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**Right to Water in India: A lost issue?**

**Priyanka Thapa**

## INTRODUCTION

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We are well aware about the basic needs of man; food, clothing and shelter. Out of all these needs it would be hard to choose one which would surpass the other but, there is an element superior to others, without which the basic needs of man could never be fulfilled. Moreover, it would not be wrong to say that without this element our “blue planet” would be devoid of any life form rendering itself uninhabitable and unworthy of the former synonym. “Water”, indisputably takes the second most important place in sustaining life next to air. From the food that we eat to the clothes that we wear to the houses that we live in, owe their existence to water.

According to an article published in 2017, “Of all the water on Earth, less than 1% is fresh and available for food, energy and everyday life. Feeding an additional 2 billion people by 2050 will require a 15% increase in water withdrawals and the water required to produce energy is expected to increase by more than 85%. Increased demand combined with climate change will leave two-thirds of the planet living in water-stressed regions by 2050”.<sup>1</sup>

It is disturbing to look at all the figures and imagine the devastating impact of water crisis upon the whole world. Although water is an indispensable part of our lives there is little awareness about its importance which can be owed to various geographical, social, economic and political factors. Specifically speaking of India, being an agricultural country, it is an overt fact that there is an enormous demand of water for irrigation. Moreover, the increasing population also puts a strain on the existing water resources for domestic consumption.<sup>2</sup> Although India has made improvements over the past decades to both the availability and quality of municipal drinking water systems, its large population has stressed planned water resources and rural areas are left out. In addition, rapid growth in India's urban areas has stretched government solutions, which have been compromised by over-privatization.

Regardless of improvements to drinking water, many other water sources are contaminated with both bio and chemical pollutants, and over 21% of the country's diseases are water-related. Furthermore, only 33% of the country has access to traditional sanitation. “In addition, water scarcity in India is expected to worsen as the overall population is expected to increase to 1.6 billion by year 2050. To that end, global water scarcity is expected to become a leading cause of national political conflict in

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<sup>1</sup> Karin Krchnak and Jennifer Sara, Water for all, (Aug,26, 2020, 2:25 P.M) <https://www.worldwildlife.org>.

<sup>2</sup> (Aug,26, 2020, 2:39 P.M) <https://ncert.nic.in>.

the future, and the prognosis for India is no different.... Children in 100 million homes in the country lack water, and one out of every two children are malnourished”.<sup>3</sup>

It is well established by now that water is an element which needs to be given a high priority for a flourishing and prosperous country. Due to its very importance, water has also become a bone of contention between different countries sharing trans boundary rivers. “.. little wonder the English language derives the word “rival” from the Latin word “rivalis,” meaning persons who live on opposite banks of a river used for irrigation”.<sup>4</sup>

This research seeks to analyze the issue of right to water and judicial incorporation of right to water under Indian Constitution. In order to give a good analysis the importance of water and its relation with human rights has been examined in detail. International laws on “right to water” have also been discussed in detail ultimately presenting the Indian scenario in relation to “right to water” from the constitutional perspective. Several Indian and International cases have also been referred to provide a more practical and intimate picture of the research to the readers.

## **WATER: MEANING & SIGNIFICANCE**

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As simple as it might sound, “water” is nevertheless a quite complex element because of its versatile nature. Taking 71% of the earth’s surface, it seems ironical that almost 2.7 billion<sup>5</sup> people on earth are plagued with water scarcity. The reason being simple that only 3% of the earth’s water is fresh water which can be used for drinking, bathing, cleaning etc. Before diving into the more complex concepts regarding right to water, one must possess the understanding of its basic concepts. “The sustainable maintenance of water quality for future generations is primarily regulated by international environmental law. Humans, either individually or collectively, claim their right to water against states and other entities, including multinational corporations, under the human rights legal regime”.<sup>6</sup> In simple parlance, water can be generally differentiated into various categories on the basis of its source and its use. As water is interconnected with our very existence, water is utilized for a plethora of

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<sup>3</sup> (Aug,27,2020,10:03 A.M) <https://thewaterproject.org/water-crisis/water-in-crisis-india>.

<sup>4</sup> (Aug,26,2020, 2:48 P.M) [www.waterencyclopedia.com](http://www.waterencyclopedia.com).

<sup>5</sup> (Aug,27, 2020, 11:22 A.M) <https://www.worldwildlife.org/threats/water-scarcity>.

<sup>6</sup> Jootack Lee & Maraya Best, Human Right to Water, The Program on Human Rights and the Global Economy, Northeastern University of school of law (Aug,27,2020, 12:20 P.M) <https://www.northeastern.edu>.



functions in our daily lives and it can be said that the function performed determines its definition and character from time to time.

“Water is perceived in a number of ways by the common people as well as theoreticians; as a commodity, as commons, as a basic right and as a sacred resource or divinity. These perceptions seemed to be diametrically opposed to each other, but each has its own significance in different contexts, often denies other ones...The perception is that, if water is considered as a commodity, water market and prices would be established as such resource conservation and sustainability would be taken care of, equity would be ensured and conflicts would automatically be resolved by market forces. But no one is quite comfortable with this description so a more sophisticated and generalized version has been accepted which described water as an “economic and social good”.<sup>7</sup>

Water has always been considered as a symbol of prosperity and life. It is well known that ancient civilizations have been found to have flourished near river banks and their downfall has often been attributed to the change in the course of rivers, proving the significance of water since time immemorial. The significance of water can also be seen in different cultures highlighted through various way; particularly spiritual.

“The mystical or even sacred attributes that different cultures give to this natural element endows it with such spiritual richness that it often ceases to be merely a symbol and becomes part of a group’s deepest feelings and beliefs. For example, in Peru’s highlands, they celebrate the “Yarqa Aspi” or “Apu yaku pagapuy,” or the “festival of water.” The worship of water in Andean culture has persisted through the ages and is manifested through offerings, rituals, songs, performances, and dances that pay homage and pray for rain and fertile land. Water’s presence defines the communities and is closely linked to their worldview, their interpersonal and community relationships”.<sup>8</sup>

## **NEED FOR RECOGNIZING RIGHT TO WATER**

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The world that we live in today feels a lot smaller thanks to globalization. People in urban sectors are mostly aware and vigilant about the on going socio-political and legal issues of their land as well as foreign countries. With various environmental issues being put to the forefront and gender stereotypes

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<sup>7</sup> Rose Mary, Right to water: Theoretical Concerns and Practical Issues, The Indian Journal of Political Science vol. LXVII No.4, Oct-Dec; 2006, (Aug,27,2020, 5:10 P.M), <https://www.jstor.org>.

<sup>8</sup> Luis Carlos Buob Concha, The Right to Water, Sur file on Development and Human Rights, (Aug,27,2020, 4:30 P.M), <https://sur.conectas.org/en/the-right-to-water/>.

being challenged, the issue relating to right to water seems to be at the back seat of this awareness truck.

“The global problem of access to safe water and sanitation continues to plague the poor countries of the world. According to World Health Organization an estimated 2.6 billion people, comprising about 40% of the world’s population, live without adequate access to safe water and good sanitation. About 2 billion of this population are found in rural areas of South Asia, Eastern Asia, and sub-Saharan Africa. Majority of the affected population are found in informal settlements, semi-urban and rural parts of the developing countries where the practice of open defecation, poor sanitation services, and use of unsafe water persists because of knowledge gaps and attitude making people unable to practice basic hygiene.”<sup>9</sup>

During a crisis, the basic amenities as water and food reach an alarming level of shortage, deficit and even depletion. However, it is shocking to discern that even during normalcy, most parts of our country are under the daily threat of water scarcity. Such a state does not transpire overnight as decades of unawareness, laxity in irrigation, unchecked industrialization, and per capita rise in demand of water leads to hazardous depletion of ground water.

“Globally, 768 million people lack access to an improved water source, and more than 80% of these people live in rural areas (WHO and UNICEF 2013). Poor water access is associated with many water-related illnesses, food insecurity, lost productivity, and poor school attendance, especially for women and girls. Daily access to clean water is necessary to satisfy basic needs of drinking, cooking, washing, and bathing-i.e., domestic uses of water. In rural areas, water is also critical for livelihood activities, such as horticulture and crop irrigation, livestock-raising, brick-making, and small-scale commercial activities. These activities increase a household’s income and food security. In semi-urban areas as well, water is necessary for a range of livelihoods. With rapid urbanization, urban agriculture is becoming particularly important, already in the 1990s, 15–20% of the world’s food was estimated to be produced in urban areas”.<sup>10</sup>

“The active participation of all sectors of national and international society is critical for ensuring better management and planning for meeting basic water needs. The outcome of our efforts will be

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<sup>9</sup> (Aug,27,2020, 6:33 P.M), <https://doi.org/10.1155/2014/958481>.

<sup>10</sup> Ralph P. Hall, Barbara Van Koppen and Emily Van Houweling, The Human Right to Water: The Importance of Domestic and Productive Water Rights,(Aug,31,2020, 10:55 A.M), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4237907/>.

vital to the health and well-being of billions of people. Formally acknowledging water as a human right, and expressing the willingness to give content and effect to this right, may be a way of encouraging the international community and governments to enhance their efforts to satisfy basic human needs and to meet the Millennium Development Goals”.<sup>11</sup>

## **RIGHT TO WATER & HUMAN RIGHTS**

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Water is one of the most essential elements for sustenance of life but it is scarcely available for a majority of the world population. Specially, the rural and semi-rural population of the world face water related problems and are new to the concept of sanitation. In such a situation there arises a need for “right to water”, which would mean that access to water would amount to a “right” which would be protected and insured by law. Further, since water is such an element which is detrimental to life itself, its protection would be much better secured if it is grouped under the umbrella of Human rights.

Human rights are rights inherent to all human beings, whatever our nationality, place of residence, sex, national or ethnic origin, color, religion, language, or any other status.

We are all equally entitled to our human rights without discrimination. These rights are all interrelated, interdependent and indivisible. Universal human rights are often expressed and guaranteed by law, in the forms of treaties, customary international law, general principles and other sources of international law. International human rights law lays down obligations of Governments to act in certain ways or to refrain from certain acts, in order to promote and protect human rights and fundamental freedoms of individuals or groups.<sup>12</sup>

Over recent decades, the urban-industrial model of life has developed so dramatically, that it has generated a serious crisis of rural disintegration and urban saturation, creating public health problems in poor countries. This crisis has been aggravated by factors such as accelerating population growth, increasing inequalities, national or regional conflicts and the influence of climate change on the water cycle. It has been estimated that in order to meet basic needs, individuals require a minimum of 20 to

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<sup>11</sup> John Scanlon, Angela Cassar and Noèmi Nemes, Water as a Human Right?, IUCN ENVIRONMENTAL LAW PROGRAM, (Aug,31,2020, 11:10 A.M), <https://portals.iucn.org>.

<sup>12</sup> (Aug,31,2020, 4:17 P.M), <https://www.ohchr.org/en/issues/pages/whatarehumanrights.aspx>.

50 liters of safe water each day. Despite water's necessity to life, the reality is that billions of people worldwide are denied access to safe water.<sup>13</sup>

Water has been perceived in many differing ways throughout the years, receiving various qualifiers like, a public resource, a common pool resource, a flux or flow resource, a non-substitutable resource, an economic good. Whether or not water as a substance is considered an inherently public or private good, some parties insist on the economic value of the water required by humans (i.e. drinking water) in light of its relationship with a plethora of aspects involved in water and sanitation provision, such as the technologies, infrastructure and labor needed to produce and supply these services. In fact, for some it is precisely this resource-intensive characteristic as opposed to a cost-free one that puts these human rights under the umbrella of economic, cultural and social rights.<sup>14</sup>

The availability of adequate water supply is critical to every aspect of human life; a water crisis would have adverse impacts on health and welfare, the environment and economics world-wide. The year 2003 was identified by the United Nations as the International Year of Freshwater with one of its aims to reassert the UN's Millennium Declaration Goal: "to halve, by the year 2015... the proportion of people who are unable to reach, or to afford, safe drinking water" and "to stop the unsustainable exploitation of water resources".<sup>15</sup>

The Goal, endorsed by the World Summit on Sustainable Development held in Johannesburg in 2002, also set a new target of halving the proportion of people who do not have access to basic sanitation by 2015. It recognized the key role of water in agriculture, energy, health, biodiversity and ecosystems as well as in combating poverty<sup>16</sup>. The link between social well-being and environmental health will become increasingly important and securing social well-being without acknowledging the environmental realities will ultimately fail.<sup>17</sup>

The right to water entitles everyone to have access to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic use. Access to water and sanitation are recognized by the United Nations as human rights, reflecting the fundamental nature of these basics in every person's

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<sup>13</sup> C line Dibreuil, The Right to Water: From concept to implementation, WORLD WATER COUNCIL 2006, (Aug 31,2020, 11:53 A.M), <https://www.worldwatercouncil.org>.

<sup>14</sup> Colin Brown, Priscila Neves Silva, Leo Heller, The Human Right to Water and Sanitation: A new perspective for public policies, CI NCIA AND SA DE COLETIVA, (Aug,31,2020, 4:28 P.M), [https://www.scielo.br/scielo.php?script=sci\\_arttext&pid=S1413-81232016000300661](https://www.scielo.br/scielo.php?script=sci_arttext&pid=S1413-81232016000300661).

<sup>15</sup> Para 19 of the Millennium Declaration (2000) Resolution referred by the General Assembly at its fifty-fourth session, (A/55/2) Adoption by fifty-fifth session.

<sup>16</sup> UN Press Release, Water Year 2003: International Year Aims to Galvanize Action on Critical Water Problems, Published by the United Nations Department of Public Information DPI/2293A Dec 2002.

<sup>17</sup> John Scanlon, Angela Cassar and No mi Nemes, Water as a Human Right?, IUCN Environmental Law Programme, (Aug,31,2020, 11:10 A.M), <https://portals.iucn.org>.

life. Lack of access to safe, sufficient and affordable water, sanitation and hygiene facilities has a devastating effect on the health, dignity and prosperity of billions of people, and has significant consequences for the realization of other human rights. People are right-holders and States are duty-bearers of providing water and sanitation services. Rights-holders can claim their rights and duty-bearers must guarantee the rights to water and sanitation equally and without discrimination.<sup>18</sup>

## INTERNATIONAL LAWS ON RIGHT TO WATER

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Water being one of the most important elements vital for existence and right to water today linked with human rights; there was a failure to explicitly recognize the right to water and give it certain legal protection until the early 1990s. Despite this fact, there were a few efforts made to recognize the right to water although these efforts were in no way systematic;

- ❖ The **Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in 1979**<sup>19</sup>, was the first primary human rights instrument to explicitly reference the right to water. Under Article 14(2)(h) of CEDAW, in order to truly eliminate discrimination against women in rural areas, the state should “ensure to such women the right . . . [t]o enjoy adequate living conditions, particularly in relation to . . . sanitation, electricity and water supply . . . .” This right has been interpreted not to require equal access to water, but a right to clean water<sup>20</sup>. However, CEDAW’s Article 14, only applies to rural women, and is not universally applicable.
- ❖ Another treaty that addresses the right to water is the **Convention on the Rights of the Child (CRC)**, which was adopted in 1989<sup>21</sup>. Article 24(1) of the CRC addresses water, recognizing the right of the child to the highest attainable standard of health. Article 24(2) specifically imposes on State Parties a duty to “take appropriate measures to combat disease and malnutrition . . . through the provision of . . . clean drinking water, taking into

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<sup>18</sup> Human Rights to Water and Sanitation, U N WATER, (Aug,31,2020, 12:20 P.M), <https://www.unwater.org>.

<sup>19</sup> Convention on the Elimination of All Forms of Discrimination against Women, opened for signature Dec 18, 1979, 1249 UNTS.13, (Sept,8,11:00 P.M), <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CEDAW.aspx>.

<sup>20</sup> Commission on the Elimination of Discrimination against Women, General Recommendation No. 34 on the rights of rural women III(a)12, U. N. Doc. CEDAW/C/GC/34,(Mar, 4, 2016), (Sept,8, 10:30 P.M), <https://www.ohchr.org/en/hrbodies/cedaw/pages/recommendations.aspx>.

<sup>21</sup> Convention on the Rights of the Child, opened for signature (Nov 20, 1989), 15557 U.N.T.S.3, (Sept,8,2020, 10:00 PM), <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>.

consideration the dangers and risks of environmental pollution . . . .” The CRC directly links safe drinking water to health and includes the right to water under the right to health.

During the 1990s, recognition of right to water by the state became a growing topic of discussion due to the rising problems from lack of water. Various international organizations along with representatives of the government adopted various action plans and statements for sustainable development of water resources at different environmental conferences such as the New Delhi Statement<sup>22</sup> and;

- ❖ **Dublin Statement on Water and Sustainable Development**<sup>23</sup>, the 1992 Dublin Statement, the cumulative statement from the International Conference on Water and the Environment in Dublin, states that the lack and misuse of water harms sustainable development and the environment. While the Dublin Statement limits the definition of water to an economic good, it also recognizes the basic human right to water, particularly affordable water.

Despite its economic focus, the Dublin Statement affirms that water itself, as the source of life, merits protection. While the Dublin Statement succeeded in raising concerns on water and its vulnerable status, it simply treated water as an economic good under Principle No. 4, and failed to recognize a right to water.

- ❖ **Agenda 21**<sup>24</sup>, Agenda 21, part of the UN Programme of Action, created at the UN Conference on Environment and Development in Rio de Janeiro in 1992 toward achieving millennium development goals, includes Chapter 18: Protection of the Quality and Supply of Freshwater Resources: Application of Integrated Approaches to the Development, Management and Use of Water Resources. Agenda 21 recognizes water is essential to life and an integral part of the ecosystem. It emphasizes that the scarcity of water requires integrated water resource planning and management, and sets specific goals to be reached by 2000 and 2025.

The Agenda outlines appropriate activities and means of implementation for drinking-water supply and sanitation, and sustainable development. It recognizes water as a social and

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<sup>22</sup> Global Consultation on Safe Water and Sanitation, New Delhi Statement, A/C 2/45/4 (1990), (Sept,9,2020, 11:14 AM), <https://www.ircwash.org/resources/global-consultation-safe-water-and-sanitation-1990s-10-14-september-1990-new-delhi-india>.

<sup>23</sup> The Convention on the Protection and use of Transboundry Watercourses and International Lakes, opened for signature Mar 17, 1992, 1366 UNTS 269, (Sept,9,2020, 11:17 A.M), [www.unece.org](http://www.unece.org).

<sup>24</sup> U. N. Conference on Environment and Development, Agenda 21 UN Doc. A/CONF. 151/26 (Vol.II) (1992), (Sept,8,2020, 9:30 PM), <https://www.un.org/esa/documents/ga/conf151/aconf15126-2.htm>.

economic good. Agenda 21 also failed to recognize water as a right and Section 18.8 simply provides that water is an economic, social, and life-sustaining good.

These efforts culminated in the adoption of the General Comment No. 1593 by the Committee on Economic, Social, and Cultural Rights in 2002. Recognizing the right to water is “indispensable for leading a life in human dignity,” the General Comment No. 15 interpreted Articles 11 and 12 of the ICESCR to include a human right to water. The General Comment No. 15 states that “including adequate food, clothing and housing” under Article 11(1) of the ICESCR is not exclusive; it identifies water as an essential element for an adequate standard of living, “one of the most fundamental conditions of survival.”

The UN General Assembly declared the period from 2005 to 2015 as the International Decade for Action, “Water for Life.” It has also declared safe and clean drinking water and sanitation as a human right essential to the full enjoyment of life and all other human rights. The following documents are important soft law produced by various institutions, arranged chronologically:

- ❖ Ministerial Declaration of the Hague on Water Security in the 21st Century (Mar. 22, 2000).<sup>25</sup>
- ❖ United Nations Millennium Declaration (2000).<sup>26</sup>
- ❖ We the Peoples: The Role of the United Nations in the 21st Century, Kofi Annan, (2000).<sup>27</sup>
- ❖ Plan of Implementation of the World Summit on Sustainable Development, Johannesburg, South Africa (2002).<sup>28</sup>
- ❖ Resolution adopted by the General Assembly [on the report of the Second Committee (A/55/582/Add.8)] 55/196. International Year of Freshwater.<sup>29</sup>
- ❖ Ministerial Declaration: Message from the Lake Biwa and Yodo River Basin Third World Water Forum. A/57/785.<sup>30</sup>

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<sup>25</sup> World Water Council, Ministerial Declaration of the Hague on Water Security in the 21<sup>st</sup> Century (Mar 22, 2000), (Sept, 9, 2020, 10:40 A.M), [www.worldwatercouncil.org](http://www.worldwatercouncil.org).

<sup>26</sup> United Nations Millennium Declaration, General Assembly Resolution 55/2 of 8 Sept, 2000, ( Sept, 9,2020, 10:38 A.M), <https://www.ohchr.org/EN/ProfessionalInterest/Pages/Millennium.aspx>.

<sup>27</sup> Kofi Annan, We the People: The Role of the United Nations in the 21<sup>st</sup> Century (2000), (Sept, 9, 2020, 10:50 A.M), [www.un.org](http://www.un.org).

<sup>28</sup> World Summit on Sustainable Development, Plan of Implementation of the World Summit on Sustainable Development, U.N. Doc. A/Conf.199/20 (Sep 4, 2002), (Sept,9,2020, 10:49 A.M), [www.un.org](http://www.un.org).

<sup>29</sup> Resolution adopted by the General Assembly [on the report of the Second Committee (A/55/582/Add.8)] 55/196. International Year of Freshwater, ( Sept,9,2020, 10:56 A.M), <http://www.un-documents.net/a55r196.htm>.

<sup>30</sup> Ministerial Declaration: Message from the Lake Biwa and Yodo River Basin, (Sep,9,2020, 10:54 A.M), <http://www.un-documents.net/a57-785x.htm>.

- ❖ UN General Assembly Resolution 58/217, the International Decade for Action, “Water for Life” (2003).<sup>31</sup>
- ❖ Human Rights Council Resolution 7/22: Human Rights and Access to Safe Drinking Water and Sanitation (Mar 28, 2008).<sup>32</sup>
- ❖ UN General Assembly Resolution 64/292, The Human Right to Water and Sanitation (2010).<sup>33</sup>
- ❖ Human Rights Council Resolution 15/9: Human Rights and Access to Safe Drinking Water and Sanitation (September 30, 2010).<sup>34</sup>
- ❖ Human Rights Council Resolution 16/2: The Human Right to Safe Drinking Water and Sanitation (Mar. 24, 2011).<sup>35</sup>
- ❖ World Health Assembly Resolution 64/24: Drinking-Water, Sanitation and Health (May 24, 2011).<sup>36</sup>
- ❖ UN Human Rights Council Resolution 24/18 (September 27, 2013).<sup>37</sup>
- ❖ UN Human Rights Council Resolution 27/7: The Human Right to Safe Drinking Water and Sanitation (September 25, 2014).<sup>38</sup>

## **RIGHT TO WATER & INDIAN CONSTITUTION**

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The Indian Constitution does not explicitly express the right to water but an in depth study of international treaties tilts towards the stand that the drafters implicitly considered water to be a fundamental resource. Several of the explicit rights protected by international rights conventions and

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<sup>31</sup> UN General Assembly Resolution 58/217, the International Decade for Action, “Water for Life” (2003), (Sept,9,2020, 11:00 A.M), [www.un.org](http://www.un.org).

<sup>32</sup> Human Rights Council Resolution 7/22: Human Rights and Access to Safe Drinking Water and Sanitation (Mar 28, 2008), (Sept,9,2020 11:10 A.M), [www.internationalwaterlaw.org](http://www.internationalwaterlaw.org).

<sup>33</sup> UN General Assembly Resolution 64/292, The Human Right to Water and Sanitation (2010), (Sept,9,2020, 11:03 A.M), [www.refworld.org](http://www.refworld.org).

<sup>34</sup> Human Rights Council Resolution 15/9: Human Rights and Access to Safe Drinking Water and Sanitation (September 30, 2010), (Sept,9,2020, 11:05 A.M), <https://www.right-docs.org/doc/a-hrc-res-15-9/>.

<sup>35</sup> Human Rights Council Resolution 16/2: The Human Right to Safe Drinking Water and Sanitation (Mar. 24, 2011), (Sep,9,2020, 1:00 PM), [www.un.org](http://www.un.org).

<sup>36</sup> World Health Assembly Resolution 64/24: Drinking-Water, Sanitation and Health (May 24, 2011), (Sept,9,2020, 1:30 PM), [www.oas.org](http://www.oas.org).

<sup>37</sup> World Health Organization, Res. 64/24 (May 24,2011), (Sept,9,2020, 11:26 AM), [www.who.org](http://www.who.org).

<sup>38</sup> Human Rights Council Res. 24/18 (Sept 27,2013), (Sept,9,2020, 11:20 AM), [www.hrc.in](http://www.hrc.in).



agreements, specifically those guaranteeing the rights to food, human health and development, cannot be attained or guaranteed without guaranteeing access to basic clean water.

Blackburn.J. in the case of **Milirpum v. Nabalco Pty Ltd**<sup>39</sup> for analyzing the nature of rights which can be claimed over water. It was discussed that the bases on ownership over water could be determined is by determining who discovered it. This is the derivative of the same principle that, whoever discovers a particular land first and is domiciled on it, has a right to it, and to any property such as water attached to it.

Further, the Riparian Water Rights doctrine states that those who are close to the water and have access to it, have a right to it. This is basically a way to express the idea of the first come first served principle and in the case of **Coffin v. Left Hand Ditch Co.**<sup>40</sup>, it was discussed that those who have appropriated water first, have a right to it.

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”.<sup>41</sup>

Right to life in the Indian Constitution also implies rights to clean water and sanitation. The Indian Courts have not only named water as an essential right but it is characterized as a social resource. In 2002, the zenith court approved the Sardar Sarovar dam venture on Narmada in 2000 Interpreting the privilege to life article as appropriate to water. “Water is the fundamental requirement for the survival of people and is a piece of the privilege to life and human perfectly fine in Article 21 of the Constitution of India and can be served just by giving wellspring of water where there is none.”

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<sup>39</sup> (1971) 17 FLR 141.

<sup>40</sup> Diganth Raj Sehgal, Right to clean water as a fundamental right, (Sept,18,2020, 5:38 P.M), <https://blog.ipleaders.in/right-to-clean-water/>.

<sup>41</sup> Jayna Kotthari, The Right to Water: A Constitutional Perspective, Workshop on Water, Law and the Commons 2006, (Sept,18,2020, 12:45 P.M), [www.iclrc.org](http://www.iclrc.org).

In 1990, the Kerala High Court on a groundwater extraction case including water supply for the island of Lakshadweep decided that administration ought not extricate groundwater affecting the sources in future that thus disregarded Article 21. It ruled that the regulatory organization cannot be allowed to work in such a way as to make advances against Article 21. The right to life is considerably more than a mere right to exist, and its traits are complex, as life itself. The right to clean water and the right to free air are credits of the right to life, for these are simply the fundamental components which support life. Aside from extending the substance of right to life as including the right to water, the court has, with regards to water contamination, commanded the tidying up of water sources including waterways (**M.C. Mehta v. Union of India**)<sup>42</sup> and even tanks and wells (**Hinch Lal Tiwari v. Kamala Devi**)<sup>43</sup> The court has likewise connected the reasonable standard to keep the potential contamination of drinking water sources resulting upon the setting up of enterprises in their region.<sup>44</sup>

## INDIAN JUDICIARY & INCORPORATION OF RIGHT TO WATER UNDER THE INDIAN CONSTITUTION

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The Indian courts provide protection to right to clean drinking water by prohibiting polluting of water sources or water bodies which is a negative right. This protection has emerged from the fundamental right to a clean and healthy environment as part of the right to life guaranteed under Article 21 of the constitution by the Supreme Court. It is believed that the right to life under Article 21 also includes the right to healthy environment. This concept was first pronounced in the case of **Bandhua Mukti Morcha v. Union of India**<sup>45</sup> and then continued and expanded. From the early nineties, the Supreme Court protected the right to clean water as a part of the right to a healthy environment in a spate of water pollution cases coming before it. An important decision of the Indian Supreme Court was the case of **A.P. Pollution Control Board II v. Prof. M.V. Nayudu**<sup>46</sup>, in this case, the Andhra Pradesh government had granted an exemption to a polluting industry and allowed

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<sup>42</sup> AIR (1988) SC 1037.

<sup>43</sup> (2001) 6 SCC 496.

<sup>44</sup> M. Swathi, R. Dhivya, Constitutional Perspective of Right to Water in India, International Journal of Pure and Applied Mathematics 2018, (Sept,18,2020, 2:00 P.M), <http://www.acadpubl.eu/hub/>.

<sup>45</sup> AIR (1984) SC 802.

<sup>46</sup> (2001) 2 SCC 62.

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 the State to grant exemption to a particular industry within the area prohibited for location of polluting industries. Exercise of such a power in favour of a particular industry must be treated as arbitrary and contrary to public interest and in violation of the right to clean water under article 21 of the constitution on India....The Government could not pass such orders of exemption having dangerous potential, unmindful of the fate of lakhs of citizens of the twin cities to whom drinking water is supplied from these lakes. Such an order of exemption carelessly passed, ignoring the precautionary principle could be catastrophic.”

The court referred to India’s participation in the UNO water conference and held that the right to access to 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 Supreme Court also referred to the **Narmada Bachao Andolan v. Union of India**<sup>47</sup> judgment where Kirpal, J. observed that “Water is the basic need for the survival of human beings and is part of the right to life and human rights as enshrined in Article 21 of the Constitution of India....and The right to healthy environment and to sustainable development are fundamental human rights implicit in the right to “life”.

In another case; **Vellore Citizens Welfare Forum v. Union of India**,<sup>48</sup> the Court gave relief to the victims of water pollution caused by tanneries. In this case, a writ petition was filed against the large-scale pollution caused by tanneries and other industries in the state of Tamil Nadu. The petitioners alleged that untreated effluent was being discharged into agricultural fields, waterways and open land, which ultimately reached the Palar river which was the main source of water supply to the residents of the area. The effluents had spoiled the physical-chemical properties of the soil and had contaminated the groundwater by percolation.

After carefully examining the facts of the case, the Supreme Court, while recognizing the common law right of the people to a clean and healthy environment, awarded compensation to the victims of

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<sup>47</sup> (2000) 10 SCC 664.

<sup>48</sup> (1996) 5 SCC 647.

pollution on the basis of the **precautionary principle** and the **polluter pays principle**. The **precautionary principle** when applied by the courts to Indian condition means:

- i. that environmental measures taken by the state and the statutory authorities must anticipate, prevent and attack the causes of environmental degradation;
- ii. that where there are threats of serious and irreversible damage, lack of scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation; and
- iii. that the **onus of proof** is on the actor or the developer/industrialist to show that his action is environmentally benign.

By regarding the aforementioned two principles as a part of the environmental law of the country, the Supreme Court has to some extent conceptualized the common law remedial measures of awarding compensation to the victims of a tortious action in water pollution cases.<sup>49</sup> Significantly, the Supreme Court held that “The constitutional and statutory provisions protect a person’s 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.” The Supreme Court has, with regards to water pollution, mandated the cleaning up of water sources including rivers, the coastline and even tanks and wells.

In **Re: Bhavani River-Shakti Sugars Ltd.**<sup>50</sup> and in **Indian Council for Enviro-Legal Action v. Union of India**<sup>51</sup>, (a compensation package was worked out for farmers affected by their only source of irrigation, a river in Andhra Pradesh, was polluted by discharge of untreated effluents by industries alongside its banks), the concern over pollution of ground water by unregulated discharge of effluents has led the court to issue mandatory directions for cleaning up by the polluter 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 consequent upon the setting up industries in their vicinity.<sup>52</sup> The court has recognized that water is a community source which is to be held by the State in public trust in recognition of its

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<sup>49</sup> M Batra, Water Rights, (Sept,18,2020, 5:00 P.M), <http://www.indiaseminar.com/2000/492/492%20m.%20batra.htm>.

<sup>50</sup> (1998) 6 SCC 335.

<sup>51</sup> (1995) 3 SCC 77.

<sup>52</sup> A.P. Pollution Control Board v. Prof. M.V. Nayudu (1999) 2 SCC 718 and A.P. Pollution Control Board (II) v. Prof. M.V. Nayudu (2001) 2 SCC 62.

duty to respect the principle of inter-generational equity. In **M.C. Mehta v. Kamal Nath**<sup>53</sup>, the court declared that “our legal system- based on English common law- includes the public trust doctrine as part of its jurisprudence. The State is the trustee of all natural resources which are by nature meant for public use and enjoyment. Public at large is the beneficiary of the seashore, running waters, air, forests and ecologically fragile lands. The State as a trustee is under a legal duty to protect the natural resources. These resources meant for public use cannot be converted into private ownership”.<sup>54</sup>

Thus, it can be seen from the above mentioned cases, that the fundamental right to water has been pronounced by the Indian courts within the ambit of the right of citizens to have clean drinking water as part of the right to clean environment guaranteed under the right to life under Article 21. But, by doing so, the court has been protecting only the negative right to not have water sources polluted. In *Andhra Pradesh Pollution Control Board*, the Supreme Court did mention that all citizens have the fundamental right to have access to clean drinking water, but did not take that issue forward in order to explore whether this includes the positive obligation on the State to provide clean drinking water to all citizens.

Thus, it can be seen that the right to clean drinking water, although not articulated as a separate right, has been considered as an inseparable part of the right to a clean environment and the right to life. In **Subhash Kumar v. State of Bihar**<sup>55</sup>, the Supreme Court held that ‘the right to live includes the right of enjoyment of pollution-free water and air for full enjoyment of life. If anything endangers or impairs that quality of life in derogation of laws, a citizen has 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’. By this judgement and many others, the court placed a duty on the state to ensure the rights of the citizens were protected.

The Indian Supreme Court has laid down in several of its decisions that the Right to Life guaranteed under Article 21 of the constitution in its true meaning includes the basic right to food, clothing and

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<sup>53</sup> (1997) 1 SCC 388.

<sup>54</sup> S. Muralidhar, *The Right to Water: An Overview of the Indian Legal Regime* in Eibe Reidel & Peter Rothen eds., *The Human Right to Water* (Berlin: Berliner Wissenschafts-Verlag, 2006), p. 65-81, (Sept,18,2020, 4:50 P.M), <http://www.ielrc.org/content/a0604.pdf>.

<sup>55</sup> 1991 AIR 420, 1991 SCR (1)5.

shelter.<sup>56</sup> The justiciability of the specific Right to Food as an integral right under Article 21 was however articulated and enforced only in 2001.<sup>57</sup>

## **CONCLUSION & SUGGESTION**

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Water is the essence of life, access to clean water should be regarded as a necessity and not a privilege. The issue of right to water is a grave one and should be given utmost priority . Since water is an essential element for life itself, it is only fair that everyone should be granted the right to clean drinking water. While multiple UN bodies affirmed the right to water with resolutions and General Comments in the first decade of this century, it was not until the United Nations General Assembly adopted Resolution in July 2010 that a high level UN body formally recognized the human right to water.

In India, despite the decisions of the Supreme Court that access to clean drinking water is a fundamental right as part of the right to life in Article 21 of the Indian Constitution, the poor are still denied such an access. Right to Water in India is not expressly guaranteed; neither by the Constitution nor any legislation, but 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. It can be said that, the right to clean water is guaranteed under Article 21 of the Constitution of India and no one can be deprived of it. The same has been upheld by the courts in our country who have widened the scope of Article 21 by including the right in it. The Indian Constitution, although expressly devoid of any provision with regards to such a right; provides right to life under Article 21 and within its folds right to clean drinking water has been judicially incorporated.

Right to water under the Indian Constitution only has a negative right, but there is no positive protection/right of the same. The Courts have widened the scope of Article 21 to include an implied right to clean drinking water but a proper law which protects and promotes right to water is still a distant dream. Right to water should be recognized as a basic human right which should be protected by the law and promoted by the state. Access to clean water should not be a privilege received by the wealthy but it should be treated as a necessity, which if not protected can be detrimental to life itself.

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<sup>56</sup> Francis Coralie Mullin v. Union Territory of Delhi., 1981(1) SCC 608; Chameli Singh v. State of UP., 1996 (2) SCC 549.

<sup>57</sup> Peoples Union for Civil Liberties (PUCL) v. Union of India & Ors. W.P. (Civil) No. 196 / 2001.

Another step towards the implementation of the right to water should be to create awareness about the existence of the human right to water and the importance of this right.

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