

# Towards Understanding the Right to Water and Sanitation



WaterAid's mission is to overcome poverty by enabling the world's poorest people to gain access to safe water, sanitation and hygiene education

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## I. Right to water and sanitation

The right to water and sanitation is necessary for the enjoyment of other human rights including the right to life and human dignity, the right to health, the right to adequate food, the right to development and the right to a healthy environment. In short water and sanitation are fundamental to human survival. Water known by different names like Paani, Jal, Neer, Tanni, L'eau, Wasser or Aqua needs no introduction. Sanitation on the other hand is the hygienic means of preventing human contact with the health hazards of waste. Yet nearly half the population of developing countries is suffering from health problems related to inadequate water supply and sanitation. Of the 37 diseases identified globally as major causes of death, 21 are related to water and sanitation.<sup>1</sup>

### Take the case of India

- 19.5 million rural people have no access to safe drinking water, 22 million are impacted by water quality problems<sup>2</sup>;
- 73 million working days are lost due to waterborne disease each year – an economic burden of \$600 million<sup>3</sup>;
- Due to lack of toilets two out of every three Indians defecate in the open<sup>4</sup>.
- 3.42 lakh people still practice manual scavenging<sup>5</sup>.

The right to life is a foremost human right. Air, water, and everything without which life cannot

exist are universal assets at par with the right to life. There are enough evidences to show that lack of access to safe water and sanitation has an impact on human health, enhances poverty and retards socio-economic development.

Lack of sanitation affects the need of women for privacy, dignity, safety and self-respect. The price they pay for inadequate sanitation is huge. Women live in a constant state of anxiety as they strive to meet their sanitation needs without losing their dignity.

Lack of water for the poor results in curbing access to the basic necessities they need to live with dignity. Poor water quality means exposure to diseases forcing the victims – mainly the marginalised and the poor – to divert their meager income for medical treatment, a process that leaves them poorer.

## II. Global intent

To help create mass opinion at the global level various international conventions have acknowledged the right to water both explicitly and implicitly. The idea is to create pressure on the signatory countries to recognise it as part of their obligation towards their citizens. However, international conventions are mere guidelines and are not enforceable under any law. Signatory countries may or may not use them to develop national policies for the realisation of these rights. Table 1 lists the various international conventions where right to water and sanitation has been mentioned.

**Table 1: International Conventions**

Convention	Year	Mention of right to water	Declaration
Universal declaration of human rights	1948	Implicit	Everyone has the right to a standard of living adequate for the health and well being of himself and of his family, including food, clothing and housing.
Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War	1949	Explicit	Stipulates a wide range of State obligations with regard to sanitation and hygiene, including access day and night and separate facilities for women internees.
UN Standard for minimum rules for prisoners	1955	Explicit	Every prisoner has to be provided with safe drinking water when he needs it.
International Convention on elimination of all forms of racial discriminations	1965	Implicit	Right to housing, health and public service irrespective of race.
International Covenant on Civil and Political rights (Article 12)	1966	Implicit	Water is the key resource of subsistence of living forms.
International Covenant on socio-economic and cultural rights (Article 12)	1966	Implicit	Right to health, includes as part of the necessary steps to be taken by states to achieve the full realisation of this right, those necessary for the reduction of infant mortality, and those necessary for the improvement of all aspects of environmental and industrial hygiene.
Mar Del Plata Declaration	1977	Explicit	All people have right to drinking water in quality and quantity, irrespective of the level of economic development of the native country and stage of development.
Convention on elimination of discrimination against women (Article 14 2(h))	1979	Explicit	The state shall ensure to women the right to enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communication.
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)	1984	Explicit	Committee against torture addresses poor sanitary conditions in detention facilities under Article 16 of the Convention prohibiting cruel, inhuman or degrading treatment or punishment.
Convention on Rights of Child (Article 24 2(c))	1989	Explicit	Mentions right to safe drinking water of a child from a non-polluted source.
Convention on the Rights of the Child (CRC)	1990	Explicit	Art. 24 [on the right of the child to the enjoyment of the highest attainable standard of health] asks States to: 'ensure that all segments of society are informed, have access to education and are

*Contd...*

Convention	Year	Mention of right to water	Declaration
			supported in the use of basic knowledge of hygiene and environmental sanitation’.
United Nations Rules for the Protection of Juveniles Deprived of their Liberty	1990	Explicit	Sanitary installations should be so located and of a sufficient standard to enable every juvenile to comply, as required, with their physical needs in privacy and in a clean and decent manner.
Agenda 21, UN Conference on Environment and Development 1992	1992	Explicit	Talks about provision of safe drinking water and environmental sanitation for poverty alleviation.
Programme of action of the International conference on population and development	1994	Explicit	Mentions right to water and sanitation in realising complete human potential and sustainable development.
The Habitat Agenda Goals and Principles, Commitments and the Global Plan of Action, [adopted by 171 States at Habitat II Conference in Istanbul]	1996	Explicit	Everyone has the right to an adequate standard of living for themselves and their families, including water and sanitation.
Guiding Principles on Internal Displacement, 1998 [drafted by the Representative of the Secretary-General on Internally Displaced Persons, Mr. Francis M. Deng and submitted to the Commission on Human Rights in 1998 and contained in document	1998	Explicit	Sanitation is an element of the right to an adequate standard of living.
Declaration on Cities and Other Human Settlements in the New Millennium	2001	Explicit	Representatives of Governments resolve to promote access to safe drinking water for all and to facilitate the provision of basic infrastructure and urban services, including adequate sanitation, waste management that is integrated and accessible to all, including people with disabilities.
The UN Committee on economic, cultural and social rights (General Comment 15)	2002	Explicit	The human right to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses. It states that:

Contd...

Convention	Year	Mention of right to water	Declaration
			<ul style="list-style-type: none"> <li>▪ States are required to ensure that each person has access to sufficient, safe, acceptable, accessible and affordable water for personal and domestic uses;</li> <li>▪ Committees noted that the other uses of water are protected by other human rights;</li> <li>▪ Priority must be given to drinking water and water for domestic use.</li> </ul>
57 <sup>th</sup> Session of Economic, Social and Cultural Rights	2005	Explicit	<p>Recognises:</p> <ul style="list-style-type: none"> <li>▪ Right to water and sanitation;</li> <li>▪ Action by the state to implement right to water and sanitation;</li> <li>▪ Preventing discrimination and addressing the needs of vulnerable and marginalised groups;</li> <li>▪ Availability and equitable distribution of water;</li> <li>▪ Affordability of water;</li> <li>▪ Water quality;</li> <li>▪ Participation in decision-making process of drinking water and sanitation which affect the right to water and sanitation; and</li> <li>▪ Access to judicial and administrative remedies.</li> </ul>
UN Sub-Commission Guidelines for the Realisation of the Right to Drinking Water and Sanitation	2006	Explicit	Everyone has the right to have access to adequate and safe sanitation that is conducive to the protection of public health and the environment.
United Nations Declaration on the Rights of Indigenous Peoples, [adopted by the GA, through resolution A/RES/61/295]	2007	Explicit	Article 21 stipulates that indigenous people have the right, without discrimination, to the improvement of their economic and social conditions, including, inter alia, in the areas of sanitation, health and social security. Paragraph 2 of this same provision stipulates that “particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities.

Source: Compiled from websites of various international conventions and in house analysis



### III. Recognising the right to water and sanitation

The right to water and sanitation has evolved in two distinct phases. The phase prior to 1975 saw the mention of right to water and sanitation implicitly but the phase after 1975 sees that international conventions have explicitly included it.

In 1977, in the Mar Del Plata declaration, an explicit mention of the right to drinking water and sanitation was made. This was followed in 1981 by the launching of 'International Drinking Water Supply and Sanitation' decade. After that the provision of drinking water and sanitation was mentioned explicitly in subsequent conventions.

The UN Committee on Economic, Social and Cultural Rights presented in its General Comment No. 15 of 2002 an authoritative interpretation of the provisions of the International Covenant on Economic, Social and Cultural Rights. General Comment 15 on the right to water was adopted in November 2002 by the Committee on Economic, Social and Cultural Rights, which sets the criteria for the full enjoyment of the right. This document clarifies the elements of the right to water and lists general and specific obligations of the states with respect to it. The human right to water also explicitly includes the right to sanitation. The General Comment No.15 also states, “State parties have an obligation to progressively extend safe sanitation services, particularly to rural and deprived urban areas, taking into account the needs of women and children.”

The UN Independent Expert on human rights obligations and water and sanitation, Ms Catarina de Albuquerque, in her report on sanitation to the UN Human Rights Council has reviewed the inextricable links between sanitation and a range of human rights, such as the right to an adequate standard of living, to health, and to education. The report outlines a definition of sanitation in human rights terms which elaborates the content of

human rights obligations related to sanitation.

While acknowledging the ongoing discussion about whether a 'right to sanitation' exists or not, she concludes that “only looking at sanitation through the lens of other human rights does not do justice to its special nature, and its importance for living a dignified life. “The report has supported the current trend of recognizing sanitation as a distinct right. It also calls for taking steps for applying the maximum of available resources, to the progressive realisation of economic, social and cultural rights as they relate to sanitation. States must move as expeditiously and effectively as possible towards ensuring access to safe, affordable and acceptable sanitation for all, which provides privacy and dignity. This requires deliberate, concrete and targeted steps towards full realization, in particular with a view to creating an enabling environment for people to realize their rights related to sanitation. Hygiene promotion and education is a critical part of this obligation, the report observes.

Understanding the human rights obligations related to sanitation requires a working definition of sanitation in human rights terms. This definition is drawn from elements related to sanitation as addressed under international human rights law. The report considers that this definition may evolve as the understanding of the human rights obligations related to sanitation continues to develop.

Ensuring the right to sanitation will entail the state to refrain from measures which threaten or deny individuals or communities existing access to sanitation. States must also ensure that the management of human excreta does not negatively impact on human rights. It is also the responsibility of the state to ensure that non - state actors act in accordance with human rights obligations related to sanitation, including through the adoption of legislative and other measures to prevent the negative impact of non - state actors

on the enjoyment of sanitation. When sanitation services are operated by a private provider, the state must establish an effective regulatory framework.

Right to water and sanitation comprises the following elements: availability, quality, accessibility (physical and economic), and non-discrimination and information accessibility (See Table 2).

The right to sanitation implicitly includes the right to hygiene education, this is important because ignorance about hygiene among the population

can lead to unsafe practices, which can help in the transmission of diseases despite the existence of proper sanitation facilities<sup>6</sup>.

General Comment 15, which includes right to water as a human right, also makes reference to international bodies and documents in which the human right to water has been recognized. It also states that water is required for different purposes, besides personal and domestic uses, to realise many of the covenant rights. For instance, water is necessary to produce food (Right to adequate food) and ensure environmental hygiene (Right to health). It is essential for securing

**Table 2: What does right to water and sanitation entail?**

Right to water	Right to sanitation
Sufficiency : Everybody has access to adequate water in accordance with international guidelines.	Availability : There should be sufficient sanitation facilities.
Safety and accessibility : Water must of acceptable colour, odour and taste which is safe for use.	Quality : Sanitation facilities should be designed in a manner such that they minimize health hazards, are conducive to hygiene, and are consistent with the privacy and dignity of individuals, taking into account cultural preferences of users and the special requirements of women and children.
Physical accessibility : Water must be within safe reach either within or near the household.	Physical accessibility : Sanitation facilities should be within safe reach for all sections of the population, in the immediate vicinity, of each household, educational institution and workplace, in a safe location.
Affordability : Water should be affordable and should not affect a person's ability to buy other essential goods.	Affordability : Sanitation facilities must be affordable.
Non-discrimination : Water and sanitation facilities and services should be accessible to all without discrimination.	
Information accessibility : Includes the right to seek, receive and impart information regarding water and sanitation issues.	

Source: *The right to water: from concept to implementation*, World Water Council

livelihoods (Right to gain a living by work) and enjoying certain cultural practices (Right to take part in cultural life).

#### IV. Right to water versus water rights

This right entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses as per the definition of General Comment 15. It is based on the interpretation of Article 11 and 12 of the *International Covenant on Economic, Social and Cultural Rights*, one of the major human rights treaties which has been adopted and is being monitored by the United Nations human rights system. In force since 1976, till date 153 countries have ratified the treaty and are thus obliged to implement it at the national level.

The 'right to water' differs from 'water rights'. It entails that all human beings have sufficient water, while water rights refers to using water from a source for specific purposes. The latter are of two types:

- a. *Land-based or riparian rights*: Based on land ownership, and protected by property law. Riparian rights state that only the owner of the banks of the water source has a right to the 'undiminished, unaltered flow' of water. Riparian rights are only transferable when the riparian land ownership title is transferred to a new owner.
- b. *Use-based rights*: Where land ownership is not essential, as long as water users have legal access to the source. Use-based rights are fully transferable to anyone.

#### V. The Indian context

India is a signatory to all the above international conventions; therefore it has an obligation to recognise the right to access water as a fundamental right.

Under Article 246 of the Constitution of India,

water as a subject is covered under the central, state and concurrent lists. Water supply and public health comes under the state list. Under Article 243 G, the state legislature can empower the panchayat to prepare plans for social and economic development, in some areas along with the areas mentioned in the XI Schedule of the Constitution. Entry 11 of the Schedule deals with drinking water.

#### *Constitutional provisions*

The Constitution does not explicitly guarantee water as a fundamental right. However, there are various provisions through which right to drinking water can be realized. These are:

- ✓ Article 14: Enshrines the right to equality before law and protects a person against unreasonable state action. This can be invoked where a state project interferes with the right of people to have access to clean adequate water.
- ✓ Article 17: Abolishment of untouchability in highly stratified Indian society some people may be discriminated against due to their caste, creed, ethnicity and origin and prevented from availing basic services. Article 17 can be invoked to fight against these injustices.
- ✓ Article 15(2): States that no citizen shall on the grounds only of religion, race, caste, sex, place of birth or any one of them be subject to any disability, liability, restrictions, or conditions with regard to the use of wells, tanks and bathing ghats.
- ✓ Article 21: Calls for protection of life and personal liberty states that no person shall be deprived of his life or liberty except according to procedures established by law.
- ✓ Article 39(b): Deals with the establishment of a welfare state, which is a Directive Principle of State Policy.

- ✓ Article 37: a Directive Principle of State Policy recognises the principle of equal access to the material resources of the community.
- ✓ The Protection of Civil Rights Act 1955: Provides an additional guarantee of equality to suppressed and exploited individuals of society.
- ✓ The 42nd Amendment of the Constitution in 1976 further included article 48A and 51A (g), which talks about the protection of environment and fundamental duty of the citizens. This has been used as a means to access the right to drinking water and sanitation.<sup>7</sup>

Thus one would believe that there are various acts and legislations, which provide guidelines to the states for ensuring effective water supply and sanitation. However media reports as indicated below continue to report the following:

- *June 2008, an elderly dalit women burnt alive while fetching water from a handpump in Kantada village in Karnataka;*
- *Dalit killed for digging well on own property in Kulakjai village, Maharashtra;*
- *When Dalits in Chakwara village, Maharashtra won the right to use the village pond, the upper castes turned it into a sewer;*
- *Panchayat denies tap water to Orissa dalits ; and*
- *Dalit woman denied water on grounds of opposition against assault.*

Thus, there are certain groups who are systematically disadvantaged and denied their right to water on the basis of their ethnicity, race, religion, and caste.

There exist various judicial provisions, which a citizen can use in case the state does not fulfill its

responsibilities and there is a breach in access to the basic human rights. Non-judicial provisions include the use of Right to information (RTI).

## VI. Judicial interpretations

The Constitution of India, the governance DNA of the country, guarantees wholesome life. Article 21 ensures the right to life for Indian citizens; but without elaborating what constitutes life. Over a period of time, the Supreme Court and various high courts have defined this right to life.

An analysis by the Policy and Partnerships Unit of WaterAid India of various court orders reveals that the judiciary has played an active role in expanding the scope and content of individual and collective rights of citizens. This has been in both the civil and political sphere as well as the economic, social and cultural sphere. Summing up key judicial pronouncements it emerges that the right to life in the Constitution now means right to water and sanitation as well. The following judgments ascertain the right to water and sanitation to be an integral part of the right to life:

- In 1981, the Supreme Court ruled: “The right to life includes the right to live with human dignity and all that goes with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and mingling with fellow human beings. The magnitude and components of this right would depend upon the extent of economic development of the country, but it must, in any view of the matter, include the bare necessities of life and also the right to carry on such functions and activities as constitute the bare minimum expression of human self.”
- In 2002, the Apex Court validated the Sardar Sarovar dam project on Narmada in 2000 interpreting the right to life article as

right to water. “Water is the basic need for the survival of human beings and is part of the Right to life and human right as enshrined in Article 21 of the Constitution of India and can be served only by providing a source of water where there is none.”

- In 1990, the Kerala High Court in a groundwater extraction case involving the water supply plan for the island of Lakshadweep restrained the government from extracting groundwater which could impact the source in future as this violated Article 21. It ruled: “... the administrative agency cannot be permitted to function in such a manner as to make inroads into the fundamental right under Article 21. The right to life is much more than a right to animal existence and its attributes are manifold, as life itself. A prioritizing of human needs and a new value system has been recognized in these areas. The right to sweet water and the right to free air are attributes of the right to life, for these are the basic elements which sustain life itself.”
- In 2004 in response to a PIL on fast depletion of groundwater in Delhi, the Apex Court ruled that groundwater is a social asset. It further said that people have the right to use air, water and earth interpreting Article 21. It even observed that in groundwater use, domestic and irrigation needs must be prioritized.
- Apart from expanding the content of the right to life as including the right to water, the Court has, in the context of water pollution, mandated the cleaning up of water sources including rivers (*MC Mehta vs. Union of India*), the coastline (*S Jagannath vs. Union of India*) and even tanks and wells (*Hinch Lal Tiwari vs. Kamala Devi*). The concern over pollution

of groundwater by unregulated discharge of effluents has led the court to issue mandatory directions for clean up by the polluter and restitution of the soil and groundwater.

- In *DD Vyas vs Ghaziabad Development Authority*, the Court said that the Right to life includes the right to enjoyment of pollution-free water and air. It further added that, “if anything endangers or impairs that quality of life in derogation of laws, a citizen has the right to have recourse to Article 32 of the Constitution for removing the pollution of water or air which may be detrimental to the quality of life.” Further, the Supreme Court held in *Virendra Gaur and others vs. State of Haryana (1995)* that “Environmental, ecological, air, water pollution, etc. should be regarded as amounting to violation of Article 21
- The Court has also applied the 'precautionary principle' to prevent pollution of drinking water sources by setting up industries in their vicinity (*A.P. Pollution Control Board vs. Prof. MV Nayudu*). Various judicial pronouncements have recognised water as a community source to be held by the state in public trust in recognition of its duty to respect the principle of inter-generational equity.
- On sanitation issues the courts have given verdicts interpreting it as a right under Article 21. In 1988 the Rajasthan High Court ordered the Jaipur Municipality to ensure proper sanitation within six months. In 1980 the Supreme Court in a case involving the Municipal Council of Ratlam, Madhya Pradesh and a citizen, ruled: “Decency and dignity are non-negotiable facets of human rights and are a first change on the local-self governing bodies.”

A study of 43 court cases and their judgements by the Supreme Court and various High Courts (See *Table 3 and Annexure 1*) highlights that cases related to water and sanitation can be broadly clubbed into the following categories:

- poor water quality,
- poor sanitation in the city,
- water pollution,
- water charges, and
- depletion of water sources.

**Table 3: Reinforcing right to water and sanitation**

Name of the case	Deciding Court and year	Citation
Hamid Khan vs. State of M.P	High Court of Madhya Pradesh - 1973	<p>Presence of excessive fluoride in the drinking water of hand pumps set up by the Government was leading to illness among inhabitants of the district.</p> <p>The Court held that this represented a failure on part of the State to fulfill a primary responsibility towards its citizen and that the right to water was a fundamental right. It ordered the State to ensure clean drinking water is supplied and to provide free medical aid to those affected by the consumption of fluoride.</p>
Municipal Council of Ratlam vs. Vardhichand	Supreme Court of India 1980	<p>Extremely poor sanitation conditions were caused due to pungent smells from open drains, public excretion in slums, and liquids flowing onto the street from the distilleries, in Ratlam Municipality. The residents approached the magistrate.</p> <p>The magistrate ordered the municipality to take measures to improve the conditions. The municipality challenged this order in the Supreme Court. The Court ordered the municipality to take necessary action within 6 months and in case of non-compliance, the magistrate had the authority to punish the officers.</p>
L.K. Koolwal vs. State of Rajasthan	Rajasthan High Court 1988	<p>The case was related to sanitation problem in Jaipur city. The Court drew its judgment from Article 21, article 19(A) and chapter VI of the Rajasthan Municipalities act, S.98. The Court ordered the municipality to perform its duty within six months from the day of judgment.</p>

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<p>Attaoya Thangal vs. Union of India</p>	<p>Kerala High Court 1990</p>	<p>Due to unprecedented use of groundwater by digging bore wells there was a shortage of water in the area and the problem of salt-water intrusion by the Arabian Sea also existed. The local administration tried to solve the problem by digging wells and drawing water from existing wells.</p> <p>According to the petitioner, the administration was not taking appropriate measures to solve the problem and this was a breach of 'Right to life' under Article 21. Experts appointed by the Court studied the region and suggested better means to augment the water supply. The Court held that, 'right to sweet water and right to free air are attributes of right to life, for all these are the basic elements that sustain life'.</p>
<p>Subhash Kumar vs. State of Bihar</p>	<p>Supreme Court of India 1991</p>	<p>Subhash Kumar filed a PIL to bring to notice the pollution of Bokaro River by the washeries of TATA Iron and Steel company. The Court held that right to life includes the right to enjoy unpolluted air and water. If anything endangers or impairs the quality of life in derogation of law, a citizen has the right to move the Supreme Court under Article 32.</p>
<p>MC Mehta vs. State of Orissa</p>	<p>Orissa High Court 1992</p>	<p>The petitioner on his visit to Cuttack saw the Taladanda irrigation canal turned into a sewer as the city's storm water drains were laden with sewage. This resulted in contamination of drinking water too.</p> <p>In response to his PIL, the Court held the municipality, the state health department and the pollution control board responsible. The Court constituted a committee of senior government officials to devise measures to prevent water pollution and improve sanitation within a year.</p>
<p>Sayeed Ansari vs. the State of Rajasthan</p>	<p>Rajasthan High Court 1992</p>	<p>The case was filed as a writ petition under Article 226. The petitioner wanted the Court to restrain the respondents from allowing allocation of any if the water out of the water available in the four dams via, Jawai, Hemawas, Sai and Lordia and thus ensure that drinking water is available to serve the city of Jodhpur, Pali and 222 villages.</p>

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V. Lakshmi pati vs. State of Karnataka	Karnataka High Court 1992	The Court held that 'entitlement to clean water is one of the basic human rights. The right to life inherent in Article 21 does not fall short of the required quality of life which is only possible in the environment of quality.'
Virendra Gaur vs. State of Haryana	Haryana High Court 1994	The court held that Article 21 protects right to life as a fundamental right. Enjoyment of life and its attainment including their right to life with human dignity encompasses within its ambit, the protection and preservation of environment, ecological balance free from pollution of air and water, sanitation without which life cannot be enjoyed. Any act that would cause environmental pollution should be regarded as amounting to violation of Article 21.
Indian Council for Enviro-Legal Action and Ors. <sup>+</sup> vs. Union of India (UOI) and Ors.	Supreme Court of India 1996	Industrial units manufacturing H-Acids were polluting water sources in Bicchiri village. The Court ordered their closure. It asked to clean up the sludge after the closure and to pay compensation to the victims.
Venkatgiriappa vs. Karnataka electricity board	Karnataka High Court 1998	There was conflict over various uses of water that can come under Article 21. The Court opined that in a developing country no citizen can claim absolute right over natural resources ignoring the claims of others, water resources being limited its use has to be regulated and restricted in the larger interest.  The fundamental right under Article 21 covered drinking water and could not be stretched to bring within its ambit the right to water for irrigation.
Lucknow Griha Swami Parishad vs. State of UP and ors.	High Court of Allahabad (Lucknow Bench) - 2000	The case concerned levying of water charges by the UP Jal Sansthan. The Court ordered that the consumer should pay according to the earlier rates and the tax raise cannot be implemented.
AP Pollution Control Board II vs. Prof. MV Nayadu and ors.	Supreme Court - 2000	Industries were polluting <i>Himayat Sagar lake</i> and <i>Osman Sagar lake</i> the main drinking water source of 50 lakh people in Hyderabad and Secundrabad. The Court ordered the closure of industry.
UP Udyog Vyapar Pratinidhi Mandal and	High Court of Allahabad 2003	The Case dealt with the distinction between fee

Contd...

+ Ors.means others



ors. vs. State of UP and ors.		and tax. The court held that since the provision of drinking water comes within the statutory duties of the Zila Panchayat a fees cannot be charged for the same unless certain special arrangements are being made for a the group of people from whom the fees is being charged.
MC Mehta vs. Kamal Nath and ors.	Supreme Court - 2002	Environmental degradation by Span Motels was obstructing the flow of river Beas and discharging waste into the river. The Court ordered that discharged effluent should conform to the prescribed standards of the State Pollution Control Board.
Hindustan Coca-Cola Beverages (P) Ltd. vs. Perumatty Grama Panchayat	High Court of Kerala 2005	<p>The Gram Panchayat refused to give license to the petitioner stating that over-extraction of groundwater was creating water shortage and the industrial waste was polluting the water source.</p> <p>The Court held that the <i>Panchayat</i> had no right to cancel an order of the government as its decision was not based on any scientific findings and was not backed by any legal measures. The company was ordered to take measures to solve the drinking water problem.</p>
Consumer Education & Research Society & ors..... Complainants vs. Ahmedabad Municipal Corporation & ors	National Consumer Dispute Redressal Commission, New Delhi - 2008	<p>Consumer Education Research Society accused Ahmedabad Municipal Corporation (AMC) and the state government for the death caused by jaundice due to contaminated water supply by the AMC.</p> <p>AMC was ordered to inspect the water tanks regularly. To follow WHO guidelines for drinking water. The state government was ordered to look into the activity of AMC. No punitive damage was awarded.</p>
M.K. Balakrishnan and others Appellants/Petitioners vs. Union of India and others Respondents	Supreme Court - 2009	The case concerned the conservation of wetlands. However, the Court expanded the scope and asked the Ministry of Science and Technology to submit an affidavit explaining the measures, which have been taken to solve the water crisis in the country. The report has been submitted in the court.

Source: WaterAid India analysis of 43 court judgments.

The judiciary has therefore played a key role in ensuring the right to water and sanitation. It has also punished authorities for negligence or complacency. But while doing so one might argue that it has taken over the role of an administrator to ensure proper functioning of state agencies. The courts are flooded with PILs, which eat into the precious time of the courts, leaving little time for other cases.

One argument that also comes forward is that the judiciary may direct government agencies to perform their functions but it cannot address aspects such as lack of funds, staff and implementation, which rest with the executing agencies. The fulfillment of rights thus depends on the judiciary, executive and legislature performing their roles properly.

## VII. Right to information

Right to Information (RTI) is not a new concept in India. Its foundation was laid in 1975 by a landmark Supreme Court ruling, *'where all the agents of public must be responsible for their conduct, there can be but few secrets. The people...have the right to know every public act, everything that is done in a public way by their public functionaries. The responsibility of officials to explain or to justify their acts is the chief safeguard against corruption and oppression'*.

The right to know...is derived from the concept of freedom of speech." (*State of Uttar Pradesh vs. Raj Narain, AIR 1975 SC 865*). This ruling was significant because it interpreted the Right to Freedom of Speech enshrined in Article 19 (a) of the Constitution as inclusive of the Right to Information.

However, this Right, though declared by the Supreme Court as just and necessary, was still inaccessible to the common man. Numerous campaigns were organized for nearly 20 years to give the common man access to this right. Led by Anna Hazare and Aruna Roy these campaigns gave

a voice to people's demand for a framework for accessing their Constitutional Right to Information.

The Right to Information Act (RTI Act) was enacted in 2005 by Parliament giving citizens access to records of the Central and State Governments. The Act applies to all States and Union Territories, except Jammu and Kashmir, which is covered under a state-level law. The passage of this Act took inspiration from the numerous state legislations that had already been passed on this issue, particularly those of Maharashtra and Delhi. Under RTI, any citizen (including the citizens within J&K) may request information from a "public authority" (a body of Government or "instrumentality of State"), which is required to reply expeditiously or within 30 days. RTI also requires every public authority to computerize their records for wide dissemination and to proactively publish certain categories of information so that the citizens need minimum recourse to request for information formally (See box 1 - *Salient features of RTI*)

### *Salient features of RTI*

- One can seek information from any department of the Central or State government, from Panchayat Raj Institutions, and from any other organisation or institution (including NGOs) that is established, constituted, owned, controlled or substantially financed, directly or indirectly, by the state or central government (section 2(a) & (h)).
- In each department, at least one officer has been designated as a public information officer (PIO). She/he accepts the request forms and provides information sought by the people (section 5(1)).
- In addition, in each sub-district/divisional level there are Assistant Public Information Officers (APIOs) who receive requests for information and appeals against decisions

of the public information officers, and then send them to the appropriate authorities (section 5(2)).

- Any person seeking information should file an application in writing or through electronic means in English or Hindi (or in the official language of the area) along with the application fees with the PIO/APIO (section 6(1)).
- Where a request cannot be made in writing, the PIO is supposed to render all reasonable assistance to the person making the request orally to reduce the same in writing (section 6(1)).
- Where the applicant is deaf, blind, or otherwise impaired, the public authority is supposed to provide assistance to enable access to the information, including providing such assistance as may be appropriate for the inspection (section 7(4)).
- Besides the applicant's contact details, the applicant is not required to either give any reasons for requesting the information or any other personal details (section 6(2)).
- A reasonable application fee (Rs. 10/- as prescribed by the Central Government, whereas in other states the fee amount may vary, will be charged for each application and supply of information. However, no fee is chargeable from persons below the poverty line (section 7(5)), or if the information is provided after the prescribed period (section 7(6)).
- A fee will be charged for obtaining a copy of the documents.
- (The Central Government has prescribed fees of Rs. 2/- for each page created and copied. In some states the charges are higher. If the Information is not provided in the stipulated time limit then the information will be provided for free. (u/s 7(6)).

If the PIO feels that the sought information does not pertain to his department then it shall be his responsibility to forward the application to the related/relevant department within 5 days and also inform the applicant about the same. In such instance, the stipulated time limit for provision of information would be 35 days (u/s 6(3)).

- In case PIO does not furnish information within the prescribed period or unreasonably troubles the applicant, then the applicant can file a complaint against him with the information commission.
- In case a PIO without any reasonable cause fails to receive an application for information, or deliberately denies a request for information, or knowingly gives incorrect, incomplete or misleading information, or asks for high fees for furnishing the information the applicant can file a direct complaint to the Central or the State Information Commission.
- The PIO can deny information in some cases/matters. The various exemptions from disclosure of information are listed in Section 8 of the RTI Act, 2005.
- If the sought information is in public interest then the exemptions enumerated in Section 8 of the RTI Act, 2005 can also be disclosed.
- Any information that cannot be denied to parliament or legislative assembly cannot be denied to a common citizen.
- In case a person fails to get a response from the PIO within the prescribed period or is aggrieved by the response received, or misuses Section 8 of the Act, then he/she can file an appeal within 30 days with an officer superior in rank to the PIO (first appellate authority) (section 19(1)).
- If the appellant is not happy with the first appeal then he/she can file a second

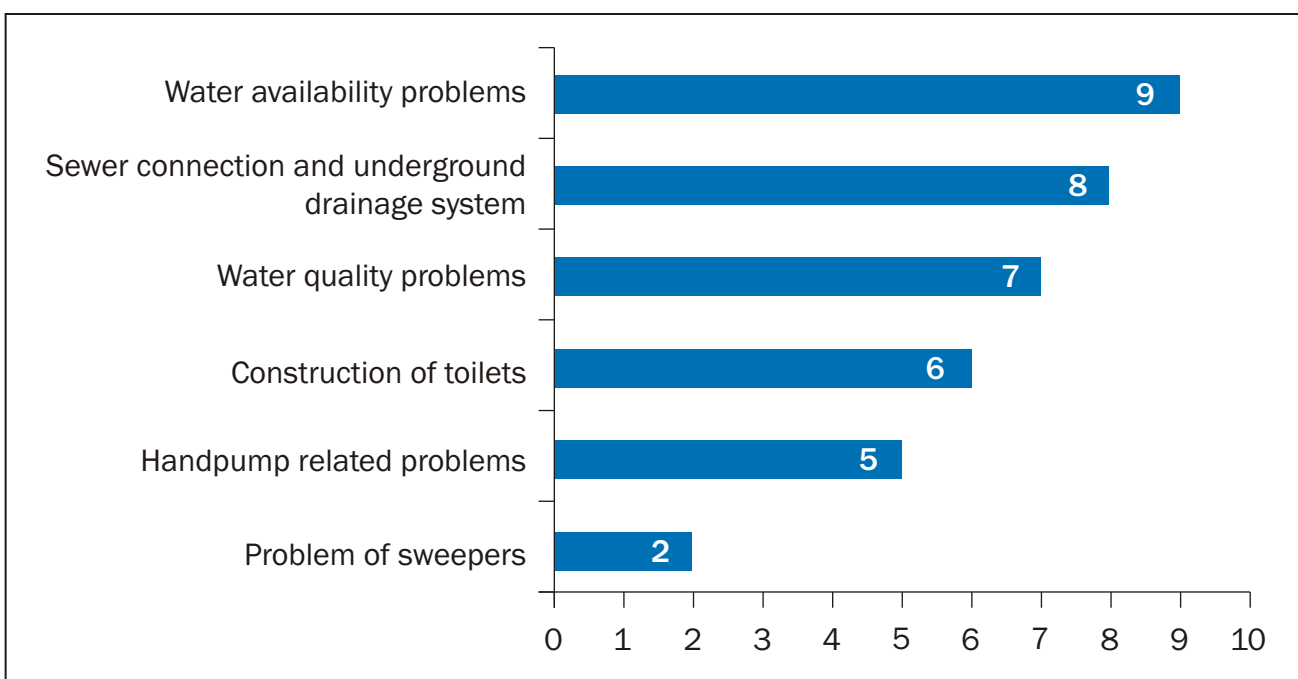
appeal with the State Information Commission or the Central Information Commission within 60 days (u/s 19(3)).

- If a PIO fails to furnish the information asked for under the Act or fails to communicate the rejection order, within the time specified, the PIO will be liable to pay a penalty of Rs. 250 per day for each day of delay, subject to a maximum of Rs. 25,000 (section 20(1)). The information commission can also recommend

disciplinary action against the concerned PIO, under the service rules applicable to him/her (section 20(2)).

### *RTI: a helping hand*

An analysis by the Policy and Partnerships Unit of WaterAid on 37 RTI cases reveals that most of the cases of RTI filed in respect of water and sanitation has been with regard to availability of water supply (See Annexure 2). The problems come under six main categories (See Figure 1).



**Figure 1: Break up of information sought under RTI**

RTI has helped people get a mechanism to voice their concerns and seek answers from the service providers. The examples below depict how people have used RTI.

#### *1. Punishing the polluters*

In Sathyamangalam village in Tamil Nadu, the members of Bhavani river water, potable water and ground water conservation movement filed RTI applications on the extent of pollution in the river. They were of the view that the paper and pulp factories in the region were discharging untreated effluents in Bhavani river. On receiving the information from the State Pollution Control

Board the villagers used it as evidence to express their concerns on the issue. Taking the findings forward the villagers filed complaints with various departments, which resulted in suspending power supply to a few factories. And, the process is on to ensure acceptable level of effluent discharge.

#### *2. Mission clean*

Santosh, a 22-year-old girl, is an RTI activist engaged with Parivartan, an NGO working in Pandav Nagar area of East Delhi. Santosh recalls the days when the area faced an acute problem of dirt and filth, as the sweepers never attended their duties. Volunteers of Parivartan submitted an RTI

application to seek the attendance register of the sweepers. To their surprise, they found that the sweepers were marked present for all the dates. To strengthen their case, Parivartan volunteers formed a Mohalla Samiti in every lane of the area and provided it with an attendance register. The attendance for the sweepers was marked thrice a day. The representatives from the Mohalla Samiti followed the same procedure to mark the actual presence of sweepers. Later when the attendance register of the MCD official and Mohalla samiti were compared, there was a complete mismatch. Armed with this information, a complaint was filed with the Municipal Corporation of Delhi resulting in sweepers coming back to work. (They were threatened with a salary cut in case they did not attend duty). The situation has improved drastically with the sweepers now knocking the door after cleaning the area to ask if the work has been done well. For Santosh, however, the transition has not been very smooth. The sweepers used to threaten and abuse her but she kept up the fight until the work was done.

### *3. Testing contaminated water*

Shapelli is a small village in Warangal district of Andhra Pradesh where the majority of the people are from the backward caste. The village had received the Nirmal Gram Puruskar last year and also has a piped water supply scheme for people. However, the water in the area is contaminated with fluoride. The villagers have been suffering from mild to acute fluorosis due to this. The village Panchayat did not have a water quality testing kit and the residents wanted to have one to test the levels of fluoride in their water. The villagers filed an RTI application to know if the village could get a water quality testing kit under the water quality programme of the Public Health Engineering Department. As a result the panchayat got a water quality testing kit out of turn in the first phase of distribution itself. Under the normal course it would have come to them in the second phase. The villagers are now using the kit to monitor the quality of water.

### *4. Preventing privatisation*

In 1998, the Delhi Government called for a tender to privatise Delhi's water supply. Under the project the management of water in 21 zones of Delhi was to be given to the private companies, which ensured a 24-hour water supply. In return, the companies' would collect management fees, engineering consultancy fees and a bonus. This management fees would cost around 24,000 US dollars for one expert. Under the contract, the company had the power to come up with its own operating budget, which it could revise. If the project were implemented, however, the water tariff would rise five times.

The contract was given to a Calcutta Subsidiary of Pricewaterhouse Coopers (PwC) in 2001 despite opposition by the Delhi Jal board. The documents received by Parivartan, a local NGO working in Delhi in response to the 4,000 RTI applications filed by them revealed that the World Bank had interfered in the process on the behalf of PwC. During the evaluation of the proposal a low score given by one member of the selection committee was removed from the final score while selecting the contractor. After such revelations, a 'Right to Water' campaign was initiated to oppose the Delhi Government's move to take loans from the World Bank for this project. The Chief Minister reacted to the protests by calling a Jan Sunwai and promised that government would only take a decision in this regard after consultation with all the stakeholders.

### *5. Fighting for their right*

All government officials do not respond to RTI. While some are cooperative others are not. Take the case of Mastapur village in Jatara block of Tikamgarh district of Madhya Pradesh. There is a severe drinking water crisis. Women have to walk miles to collect water for 3-4 hours daily. Children especially girls have to miss school often to help their mothers collect water. The villagers want to know the status of water supply schemes being implemented in their area. They are supported by

Parmarth Samaj Sevi Sansthan an NGO working in the area.

Jagdish, a resident who submitted an RTI application the help of local NGO workers from Parmarth to the Pradhan of the village was turned back on the grounds that he had submitted a hand written application. Subsequently he submitted a typed application in February 2009. After not getting a reply from the panchayat for three months, he wrote to the District Magistrate who ordered the pradhan to immediately respond. Infuriated by this, the pradhan filed a false case under the Harijan Act against Jagdish.

Jagdish may not have been able to get the authorities to repair the handpumps or provide an assured supply of water but now he has certainly become more informed of the various water supply programmes that are being run by the state and feels a sense of empowerment on being able to speak to government officials.

### *Learning's*

The right to information on one hand has increased people's say in the governance process and helped in solving their problems but there have been examples where people have opted out due to the harassment they have faced from government officials. The example below depicts one such instance of harassment faced by people in Bundelkhand.

Shyam Prakash, a 40-year-old carpenter, in Kasba village of Jalaun district of UP filed an RTI application seeking information regarding the total funds spent on development schemes in the village. On not getting a response he moved his application to the Public Health Engineering Department. The Pradhan then started threatening him. Nobody knows what threat was issued to Shyam Prakash, but one day he left the village with his family. He did not inform anybody where he was going. Today the villagers are happy to adjust with their problems rather than take up a fight with the authorities.

While RTI has given people the power to seek information and increased transparency in governance, its true potential is yet to be realized. Awareness on its use is limited and its success is dependent on the use of it as a tool by the citizens. However, the process of filing RTI seems simple. The applications do not require the applicant to disclose any information, other than his name and address.

This theoretically simple procedure may not be as simple as it looks, especially to the illiterate and people from rural areas. For many this struggle has not proved very fruitful. Even though a person is free not to disclose any other information than name and address, the applicants are often harassed while filing applications. For instance M. Prabhakar, a 45-year-old Scheduled Caste farmer in Thatikonda village, after undergoing RTI training from *Modern Architects for Rural India*, a WaterAid partner filed an RTI application at the MPDO office asking about the total number of hand pumps sanctioned in the village. He received a reply within 30 days asking him to collect the information from the Rural Water Supply Department Office. He was too scared to visit the government office again. Other officials too received the same response. In some cases in Warangal district of Andhra Pradesh, the PIO actually called the applicant to the office to ask him questions like the reason for filing the RTI applications.

The relationship of the state with the citizen varies in urban and rural areas. In the city, where people are literate and know their rights they feel free to act if they see an infringement of their rights. In rural areas, however, where most of the people are illiterate and government officials are at the top of the hierarchy the villagers often feel that they are at the mercy of the officials. Officials respond differently to different people. Hilda Grace, a social activist working with the Centre for Rural Development and Studies at Anantpur in Andhra Pradesh, says, 'the responses of public officials is

different when a seemingly educated person goes to submit an RTI application and when a person with a rustic appearance goes”.

Asking the right question is extremely important too. On several occasions officials have taken advantage of an unclear question in the application and do not provide complete information. There had been instances where applicants, especially from rural areas have asked questions framed as requests for a particular service. In such cases, it becomes difficult for the officials to find an apt reply.

The RTI Act also states that its success will depend on the legal literacy of the common people. There have been instances of harassment of RTI applicants, which is a discouraging factor. In some cases applicants are not given a receipt for the application. This is to prevent them from having any proof of submitting an RTI application. The active use of RTI thus involves an effort from the government side as well. Many times, RTI applications are seen to create enmity between state officials and the public. Officials have to realize that RTI is meant for bringing accountability and transparency into the system only.

## **VIII. Water and sanitation programmes in India**

The introduction of a national water supply and sanitation programme in the social welfare sector in 1954 was the first attempt by the Government of India to provide water to the rural population. This was followed by the launch of the Accelerated Rural Water Supply Programme (ARWSP) in 1972.

The National Drinking Water Mission was set up in 1986 and the National Water Policy was announced in 1987, which gave high priority to drinking water supply.

The Seventh Plan (1985-90) admitted that the 'high rate of incidence of death and disease in urban poor settlements can be attributed largely to the poor quality of water and sanitation

facilities'. The approach in the Eighth Plan (1992-97) was to extend safe drinking water facilities to the remaining urban population so as to achieve the goal of 100 per cent coverage of population by the turn of the century. In rural areas, the Plan gave high priority to 'no-source' problem villages and all the partially covered villages numbering about 150,000. The Ninth Plan (1997-02) document reiterated that the government is 'committed to provide drinking water to every settlement in the country within five years'. The Tenth Plan (2002-07) proclaimed that safe drinking water should be provided in accordance with the stipulated norms on a sustainable basis to all habitations by March 2004.

In between, the Swajaldhara Programme was launched in 2002. Swajaldhara principles brought about a change from a government supply-driven approach to a community-based demand driven approach. The National Water Policy redrafted in 2002 prioritised the diverse uses of water and keeps drinking water at top of the pyramid.

The latest initiative is the introduction of the new guidelines for the National Rural Water Supply programme with effect from April 1, 2009. Thus, in actual sense it has been 55 years since the government first took up rural water supply as a programme.

However, in these 55 years the government has missed the deadline thrice for providing complete coverage in 1997 (deadline of complete coverage by the end of Eighth Plan), 2007 (deadline set after census 2001), and 2009 (end of the Bharat Nirman programme) respectively. The latest deadline set by the government for complete coverage of all habitations stands at 31 March 2012. The new guidelines will be effective till March 2012 by which the government plans for complete coverage of all habitations with communities managing their water supply systems and the state ultimately withdrawing from providing water services.

In respect of sanitation the Central Rural Sanitation Programme (CRSP) was launched in 1986 with the objective of improving the quality of life of rural people and providing privacy and dignity to women. Subsequently in 1999, the Total Sanitation Campaign was launched as a comprehensive programme to ensure sanitation facilities in rural areas with the broader goal to eradicate the practice of open defecation. It was part of the reform principles initiated in 1999 when the Central Rural Sanitation Programme was restructured making it demand driven and people centered.

After 10 years the sanitation coverage of the country stands at 49 per cent<sup>8</sup> and the state faces the daunting task of meeting the 2012 deadline of 100 per cent sanitation coverage.

## IX. Rays of hope

The Delhi Declaration adopted after the South Asia Conferences on Sanitation (SACOSAN) III (high-powered ministerial conferences in the South Asian region, devoted solely to the subject of sanitation) recognised that access to sanitation and safe drinking water is a basic right, and according national priority to sanitation is an imperative.

The new guidelines for the rural water supply programme drafted by the Department of Drinking Water Supply have come into effect from 1st April 2009. Here also the right to water has been recognised as a basic principle, which entails that every individual has a right to demand safe water, which is to be treated as a public good.

While the right to water and sanitation has been recognised as a basic human right, the state will not have the liability to ensure access to water and sanitation unless this is mentioned explicitly in the Constitution. A human right dimension to water will impose three main obligations on the state:

1. To respect: the state will need to refrain from engaging in any practice or activity

that denies or limits equal access to adequate water; arbitrarily interfering with traditional arrangements for water allocation and unlawfully polluting water and limiting access to, or destroying, water services and infrastructures.

2. To protect: the state will adopt the necessary and effective legislative and other measures to restrain third parties from denying access to adequate water and from polluting and inequitably extracting from water resources; prevent third parties from compromising equal, affordable and physical access to sufficient and safe water where water services are operated or controlled by third parties.
3. To fulfill: the state could meet this obligation by way of legislative implementation, adopting a national water strategy and plan of action to realize this right while ensuring that water is affordable and available for everyone.

## X. Rights also entail responsibilities

While Article 21 guarantees the right to water there are few options available to ensure this right. As civil society organisations, we have dual responsibilities: to raise the awareness on the centrality of the right to water within the fundamental right to life and to dwell with ways and means that ensure the right.

With rights come responsibilities. The Constitution of India has made provisions for fundamental duties from citizens as well as the state. Article 51-A classifies duties towards self, duties towards the environment and towards the nation. Article 51 A (g) states that 'it shall be the fundamental duty of every citizen to protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for living creatures.' So what we need to adopt and promote



is adherence to a right combination of rights and responsibilities.

As courts have interpreted water as a social asset, it is the duty of communities to protect and adopt judicious uses of water. At the community level, how do we honor our responsibilities to the water and sanitation sector? Being a social and common resource, it needs responsible responses from various communities. There are examples that show that village communities have adopted water budgeting for efficient uses. They are an example of community responsibility towards enforcing water rights. On the other hand government programmes and policies must make right to water as the core of its service provisions.

Here is where civil societies can play an important role. This includes

- (a) Informing, encouraging and empowering communities about their rights and entitlements so that these can be

accessed, leading to enforcement,

- (b) Empowering the under-privileged so that their water and sanitation rights are protected,
- (c) Empowering communities to protect water sources so that these are sustained in quality and quantity,
- (d) Convincing communities so that they change their behavior towards a cleaner environment and judicious use of water,
- (e) Engaging with the governments for sharing experiences, ground realities and monitoring,
- (f) Adopting self-regulatory mechanisms to control water quality and use,
- (g) Playing the role of a watch dog so that these rights are not violated, and
- (h) Igniting a debate and public discourse on whether there is a need for a separate act on water or drinking water and sanitation.

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7. Rosencranz A. and Shyam. D.(2002) Environment Law and Policy in India, 2nd Edition, Oxford India Press, New Delhi
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# ANNEXURES



## ANNEXURE 1

### List of cases, judgments and articles/acts referred\*\*

- 1. Case: News Item "Hindustan Times" A.Q.F.M Yamuna vs. Central Pollution Control Board and Anr.**  
**Date:** 28.04.2000  
**Deciding court:** In the Supreme Court of India  
**Articles/ Acts referred:** NA  
**Judgment:** On 13<sup>th</sup> September 1999, the court ordered the Delhi Administration to take measures against the industries that were discharging effluents, not conforming to Central Pollution Control Board norms, into River Yamuna. The court had asked the Delhi administration to give details on the progress of the issue.
- 2. Case: A.P Pollution control Board II vs. Prof. M.V. Nayadu and Ors.**  
**Date:** 1.12.2000  
**Deciding court:** In the Supreme Court of India  
**Articles/ Acts referred:** Article 21, Water Act 1974 (Sub-section 2(e), 2(k), 17, 18 and 9), Water Cess Act, 1977, EPA, 1986. (Section 2 (b), 3(2) and 5).  
**Judgment:** The case concerned pollution of Himayat Sagar Lake and Osman Sagar Lake which are the main drinking water sources to Hyderabad and Secundrabad by Surana Oils & derivatives (India) Ltd. The court asked the National Environment Appellate Authority to look into the situation. The agency after investigation decided that No Objection Certificate (NOC) should not be granted to the industry. The industry went ahead with the construction on the same site by taking the permission of the Panchayat. The court gave the responsibility of enquiring into this matter to Indian Institute of Chemical Technology, Hyderabad. The court ordered the closure of industry.
- 3. Case: Lucknow Griha Swami Parishad vs. State of U.P and Ors.**  
**Date:** 20.04.2000
- Deciding court:** In the High court of Allahabad, Lucknow Bench  
**Articles/ Acts referred:** Article 14, Article 226, and Article 21  
**Judgment:** The case concerned levying of water charges by U.P. Jal Sansthan. Under Section 59(2), 62, 30 and 44 of the U.P. Water Supply and Sewerage Act. The case was a PIL filed by the mentioned society questioning the basis of the tax imposed. The Sansthan also asked for a service charge of Rs. 24 per year in both cases. The petitioner argued that no extra service was being provided by the Jal Sansthan. The water, which was being supplied in Lucknow city was often contaminated. The court ordered that the consumer should pay according to the earlier rates and the new levels tax raise cannot be implemented.
- 4. Case: M.C.Mehta vs. Union of India**  
**Date:** 18.03.2004  
**Deciding court:** In the Supreme Court of India  
**Articles/ Acts referred:** Article 21, Article 48A, Article 51, Environment Protection Act sub section 1, clause 5 of sub section (2).  
**Judgment:** The case concerned the issue of pollution caused in the Delhi- Haryana Border region due to mining operations. The court had asked the Environment Pollution and Control Authority (EPCA) to investigate the matter and come up with a report. Based on its findings, the EPCA suggested that the mining industries operating in the region should come up with an environment management plan. The court came up with stringent orders, which held that no mining activity could be carried out in a region, if it did not work according to the principle of sustainable development.
- 5. Case: Mahendra Prasad Sonkar son of Sri Chunni Lal Sonkar and Surya Prakash Singh,**

**son of Late Chavvi Nath Singh vs. State of Uttar Pradesh through secretary Urban-Development and Ors.**

**Date:** 6.08.2004

**Deciding court:** In The High Court of Allahabad

**Articles/ Acts referred:** Water Pollution Act, Environment Protection Act, and Article 21

**Judgment:** The case concerned the pollution of river Gomti in Jaunpur district of Uttar Pradesh. The case was filed as a PIL. The pollution of the river was causing shortage of quality water for drinking purposes. The petitioner filed many applications to the Municipality of Jaunpur and also to the Jal Sansthan but these agencies did not pay heed to the problem of the people. The court opined that adequate steps must be taken not only in Jaunpur but also in all the places where river Gomti flows. The court also held that amongst all the competing uses of water, it is the water for domestic purpose, which should get topmost priority. The court ordered the formation of a committee, headed by the Chief Secretary of UP, which would monitor the pollution level in the river and submit its report every month to the court.

**6. Case: Santosh Mittal vs. State of Rajasthan and Ors.**

**Date:** 08.10.2004

**Deciding court:** In the High Court of Rajasthan (Jaipur Bench)

**Articles/ Acts referred:** Article 19(1) (a), Article 21, Prevention of Food Adulteration Act, 1954, Prevention of Food Adulteration rules 1954.

**Judgment:** The case concerned the presence of contaminants in the soft-drinks. (Pepsi Co and Coca Cola). The petitioner demanded that these cold drinks should be banned as they contain pesticides as contaminants. The court held that commercial interest is subservient to fundamental rights. Water is essential for survival. People cannot live in its absence. However, carbonated drinks are the products for sale and people have the right o

make informed choices if they pay for it. Thus, the court ordered the respondents to come up with the full disclosure of the ingredients in the drink.

**7. Case: Hindustan Coca-Cola Beverages (P) Ltd. vs. Perumatty Grama Panchayat**

**Date:** 07.04.2005

**Deciding court:** In The High Court of Kerala

**Articles/ Acts referred:** Article 226

**Judgment:** The case was filed by the gram Panchayat as a writ petition. The gram Panchayat gave permission to the beverage company to set up a factory in the Moolthara village in Perumatty gram Panchayat in 2000. The company had also received clearance from the state pollution board. After three years of operation in the village, the gram Panchayat refused to renew the license of the company. The Panchayat held that the company has installed six bore wells for the extraction of ground water without the permission of the Panchayat. The government stayed the order of the Panchayat mentioning that Panchayat does not have right to take such decisions. The Panchayat filed the writ petition in the court against the order of the government. The court held that the Panchayat has no right to cancel the order of the government. The decision of the Panchayat is not based on any scientific findings and it is also not backed by any legal measures. The court ordered the company to take measures that can solve the drinking water problem of the people.

**8. Case: Howrah Ganatantrik Nagarik Samity and Ors. vs. State of West Bengal and Ors.**

**Date:** 6.05.2005

**Deciding court:** In The High Court of Calcutta

**Articles/ Acts referred:** NA

**Judgment:** The case was filed as a PIL by Howrah Ganatantrik Nagarik Samity. The three main issues which the petitioners brought in the case was water pollution due to excessive use of groundwater, danger to public health due to contaminants in the beverages and

regular testing of the soft-drinks and publishing of the reports of the contaminants by the government. It was mentioned that the quality of water in the state of West Bengal is already poor as it is contaminated with Arsenic. Excessive exploitation of groundwater would increase the concentration of Arsenic. Regarding the water quality, the government representative mentioned that the measures to improve the quality of water are already being taken. The court also emphasised the importance of rainwater harvesting measures being taken by the soft drink companies. The court said that there must be a state agency, which monitors the measures taken by the beverage companies to recharge ground water levels.

**9. Case: Intellectuals Forum, Tirupati vs. State of AP and Ors.**

**Date:** 23.02.2006

**Deciding court:** In The Supreme Court of India  
**Articles/ Acts referred:** Article 14, Article 19, Article 21, Article 48A, and Article 51 A

**Judgment:** The case concerned preservation and protection of two tanks viz. Peruru and Avilala. Peruru tank was taken over by Tirumala Tirupati Devasthanam(TTD) and Avilala tank was taken over by Tirupati urban development authority for the purpose of construction of houses. The authorities mentioned that the tank in question had not been used for any purpose for the past 22-23 years. In fact a slum had come up in the tank area and was a home to many anti-social elements. Since the population of Tirupati city was growing this area was needed to provide space for housing. The question behind the court was whether urban development should be given priority over environment protection. The court held that no construction should be done in the tank region. It also emphasized the importance of rainwater harvesting.

**10. Case: Mrs. Susetha vs. State of Tamil Nadu and Ors.**

**Date:** 08.08.2006

**Deciding court:** In the Supreme Court of India  
**Articles/ Acts referred:** Article 21, Article 47, Article 48A, Article 51 A

**Judgment:** The case was a writ petition that challenge the construction of a shopping complex on dilapidated tank. The petitioner claimed that the tank in question has a capacity to store water. The court dismissed the writ petition, as there was no shortage of drinking water in the region. In the vicinity of the mentioned tank, there are five other tanks used for the storage of water. The village is also very near to the sea coast. The water from the tank was not being used for any other purpose. The water was also unfit for human consumption. The tank was an artificial tank and was not in use from a long time.

**11. Case: M.C. Mehta vs. Kamal Nath and Ors.**

**Date:** 15.03.2002

**Deciding Court:** In the Supreme Court of India  
**Articles/ Acts referred:** Article 32, Section 24 of Water (Prevention and control of pollution) Act, 1974,

**Judgment:** The case concerned environmental degradation cause by Span Motels by obstructing the flow of river Beas and discharging the effluents in the river. The court ordered Span Motel to construct a boundary wall which separates the motel from the river basin. The court further prohibited the motel from discharging untreated effluents in the river. The court ordered that discharged effluent should conform to the prescribed standards of the State Pollution Control Board. The state was also accused of breaching the public trust.

**12. Case: State of MP vs. Kedia Leather & Liquor Ltd. and Ors.**

**Date:** 19.08.2003

**Deciding Court:** In the Supreme Court of India  
**Articles/ Acts referred:** Section 30, 32 and 33 of Water Act, 1974

**Judgment:** The District Magistrate under

Section 133 CrPC ordered the closure of industrial unit causing pollution in the city. The respondent challenged the order under section 397 of the code. The respondents held that the magistrate cannot give such order under the said dictions. He can only ask for curative measure. In the present case, the action taken by the magistrate is penal in nature, which is mentioned in the Water (Prevention and control of pollution) Act 1974. The Supreme Court ordered the matter to be resolved in appropriate forum.

**13. Case: K.M. Chinnappa and T.N. Godavarman Thirumalpad vs. Union of India (UOI) and Ors.**

**Date:** 30.10.2002

**Deciding Court:** In the Supreme Court of India  
**Articles/ Acts referred:** Article 48A, Article 47, Article 51 A (g), Article 21

**Judgment:** Mining operations were being carried out inside the Kudermukh National Park. There were various issues pertaining to the ecological degradation in the area. One of the important issues was pollution of the river Bhadra from the Kundremukh iron ore mines due to opencast mining. The court ordered the extension of mining operation in the region for five years till the time secondary ore in the area is exhausted.

**14. Case: UP Udyog Vyapar Pratinidhi Mandal and Ors. vs. State of UP and Ors.**

**Date:** 07.02.2003

**Deciding Court:** In the High Court of Allahabad

**Articles/ Acts referred:** Section 142 to 145 of U.P Kshetra Panchayats and Zila panchyat adhiniyam, 1961.

**Judgment:** The case was a writ petition. The Zila Parishad of Agra came up with bylaws, according to which certain amount of fees has to be paid by the vehicles going in and out of Agra. The fees charged would be used to provide drinking water facility to the drivers. According to the Court, providing drinking water facility is the statutory duty of the Zila Parishad and it has no right to charge for

extra fees for this purpose. The writ petition was quashed.

**15. Case: Mohammed Haroon Ansari and Anr. vs. The District Collector, Ranga Reddy District, A.P. and Ors.**

**Date:** 12.12.2003

**Deciding Court:** In the Supreme Court of India  
**Articles/ Acts referred:** NA

**Judgment:** The case was a writ petition filed to stop illegal blasting and crushing of granite for concrete metal in the areas of the Goldodi, Nanakramguda, hills of Khanapur and Kokapet in Rangareddy. The expert committee report held that there was no danger to Osman Sagar Lake due to the runoff from the mines as the two of them lie in different watershed. Also, the wind direction is from Osman Sagar lake to the mines. This also prevents contamination of Osman Sagar Lake from mining pollutants. However, the court held that all such activities could be carried out in the area only if there is a prior permission from the state pollution control board.

**16. Case: Tekaba AO and Anr. vs. Sakumeren AO and Anr.**

**Date:** 29.04.2004

**Deciding Court:** In the Supreme Court of India  
**Articles/ Acts referred:** Rules for administration of justice and police in Nagaland 1937, Section 6 of scheduled District Act.

**Judgment:** The case concerned dispute over a water source and a land between two clans of the village. The dispute had arisen in 1985 when a pillar which demarcates the boundary of two villages was disturbed by the villagers. Since then the respondents were drawing water from the disputed land to fulfill their needs. To solve the problem, the appellants moved to the village court called Dabhosis to solve the matter. The village court gave the judgment in favor of the respondents. Aggrieved by this decision, the appellants moved to the deputy commissioner at district



level. At this stage, the judgment was in favor of appellants. The respondents moved to the Supreme Court. The court held that instead of looking into the problem as an ownership issue, the problem in the present case relates to the solution of the water problem. The state is the owner of natural resources and the two clans should share water from the said water source.

**17. Case: Municipal Corporation Chandigarh and Ors. Etc. vs. Shantikunj Investment Pvt. Ltd. Etc.**

**Date:** 28.02.2006

**Deciding Court:** In the Supreme Court of India  
**Articles/ Acts referred:** Section 2(b) of the Capital of Punjab (Development and Regulation) Act, 1952, Chandigarh lease hold of sites and building rules, 1973, Section 67 of the Indian contract Act, Section 105 and 108 of Transfer of property Act.

**Judgment:** The case concerned the negligence of the Chandigarh Administration in providing the basic amenities in the property sold to the respondents. The respondents had paid the required amount of premium. However basic amenities like drinking water supply and sewerage system was in array. Keeping this negligence in mind, the respondents refused to pay the remaining amount to the Chandigarh Administration at the interest rate fixed by them, which according to them was valid only if all the basic amenities had been in place. The Supreme Court made an observation on the issue and asked the High Court to comment on it.

**18. Case: Akhil Bharat Gosewa Sangh Vs. State of A.P. and Ors. and Umesh and Ors. vs. State of Karnataka and Ors.**

**Date:** 29.03.2006

**Deciding Court:** In the Supreme Court of India  
**Articles/ Acts referred:** Section 25 & 26 of Water (prevention and control of pollution) Act 1974, Section 131(3) of Andhra Pradesh Gram Panchayat Act, 1964, Article 19(1)(a),

Section 16, 17, 20 and 25 of water act., Section 4(2)(a), section 11 and section 4(2)(f) of water act

**Judgment:** The case concerned the pollution of water due to the setting up of a slaughter house. The company named Al-Kabeer was operating in the village. The operation of the company started after it received 'No Objection Certificate' from the state pollution control board. On testing of water, the BOD was found to be at a higher level than the prescribed standards. There was a breach of environment protection rules 1986 also. After few years of operation, the village Panchayat refused to renew the license on various grounds. One among which was water pollution. The court in its judgment held that the Andhra Pradesh Pollution Control Board (APPCB) should rectify its consent given to the company earlier. The company should file its pollution control monitoring report every month to APPCB and APPCB should submit it to the government once in three months. These reports should show the compliance of the standard with Environment Protection Rule 1986.

**19. Case: John vs. Kalamassery Municipality**

**Date:** 14.03.2006

**Deciding Court:** In the High Court of Kerala  
**Articles/ Acts referred:** Section 509 of the Kerala Municipality Act, 1994, Kerala groundwater Act 2002, Article 226 of India Constitution.

**Judgment:** John constructed a well on his private property and started Aqua Line fresh to provide water to different public and private institutions in Edapally village. The excess of extraction of groundwater resulted in acute scarcity of the resource. The Central Ground Water Board reported that there should not be any pumping of the resources. The Central Ground Water Board also ordered that there should not be any pumping of the groundwater for commercial purpose. On the one hand there had been the question of

depleting reservoir of resources on the other hand it was cutting the drinking water supply to many people by stopping the activity. According to Kerala Ground Water Act, 2002, people have the right to draw groundwater from the well if they are registered. In the present case, the petitioners were not registered. The court opined that amongst the two usages of water, it is the maintenance of the available resource, which is more important than the mindless exploitation of the available resources.

**20. Case: Kranti vs. Union of India (UOI) and Ors.**

**Date:** 16.05.2007

**Deciding Court:** In the Supreme Court of India  
**Articles/ Acts referred:** NA

**Case ongoing:** The Tsunami, which hit the Andaman and Nicobar coast on 25th December, affected the area badly and the aftermath also reported problems of grave concerns. One of the acute problems was the lack of potable drinking water, which further led to health problem. The issues were addressed in Lok Adalats in Port Blair, which was not accessible and affordable for the Tsunami affected islanders. It was proposed to construct structure for rainwater harvesting as monsoon was round the corner. To augment the water supply, it was proposed to dig some more wells in the region.

**21. Case: Iqbal Ahmad son of Ismail and Ors. vs. Deputy Director of Consolidation and Ors.**

**Date:** 30.08.2007

**Deciding Court:** In the High Court of Allahabad

**Articles/ Acts referred:** Article 38, Article 39(b), Article 48, Article 51(g)

**Judgment:** The case concerned restoration of tanks, pokhars and river bodies of the villages. The court gave the order and supported it by article 38(1), 38(2), 39(6), 48(a) and 51 (g). The court also mentioned that according to U.P Act no. 1 of 1951, section 4 and section 117, after the abolishment of zamindari system it was the

duty of the state to protect the village water bodies. The court ordered the state to carry out the survey of each village and record the total number of tanks, pokhars and talabs in an area. The court also ordered the state to come up with the water management works being carried out in the area. To avoid any dispute, the court mentioned that the abandoned water bodies where people of disadvantaged community stay cannot be evacuated until an alternative is found for them. In addition, if educational institutions or other organisations are located on abandoned water bodies they have the right of being heard in the court before eviction.

**22. Case: PepsiCo India Holdings Pvt. Ltd. vs. State of Kerala and Ors.**

**Date:** 10.04.2007

**Deciding Court:** In the High Court of Kerala  
**Articles/ Acts referred:** Kerala Industrial Single Window Clearance Boards and Industrial Township Area Development Act, 1999 - Sections 2, 3, 4(1), 5, 5(2), 6, 7 and 10; Companies Act; Kerala Panchayat Raj Act, 1994 - Sections 1, 1(2), 4, 166, 182 and 243C; Constitution (73rd Amendment) Act, 1992; Constitution (74th Amendment) Act; Gujarat Industrial Development Act, 1962 - Sections 2 and 16; Gujarat Municipalities Act, 1963 - Section 264A; Gujarat Municipalities Act, 1964; Gujarat Municipalities (Amendment) Act, 1993; Kerala Ground Water (Control and Regulation) Act, 2000; Constitution of India - Articles 21, 243A, 243G and 243Q.

**Judgment:** The petitioner set up the industry in the industrial area of Kanjikode. The industry was set up after taking prior permission from the concerned state authorities and also the Panchayat. The Panchayat refused to renew the license of the company on the ground that the company is extracting excess of groundwater due to which the wells in the nearby region are drying up. This has created a shortage of

drinking water. The petitioner in the present case held that the Panchayat has no right to take such a decision. The act under which the Panchayat has been given such power does not include industrial area. The judgment was given in favour of the petitioner. However, the court opined that the concern of the Panchayat cannot be given a blind eye and Panchayat can take the problem to the authority constructed under Kerala Groundwater Act, 2002.

**23. Case: Dhrangadhra Chemical Works Ltd. vs. the Dhrangadhra Municipality**

**Date:** 19.05.1959

**Deciding Court:** In the Supreme Court of India  
**Articles/ Acts referred:** 153A (1) of the Bombay District Municipal Act, 1901

**Judgment:** Case concerning water pollution (wells) as a result of discharge of effluents by chemical works. The court held that the Special Officer appointed by the Government could carry out an enquiry into the question of whether nuisance existed in such cases. It ordered that such an enquiry should be carried out without undue delay so as to protect the health of the community and the fertility of the soil.

**24. Case: Hamid Khan vs. State of MP**

**Date:** 1973

**Deciding Court:** In the High Court of Madhya Pradesh

**Articles/ Acts referred:** Article 21 Article 47  
**Judgment:** The case concerned the problem of excessive fluoride in the hand pump being provided by the government in the Mandla district of M.P. The fluoride level in the water of some of the handpumps was as high as 10 mg per litre. It was surprising that State Pollution Control Board tested the sample and found the Fluoride level to be 0.96 mg per litre. The court gave the precedent of Subhash Kumar Vs. State of Bihar case where the court stated that right to life under article 21 within its ambit has right to pollution free water. The court under article

47 said that it is the responsibility of the state to improve the health of the people and to increase the living standard of the people. Also it is incumbent on the state to provide people with unpolluted drinking water. Thus, state has refrained from performing its primary duty. The court ordered the state agencies to give compensation and necessary medical treatment to the affected people. It also said that the hand pump with fluoride water content should immediately be taken off. Also, the court asked the district magistrate and state to arrange for the finances for the case. It gave the state a time period of one year.

**25. Case: Delhi water supply and sewerage disposal undertaking vs. State of Haryana**

**Date:** 29.02.1996

**Deciding Court:** In the Supreme Court of India  
**Articles/ Acts referred:** Article 32 and Article 262

**Judgment:** The case related to the insufficient release of water into the river Yamuna from the Tajewala headworks. This was leading to insufficient drinking water for people of Delhi. The court opined that the primary use of water is for drinking. This need cannot remain unfulfilled at the cost of irrigation water. Under Article 32 of the Constitution, the case was brought to court under a writ petition. Also, the Court under Article 262 under which interstate water disputes are resolved entertained the grievance of the petitioner. The court ordered that the Hyderpur and Wazirabad reservoirs should remain filled with water through river Yamuna. The court also opined that this order of the court was to be also observed by upper Yamuna Board, the management body for implementing the MOU, which was non-functional by this time.

**26. Case: F.K Hussein vs. Union of India**

**Date:** 26.2.1990

**Deciding Court:** In the High Court of Kerala  
**Articles/ Acts referred:** Article 21

**Judgment:** The case concerned the intrusion

of salt water into the ground water of the islands. Lakswadweep Island situated on the Malabar Coast was facing shortage of water. The court opined that contamination of potable water is a breach of fundamental right of life under Article 21. The court mentioned that right to life does not only mean animal existence but has many dimensions attached to it. If the augmentation measure adopted by the state agencies is interfering with the fundamental right of right to life, state agencies should think of some other measures like rainwater harvesting, reverse osmosis and desalination for augmenting the water supply in the region. The court also mentioned that collection of water from wells is the most pristine way of extracting water in the region. It also warned that human interference with nature should not be beyond the capacity of it to regenerate. Right to sweet water is a right of every citizen.

**27. Case: Cauvery Mineral Water Private Limited vs. Bureau of Indian standards**

**Date:** 29.08.2002

**Deciding Court:** In the High Court of Karnataka

**Articles/ Acts referred:** Prevention of Food Adulteration Act, 1954.

**Judgment:** The case concerned whether packaged drinking water comes under 'Prevention of Food Adulteration Act', 1954. The petitioner challenged the act saying that packaged drinking water does not come within the ambit of this act. Bureau of Indian Standards (BIS) has not allowed the petitioner to use the word 'Cauvery' in the report. Though the word water is exempted from the definition of food in the above mentioned act, yet the act again mentions that the 'food' also means any medium through which a substance is entering a human system. Also, it is widely used in preparation of human food. So, it cannot use the name Cauvery as the word conveys that the packaged water in the present case is pure and holy as that of

the Cauvery. Thus BIS is right in not giving them the permission to use the word Cauvery to sell their product, as there is no guarantee of the quality of water being packaged in this case.

**28. Case: Municipal council of Ratlam vs. Vardhichand and others**

**Date:** 1980

**Deciding Court:** In the Supreme Court of India  
**Articles/ Acts referred:** Article 21

**Judgment:** Ratlam city was full of dirt, filth and stench. Under section 123 of M.P Municipalities rule, 1961, the municipality has the duty to clean the city. The magistrate played an activist role by issuing order under section 133 of CrPC to the municipality to come up with a plan within a period of six months to clean the city. Defying these orders would have attracted penalty to the municipality under section 188 of IPC. Rather than doing its duty, the municipality moved to the court to challenge the order given by the magistrate. It held that due to paucity of funds, they are not in a position to clean the city. They also mentioned that the six-month duration is too less for the task. The court rightly dismissed the petition by saying that instead of showing their litigative zeal for seven years, the municipality should have used the same time and resources in performing their duties.

**29. Case: Rampal vs. State of Rajasthan**

**Date:** 1979

**Deciding Court:** In the High Court of Rajasthan

**Articles/ Acts referred:** Article 21 and section 98 of the Rajasthan municipalities act, 1959.

**Judgment:** The residents of Mundara mohalla, in Mandal town of Bhilwara district filed this case. There is a blind lane in the mohalla where rainwater and water exiting from houses used to collect since there was no drain. The residents wrote a letter to the municipality in this regard and also gave a letter written by the Medical Health Officer as

a proof to make the municipality understand the gravity of the situation. In the absence of any action from the municipal board, the petitioners filed the writ petition mandamus to the court. The court allowed the petition and directed the municipality to solve the problems of the petitioners, as the task is the duty of the municipality.

**30. Case: L.K. Koolwal vs. State of Rajasthan**

**Date:** 1988

**Deciding Court:** In the High Court of Rajasthan

**Articles/ Acts referred:** Article 51A, Article 19(1) and Article 21.

**Judgment:** The residents of Jaipur filed a writ petition through the petitioner in this case. The case related to poor sanitation in the area. In the present case the court opined that in case some state agency is not performing its duty well the citizens have the right to move to the court and that it is duty of the citizens to protect their environment.

**31. Case: Venkatagiriappa vs. State of Karnataka**

**Date:** 15.07.1998

**Deciding Court:** In the High Court of Karnataka

**Articles/ Acts referred:** Article 21 and Article 300 A

**Judgment:** the petitioner brought the case as a writ petition. The case concerned conflicting interests amongst various use of water. Due to the construction of a borewell in the close proximity of wells used for drinking and domestic purpose, the level of water in the wells was falling and many wells had dried up. The court opined that that under Article 21, people have right to water but in case of the conflicting interests amongst various uses of water, this right can be restricted for the use which is meant for larger good of the society. In this case that use is of drinking water. The court also said that under Article 21 everybody has the right to enjoy life but their

right should not interfere with the right of the other person to meet the basic necessities of life. Thus right to water for irrigation purpose cannot come under right to life but at maximum it can be brought under the rule of Article 300 A.

**32. Case: In Re: Bhavani River vs. Sakthi Sugars Ltd.**

**Date:** 29.01.1998

**Deciding Court:** In the Supreme Court of India

**Articles/ Acts referred:** Section 33 of Water (prevention and control of pollution) Act 1974

**Judgment:** There had been seepage of effluent from the lagoon to Bhavani River. The court ordered the closure of the industry. It asked the National Environmental Engineering Research Institute to inspect the pollution control equipment being used by the industry and the impact of pollution in adjoining area.

**33. Case: M.C. Mehta vs. Union of India (UOI) and Ors.**

**Date:** 19.12.1996

**Deciding Court:** In the Supreme Court of India

**Articles/ Acts referred:** Sections 2(d), (e), (J), (k) 24(l)(a), 25(1), (2) and 26 of Water (Prevention and Control of Pollution) Act, 1974, Article 226 and Article 32

**Judgment:** The case concerned pollution of river Ganga by the Tanneries located along the banks. These tanneries were chrome based and caused pollution. No wastewater treatment facility was available. They did not comply with any standards and there was no effluent treatment plant in the tanneries. The state agencies had shown a blind eye in rectifying the pollution caused by the industry. There was no space to construct an ETP in the present location of the industry. The Court ordered the relocation of these industries to a place where a common effluent treatment plant can be constructed for all the tanneries. The court also ordered the tanneries to pay 25 per cent of the cost of

the new land. Failure to comply with the order of the court would lead to closure of the units.

**34. Case: Vineet Kumar Mathur vs. Union of India (UOI) and Ors.**

**Date:** 08.11.1995

**Deciding Court:** In the Supreme Court of India

**Articles/ Acts referred:** Section 27(2) of Water (Prevention and control of pollution) Act, 1974.

**Judgment:** The case concerned pollution of river Gomti by Mohan Meakins Brewery operating in the vicinity of the river. The brewery did not have any effluent treatment plant. The court questioned the basis on which industry was running in the area. It also accused state pollution control board for giving license to operate.

**35. Case: Vellore Citizens Welfare Forum vs. Union of India and others**

**Date:** 28.08.1996

**Deciding Court:** In the Supreme Court of India

**Articles/ Acts referred:** Article 21, 47, 48(a) and 51(g), Section 3(1), 3(2), 3(3) and 5(1) of environment protection rule 1986.

**Judgment:** The case concerned the pollution of River Palar by the effluents discharged from the tanneries in the industries. A survey conducted showed that 360 out of the 467 wells in the region were polluted. People have to cover longer distance to search for water. The Municipality of the nearby town of Ambur also acted as a dumb spectator as the owners of the tanneries are big shots. The court ordered the appointment of an authority by the government that would look into the pollution caused by the industries. It levied a fine of Rs 10,000 on each of the pollution causing tannery unit and asked the state authority to close the tannery unit if it does not comply with the standard mentioned by pollution control board

**36. Case: Indian Council for Enviro-Legal Action and Ors. vs. Union of India (UOI) and Ors.**

**Date:** 13.02.1996

**Deciding Court:** In the Supreme Court of India

**Articles/ Acts referred:** Hazardous Wastes (Management and Handling) Rules, 1989 framed under Environment (Protection) Act, 1986, Section 33(A) of the Water Act, Article 48(A), Article 51(A), Article 252Section 24(1) of water act.

**Judgment:** The case concerned pollution of water sources in Bicchiri village due to the setting up of industrial units, which manufactured H-Acids in the region. H-Acid is a poisonous chemical, which is banned in the developed countries. Water samples from 60 well showed the contamination by H-Acid. Many of the industrial units in the region were operating without getting consent from the pollution control board. The court ordered the closure of the units. It also asked the it to clean the sludge, which was left in the area after the closure. It asked the industries to pay compensation to the victims as well.

**37. Case: Dr. K.C. Malhotra vs. State of M.P.**

**Date:** 7.05.1993

**Deciding Court:** In the high court of Madhya Pradesh

**Articles/ Acts referred:** Article 21 and Section 66 of the M.P Municipal Corporation Act

**Judgment:** The case was filed as a PIL in reaction to newspaper cutting that said that due to poor sanitary conditions in the area, there was a spread of epidemic in the area and deaths were reported due to cholera and gastroenteritis in the year 1992-93. The respondents denied the observations and said that there was no death reported due to poor sanitary conditions or water quality problems. The court held that the area where Pardhi community lives comes under the purview of the municipality. Under section 66 of the M.P Municipal Corporation Act, it is the duty of the municipality to take care of the problems of the region. The court further ordered that under Article 21, the weaker section of the society has the right to enjoy economic and social freedom which emanates from good health which can further

be enhanced by clean surrounding.

**38. Case: Prof. A. Lakshmisagar and etc. vs. State of Karnataka and others**

**Date:** 24.04.1992

**Deciding Court:** In the High Court of Karnataka

**Articles/ Acts referred:** Section 6 of the Land Revenue Act.

**Judgment:** The case was regarding an objection to the establishment of a housing colony on the banks of Arkavati River near Tippagondannahalli water reservoir. The Bangalore water supply and sewerage board objected to this construction as the construction would pollute the water source and will also result in the depletion of the water source in the region. The court in its judgment ruled out the possibility of pollution of water source due to the construction of housing colony.

**39. Case: People United for Better Living in Calcutta-Public and another vs. State of West Bengal and others**

**Date:** 24.09.1992

**Deciding Court:** In the High Court of Calcutta

**Articles/ Acts referred:** NA

**Judgment:** The case concerned the maintenance of wetlands in the eastern fringe of the city of Calcutta. The city of Calcutta had 20,000 acres of wetland. Out of which 10,000 acres have been used for other purposes. The remaining wetland has become a dump yard for the pollutants of the city. The court ordered the state to maintain the existing wetlands properly and to prevent the further conversion of wetland to other purposes.

**40. Case: Subhash Kumar vs. State of Bihar and others**

**Date:** 01.09.1991

**Deciding Court:** In the Supreme Court of India

**Articles/ Acts referred:** Article 21 and Article 32

**Judgment:** Case concerned pollution of the Bokaro River by the release of slurry/sludge

into it by an industrial unit located on its banks. The Court opined that though the right to life guaranteed under Article 21 of the Constitution includes the right to enjoyment of pollution free water and that a citizen had recourse to Article 32 of the Constitution for removal of pollution from water, in the present case adequate steps had been taken by the State Pollution Control Board and the industry concerned to prevent pollution. Although the petitioner had approached the Court through a public interest Litigation, it was his private interests and grudges that he sought to fulfill. The Court held that this could not be permitted, as it would amount to an abuse of the process of the Court.

**41. Case: Aut Behary Guy vs. Rameshwar Mitra, Date: 1916**

**Deciding Court:** In the High Court of Calcutta

**Articles/ Acts referred:** NA

**Judgment:** The case concerned a breach of the right to water by the defendants who were in favour of land filling the tank as according to them, the tank was a nuisance to them as it was full of insects and weed. The plaintiffs were using the tank for domestic and drinking water purpose. They mentioned that they will try to get rid of the weeds but land filling the tank will deprive them of their source to water. The court held that the defendant couldn't interfere with the right to water of the plaintiffs.

**42. Case: H.C Mukerjee vs. K.P Goswami, Date: 1960**

**Deciding Court:** In the High Court of Allahabad

**Articles/ Acts referred:** Uttar Pradesh Municipality Water Supply Rules

**Judgment:** The case concerned the payment of the extra charges for water supply to the municipal board by the tenant who is respondent in the present case. There were more than 20 tenants in the building. The municipality of Allahabad levied the extra charges of Rs 53/ on water supply, failing to

pay for which, meant cutting of water supply in the building. The respondent who is one of the occupiers of the building paid the amount in order to save the water supply connection. Later he demanded the adjustment of the amount in the rent he paid to the owner. The owner who is a petitioner in this case refused to adjust the amount and filed a writ petition. The court held that according to Rule 3 of UP Municipality Water supply Rules, when there are more occupiers in the building, the owner is deemed to pay any extra water supply charges. In that case the petitioner has to adjust Rs 53/ in the rent paid by the respondent.

**43. Case: Captain M.P Subarayappa vs. Bharat Electronics Employees Cooperative House Building Society Ltd.**

**Date:** 21.09.1989.

**Deciding Court:** In the High Court of Karnataka

**Articles/ Acts referred:** Article 226 and 227

**Judgment:** The case concerned use of civic amenity site for the construction of sewage treatment plant (STP). The construction of sewage treatment plant was taking place opposite the house of the petitioner. According to, the respondent, the construction of the STP in a residential area will cause chemical and biological hazards. The court held that the petitioner's claim that he has come to represent the interest of the

public was wrong, as the majority of people in the area have agreed to the construction of tank. The tank in question is a big tank, which is creating nuisance to the public. If a part of it is used to create a STP it will help in solving the nuisance. Also, the proposed STP would be an aerobic one, which improves the environmental condition of an area rather than degrading it. The proposed STP would make the civic amenities in the area better. The effluents from the STP would be used in agricultural fields. In light of these facts, the writ petition was dismissed. However, the question that what harm would have been there if the STP would have been installed 2-3 Kms away from the residential area was not addressed.

**44. Case: M.K. Balakrishnan and others Appellants/Petitioners vs. Union of India and others Respondents**

**Date:** 21.09.1989.

**Deciding Court:** In the Supreme Court of India  
**Articles/ Acts referred:** NA

**Judgment:** The case concerned the conservation of wetlands. However, the Court expended the scope and asked the Ministry of Science and Technology to submit an affidavit explaining the measures, which have been taken to solve the water crisis in the country. The reapportions submitted in the Court in August, 09. The Court will hear the case on a monthly basis.

\*\* Cases extracted from the International Environmental Law Research Centre website ([www.ielrc.org](http://www.ielrc.org)) and other sources.



## ANNEXURE 2

### Right to Information (RTI) Cases studied

#### a. Urban Areas

1. DJB case: Water Privatization
2. Trilokpuri Area: Issue of Public Toilets
3. Mandauli area: Problem of sewer connection
4. Pandavnagar Area: Problem of sweepers
5. Jagdamba slums: Problem of sweepers
6. Jagdamba slums: Water quality problem
7. Sundarnagari: Restoration of sewer connections
8. Josh(NGO) in Mayur Vihar: Construction of toilets in the school
9. New friends colony: measure adopted by the government for the better drainag system
10. Proposed Coastal Corridor from Vishakhapatnam to Kakinada: Water Pollution problem.
11. Vishakhapatnam: Water quality problem
12. Vishakhapatnam: Frequency of water supply
13. Vishakhapatnam: Frequency of drinking water supply
14. Vishakhapatnam: Details of Public Toilets
15. Vishakhapatnam: Details of underground drainage system
16. Vishakhapatnam: Details of underground drainage system
17. Vishakhapatnam: Details of individual toilets

#### b. Rural Areas

18. Khalawahan Panchayat in Bali Chowki

- Tehsil: Sudhrani-Baggi drinking water scheme(Mandi, Himachal Pradesh)
19. Keolori case: Right to have water from a well on private property.(Madhya Pradesh)
  20. Bahrana and Kanunga Village of Gop block in Orissa: Water quality problem
  21. Pallavaram in Tamil Nadu; Water supply problem.
  22. Ahsana: Kapil Dhara Scheme(Bundelkhand)
  23. Ahsana: Construction of Tank
  24. Ahsana: Construction of DRAIN IN Jawahar Yojna Scheme
  25. Gallampura: Construction of drain under NREGA (Bundelkhand)
  26. Gallam pura: Total Saniation Scheme
  27. Mallahanpura: Total money spent under NREGA for the construction of drains(Bundelkhand)
  28. Mastapur: Details of implementation of Kapil Dhara Scheme (Bundelkhand)
  29. Shapelli: Hand Pump Repair (Andhra Pradesh)
  30. Shapelli: Spare parts of Handpump
  31. Shapelli: Pipeline
  32. Shapelli: Construction of toilets under ISL
  33. Shapelli: Water quality reports
  34. Shapelli: water quality kits
  35. Thatikonda: Handpumps sanctioned(Andhra Pradesh)
  36. Thatikonda: Water quality reports
  37. Chagall; Repair details of hand pump(Andhra Pradesh)



WaterAid Water for Life

The UK's only major charity dedicated exclusively to the provision of safe domestic water, sanitation and hygiene education.

## WaterAid

Recognising water and sanitation as basic human rights and the foundation for overall development

WaterAid is an international charity established in 1981. Its vision is to enable poor communities gain access to safe and adequate water and sanitation. Presently, WaterAid works in 17 countries across Asia, Africa and the Pacific region. It operates through local partners, helping them set up low cost sustainable projects that can be managed by the community themselves.

**WaterAid believes that water, sanitation and hygiene education are vital for the health, well being and dignity of poor people and provide the foundation for development and poverty reduction.**

## WaterAid in India

WaterAid started working in India in 1986. Since 2003, WAI shifted its focus from Southern India to include the poorer states in the north to better target India's most vulnerable communities. Keeping that in mind, the country office was shifted to the nation's capital, New Delhi.

Currently, WaterAid India (WAI) works in the ten states of Andhra Pradesh, Bihar, Chhattisgarh, Delhi, Jharkhand, Karnataka, Madhya Pradesh, Orissa, Tamil Nadu and Uttar Pradesh.

## WAI's objectives are to

- Enable improved access to sustainable, safe and adequate water supply and sanitation through water, sanitation, health and hygiene projects
- Creation of a knowledge base for promotion and dissemination of best practices and advocacy at different levels for policy improvement towards sustainable health and hygiene benefits
- Develop and foster an enabling environment for effective programme implementation, in-country funding, organisational learning and growth

**WAI also has liaison offices in Bhopal, Bangalore, Bhubaneswar and Lucknow**



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## Working areas

Andhra Pradesh, Bihar, Chattisgarh, Jharkhand, Karnataka, Madhya Pradesh,  
Orissa, Tamil Nadu and Uttar Pradesh