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## Role of Indian Judiciary in ensuring safe drinking water for all.

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### Abstract

Water is the most precious gift of nature which is extremely important for existence of all living beings on earth. Water is essentially a life supporting substance, even more essential than the food we eat and almost as important as air we breathe. Yet thousands of people around the world lack access to safe drinking water. According to World Bank,<sup>2</sup> 163 million Indians lack access to safe drinking water. The right to safe drinking water is a part of right to life and hence a basic human right necessary for leading a dignified life. This research article will make an attempt to highlight important decisions of Supreme Court and various High Courts to ensure right to safe drinking water in India.

**Key words:** safe drinking water, right to life, High Court, Supreme Court

### Introduction

“Water, water everywhere and not a drop to drink”

Samuel Taylor Coleridge.

Water is the most essential element present on earth which is extremely essential for the existence of all the organism living on earth. It is as important as food we eat and air we breathe. In fact, we can live for days without food but not without water. Realizing the importance of water, United Nations General Assembly adopted a resolution<sup>3</sup> on 28th July 2010 which declared “safe and clean drinking water and sanitation as a human right essential to the full enjoyment of life and all other human rights.”

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<sup>2</sup> The Water Crisis In India: Everything You Need To Know, available at: <https://siwi.org/latest/water-crisis-india-everything-need-know/#:~:text=A%20few%20numbers%20from%20the%20World%20Bank%20highlight,five%20die%20from%20diarrhea%20each%20day%20in%20India> last visited on ( May 23, 2022).

<sup>3</sup> General Assembly Resolution No A/RES/64/292, available at: [A/RES/64/292: The Human Right to Water and Sanitation - \[PDF Document\] \(vdocuments.net\)](https://www.un.org/en/development/desa/indiaandpakistan/2010/07/28/2010-07-28-292.html)(last visited on May 12, 2022).

## **Water Scarcity in India**

Water scarcity in India is an ongoing water crisis that affects nearly hundreds of millions of people each year.<sup>4</sup> In addition to affecting the huge rural and urban population, the water scarcity in India also extensively affects the ecosystem and agriculture. India has only 4% of the world's fresh water resources despite a population of over 1.4 billion people.<sup>5</sup> Apart from the disproportionate availability of freshwater, another factor contributing to India's water scarcity is the drying up of rivers and their reservoirs throughout the summer, just prior to the start of the monsoon season nationwide. Climate change has made the situation particularly worse in recent years by delaying the monsoon, which causes reservoirs in many areas to dry up. Unchecked water contamination, inadequate infrastructure, and a lack of government monitoring are further causes linked to India's water scarcity.

## **Efforts of Indian judiciary in protecting water in India**

Indian courts have played a pivotal role in construing laws in a manner that has promoted both longterm development and environmental conservation. With its proactive attitude, the Indian court has secured several more fundamental rights that are inherent in the constitution but not explicitly stated. It has evolved into the curator and protector of people's fundamental rights.

The country's basic laws guarantee everyone the right to a pollutionfree environment. The right to life is protected as a fundamental freedom by Article 21 of the Indian Constitution. According to the Supreme Court's interpretation, the fundamental rights to life and personal liberty guaranteed by Article 21 also encompass environmental protection. The Indian Supreme Court took a while to finally decide that the right to live in a healthy environment is protected by Article 21 of the constitution.

The Supreme Court raised the right to a clean and healthy environment to the status of a fundamental human right under Article 21 of the Constitution, marking a gradual extension of environmental jurisprudence. The extension of this kind of Constitutional protection to address environmental challenges has been beneficial to India's environmental governance as a result of vigorous judicial activism.

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<sup>4</sup> NITI Aayog “Composite Water Management Index” (2019).

<sup>5</sup>Water and Agriculture in India: Background Paper for the South Asia Expert Panel During the Global Forum for Food and Agriculture (GFFA) 2017, *available at:* [www.oav.de/fileadmin/user\\_upload/5\\_Publikationen/5\\_Studien/170118\\_Study\\_Water\\_Agriculture\\_India.pdf](http://www.oav.de/fileadmin/user_upload/5_Publikationen/5_Studien/170118_Study_Water_Agriculture_India.pdf) (last visited on June 23, 2022).

In various decisions of the Supreme Court and High Courts, the right to life under Article 21 of the Constitution has been broadened in scope and included within its ambit right to pollution free environment in general and right to safe drinking water in particular. The Supreme Court in *Francis Coralie Mullin v. Union territory of Delhi*<sup>6</sup> ruled that Article 21 right to life under Article 21 of the Indian Constitution cannot be limited to mere animal existence. It entails far more than just physical survival.

In *Bheemagiri Bhaskar vs Revenue Divisional Office, Bhongir*<sup>7</sup> the Andhra Pradesh High Court came to the conclusion that there cannot be any doubt that the **right to get drinking water comes within the purview of Article 21 of the Constitution**. Secondly the Court held that the slow poisoning of the atmosphere caused by environmental pollution and spoliation should amount to violation of Article 21 of the Constitution.

In *S. K. Garg vs State of U.P.*<sup>8</sup> a writ petition in the nature Public Interest Litigation has been filed to ensure regular supply of water to the citizens of Allahabad. The Allahabad High Court held that the **right to safe drinking water is a fundamental right** and hence directed that a committee (to be called Allahabad Water Committee) to be set up immediately to look into the problem of water crisis and decide ways to solve it. Further the Court directed authorities concerned to repair the existing tube wells and hand pumps which are out of order within a week from today failing which this Court will take serious view of the matter. Court further directed that the water which is supplied should be tested regularly by chemical analysis to find out whether it is potable and does not contain any germs and harmful chemicals.

In *Intellectuals forums Tirupathi vs State of Andhra Pradesh*<sup>9</sup> the Court **outweighed protecting the water bodies over the need for the new residential area development**.

In *Pennar Delta Ayacutdars vs Government of Andhra Pradesh*<sup>10</sup> the Court held **that the drinking water needs of the people should take precedence over the water needs for the purpose of irrigation and other economic activities**. Court highlighted the need for the conservation of the surface water and groundwater resources.

In *Delhi Water Supply and Sewage Disposal Undertaking vs State of Haryana and ors.*<sup>11</sup> The Supreme Court observed that **“Water is a gift of nature. Human hand cannot be permitted to convert this bounty into a curse, oppression. The primary use to which water is put**

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<sup>6</sup>1981 AIR 746,1981 SCR (2) 516.

<sup>7</sup> AIR 2001 A.P. 492 (W.P. Nos 22740 and 25644 of 2000).

<sup>8</sup>(1998)2UPLBEC1211.

<sup>9</sup>AIR 2006 Supreme Court 1350.

<sup>10</sup>2000 (3) ALD 182, 2000 (2) ALT 634.

<sup>11</sup>AIR 1996 Supreme Court 2992.

**being drinking, it would be mocking nature to force the people who live on the banks of river to remain thirsty**". The Supreme Court further observed that **"drinking is the most beneficial use of water and this need is so paramount that it cannot be made, subservient to any other use of water, like irrigation. So, the right to use water for domestic purpose will prevail over other needs"**.

In *D.K.Joshi vs State of UP*,<sup>12</sup> the Supreme Court directed the State of Uttar Pradesh to appoint a **Monitoring Committee to oversee the functions of the Government agencies responsible for supply of drinking water so that the inhabitants of Agra will get benefits of getting unpolluted drinking water.**

In *Environmental and Consumer Protection Foundation vs Delhi Administration and Others*<sup>13</sup> the Court emphasizes the duty of the Government to ensure that ***the basic facilities such as drinking water and sanitation are available in all primary schools.***

In *All India Lawyers Union vs Union of India*<sup>14</sup>, Court held that ***provision for wholesome portable water in school is part of right to life enshrined under Article 21 of the Constitution and hence all schools are directed to provide clean drinking water to the children.***

In *Hamid Khan vs State of M P and Ors.*<sup>15</sup>, stressing the responsibility of the State to raise the level of nutrition and standard of living of its people as enshrined under article 47 of the Constitution, Court held that **it is responsibility of the State to improve the health of public by providing pollution free drinking water.** The Court further held that **right to life under Article 21 of the Constitution includes right to pollution free drinking water and it is the responsibility of the State to protect this vital fundamental right to pollution free water.**

In *Vishala Kochi Kudivella Samrakshana Samiti vs State of Kerala*<sup>16</sup> The Original Petition in the nature of Public Interest Litigation have come before the Court with the grievance of people of West Kochi who have been suffering due to non-supply of portable drinking for more than three decades. Court held that **it is the duty of the State to provide safe drinking water to the citizens in adequate quantities and if state fails, it would amount to violation of fundamental rights under Article 21 and human rights as well.**

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<sup>12</sup>AIR 2000 SC 384, JT 1999(9) SC 208, (1999) 9 SCC 578.

<sup>13</sup>Writ Petition (Civil) No. 631 of 2004.

<sup>14</sup>AIR 1999 Del 120(DB).

<sup>15</sup> AIR 1997, MP 191.

<sup>16</sup>2006 (1) KLT 919.

In *Vijay Singh Puniya vs State of Rajasthan*<sup>17</sup> the court held that **all human beings have fundamental right to unpolluted environment, pollution free air and water and State is obliged to preserve and protect the environment.** The industries cannot be permitted to continue in case it creates pollution. **The polluter must meet the cost of repairing environment and ecology and pay reparation to those who have suffered because of the pollution caused by polluter.**

In *Tirupar Dyeing Factory Owners Association vs Noyyal River Ayacutdars Protection Association*,<sup>18</sup> Supreme Court held that **it is the responsibility of the industries to carry out their industrial activities without polluting the water.** Supreme Court further put forward the view that polluter pays principle and precautionary principle has to be read alongside the doctrine of sustainable development.

In *M.C Mehta (Calcutta tanneries matter) vs Union of India*<sup>19</sup>, The Supreme Court held that the State of West Bengal and the West Bengal Pollution Control Board were failure in their performance of their statutory obligation to control pollution and to stop environmental degradation. The Court granted three months to the State Government to relocate the tanneries in a new place and erect a Common Effluent Treatment Plant for them in the new place. The Supreme Court directed the closure of tanneries at the present location and directed for relocation of the tanneries.

In *M.K. Balakrishnan vs Union of India*,<sup>20</sup> Supreme Court held that there is acute shortage of water in our country and one of the main reasons for that is that most of the water conservation bodies in our country such as ponds, tank, small lakes etc. have been filled up in recent times by greedy people and such persons have constructed shops, buildings etc. on the same. The Court held that respondents shall vacate the land that was allotted to them. The Court directed that State shall restore the pond, develop and maintain the same as recreational spot. The Court further held that **right to have access to water is a fundamental right guaranteed by Article 21 of the Constitution.**

In *Puttappa Honnappa Talwar vs Deputy Commissioner, Dharwad*<sup>21</sup> The Court held that **right to life under Article 21 of the Constitution included right to dig wells for the purpose of drawing groundwater either for drinking or cultivation** and this right could only be regulated by law and not by administrative authorities.

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<sup>17</sup> AIR (2003) Raj 286.

<sup>18</sup> Civil Appeal No. 6776 of 2009.

<sup>19</sup> Writ Petition (civil) 3727 of 1985.

<sup>20</sup> Writ Petition(s)(Civil) No(s). 230/2001.

<sup>21</sup> Writ Petition No. 682 of 1997.

In *Pani Haq Samiti and Ors. vs Brihan Mumbai Municipal Corporation and ors*<sup>22</sup> the Court held **that right to water is an integral part of right to life under Article 21 of the Constitution of India and state cannot deny to supply of water to any citizen on the ground that he occupies an illegal structure.**

In *Perumatty Grama Panchayat vs State of Kerala*<sup>23</sup> Court held that, **it is the responsibility of the state to protect ground water against excessive exploitation and the inaction of the state in this regard would tantamount to infringement of right to life under Article 21 of the Constitution.**

In *Sudha Katwa vs the KFC Restaurant*,<sup>24</sup> the Court directed the Chief Health Officer, Bruhat Bangalore MahanagaraPalike (BBMP) to ensure that all multiplexes, restaurant and eating houses within the limits of BBMP shall provide free clean drinking water to all the consumers throughout the year.

In *State of M.P. vs Kedia Leather and liquor ltd.*<sup>25</sup> Supreme Court held that **air and water pollution amount to violation of right to life assured under Article 21 of the Constitution.**

In *The State vs Alisaheb Kashim Tamboli*<sup>26</sup> the Court held that drinking water as mentioned under Section 47 of the Factories Act, 1948 is an elementary need of all human beings including all animal creations. Safe and sufficient drinking water is vital to the sustenance of the life of workers and **it is the duty of the factories to ensure that workers are provided with sufficient drinking water.**

In *Venkatagiriappa vs Karnataka Electricity Board*<sup>27</sup> the Court held that **Right to life under Article 21 which is available to all citizens, can be held at the most to have water for drinking purpose as without water for drinking purpose the life cannot be enjoyed at all.** However, the right to have water for irrigation purposes cannot be stretched to the extent of bringing it within the ambit of Article 21 of the Constitution.

In *Gautam Uzir & Ans. vs Gauhati Municipal Corp.*<sup>28</sup> the Court held that **clean water is essential to life and hence it attracts the provisions of Article 21 of the Constitution.** The

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<sup>22</sup>Public Interest Litigation No. 10 of 2012.

<sup>23</sup>2004 (1) KLT 731.

<sup>24</sup>CC/16/1334

<sup>25</sup>Appeal (crl.) 151-158 of 1996.

<sup>26</sup>AIR 1955 Bom 209, (1955) 57 BOMLR 135.

<sup>27</sup>1994(4) KAR LJ 482.

<sup>28</sup>1999(3) GLT 110.

court further held that it is the responsibility of the State government along with municipal corporation to ensure that people are not deprived of water.

In *U.P. Pollution Control Board vs Mohan Meakins Ltd. And Others*<sup>29</sup> The Supreme Court observed that the discharge of toxic polluting effluents into streams or rivers inflicts injury on the public health at large, causes irreparable to aquatic organisms and also effects health and life of animals. The Supreme Court directed that the Courts should not deal with such kind of matters in a casual manner.

### **Conclusion:**

Access to safe drinking water is the basic requirement of the decent living of any country. The high rate of death and disease in rural and urban areas can be attributed to lack of pure water and sanitation facilities. A significant majority of the world's disease is due to water borne diseases. Improper sanitation and sewage disposal; causes pollution of water and contamination of drinking water supply results in the spread of deadly diseases.<sup>30</sup> The decisions in the above mentioned cases reflects the constant effort of the Indian judiciary to ensure protection of water in general and right to safe drinking water in particular. In various decisions of the Supreme Court and High Court Article 21 has been interpreted to include right to safe drinking water. Thus, judicial recognition of fundamental right to water is unequivocal, however its implementation through policies and Acts is not advanced.<sup>31</sup> Nevertheless, these judicial decisions have played an important role in protecting the right of citizens to safe drinking water in India and ensuring that the government takes appropriate measures to provide clean drinking water to all.

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<sup>29</sup> Special Leave Petition(crl.) 3978 of 1999.

<sup>30</sup>Kiran Jain "Drainage and sanitation: Law and Policy"Vol. 33, No. 4, *Journal of the Indian Law Institute* pp. 553-588 (1991).

<sup>31</sup>India: evolution of water law and policy available at:[www.ielrc.org/content/a0901.pdf](http://www.ielrc.org/content/a0901.pdf) (last visited on May 19, 2022).