

Water Economics and Governance
Prof. Manoj Kumar Tiwari
School of Water Resources
Indian Institute of Technology, Kharagpur

Lecture - 06
Background to Water Rights

Hello everybody. So, we are into the week 2. And last week we did talk about the water availability it is uses and what are the major critical issues and challenges that we are facing in today's time with respect to primarily focusing on to the Indian aspects. We did talk about earlier the introduction of the course also that what eventually will be discussing throughout this course. And, one of the basic topics is actually on to the water rights.

So, this week and primarily in next few lectures what we are going to talk is about the water rights. So, we will be discussing what are the water rights, why we need them, how it has been eventually developed regularized and those various aspects of the water rights that is what we are going to discuss over here.

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Water and the Millennium Development Goals

- In 2000, the United Nations adopted a set of 08 Millennium Development Goals (MDGs) to improve the lives of the poorest people on Earth.

“Halve, by 2015, the proportion of people unable to reach or afford safe drinking water and to halve the proportion of people without access to basic sanitation”. (WHO Website: <http://www.who.int>)

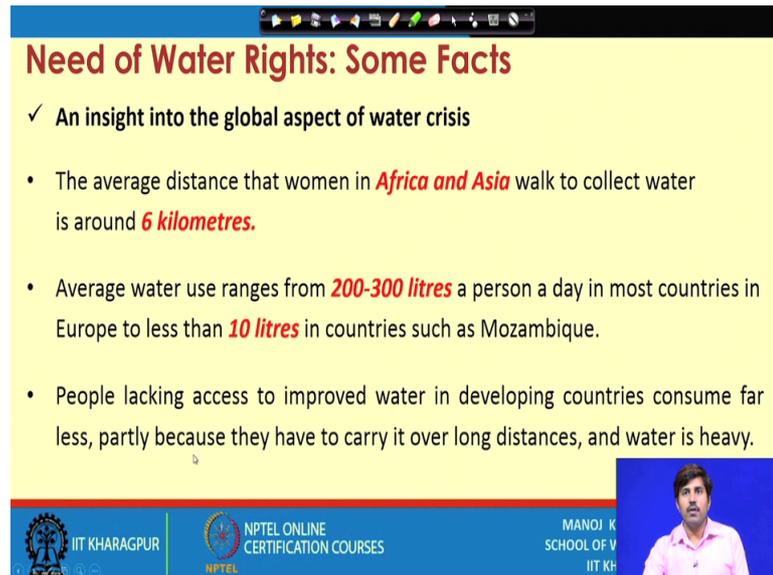
- Millennium Development Goal drinking water target met, Sanitation target still lagging far behind. (WHO Website: <http://www.who.int>)

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So, first thing if you see the water which was which was included in one of the 8 millennium development goals which was set in 2000 and that said that we need to basically cut down the proportion of people who are unable to reach or afford safe drinking water to half.

So, basically the entire the number of people at that particular time in around 2000 was to be supposed to be cut down to 50 percent by 2050 in terms of those who did not have access to safe and affordable and significant quantity of water and basic sanitation of course. So, as per the who they are millennium development goal this goal in terms of drinking water has been met while the sanitation target is still lagging far behind.

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Need of Water Rights: Some Facts

- ✓ An insight into the global aspect of water crisis
- The average distance that women in **Africa and Asia** walk to collect water is around **6 kilometres**.
- Average water use ranges from **200-300 litres** a person a day in most countries in Europe to less than **10 litres** in countries such as Mozambique.
- People lacking access to improved water in developing countries consume far less, partly because they have to carry it over long distances, and water is heavy.

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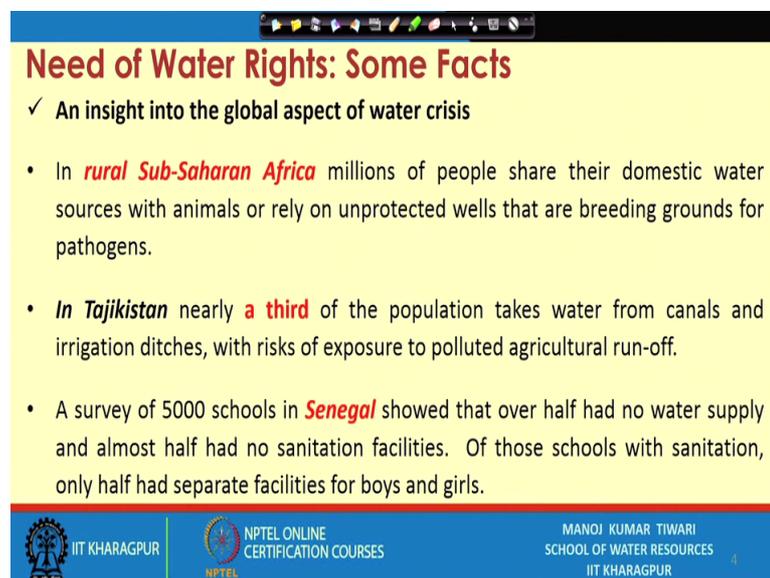
So, that is the case of sort of where we stand in terms of the worldwide this thing as we told that will be talk talking about water rights in today's lecture. So, before we go on to what exactly are water rights or what is right to water as our united nation calls it. So, first thing what is the need of water right, why we are discussing this term water rights and why we need such right legislatively or regulatory rights that enforces the enforces these state agencies or the government bodies to make safe and adequate amount of water available to us.

So, there is if you see the insight on to the global aspects of water crises where the what is the status of crisis in different portions. So, these are some facts actually compiled from various sources primarily from World Bank reports WHO and World Bank reports. So, you see that average distance that a woman in Africa and part of Asia walks to collect the water is around 6 kilometers. Now that is a huge distance to get water the average water use ranges from 200 to 300 liters in most of the countries in Europe which are very well developed and which are quite well developed and has access to the significant

amount of water resources fresh water resources Europe is basically rich in the freshwater resources.

So, their per capita consumption is as high as 200 to 300 liters per day while if you look the lowest African and these places where there is a high very high order of water scarcity the per capita consumption falls to less than 10 liters in countries, such as Mozambique the people that lack the improved water in developing countries consume far less of water mostly, because they have to carry water from long distances and water is heavy.

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Need of Water Rights: Some Facts

- ✓ An insight into the global aspect of water crisis
- In **rural Sub-Saharan Africa** millions of people share their domestic water sources with animals or rely on unprotected wells that are breeding grounds for pathogens.
- In **Tajikistan** nearly **a third** of the population takes water from canals and irrigation ditches, with risks of exposure to polluted agricultural run-off.
- A survey of 5000 schools in **Senegal** showed that over half had no water supply and almost half had no sanitation facilities. Of those schools with sanitation, only half had separate facilities for boys and girls.

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So, if you need to carry water for a long distance one actually you will think of cutting down it is uses. So, that they do not need to put that much of effort, in rural sub-Sahara Africa there are millions of people share their domestic water sources with animals or rely on unprotected walls that are breeding ground for pathogens and this is not the case for Africa only is the case actually for many other places. So, I will share a personal experience that way we happen to visit some places in the in the Sundarban area Ganga, Sagar and there are people who rely on pond waters completely filled with water high scenes they have just cleared a little portion of that pond and taking the water from that pond using it for cooking purpose feeding purpose washing purpose.

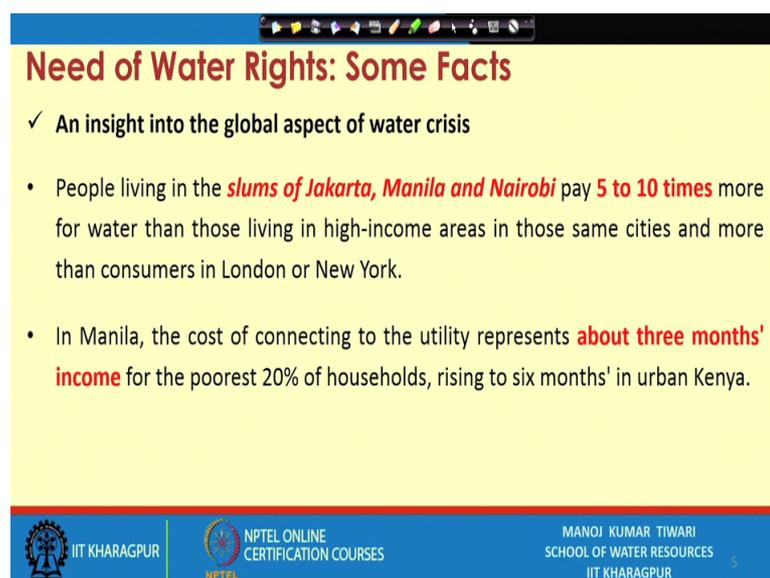
So, all their domestic water needs are getting fulfilled from that water only whereas, that same water is being used by animal and other also because they cannot completely stop

entering it is a big pond. So, those kind of situations are there and these are serious breeding grounds for pathogens and these that kind of cases leads to the severe water bond epidemics that can lead to the loss of life of significant amount of people in Tajikistan nearly a third of population takes water from canal and irrigation ditches with risk of exposure to the agricultural run off again agricultural runoff is known to contain lot of pesticides lot of herbicides and all that.

So, these coming into the water these are likely to if you are collecting water from irrigation ditches in these places. So, you are exposing yourself one is exposing oneself to these pollutants and these are the chronic pollutants can lead to the cancerous disease. So, immediately you will one will not recognize any problem, but in later scales one can see that the extent at which one suffers is huge. A survey of 5000 schools in Senegal have showed that over half had no water supply and almost half had no sanitation facilities.

So, of those schools with sanitation only few or around half of them have separate facilities for boys and girls. So, you see that 50 percent of school does not have sanitation facility at all and those 50 percent which had also half of them did not had the proper sanitation facility for proper gender specific sanitation facilities. So, that is another issue.

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Need of Water Rights: Some Facts

- ✓ An insight into the global aspect of water crisis
- People living in the *slums of Jakarta, Manila and Nairobi* pay **5 to 10 times** more for water than those living in high-income areas in those same cities and more than consumers in London or New York.
- In Manila, the cost of connecting to the utility represents **about three months' income** for the poorest 20% of households, rising to six months' in urban Kenya.

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People in slums of Jakarta Manilanairobi these places pay 5 to 10 times more for water than those living in high income areas in the same cities and more than the consumers in London and New York now this is interesting, because ideally the people earning more are actually capable of paying more for water, but because they are fed with proper water supply connections proper metered water supply connections they pay at a fixed tariff rate, but those who are not fed with the idea with the proper piped water supply system face. This issue because they have to rely many times onto the tanker buying water bottles for drinking and all that.

So, if you happen to buy 20 liter can of water for drinking purpose you will pay minimum say 20 rupees, 25 rupees, 30 rupees minimum that much. However, if you are getting pipe supply in your household for the 20 liter of water you pay almost nothing. So, that is the situation those who are having well equipped water supply connections and all that even though there they will be earning in lakhs of rupees, but they are not they does not pay a substantial amount of money for that their water consumption. However, those who are living in slums and unfit water area where water supply is not proper or not piped water supply they have to rely on external sources and in order to buying the water they need to pay more. So, that is another critical challenge.

In manila the cost of connecting to water utility represents about 3 months income for the poorest 20 of household, which is almost raises to the 6 months income in urban part of the Kenya.

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Need of Water Rights: Some Facts

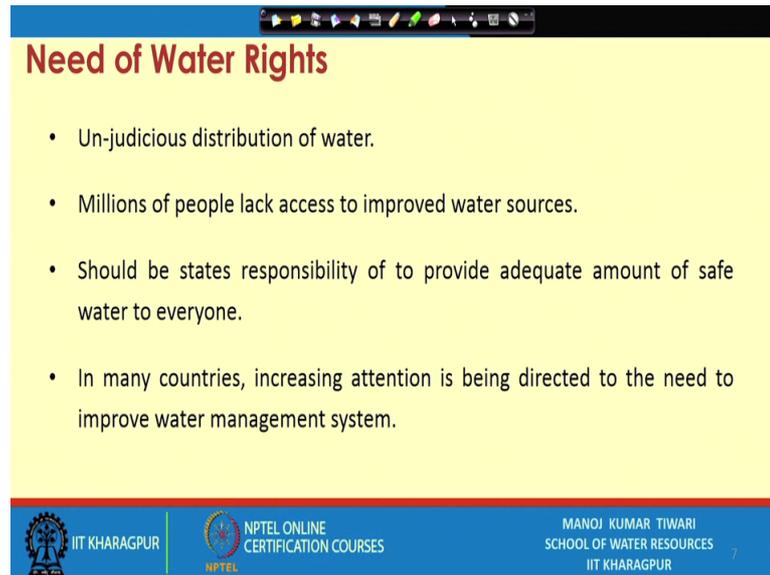
- ✓ An insight into the global aspect of water crisis
- For the 884 million people or so people in the world who live more than 1 kilometre from a water source, water use is often < 5 litres a day.
- At any one time, *close to half of all people in developing countries are suffering from health problems caused by poor water and sanitation.*
- Together, unclean water and poor sanitation are the world's second biggest killer of children. It has been calculated that 443 million school days are lost each year to water-related illness.

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So, that kind of charges are there for connecting to water utilities in some places overall if you see. So, as per the WHO and WHO and United Nations around 884 million people. So, there are basically more than one kilometer for around 884 million people needs to move more than 1 kilometer for getting water. So, they live more than 1 kilometer away from water sources and their water use often is less than 5 liters a day. So, at any given point of time if you see the close to half of the all people in developing countries is suffering from health problems caused by the poor water and sanitation. So, that is the that is the scale of the issue that is we generally do not realize that what we are, because we are more self concerned that way about our status of living and all that, but if you see the holistic picture we are in very sad state of affairs in terms.

So, it has been estimated that unclean water and poor sanitation are the world's second biggest killer of the children. So, it has been calculated that around 443 million school days are lost each year to water-related illness.

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Need of Water Rights

- Un-judicious distribution of water.
- Millions of people lack access to improved water sources.
- Should be states responsibility of to provide adequate amount of safe water to everyone.
- In many countries, increasing attention is being directed to the need to improve water management system.

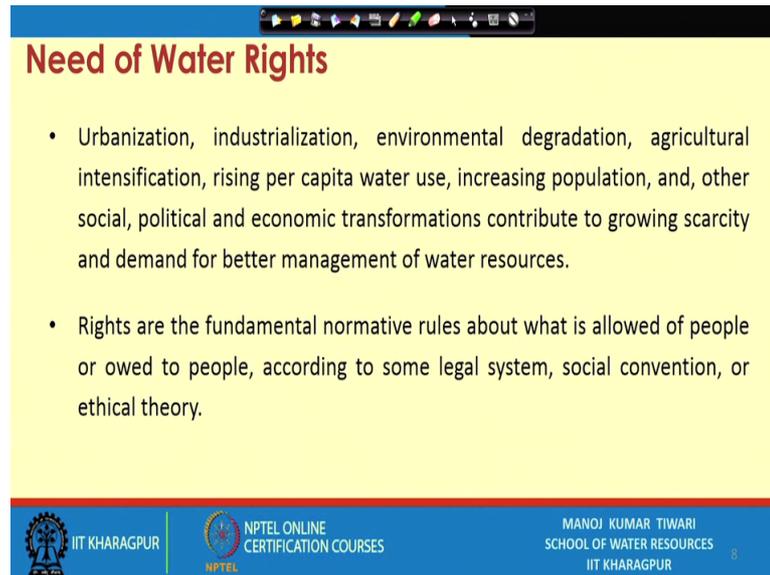
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So, that is the status, now we have been seeing that how pathetic is the situation or how un judicious is the situation in terms of water availability, water consumption, water economics. So, this un judicious distribution of water is one of the major reasons that one should have a rule in forced by the states, by the governments, by the legislation, that provides access to the water to everyone at fair and equitable way it is very unfair for one people paying many many folds higher for that water which is available at substantially less price to more well to do person.

So, this Un-judicious distribution of water is needs to be basically addressed that is one point, then there is million of people that lakhs of access to improve water sources as we have been discussing earlier in the entire world that is not the case with India only, but everywhere and in most of the developing countries that is the case, of course the under developed countries are even worse.

So, water management or the water governance or this responsibility of providing adequate amount of safe and safe and sort of affordable water to everyone should be the states responsibility, because it is government who manages the these resources as in their own authority. So, it is their responsibility also, in many countries there has been increasing attention towards the need of improved water management system. So, how can like water be managed in an improved way and how basically it can be distributed or made available to the entire citizens of a country or of a nation in fair and equitable way.

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Need of Water Rights

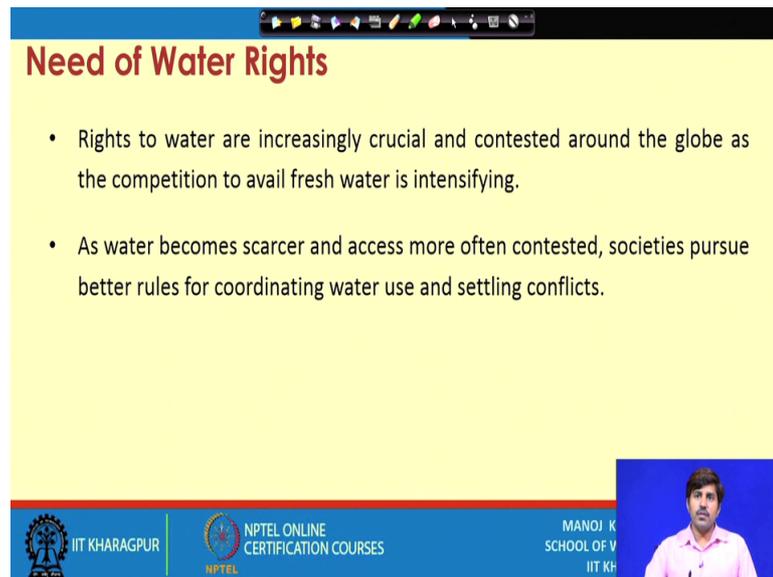
- Urbanization, industrialization, environmental degradation, agricultural intensification, rising per capita water use, increasing population, and, other social, political and economic transformations contribute to growing scarcity and demand for better management of water resources.
- Rights are the fundamental normative rules about what is allowed of people or owed to people, according to some legal system, social convention, or ethical theory.

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Further there is various factors like urbanization industrialization environmental degradation, then agricultural intensification, rise in per capita availability, sorry per capita demand not availability. So, rise in per capita demand due to the due to the changes in the living conditions, increasing population and there are these are the major factors apart from that there are social political and economic transformations. So, these contributes the growing scarcity and demand for better management of water resources, because scarcity is growing we did see the numbers for India various other countries of course, so scarcity is growing the demand is increasing. So, a better management a better regulatory management is needed a better control by the state control by the government is needed on to the water.

Now, when we talk about the water rights so rights are typically the fundamental normative rules that are set and that allow basically people to use or sort of own or use what. So, ever they are doing with that according to proper legal system social convention and ethical theory.

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Need of Water Rights

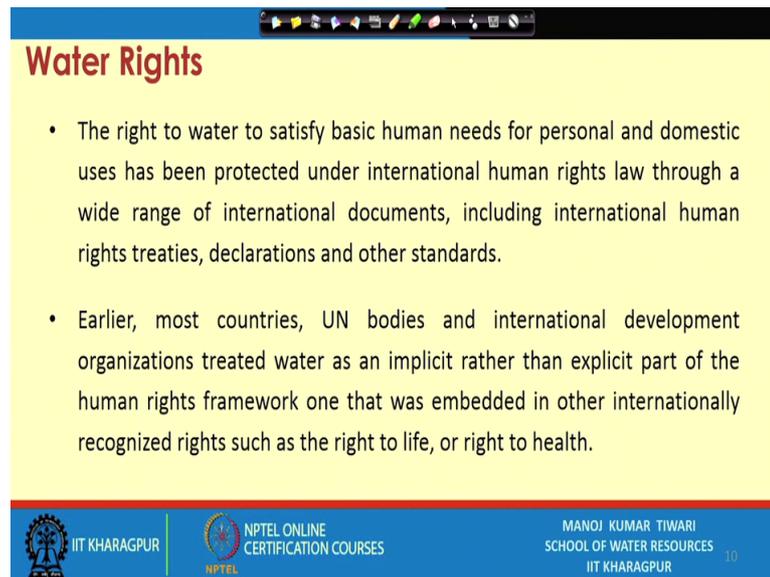
- Rights to water are increasingly crucial and contested around the globe as the competition to avail fresh water is intensifying.
- As water becomes scarcer and access more often contested, societies pursue better rules for coordinating water use and settling conflicts.

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So, that is what is expected in terms of water rights also and rights to water were sort of becoming increasingly crucial and contested around the globe as the competition for fresh water was more and more intensifying. Now this competition for fresh water is intensifying not only onto the just local scale, but even in the regional scale because the water bodies does not follow the exact political lines, we have rivers that cross different nations, we have water bodies that cross the boundaries of different states.

So, with in there could be basically disputes there could be we have had actually there are several disputes on to the management of water that is crossing the different state. So, interstate management or inter nation management between the 2 nations how they are sort of sorting out the judicious distribution of water in a natural water resource. So, these things are there and that is why the proper legislation, proper this thing is needed. So, again as what are becoming scarcer and access sort of more often contested societies pursue better rule for coordinating water use and settling conflicts. So, that is what was actually focusing on to the building of water right or rights to water.

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Water Rights

- The right to water to satisfy basic human needs for personal and domestic uses has been protected under international human rights law through a wide range of international documents, including international human rights treaties, declarations and other standards.
- Earlier, most countries, UN bodies and international development organizations treated water as an implicit rather than explicit part of the human rights framework one that was embedded in other internationally recognized rights such as the right to life, or right to health.

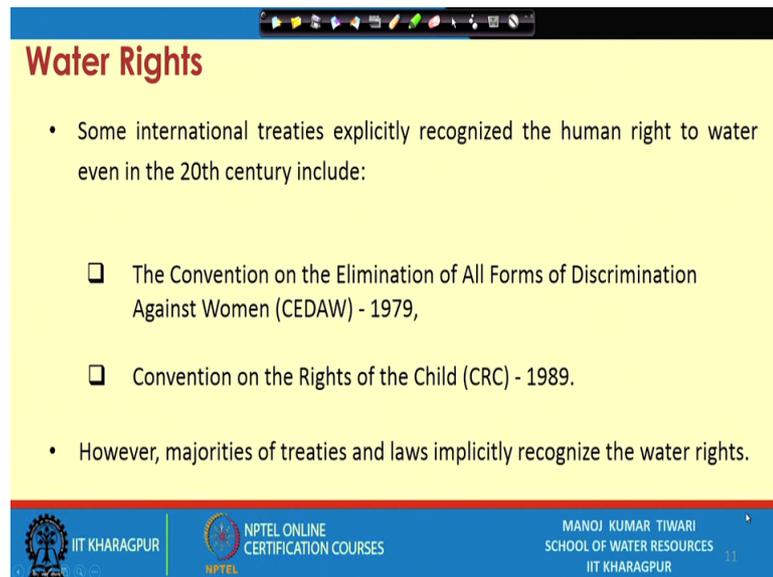
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So, if you see the water rights the right to water to satisfy the basic human need for personal and domestic uses was actually been in talk since long. So, and there has been various sort of implicit mentions of various right and water was considered earlier into one of them. So, there has been a range of international documents including international human right treaties declaration and various other standards, which sort of protected right to water in some way or other.

Most countries including human bodies and international development organization initially treated water as a implicit treated sort of right to water or water as an implicit factor rather than explicit part of the human right framework. So, the countries sort of believed that it is actually embedded in the internationally recognized right such as right to life or right to health. So, water is included in that.

So, one use once you say that right to health. That means, one has right to live healthy in order to that he will need he will need adequate quantity and safe quality of water for ensuring his or whole his or her good health. So, that right to health that way was considered to have incorporated implicitly that right to water as well. Similarly there is right to life, which different organizations believed that incorporates right to water as well, but there has been growing concerned and there has been demand of mentioning water as explicitly not as sort of implicit to the other internationally recognized rights.

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Water Rights

- Some international treaties explicitly recognized the human right to water even in the 20th century include:
 - ❑ The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) - 1979,
 - ❑ Convention on the Rights of the Child (CRC) - 1989.
- However, majorities of treaties and laws implicitly recognize the water rights.

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In 20th century also earlier century we had some international treaties that explicitly recognized the right to water the some of them were actually the convention on elimination of all forms of discrimination against women. So, that said that woman has right, equal right to water as any other citizen and those kind of thing. So, there specifically water was mentioned in this there was another convention which came in 1989 was convention on right of the child rights of the child.

So, this also has explicitly recognized the human right to water. So, a child needs safe quality of water in significant amount was explicitly mentioned in this convention as well; however, majority of treaties and laws has recognized water rights only implicitly as we were mentioning earlier.

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Water Rights: Scenario in India

India has generated the largest jurisprudence regarding the aspects of the constitutional right of life.

- ✓ The High Court held in *L.K. Koolwal v State of Rajasthan and Others* that “maintenance of health, preservation of the sanitation and environment falls within the purview of Article 21” and thus Jaipur violated residents’ rights to life by failing to implement adequate sanitation measures.
- ✓ In *Attakoya Thangal v Union of India 1990*, the court considered the legality of extracting water to increase water supply in the Lakshwadeep Islands. It concluded that the administrative agency cannot be permitted to function in a such a manner as to make inroads into the fundamental right under Article 21, for these are the basic elements which sustain life itself.

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So, the water rights scenario in India if you see is the water rights scenario in India has been again brought into the attention since long, but was not explicitly mentioned as was the case in the rest of the nations or rest of the places, but there has been Jurisprudence Judicial precedences that has been sort of been arising throughout all the nations in the different nations throughout the world and India has generated one of the largest judicial precedences regarding the aspect of constitutional right of life and incorporating water in that.

So, some of these are like in High Court held in Koolwal and state of Rajasthan and others. So, there they said that maintenance of health preservation of the sanitation and environmental falls within the purview of article 21 and thus Jaipur violated resident’s rights to life by failing implement adequate sanitation measure. So, they said that sanitation is actually implicit inclusion into the right to health as per the purview of article 21. In another case in 1990 in Attakoya, Thangal versus Union of India the court considered the legality of extracting water to increase water supply in the Lakshadweep Island.

So, this sort of it concluded that administrative agency cannot be permitted to function in a manner and to make inroads into the fundamental rights for these are the basic element to sustain life itself. So, because water is one of the basic elements to sustain life it is included in right to life and they no one has authority to invade into that.

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Water Rights: Scenario in India

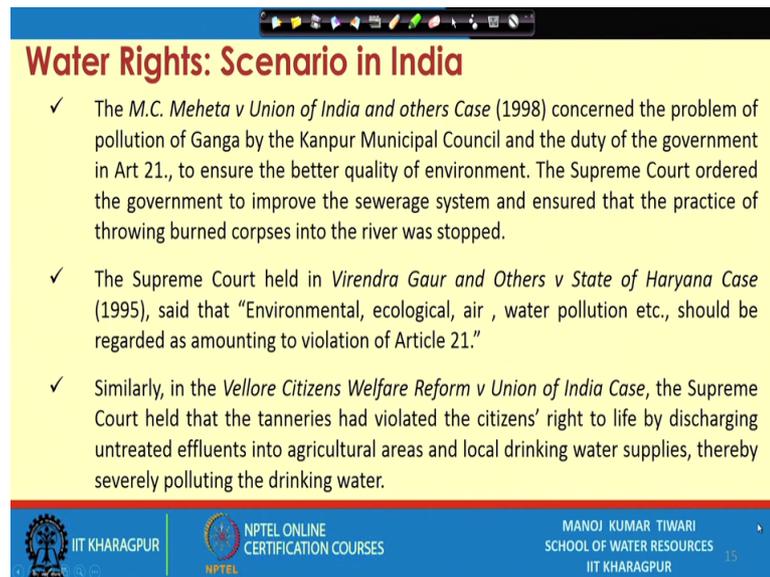
- ✓ In 1991, the Supreme Court in *Charan Lal Sahu Case* interpreted the right to life guaranteed by Article 21, to include the right to wholesome environment.
- ✓ In *V. Laxmipathy and Others v State of Karnataka and Others (1991)*, the high court went further and observed that “the entitlement to a clean environment is one of the recognized is one of the recognized human rights”.
- ✓ In the *Subhash Kumar Case*, the Court said that the right to life includes the right to enjoyment of pollution-free water and air for full enjoyment of life .
- ✓ Further in *D.D. Vyas v Ghaziabad Development Authority Case, 1993*, it was stated that “if anything endangers or impairs the quality of life, in derogation of laws, a citizen has the 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”.

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In 1991 the Supreme Court in Charan Lal Sahu case again interpreted the right to life guaranteed by article 21, to include the right to wholesome environment. So, wholesome environment included the fresh air safe and good quality of water. So, all this was again considered to be sort of implicit inclusions in article 21 in another case in V Laxmipathy and others in state of Karnataka, the high court again observed that entitlement to a clean environment is one of the recognized human rights. So, that is again sort of repeated the same thing the in Subhash Kumar Case, the Court said that right to life includes the right to enjoy the pollution free water and air for full enjoyment of life.

So, again the water was included explicitly there has been other cases in the D. D. Vyas in Ghaziabad development authority case in 1993, they sort of again said that “if anything endangers or impairs the quality of life in derogation of a law a citizen has tried to have resource to article 32 of the constitution for removing the pollution of water or air which may be detrimental to the quality of life”.

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Water Rights: Scenario in India

- ✓ The *M.C. Meheta v Union of India and others Case* (1998) concerned the problem of pollution of Ganga by the Kanpur Municipal Council and the duty of the government in Art 21., to ensure the better quality of environment. The Supreme Court ordered the government to improve the sewerage system and ensured that the practice of throwing burned corpses into the river was stopped.
- ✓ The Supreme Court held in *Virendra Gaur and Others v State of Haryana Case* (1995), said that “Environmental, ecological, air , water pollution etc., should be regarded as amounting to violation of Article 21.”
- ✓ Similarly, in the *Vellore Citizens Welfare Reform v Union of India Case*, the Supreme Court held that the tanneries had violated the citizens’ right to life by discharging untreated effluents into agricultural areas and local drinking water supplies, thereby severely polluting the drinking water.

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So, those kind of judicious precedence’s were given there has been a few more in M.C. Meheta and Union of India and other cases in 1998 again concerned the problem of pollution of Ganga by Kanpur Municipal Council and duty of the government in article 21, to ensure better quality of environment. So, they ordered government to improve the sewage system of the city and ensure that the practice of throwing burned crops into the river was stopped as basically directed by the court. Then in another case Virendra Gaur and others versus state of Haryana in 1995 the court said supreme court said that “Environmental, ecological, air, water pollution etcetera, should be regarded as amounting to violation of Article 21” which is right to life.

So, these basically water pollution and all that were considered were given due concern that these actually are violations under the article 21, in Vellore citizen welfare reform versus union of India case the supreme court again held the tanneries that violated the citizens right to life by discharging untreated effluent into agricultural area and local drinking water supplies so thereby severely polluting the drinking water. So, this is another ah precedence where court has sort of given that the pollution of water bodies or water supply systems local water supply systems is violation of right to life under article 21 and should be protected by these states.

So, this way there have been several there has been several precedence’s where although the right to water was not explicitly mentioned in to the our constitution in that way, but

our judicial system has from time to time recognized that it whether it is explicitly mentioned or not, but right to life or right to good health or sort of these sort of very fundamental rights, incorporates right to clean environment which includes safe water, which includes clean air and which includes other things.

So, these are these sort of some of the backgrounds which impose this is from we saw some judicial cases from India, but there has been similar judicial precedences from other places in the world as well where there has been like people have people or agencies or organization have gone to the judiciary to clarify that what they have what they possess onto the water.

So, this has sort of enforced the world community and need was realized to come up onto the rights of water mentioning it explicitly this implicit mentioning and sort of demarcation leading to. So, many court cases and all that as sort of give enough background, and then the world community realizes that it needs to be mentioned explicitly and that that is what gave the worldwide accepted right to water in 2010 which we will be talking about in the next lecture.

Thank you.