

## **Right to Water as a Human right and Indian Constitution: An analysis of various judgments of Apex Court of India<sup>1</sup>**

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**Abstract:** Water is one of the most significant substance on earth. All plants and animal must have water for survival. If there is no water there would be dream of life on earth. Other than drinking even water has many uses which is essential to deal day to day activities. The basic reason is body loses water through the activities such as breathing, sweating and most important digesting the food. That is why it is important to rehydrate by drinking liquid and eating food containing water. Everybody needs it to maintain the temperature of body by using through cells, organs and all tissues and proper maintaining of other functions of body. The earth covered two third of its space with water but still people of various country including India facing water crisis in different parts. The government having different schemes and policies to provide water to their citizen for survival but there are reasons which shows that the people still facing some problem related to the water. Through this article author tries to discuss about the proactive steps of judiciary related to the water issues in India. Though there are rights under Indian Constitution like fundamental rights but there is no express rights has been given so far as water is concern provided in the interest of people at large the judiciary actively took cognizance of this serious issue and with the extended interpretation protected it as other rights. Hence forth the study showed that judiciary played utmost active role related to the water and tries to include in the sphere of right as other rights given under Indian Constitution.

**Keywords:** Water, Constitution, Fundamental Right, Government.

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### **I. INTRODUCTION**

After the declaration of the Cap Town as the first dry town in the world when zero water availability certified there, it compelled the whole world to think and discuss over the water crisis which would be the major concern in coming years. It is a bare truth that after air the water is, second most immediate substance which is necessarily required for human beings for their existence. The role which water plays in human life cannot be questioned and fresh water is indispensable for human life. Since last two decades water has been clothed with the rights by linking this with the human life. The link of life with water given a generic debate on legislative part which further interpreted by apex courts on their own ways considering the significance of the water. (Cullet, 2013) International bodies also interpreted the laws in such a manner which given water as a status of right but this depends upon the approach of individual country whether it would be accepted or not. Since India having liberal approach in this regards, Indian judiciary interpreted it according to the need and demand of Indian population and levied with the various provisions of Indian Constitution. The idea that right to water as a human right gives a way to the human inspiration which is connected with the religious and welfare activity. It reflects from the fact that people of different places themselves offer fresh drinking water to the needy in the public places.

This article examines the right based approach of Indian society related to the water and its judicial interpretation. The discussion must be elaborated with the various judgement of Indian judiciary and various provisions of Indian Constitution which include fundamental rights and directive principles of state policy. Reason being, the water having unconditional significance in daily life of human beings which compelled policy makers to come up with strong policy and committed political aspirations. This reflects through various water policies and schemes framed at the union and state level. The government came with many new water laws and

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water policy reforms and these came in last two decades. (Madhav) This shows that the water has been provided a status of right with proper attention in the context of human rights.

### **Provisions Related to Right to Safe Drinking Water under Indian Constitution**

The Constitution of India is a basic document which describes set-up of the Indian government which is based on distribution of powers among various organs of the government. It is called the Bible” of Indian citizens (Praveen, 2014) because it ensures various fundamental rights of the citizens for the protection of their life and freedoms, directive principles of state policy to make the state answerable for non-compliance of its duties towards citizens, fundamental duties of the citizens towards state and other human beings for assurance of fundamental rights in a better way (2006). The Indian Constitution is one of the very few documents of the world which has provisions about protection of environment which includes protection of water resources too. These provisions are the effects of Stockholm conference held at International level regarding various issues of environmental protection (Desai, 1987). This is the reason Indian Constitution do not contain any express provisions as far as water is concerned, though the interpretation of judiciary brought the provisions into right approaches. Some of the specific provisions which has been connected to the water is article 21 as right to life which includes right to water as well. It says:

**Article 21: Protection of life and personal liberty:** “No person shall be deprived of his life or personal liberty except according to procedure established by law.”

The ‘fundamental rights’ enumerated in our Constitution which came into force in the year of 1950 include right to equality, freedom, right to life, education, freedom from exploitation and forced labour, religious freedoms, minority and cultural rights as well as rights to constitutional remedies. There is no express recognition of right to water in the Bill of Rights nor, is it mentioned in the directive principles (Sharma, 2015).

The rights Under Article 21 are collection of different types of rights altogether which are derived from the Fundamental Rights of the Constitution. Customary right has been legitimized as a constitutionally guaranteed right through the new interpretation of Article 21 (Singh C. , Water rights in India). India is an example for other countries, where domestic courts derived Human Right to safe drinking water from other fundamental rights. The Indian Supreme Court has jurisdiction over 1¼ billion citizens in 35 states and Union territories. The Supreme Court in India has developed a liberal interpretation of “Right to life” (Article 21 Constitution of 1950) to derive Human Right to water from it (Norbert Brunner, 2015).

The Directive Principles of State Policy (Articles 36-51) are 'enshrined in Part IV of the Constitution.

The Directive Principle of state policy uses the word “Environment” in a wider sense. It means an aggregate of all the extremal conditions and influences affecting life and development of organs of human beings, animals and plants. It needs to be underlined that the directive of Article 39, Article 47 and 48A requires the state not only to adopt a protectionist policy but also to provide for the improvement of polluted environment. Therefore, the state may impose restrictions on the use of factors affecting life and development of body of human beings, animals and plants. It may, in addition, take necessary measures for the improvement of environment. The provisions states like:

**Article 39: The State shall, in particular, direct its policy towards securing:** (b) that the ownership and control of the material resources of the community are so distributed as best to sub serve the common good; (c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment.

**Article 47: Duty of the State to raise the level of nutrition and the standard of living and to improve public health:** The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavor to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.

**Article 48: Organization of agriculture and animal husbandry:** The State shall endeavor to organize agriculture and animal husbandry on modern and scientific lines and shall, in particular, take steps for preserving and improving the breeds, and prohibiting the slaughter, of cows and calves and other milch and draught cattle.

Apart from the Directive to the State "to protect and improve the environment," a special provision is enshrined in Part IV-A of the Constitution of India. In this Part, the newly inserted Article 51A provides for certain fundamental duties of the citizen of India. Article 51 (A) (g) specifically deals with the fundamental duty with respect to Environment. It states:

Article 51 (A) (g) It shall be the duty of every citizen of India - to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures. It is important to note that Article 51 (A) (g) imposes a fundamental duty, “to protect and improve the natural environment” only on the "citizens” of India. This may be construed as imposing no obligation on "non-citizens” for the purpose.

Ironically, the Article does not mention any enforcement mechanism for compliance with the Fundamental duties.

Article 51 (A) (g) is also not comprehensive enough to cover all forms of environmental pollution. It specifically lays stress on air and water pollution by referring to forests, lakes, rivers, etc. However, more recently, noise, light, radioactive and hazardous wastes, etc. are also found to be responsible for causing environmental pollution.<sup>2</sup>

In addition to these above article a commission has been constituted by the government a decade ago to review the constitution by going through the amending process and proposed for the new **Article 30 D** which recognized that the Every person shall have right to safe drinking water. (India, 2002)

#### **Article 262: Adjudication of disputes relating to waters of inter State Rivers or river valleys**

(1) Parliament may by law provide for the adjudication of any dispute or complaint with respect to the use, distribution or control of the waters of, or in, any inter State River or river valley

(2) Notwithstanding anything in this Constitution, Parliament may by law provide that neither the Supreme Court nor any other court shall exercise jurisdiction in respect of any such dispute or complaint as is referred to in clause ( 1 ) Co-ordination between States

Originally the “Right to safe drinking water” is not a part of the constitution as a fundamental right. Water rights exist in the Indian Constitution as riparian rights under Article 262 which was created to resolve state river water disputes (Mary, 2006).

#### **Judicial Approaches towards Evolution of the Right**

Fundamental human right to water has evolved basically through judicial interpretations, not through legislative actions. Decisions of Indian Supreme Court deem to express such kind of right impliedly hidden in Article 21. The right to life has been interpreted to include all facets of life and to include the right to clean environment also which is a basic need to sustain life.

There is a significant expansion in right to life under Art.21 for the last six decades. Due to this the right to health and right to clean environment has been included in it. It may also include right to safe drinking water. There have been significant attempts of development of incorporating the right to food as a fundamental right under Article 21. A question arises here, whether the expansion of right to food may be extended upto right to safe drinking water under the protection of right to life? If protection of rights included not only negative protection of violation of rights but also positive protection, then it may argued that right to water be extended to mean the people should not be denied access to water but also that in areas where no access to water is provided by the state, the Constitutional right to life guarantees would include a duty on the state to positively provide the safe drinking water. (Singh C. a., 1992) Looking the views of courts in the era of seventies and eighties, various governments also became more aware about the fact that it is the need of the hour that legislations should be far more stringent and comprehensive if we want to protect right to pure water of common people. The right to pollute water is now restricted through the water (Prevention and Control of Pollution) Act, 1974 and the Environment Protection Act, 1986. The expanded horizon of article 21 is that it has been interpreted to mean right to environment and hence Right to safe drinking water also (Singh C. , Legal policy for control of water pollution, 1984). In an important ruling of “**A.P. Pollution Control Board II v. Prof. M.V. Nayudu**,” (2001) the Indian Supreme court held that safe drinking water is the first importance in any country. The court referred here India’s participation in the UNO water conference and opined that, the “Right to access to safe drinking water is fundamental to life. The court further held that under Article 21 there is a duty on the State under to provide clean drinking water to its citizens. In “**Narmada Bachao Andolan Vs. Union of India**” (2000) the Supreme Court uphold the Indian government’s decision to construct over 3,000 dams on the river Narmada but considered the importance of Right to safe drinking water as well and held that “water is the basic need for the survival of the human beings and is part of right of life and human rights as enshrined in Article 21 of the Constitution of India. The Supreme Court has repeatedly reaffirmed the connection between public access to natural resources which includes water, the right to a healthy environment and the right to life under Article 21 of the Constitution while considering the right to water as implied in the recognition of the right to clean environment (1991). In the case of **M.C. Mehta vs. Kamal Nath** (1997) Court held that our legal system based on English common law and includes public trust doctrine as a part of jurisprudence. The state is the trustee of all natural resources which are by nature meant for public use and enjoyment. The state as a trustee under legal duty to protect all the resources. In the **Vallore Citizen Welfare Forum vs. Union of India** (1997) Supreme Court expressly held that the constitutional and statutory provisions protect a person’s right to fresh air, clean water and pollution free environment.

<sup>2</sup>It needs to be noted here that, the Sardarswan Singh Committee recommended that Parliament be empowered to enact legislation imposing penalties or punishment to enforce Article 51 (A) (g). This recommendation was, however, deleted from the final amendment.

The Court again recently cleared it that 'the right to access to clean drinking water is fundamental to life and it is a duty of the state under Article 21 to provide clean drinking water to its citizens. Further in 1984 in the case of **Bandhua Mukti Morcha vs. Union of India** (1984) held that the entitlement of citizens to receive safe drinking water (potable water) is part of the right to life under Article 21. In the case of **Subhas Kumar vs. State of Bihar** (1991), the Supreme Court asserted that the right to live is fundamental rights given under Article 21 of Indian Constitution and it includes right to clean water and pollution free air for enjoyment of life.

In important judgment of *Voice of India vs. Union of India* (2010), Supreme Court accepted the fact that after 60 years of independence Indian legislature not able to provide clean water to the Indian citizen and it needs to a special executive attention.

Therefore it must be seen through analyzing the various significant judgment that the judiciary given notable interpretation but at the same time it needs executive recognition. As per as rights based approach is concern no one deny the water as a basic rights as judiciary asserted in almost all the judgement related to the water issues.

## II. CONCLUSION

Above elaboration makes it clear that the Indian Constitution has not been successful in recognizing the human right to safe drinking water because express provisions are lacking. Though various Acts and provisions have been passed in the past half century, still there is a conceptual gap and no express provisions has been explored so far as a legislative measure in India. The gap has been bridged by the judiciary with liberal interpretation of various provisions of Indian Constitution. This is the reason in Indian context the basic outline of right to water as a Human rights is not subject to much dispute. A mutual consensus found while discussing about the right to water as universal rights. The Court took lead role in this regards and multiple occasion with the help of various provisions of the constitution of India discussed water as a Human rights and asserted this right as a part of right to life which is universal in nature. To give broader perspective and remind constitutional obligation duty to the state the court brought liberal jurisprudential aspects of rights by declaring state as a trustee of all natural resources and given some principles so that the state must oblige to fulfill the human aspiration and major needs like clean water.

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