

20. Ensuring Water For The Marginalized – II

By Gopal Krishna Agarwal,

The judicial approach to water rights regime in India clearly showcases the urge of the Supreme Court and various high courts to shelter the right to water, thereby, providing basic amenities of life to the poorest of poor. 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 recognizes the principle of equal access to the material resources of the community.

The right to groundwater in India is seen as following the right to land. The Indian Easements Act, 1882, links groundwater ownership to land ownership and this legal position has remained intact since then. The definition of the right suggests that if your neighbor extracts too much water and lowers the water table, you have the right to prevent him from doing so. Thus, there are limits to an individual's right to exploit groundwater.

In the international scenario, through Resolution 64/292, on July 28, 2010, the UN General Assembly explicitly recognized the human right to water and sanitation, and acknowledged that clean drinking water and sanitation are essential to the realization of all human rights. The Resolution calls upon states and international organizations to provide financial resources, capacity-building and technology transfer to help countries, in particular developing countries, to provide safe, clean, accessible and affordable drinking water and sanitation for all.

The scope of water rights and laws in India have been widened and a positive approach has been adopted by the Indian judiciary, reflecting the international norms and standards. The National Commission that reviewed the Indian Constitution, recommended in its report, the inclusion of a new right in the form of right to safe drinking water to avoid ambiguity and also to bring clarity by constitutional provision. A legislation clearly framing the rights and duties of various government and institution for provisioning of water is the need of the hour.

The National water framework law 2016 was a step in the right direction, but unfortunately it lapsed in Parliament and could not see the light of the day.