 times the recommended Bureau of Indian Standards level for safe drinking water. The water was therefore deemed to be unfit for human consumption.

Analysis of industrial effluent samples from DCM Shriram Industries Limited identified the same range of heavy metals as was found in the groundwater. Levels of these metals in the industrial effluent were found to be far in exceedence of the desirable limits for drinking water, as specified by

²² A Study by Janhit Foundation, NGO at Meerut: Report on Jaibheem Nagar, 30-04-2008, pp vi-viii.

the Bureau of Indian Standards standard IS 10500: 1991. For example, levels of lead within the effluent were shown to be nearly 800 times the desirable limit for drinking water. Arsenic, Chloride, Cyanide were also discharged into the ground water. The report also identified that this contaminated effluent was being stored in unlined lagoons to be used by local farmers for crop irrigation. The heavy metal contaminants within this effluent is therefore brought into direct contact with food crops, and is a direct source of groundwater contamination due to effluent leaching to groundwater through soils and through the unlined storage lagoons. Levels of heavy metals within agricultural soil was, as expected, shown to contain similarly elevated levels of heavy metals as a result of crop irrigation by contaminated leachate. The report therefore highlights clear links between disposal of industrial effluent and contamination of agricultural soils and drinking water. 25% of the surveyed population were shown to be suffering from debilitating illnesses with symptoms that are characteristic of toxic poisoning by long term consumption of heavy metals, diseases including neurological disorders, cancers, gastric, dermal and respiratory disorders. Many of these diseases have proved fatal with elevated death rates amongst residents. Children have also been shown to be particularly at risk due to the mechanism of action of heavy metals poisoning. The report also identified the clear links between industrial effluent discharge and contamination of drinking water supplies to the residents of Daurala town. By allowing this contamination of both environment and drinking water to continue and failing to take appropriate action, these government bodies are therefore in clear violation of International and National human rights obligations, and the Indian Constitution.²³

Case Study: Kali Nadi

Originating in the foothills of the Himalayas, the Kali River (East) flows for over 300km through eight highly populated agricultural districts within Western Uttar Pradesh before joining the Ganges River. However, as is unfortunately the case for rivers across India, the Kali River (East) receives substantial quantities of contaminants and untreated effluents from numerous sources along its course. The catchment has inadequate sewage treatment facilities and so the Kali River (East) receives a large volume of untreated raw human excreta from thousands of major and minor habitations in the catchment. Numerous studies have shown human sewage to contain a wider range of heavy metal parameters. The river is a major source of water for agricultural purposes, particularly for crop irrigation and the watering and washing of livestock. However, as an intensely agricultural region, the catchment of the river also receives considerable volumes of agrochemicals, either as direct run-off from land, or via hydraulic continuity with underlying groundwater aquifers which have

²³ In September 2005 the Janhit Foundation published their comprehensive report "Daurala, Hell on Earth" A paper on industrial pollution in Heather Lewis, A Paper on Corporate Responsibility, Restoring Daurala, Mitigating Industrial Pollution, Janhit Foundation, 2007, p 1

themselves been contaminated. Extensive scientific research has shown that chemical fertilisers also contain a range of heavy metals contaminants and that these contaminants are known to leach through soils to underlying groundwater aquifers, causing contamination of this important water resource.

A survey was undertaken in 1999 by the Government of India's Central Ground Water Board, to investigate the quality of the Kali River (East) and the local groundwater resources. Two reports resulted – "Chemical quality and pollution status of ground water in and around areas of Kali River (East), Uttar Pradesh" and "Pollution in Kali Nadi (East) and its environs in parts of Meerut and Ghaziabad Districts, Uttar Pradesh".

The survey found a range of heavy metal parameters to be present in the groundwater samples taken from drinking water handpumps within Meerut and Ghaziabad Districts. Metals present included chromium, cadmium and iron. Iron was seen to grossly exceed the Bureau of Indian Standards (BIS) specification for safe drinking water within 50 out of 52 samples, with some handpumps recording exceedences of upto 224 times the acceptable level²⁴.

The river has contaminated the groundwater along its banks. "The water from handpumps turns dark yellow if you keep it for a few minutes. It tastes like diesel," said Om Prakash, a resident of Jalalpur, a village 4 km downstream of Meerut. He said the paper and sugar mills and the slaughterhouse in Meerut are polluting the river. Thirty families in the village of 2,000 have migrated due to pollution, he added. Further downstream, residents of Alipur village said officials collect water samples regularly but have done nothing about the pollution. The Central Ground Water Board office in Lucknow had recommended in 2002 that handpumps and tubewells along the Kali Nadi be closed. People say they have no other source of drinking water²⁵. Samples from handpumps in villages in close proximity to the Kali River (East), identified heavy metal contaminants (cadmium, chromium, zinc and iron) within both river water and groundwater. All metals were found to be exceeding, or close to exceeding, permissible limits standards set for drinking water. For example levels of chromium within drinking water supplies at Kudhla Village, Meerut district, are found to be 140 times the maximum permissible limit for drinking water set by the Bureau of Indian Standards for this heavy metal. Groundwater available from handpumps samples was also heavily coloured with an unacceptable odour and taste.

²⁴ A Study by Janhit Foundation, NGO at Meerut: Report on Jaibheem Nagar, 30-04-2008, pp 10-11.

²⁵ Jyotika Sood, Kali Nadi is poisoned, Down to Earth, Jul 15, 2010.

Conclusion

There are some problems despite having the constitutional right to water in India [a.) There are vast areas in India where water infrastructure does not exist and water delivery of any kind is not possible. The policy to provide free basic water therefore needs to be supplemented with a policy that aims to rapidly increase access to water infrastructure - especially for the rural poor; b.) Especially in rural communities where there are not a sufficient amount of high volume users to cross-subsidise the provision of free water to all, policy creates serious problems for local governments, which are often not able to finance the free provision of basic water for all. This leads rural municipalities to take drastic measures (e.g. disconnections) that deprive their residents of access to water. A water policy therefore should be properly targeted to meet the needs of the rural poor - a particularly vulnerable group in society. The rhetoric of a human right to water, once implemented and fleshed out in practice, has a tendency to dissolve into a series of strategies eerily resembling consumer rights [an important dimension of a market state and the urgency of the rights claim can be entangled in a web of a complex regulatory framework. This should not necessarily stifle the rights claim to water. A human need can be left to market forces to fulfill. But if water is a human right, then the State is responsible for the fulfillment of that right even if it allows private intermediaries to play a role. In Meerut almost in every area submersible pumps are installed and they are exploiting underground water without any restriction. Thus to curb the persons who are selling potable water in Meerut, it should be made mandatory for boring companies to get themselves registered. To conclude, governments, international aid agencies, nongovernmental organizations and local communities should work to provide all persons with a basic water requirement and to guarantee water as a human right.