

ACCESS TO CLEAN WATER AS A BASIC HUMAN RIGHT OF THE INDIGENOUS COMMUNITY IN INDIA: A SUSTAINABLE DEVELOPMENT PERSPECTIVE

¹Vijaya Bharathi Ravikumar, ²Vijayendra Kumar. M, ³Dr Prema Elumalai

¹Assistant Professor, VIT School of Law, Vellore Institute of Technology, Chennai, Tamil Nadu, India. Email: vijayabharathi.r@vit.ac.in

²Assistant Professor, VIT School of Law, Vellore Institute of Technology, Chennai, Tamil Nadu, India. Email: vijayendrakumar.m@vit.ac.in

³Associate Professor (Senior)& Assistant Dean, VIT School of Law, Vellore Institute of Technology, Chennai, Tamil Nadu, India-600 127 Email: prema.e@vit.ac.in

ABSTRACT

Unsafe water and lack of access to sanitation are not the only threats to the health of the indigenous community but it is a deprivation of basic human rights. The health and well-being of the indigenous community are affected at large by the deprivation of such basic rights. Indigenous communities from ancient times have managed the land and other natural resources through sustainable measures. Such highly dense mountain regions experience clean water scarcity and unplanned sanitation systems. This problem majorly attracts four significant sustainable development goals (SDGs) viz., SDG-3, 6, 10, and 16 that emphasize good health and well-being of the community, clean water and sanitation, reduced inequalities among people, and justice respectively. Water being a core of world politics also becomes a symbol of good governance when it is efficiently managed by the governments. In India, though there are legislations such as The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, which provides the right to water to the indigenous community, the legislation is silent on the position of indigenous people in terms of access to water and there are major problems in accessing clean water and proper sanitation facilities. The present study aims to identify the complications involved in the implementation of water management laws and analyses the existing legislation and government policies in India relating to water management and indigenous communities. It also aims to analyze the international best practices and case studies relating to water management strategies of the indigenous communities.

Keywords: *Indigenous People, SDGs, water, access, sanitation, governance.*

INTRODUCTION

Indigenous people have been inhabiting this Indian sub-continent since time immemorial. They possess a vast amount of unwritten knowledge and experience dealing with science, forestry, and medicine. Rapid urbanization has intruded into their lifestyle. To safeguard them, Governments across the world, and India in particular have enacted laws to safeguard their rights which include the right to water. Across the world, the sharing of water

among people, the government providing water resources to people, etc., are a few common issues that are confronted by one billion, and among them are indigenous communities. (D.Nakashima, 2006) SDG 15 aims to “protect, restore and promote sustainable use of terrestrial ecosystem, sustainably manage forests, combat desertification, and halt and reverse land degradation and halt biodiversity loss.” Further, humans are dependent on the forest's biological diversity, both for food and trade. Interestingly, water is one specific natural resource, for its preservation requires forest region. The ancient society recognized the importance of water. Poets penned numerous literatures glorifying its importance and one such poet is Thiruvalluvar. Thirukural, written by him in Tamil language, held water in high esteem wherein he states in one poem – “neerindri amaiyathu ulagu” which translates to – the existence of water is highly essential for the very existence of this world. Such was the thought process which, though written thousands of years back, is relevant even today wherein this thought process finds its place in constitutional documents and judicial pronouncements. This paper attempts to understand the legislative, judicial and policy approaches towards right to water as a basic human right and how the access to water for the indigenous community is ensured through these approaches.

Right to Water as a Human Right

The indigenous communities have suffered years of marginalization, colonization, and violence. One of the most persistent problems is access to resources. The right to water is one of the most basic human rights and it should be made available and accessible to all. The right to water is most commonly advocated from the perspective of the privatization of water. The right to water is a fundamental right under the Constitution of India and this can be traced through several judgments of the Indian Judiciary. The right to clean water though not mentioned under Article 21 of the Constitution of India explicitly, through judicial activism is brought under the ambit of Article 21. Apart from Article 21, the courts have also relied upon several other articles like Article 39, Article 47, and Article 51 (A) (g) to emphasize the right to water. Article 39 states that the state shall make policies and plans in such a way that the division of material resources and its control and title is done equitably and to promote the collective interest of the society. Article 47 emphasizes one of the most important duties of the state which is to increase the nutrition levels, public health, and the standard of living. The courts have also evoked Article 51 (A) (g) when private parties are involved. Article 51 (A) (g) deals with the fundamental duty of the citizen to protect and respect the environment. The article states that “It shall be the duty of every citizen of India - to protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for living creatures”.

The Supreme Court of India has reinstated the position of access to water as a fundamental right separately as well as by bringing the right to water under the right to a clean environment. The courts have expressed this view in several judgments as highlighted below. In the *Subhash Kumar* case (*Subhash Kumar v. State of Bihar, 1991*), the Supreme Court of India gave its judgment stating that the right to life encompasses the right to the environment thereby including the right to clean water and air. Anything that hinders the right to water by means of pollution or the right to access water can be considered a fundamental right and a remedy can be sought under Article 32. The courts did not only accentuate on right to water

they also emphasized on right to clean water. In *Bandhua Mukti Morcha* case (Bandhua Mukti Morcha v. Union of India & Ors. , 1997) the Supreme Court of India reiterated its position by stating that the right to water includes the right to clean water and brought it under the ambit of Article 21.

In *Vellore Citizens' case* (Vellore Citizens' Welfare Forum v. Union of India, 1996) the Supreme Court of India again restated its view on the right to water. The case is related to water pollution caused because of the chemical effluents discharged into the water by the tanneries situated near the river Palar. The court ordered that the tanneries must be shut down until they equip themselves with the required pollution control mechanism, the reopening of tanneries should be based on the permission given by the Tamil Nadu Pollution Control Board, it imposed fine on the polluters and expressed its opinion on the establishment of Green Benches to decide cases in the realm of environmental protection. Moreover, in *Kamal Nath case* (M.C. Mehta v. Kamal Nath, 1997) the Supreme Court of India stated that the state should be the "trustee of all-natural resources which are by nature meant for public use and enjoyment". The Court highlighted the 'public trust doctrine' which establishes that certain natural resources such as rivers and forests are under the Government- the trustee of all natural resources and the same is meant for public use and enjoyment. Further, the public trust doctrine is reviewed by the Court from United States cases and observed that under English common law the doctrine was applied only to traditional uses such as fishing and navigation. Additionally, the Court stated that the public trust doctrine is now being extended to all ecologically vital lands which includes fresh water, wetlands and forests.

Right to Water and Indigenous People

Due to nation's decision on establishing dams or projects often impacted the rights of indigenous community and the judiciary has provided remedies to the victims through its decisions. Judiciary at national and international level constantly considered the rights of indigenous people and paved way in establishing the legal protection widely.

In the *Sami village case* (Handölsdalen Sami Village and Ors Vs Sweden, 2010), the district court, the court of appeals and the European Court of Human Rights (ECHR) affirmed that the Sami people do not have grazing rights on privately owned land for winter grazing of their reindeers based of the fact that such usage did not constitute a custom because there was no proof to indicate such usage for a time immemorial. In *Sawhoyamaxa Indigenous Community case* (Sawhoyamaxa Indigenous Community v. Paraguay, 2006), the Court has recognized water rights as a requirement of a dignified life which includes the resettlement of communities. Further the Court stated "will be chosen by agreement with the members of the indigenous peoples, according to their own consultation and decision procedures." In *Ogoni People Case* (The Social and Economic Rights Action Center, et al. v. Nigeria, 2001) the African Commission stated that Nigeria in violation of the right to a satisfactory environment un the African Charter for the serious environmental rights violation that was committed by Royal Dutch Shell against the Ogoni people and their territories for fifty years (Giunta, 2023).

In *Endorois case*, (Centre for Minority Rights Development (Kenya) and Minority Rights Group International on Behalf of Endorois Welfare Council Vs Kenya, 2003) the Commission found that the Government of Kenya, while evicting hundreds of Endorois families living around Lake Bogoria area, for establishing a game reserve for tourism, violated

various rights of Endorois' communities including their rights on natural resources. It is been noted that in the *Endorois* case, the Commission Stated that "The jurisprudence under international law bestows the right of ownership rather than mere access. The African Commission notes that if international law were to grant access only, indigenous peoples would remain vulnerable to further violations/ dispossession by the State or third parties. Ownership ensures that indigenous peoples can engage with the state and third parties as active stakeholders rather than as passive beneficiaries." (Centre for Minority Rights Development (Kenya) and Minority Rights Group International on Behalf of Endorois Welfare Council Vs Kenya, 2003)

The European Parliament resolution of 3 July 2018 on violation of the indigenous peoples in the world, including land grabbing, is emphasizing the protection of indigenous rights that includes water rights under human rights (2017/2206(INI)). Often, communal resources such as water are impacted by industrial growth or mineral extraction projects, which results in many issues, particularly if there are water-related rights it becomes a centre of legal conflicts. (Barral, 2018) In human rights-based environmental actions, applicants have asserted a variety of rights. A number of these have been central to the development of regional human rights frameworks; two such examples are the right to life in Inter-American case law (Article 4 of the American Convention on Human Rights (ACHR)) and the right to private and family life in European Convention on Human Rights (ECHR) case law (Article 8 of the European Convention on Human Rights (ECHR)) (Galani, 2023).

Nexus between the Right to clean water and Indigenous People living in the Mountain region

There are many countries and many regions of indigenous communities fighting for their rights. For instance, "A confluence of mounting resource scarcity and heightened efforts by governments to suppress environmental social movements made 2017 the deadliest year on record for land and environmental defenders, with 207 women and men—one quarter of whom were indigenous—killed for protecting their lands, forests, and water." (Global Witness. 2018)

The Government of India, in partnership with State Governments, has been implementing the Jal Jeevan Mission (JJM). It took into account the water rights of indigenous people and has made significant achievements in providing potable tap water supply to every rural household including those in tribal areas. According to a press release, "At the time of the announcement of the Jal Jeevan Mission in August 2019, 3.23 Crore (17%) of rural households were reported to have tap water connections. So far, as reported by States/UTs as of 02.02.23, more than 7.83 Crore rural households have been provided with tap water connections in the last three and half years. Thus, as of 02.02.2023, out of 19.36 Crore rural households in the country, around 11.07 Crore (57%) households are reported to have tap water supply in their homes."

SDG and Right to Water in India

The *NITI Aayog* or the National Institution for Transforming India, a policy think-tank of Indian Government, in its 2018 report states that only 4% of fresh water will be available for the 16% of the population. India realizes the fact that waste management and improper sanitation are one of the reasons that pollute the water bodies that provide drinking water. The

Indian government has also come out with many schemes to eliminate water scarcity among the Indian population. The United Nations Sustainable Development Goal 6, ensures the availability and sustainable management of water and sanitation for all. Analyzing the fact that the right to clean water applies to all living beings on earth, the national governance must implement this universal objective into its policy and schemes. India in recent decades has framed various policy that specifically focuses on the distribution of clean water to all citizens of India. These policies are ensuring in achieving the SDG 6. For instance, in 2019, India established a policy *Jal Jeevan Mission*, which provides water supply to households in rural areas through pipeline connections. Previously, in 2014, India launched the *Swachh Bharat Abhiyan*- Clean India Mission, this included improving the needs of the people for safe and accessible water and sanitation. (Singh, 2022)

Case Studies (India)

There are many case studies made by individuals and non-governmental organizations on the indigenous communities that are denied basic human rights such as water rights. VAAGDHARA, an NGO in India has conducted a study in Central Western India- a hilly terrain that has poor rainwater retention due to undulated lands. The study focused on the water sovereignty of the indigenous people and its traditional methods of water conservation and harvesting (Vaagdhara., 2023). The following are two case studies in India that show the problems and issues faced by the indigenous community in India.

i. Orissa

Due geographical properties, it is difficult to implement the conventional methods of groundwater extraction. Access to clean water is still a challenge for many indigenous people in India. This challenge is the inception of multifaceted problems like health hazards, food security issues, lack of sanitation, and agriculture failure. Springs are natural water sources in mountain and hilly regions.

The Ministry of Tribal Affairs, Government of India joined hands with United Nations Development Programme (UNDP) and came up with an initiative called the 1000 Springs Initiative. It was incorporated in Odisha with the assistance of the Community-based organization Gram Vikas to guarantee improved access to clean water to the indigenous communities by identifying and rejuvenating the existing natural springs.

One of the key features of this initiative is that it includes members from the indigenous community and trains them as a barefoot hydrologist and they help in identifying and mapping the springs. The identified set of information is then fed to a Geographic Information System-based Spring Atlas which consists of an online inventory of springs. "It helps in locating springs, analyzing their health status, quality of water, discharge capacity, and other physical, chemical, and biological properties. It also fills the crucial information gap to develop a national map of springs in the state." This project not only enriched the water resources but also paved the way for planting indigenous varieties of crops, generating employment, and improving the overall livelihood of the people. The 1000 Springs initiative has assisted in identifying 554 springs covering 116 habitations in 11 districts of Odisha and several districts of Odisha now have adequate water access. After seeing the response and performance in Odisha, the ministry is also planning to extend the 1000 springs initiative to the states of Jharkhand, Chhattisgarh, and Madhya Pradesh.

Subsequently, the Government has also initiated several other projects and working groups to improve water and sanitation of the indigenous community such as “to bring the issue of spring shed management to center stage in the context of sustainable development in the Indian Himalayan Region, NITI Aayog, vide its notification Number P12018/12/2016-RD dated 2 June 2017, constituted a Working Group on ‘Inventory and Revival of Springs of Himalaya for Water Security’ as one of 5 thematic Working Groups for Sustainable Development of the Indian Himalayan Region.”

ii. The Case of Lath Village

Since India’s independence, resources show that more than 50 percent of the more than 20 million people are displaced due to mining and other industrial projects. Lath is a small village in Sonipat district, Haryana state of India where there are about 400 indigenous (Kawar Adivasi- tribal) families live. In 2003, the South Eastern Coalfields Limited (SECL) built its coal mine in the Lath region which resulted in displacement many indigenous families and only 56 families remain. These families have lost their livelihood (farmers) and their access to clean water was affected highly since the coal mine carry the waste water and the same contaminated the river that provides water to the indigenous families. (Puranam, Elizabeth, 2016)

CONCLUSION

There has been an increasing trend to safeguard the rights of indigenous people residing in the country which also includes water rights. The legislatures have enacted suitable measures to safeguard those rights. The policy decisions also reflect the commitment of the Governments in providing potable water to indigenous people. Water scarcity, which is made worse by climate change, disproportionately affects women and indigenous people. Girls and women are typically in charge of gathering and maintaining water supplies for household use in many societies like India, which frequently results in a loss of educational and employment opportunities. So, it is crucial to utilize indigenous knowledge and the involvement of women in order to address the numerous, complex problems related to water that climate change has brought about. Their knowledge systems and experiences are crucial to implementing methods to reduce and adapt to these changes, as well as to preserve a balance in the environment through a sustainable approach to water management. Naturally, protecting the water bodies such as growth of algae and weeds that cleans water need to be implemented. Further, there is a necessity for the Government of India to address the climate change impacts on water availability, scarcity to recognize the climate change issues effectively through schemes like *Atal Bhujal*. When there is a failure in the climate change resilience in water supply and water sanitation will impact the health condition of poor and tribal people at large. Conclusively, though India has successful in implementing the SDG 6 through many schemes and policies, the Tribal or indigenous community still face many challenges to the access to clean water and there is clear necessity for the government to address the same.

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