



RIGHT TO CLEAN WATER AS A FUNDAMENTAL RIGHT IN INDIA: A JUDICIAL PERSPECTIVE

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ABSTRACT

By environmental pollution, globalisation or internationalisation leads to unsustainable growth. Despite advances in regional modelling, projecting the effects of climate change on water resources is particularly challenging, in part because water supplies are determined not just by the hydrological cycle, but also by population, technology, and social and economic limitations. Increasing population, urbanisation, pollution or environmental degradation, changing agricultural sectors, and institutional and legislative conditions are only a few of the many variables that influence future water demands. This Chapter aims to highlight the Indian Constitutional provisions relating to right to water and Judicial attitude towards right to water.

KEYWORDS: Environment, Water, Constitution, Judiciary.

INTRODUCTION

Water is required for life to exist. Humans can “survive three weeks without food, but only three days without water”.¹ Similarly, food cultivation is impossible without water. As a result, the “right to life, which is considered the most basic and fundamental of all rights, must conceptually include a right to water”. However, this connection has only been acknowledged in international human rights legislation since the late 1970s. “The human right to water evolved from initial references to water in numerous international treaties, including the Convention on the Elimination of All Forms of Discrimination against Women, 1979,² the Convention on the Rights of the Child, 1990,³ and the Convention on the Rights of Persons with Disabilities, 2008”.⁴ Finally, in 2010, the United Nations (UN) General Assembly passed resolutions on the “Human Right

¹Atul Singh, Water Is the Essence of Life, Fair Observer, 10 March 2016. Available online: https://www.fairobserver.com/more/global_change/water-is-the-essence-of-life-23230/ (accessed on 20 June 2022).

² The Convention on the Elimination of All Forms of Discrimination against Women, 1979. Available online: <https://www.un.org/womenwatch/daw/cedaw/cedaw.htm> (accessed on 8 June 2022).

³ The Convention on the Rights of the Child. 1990. U.N. Commission on Human Rights Resolution. No. E/CN.4/RES/1990/74 Available online: <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx> (accessed on 8 June 2022).

⁴The Convention on the Rights of Persons with Disabilities. 2008. U.N. General Assembly Resolution. No. A/RES/61/106

to Water and Sanitation⁵, Human Rights and Access to Safe Drinking Water and Sanitation,⁶ emphasising the difference between the right to water and human rights and access to safe drinking water and sanitation”. As a result, water has become a distinct human right.⁷

“The human right to water is fundamental for leading a life with human dignity, the United Nations Committee on Economic, Social, and Cultural Rights (ESCR) stated in General Comment 15 in 2002. The essential content of the ‘right to water’ was also described by the Committee as ‘everyone’s right to sufficient, safe, acceptable, physically accessible, and inexpensive water for personal and household usage’.”

“While many domestic constitutions⁸ incorporate the right to water as a constitutional right. The right to water in India has been read into expressly enunciated basic or constitutional rights, such as the ‘right to life,’ through judicial interpretation. Despite widespread acceptance of the ‘right to water’ in both constitutional and international law, the content of the right and how it is enforced varies significantly across countries”.⁹

However, “the recognition of the right to water as an international human right means that every person in every country must have access to a specific amount of affordable and high-quality water, and states are obligated to supply it to the best of their available resources.”

CONSTITUTIONAL PROVISIONS RELATING TO RIGHT TO WATER

Human life depends on water. The critical question now is not whether developing countries can afford water pollution control measures, but whether they can afford to ignore them. One of humanity's most critical problems is water pollution. Water contamination is caused by a variety of sources. Water contamination occurs when industrial waste water is discharged directly into a stream, through a municipal sewer, or on land intended for irrigation. Community wastes from human settlements, on the other hand, are the most significant source of water contamination. The majority of these wastes are released into waterways without being treated. Water contamination can also be caused by things held on land, such as raw materials and solid debris from mines and quarries. Furthermore, the usage of pesticides in agriculture results in water pollution as rainwater washes the chemicals into a stream.¹⁰

For dealing with water contamination issues, the Indian legal system provides four key sources of law:

- (i) “Water (Prevention and Control of Pollution) Act, 1974”.
- (ii) “Environment (Protection) Act, 1986’ relating to water quality”.

Available: <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html> (accessed on 8 June 2022).

⁵United Nations General Assembly Resolution 64/292; The Human Right to Water and Sanitation. U.N. Doc. A/RES/64/292.2010. Available online: https://www.un.org/waterforlifedecade/human_right_to_water.shtml (accessed on 8 February 2022).

⁶United Nations Human Rights Council Resolution 15/9; Human Rights and Access to Safe Drinking Water and Sanitation. U.N.Doc. GEA/HRC/15/31/Add.1. 0-16633. 2010.

Available online: <https://www.right-docs.org/doc/a-hrc-res-15-9/> (accessed on 10 June 2022).

⁷Langford, M. The United Nations concept of water as a human right: A new paradigm for old problems? *Int. J. Water Resource*, 2005, 21, 273–282.]

⁸ Jung, C.; Hirschl, R.; Rosevear, E. Economic and Social Rights in National Constitutions. *Am. J. Comp. Law* 2014, 62, 1043–1093.

⁹Langford, M.; Russell, A. (Eds.) *The Human Rights to Water: Theory, Practice and Prospects*; Cambridge University Press: Cambridge, UK, 2016.

¹⁰ Dr. J.J.R. Upadhyaya, *Environmental Law*, 208 (5th edn, 2018, Central Law Agency).

(iii) Municipalities charged with controlling water contamination and Public Nuisance actions against polluters.

(iv) The Department of Forests and Wildlife of the Union Government has prepared an action plan to prevent Ganga contamination. The Supreme Court has added to the impact of these laws by hearing “public interest litigation cases filed under Article 32 of the Constitution” for the adoption of legal measures to combat water pollution, most notably in the Ganga Pollution case.¹¹ Water contamination is not directly mentioned in the Indian Constitution. The Supreme Court of India, on the other hand, has determined how “Article 21 of the Constitution, which guarantees the right to life, should be construed to include as a fundamental right the enjoyment of a pollution free water environment”¹² and the ‘right to a clean environment’.¹³

Two of the Constitution's “Directive Principles of State Policy, which mandates that the state must strive to (i) improve public health (Article 47) and (ii) safeguard and develop the environment (Article 48), are included in Part IV (Article 48-A)”. Furthermore, Article 51-A(g) of the Constitution declares that everyone has a fundamental responsibility to maintain and improve the natural environment, including lakes and rivers. “Water, sanitation, and public health are specified in List II of the Constitution's Seventh Schedule, indicating that state governments, not the federal government, are in charge of these matters”. Parts IX and X of the Constitution were introduced in 1992 as a result of the 73rd and 74th Constitutional Amendment Acts, which constitutionalised local level governing entities, such as municipal “authorities in urban areas and Panchayati Raj Institutions (Gram Sabhas or panchayats) in rural areas”. “States have been authorised to transfer any or all of the tasks related to water, sanitation, and public health to the local bodies”.

INDIAN JUDICIAL ATTITUDE TOWARDS RIGHT TO WATER

A number of cases concerning water pollution have been decided by the “Supreme Court of India, High Courts, and the National Green Tribunal”. Some of these cases have allowed the courts to handle circumstances that have arisen as a result of the poor or non-implementation of important aspects of existing legislation. In many other cases, courts have held polluters or potential polluters accountable under “environmental law principles such as the polluter pays principle and the precautionary principle”, with the polluter or potential polluter being required to take appropriate corrective or prevention strategies, as the situation may be.

The right to water, as a right that necessitates infrastructure, is difficult to implement for all citizens. So, if it is made a fundamental right, everyone has a right to it and can seek redress in court if that right is not provided to them. As a result, for a long time, the right to clean water was not considered a basic right, but recent court decisions have changed that.

¹¹M.C. Mehta v. Union of India, AIR 1988 SC 1115.

¹² Subash Kumar v State of Bihar & Others, AIR 1991 SC 420.

¹³ Virendra Gaur & Others v State of Haryana & Others, (1995) 2 SCC 577.

The right to life entails providing a safe environment in which people can grow and enjoy a full life. This implies that individuals should develop holistically and be provided with nutrition, clean air, clean water, education, and other necessities for existence and sustenance.

In **Bandhua Mukti Morcha v. Union of India**¹⁴, the court construed Article 21¹⁵ to include right to have clean drinking water (potable water). The Petitioner in this case was a "organisation dedicated to the cause of bonded labourer freedom." Several surveys revealed that several of the miners were migratory workers from neighbouring Indian states who were 'bonded labourers.' They were living in deplorable circumstances. They were not provided with shelter, clean drinking water, latrines, or medical facilities, among other things, by the mine owners. As a result, the petitioner instituted a Public Interest Litigation under "Article 32 of the Constitution". The "Supreme Court introduced the concept of a right to a healthy environment as part of the Right to Life" by holding that "clean drinking water is unquestionably necessary to the health and welfare of workers," and that "some authority must be accountable for supplying it."

"The **A.P. Pollution Control Board II v. Prof. M.V. Nayudu**,¹⁶ case before the Indian Supreme Court was significant and, in this case, the Andhra Pradesh government provided an exemption to a polluting firm, allowing it to develop a factory near two major lakes in the state, the Himayat Sagar Lake and the Osman Sagar Lake, in violation of the Environment Protection Act 1986". Such an exemption was overturned by the Supreme Court.

The court determined in **T. Rama Krishna Rao v. The Chairman, Huda & Others**,¹⁷ that environmental conservation is not just the responsibility of individuals, but also of the state and its various organs, including the courts. "Article 21 of the Indian Constitution guarantees the enjoyment of life and its attainment and fulfilment, which includes the protection and preservation of nature's gift, without which life cannot be enjoyed fruitfully". The court stated that the gradual poisoning of the atmosphere caused by pollution and deterioration of the environment should be considered a "violation of Article 21 of the Indian Constitution". The state must ensure that the public is able to exercise their right to water, which includes both access and availability.

"The Supreme Court has ruled in **Subhash Kumar v. State of Bihar**,¹⁸ that the right to live includes the right to enjoy pollution-free water and air for full enjoyment of life." If there is violation of the law or damage to the quality of life, a person has the right to invoke Article 32 of the Constitution to have the contaminant of water or air that may be damaging to one's quality of life. The court, in this case and many others, imposed an obligation on the state to ensure that citizen's rights were respected.

Furthermore, the Supreme Court declared in **M.C. Mehta v Kamalnath**,¹⁹ "that the state is not only responsible for water supply regulation, but also for assisting in the realisation of the right to safe drinking

¹⁴ (1997) 10 SCC 549.

¹⁵ "No person shall be deprived of his life or personal liberty except according to the procedure established by law".

¹⁶ 3 (2001) 2 SCC 62.

¹⁷ ILR (2001) 2 A.P. 186 (DB).

¹⁸ AIR 1991 SC 420.

¹⁹ (1997) 1 SCC 388.

water and the prevention of health risks”. The apex court further addressed how the Roman law principle of “*salus populi est suprema lex*” (people's welfare is supreme law) is an enduring trust in the Indian Constitution. As a result, the court assigned the government a positive role in assisting people in realising their rights and needs.

CONCLUSION

The Indian judiciary, i.e., the Supreme Court and the High Courts, plays a critical role in preventing environmental degradation. To address the issues of environmental deterioration, Parliament has passed a number of legislations. Today's judges have played a more active role in the legal system. Individual rights in India are well protected by the Indian judiciary.

Judicial activism developed new tools and remedies, and public interest litigation reshaped the Supreme Court's institutional function to more easily enforce people's rights and even impose positive obligations on the government. The higher judiciary in India is responsible for India's environmental justice. The higher judiciary plays a particularly stalwart role due to its unique position and strength, as well as the circumstances of administrative ineptitude and the existence of a skeletal legal framework.

