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Critical Analysis of Human Right to Water: A Comparative Study of Legal Framework of India and South Africa

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Abstract

Human right as universal declaration of human rights expresses that the rights which a human may get by birth and because to be a human. This is world's broadest classification of rights which itself includes all the basic needs of a human being. Judiciary with the progress of society and human civilization continuously making efforts for this. The water one of the significant bounties of nature is unparallel needs of living creature may have such recognition. The legislations as such not given express relief to the citizen of India so far. It is judiciary who goes upto the approach and with the various judgments recognizes through the pronouncement. No one disagree with the composite needs of water for living creature and this is a huge gap were one can witness that the villages of the country do not have access of water even we passed seventy years of independence. The journey needs to analyze looking the legislative and judicial framework and through this work a trial has been made to look water accessibility its recognition in India and South Africa.

Keywords: Human Rights, Universal Declaration of Human Rights, Accessibility.

Introduction

Water is the basis of human life and an essential resource for survival of human beings. It is a limited natural resource which is very fundamental aspect for sustaining life and maintenance of ecosystem on this earth (Unknown). Access to a basic level of quantity of quality water is required to enjoy every aspect of life. While keeping this aspect in mind it seems extremely relevant and logical step in an absolutely right direction to have a Human Right to water. Though there are some political and hydrological realities which may make it difficult to uphold the right. The world is entering in the water stressed era and it is

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expected that many regions are going to experience increased levels of water crises in the near future (Devlaeminck 2013).

Though Safe drinking water is indispensable to sustain life and health, and it is also essential for dignified life of all. Yet, 884 million people of the world do not have access to improved sources of safe drinking water.[1]Only 2.5 percent of Fresh water is available on Earth and less than one percent of the fresh water is readily accessible (W.H.O.). That means only .007percent of water on earth is remaining for direct human use(Thor 2013). According to an estimated calculation of theUnited Nations ("U.N.") 2.8 billion people will face freshwaterscarcity by[2]2025 (AGENCY 2008). It is an estimated fact that sustainable water resources of Western Asia and Northern Africa have been alreadyeffectively used up (Secretary-General 2011). While these numbers of people who do not have access to safe drinking water just threw light on a worrying situation, the real situation is worst, as millions of poor people living in informalsettlements are simply missing from national statistics (Organization 2004). The basic roots of the current water crisis are mainly poverty, inequalityand unequal power relationships. Social and environmental challenges, rampant urbanization, climate change, increasing pollution and over exploitation of water resources are also very effective factors in this regard (Basingstoke 2006). Despite water being a very important resource, its recognition was not articulated recently asa human right to water.It took an extended time period for development of the Right to water as a Human Right, specifically in United Nations (Holmström 2012).

In 2010, all the nations who were the members of the United Nations General Assembly voted in favour of a resolution A/RES/64/292[3] and recognized"the right to safe and clean drinking water and sanitation as a human right that is essential for the full enjoyment of life and all human rights(2010).After recognizing this resolution, the United Nations Human Rights Council (UNHRC) adopted another Resolution i.e. Resolution A/HRC/15/L.14.The UNHRC declared that it is to be adopted in Human rights law and interpreted in the International Covenant on Economic, Social and Cultural Rights (ICESCR). In this way

[1]See United Nations Children's Fund and World Health Organization, "*Progress on Drinking Water and Sanitation: Special Focus on Sanitation"* (2008).Improved drinking water sources include those that are protected from outsidecontamination, particularly fecal matter. However, "improved" does notnecessarily mean that the water is actually safe.

[2] "Water scarcity occurs where there are insufficient water resources to satisfy long-term average requirements. It refers to long-term water imbalances, combining low water availability with a level of water demand exceeding the supply capacity of the natural system."

[3]United Nations General Assembly. (2010). *Resolution A/RES/64/292.* United Nations.

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UNHRC made the right legally binding. In other words, we can say that Resolution A/HRC/15/L.14 creats an obligation that the right to water and sanitation to be acknowledged as a fundamental human right. and it resulted this right as a legitimate right (Holmström 2012).In2002, general comment No. 15 on the right to water was adopted by the United Nations Committee on Economic, Social and Cultural Rights. This committee defined the right as right of everyone "to sufficient, safe, acceptable, physicallyaccessible and affordable water for personal and domestic uses.[4]" After a period of four years, guidelines for the realization of the right to drinking water and sanitation were adopted by the United Nations Sub-Commission on the Promotion andProtection of Human Rights (U.N. 2010).Different kinds of hurdles may occur regarding these requirements through interpretation of the right, if it is guaranteed through the classification of the right to water that it should be incorporated, it is compatible and functional in humanrights law.

Meaning of Human Right to Water:

On the occasion of consensus resolution by the U.N. Human Rights many of the potential concerns of the abstaining states have been addressed while there was voting in the General Assembly about the scope of the legal obligations associated with the right to water (Devlaeminck 2013).New perspective has opened for achieving universal access to safe drinking water services after the adoption in 2010 of United Nations (UN) resolutions[5]which recognized the Human Right to Safe Drinking Water and Sanitation.The member states of United Nations haveaccepted their obligations as theduty bearers for the realization of the right through the adoption of these resolutions by United Nations(Robert Bos 2016). Now the states can be held liable and accountable for progressive steps they have taken towards full realization of the right (U.N.Water 2017). Governments of member states have three types of obligation: to respect, protect andfulfil human rights as duty bearers. An implicitresponsibility – under the rights to health, development and an adequate standard of living caused the evolution of Human Right to water and made it an explicitobligation(Gupta 2010).

[4]United Nations Economic and Social Council. (2003). *General Document E/C.12/2002/1, Committee on economic, social and cultural rights. Geneva, 11-29 Nov. 2002. Substantive issues arising in the implementation covenant on economic, social and cultural rights. General comment No.15 (2002) the right to water (art.11 and 12 of the international covenants on economic, social and cultural rights).* (p.1) Geneva: The United Nations.

[5] On 28 July 2010 the United Nations General Assembly, at its 64th session, adopted Resolution A/64/292 (The Human Right to Water and Sanitation) http://www.un.org/es/comun/docs/?symbol = A/RES/64/292&lang = E ; on 28 September the UN Human Rights Council, at its 18th session, adopted Resolution A/HRC/RES/18/1 (The Human Right to Safe Drinking Water and Sanitation) http://www.un.org/es/comun/docs/?symbol = A/HRC/RES/18/1&lang = E.

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After considering the key provisions of the ICESCR the nature of the existing legal obligations can be better understood (Winkler 2014). Basic need for water has been transformed into a rightful claim and it has evolved corresponding obligations on the state (Winkler 2012).Maximum available resources must be used by the states for ensuring realization of the right to water, along with all of the other rights recognized within the ICESCR progressively. [6] This unique ICESCR,s concept of "progressive realization," [7] acknowledges the some obstacles which arise due to limited available resources(Albuquerque 2010).Parallelly states cannot remain in an inaction status by taking accuse of "progressive realization." It, s also does not meant that they are not bound by obligations or obligations are not binding[8](CRAVEN 1995). However, a debate still exists, which discusses about its normative content and the obligations that derive from it. Consequently, some states are reluctant to recognize this right (Chávarro 2014).

Nevertheless, after recognition of water as a Human Right it increases the political, legal, and moral will of international community to consider the dire need for water seriously (Gleick 1998). The human right to water also embedded within the ICESCR (Pahl-Wostl 2007). It is also supported by theArticle 2 which is an obligation on the states to progressively realize all rights recognized within the ICESCR (Murthy 2013).

Contents of Human Right to Water:

Under International law there is a particular guiding notion through which human right to water is being guided.According to which sufficient water services must be provided to ensure human dignity, life, and health.[9](JOHN SCANLON 2004).The normative content of the human right to water has been described in General Comment 15 in two related ways.

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[6] International Covenant on Economic, Social and Cultural Rights art. 2, December. 16, 1966, 993 U.N.T.S. 3.

[7] "The notion of progressive realization relates not only to progressively achieving universal access to water and sanitation, but also to meeting these standards. Human rights not only settle for minimum standards, such as basic access to water and sanitation, but also ultimately require achieving a higher standard that guarantees an adequate standard of living."); United Nations, Econ. & Soc. Council, Comm. on Econ., Soc., & Cultural Rights, *General Comment No. 3: The Nature of States Parties' Obligations (Art. 2, Para. 1, of the Covenant)*, 5th Sess., 1990, U.N. Doc. E/1991/23 (Dec. 14, 1990) [hereinafter General Comment No. 3]. *See also* SALMAN & MCINERNEY-LANKFORD, *supra* note 11, at 30 (noting that "[t]he history and institutional apparatus of the ICESCR is inextricably linked to the concept of 'progressive realization' at the heart of the ICESCR's implementation").

[8]Carven in his article titled, "*The International Covenant on Economic, Social, and Cultural Rights: A Perspective on its* Development" noting that "The nature of international law is such that the question of enforceability has never been conclusive as to the existence of international rights or duties"

[9]United Nations, Econ. & Soc. Council, Comm. on Econ., Soc., & Cultural Rights, *Substantive Issues Arising in the Implementation of the International Covenant on Economic, Socialand Cultural Rights: General Comment No. 15 (2002): The Right to Water (Arts. 11 and 12 of theInternational Covenant on Economic, Social and Cultural Rights)*, 29th Sess., 2002, U.N. Doc. E/C.12/2002/11 (Jan. 20, 2003) [hereinafter General Comment No. 15].

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Paragraph two of the General Comment 15 states, that the right to water "entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses." (Murthy 2013) Further paragraph twelve describes the content of the right as requiring:

(i)- Availability(ii)- Qualityand (iii)- Accessibility(Robert Bos 2016).

Recognition of Human Right to Water in International Documents:

The Human right to water is very well recognized in international documents.The way of development of the right in international treaties can be understood through the following six treaties which have been adopted since 1970,s.[10] Water in mentioned in three treaties among all these: the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child (CRC) and the Convention on the Rights of Persons with Disabilities (U.N. 1978)(U.N. 1989, 2006).In other three conventions water has not been given any reference. Treaties also do not give recognition of the human in right to water since the water has not been specifically mentioned International Covenant on Economic, Social and Cultural Rights (ICESCR). Most recently in 2007 the UN High Commissioner for HumanRights in one of her report stated that 'the debate is still open as to whether access to safe drinking waterand sanitation is a human right', which specifically questions about the nature of the right as a derived or self-standingright (U.N.H.C.R.).Later on in the year 2010 such doubts have been removed by adoption of a UN General Assembly resolution which emphasizes on the separate identity of the right to water (U.N. 2010).

The Committee on Economic,Social and Cultural Rights has given further importance to the right in the context of ICESCR through the adoption of General Comment in addition to these treaties and soft law instruments (U.N. 2010).The right to water has been defined as entitling 'everyone to sufficient, safe, acceptable, physicallyaccessible and affordable waterby the committee.In this regard the General Comment isa basic and of utmost importance at international level (U.N. 2010). Though this is a very general recognition and the right has not been conclusively identified in binding international law.

Right to have Sufficient Water in South Africa:

Other than being a member of United Nations and signatory of all conventions which ensure and mention the right to water for ensuring availability of water for all African government

[10] A list of 'core' human rights treaties is available on the webpage of the Office of the United Nations High Commissioner for Human Rights at- http://www.ohchr.org/english/law.

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has made some specific laws on water and sanitation services (Prüss-Ustün 2014). South Africa, Water Services Act 1997 is worth mentioning here. Some important provisions and features of the Act being discussed below:

Recognition of the Right in South African Constitution:

Section 27(1) (b) of the South African Constitution expressly recognizes the right to have access to sufficient water while section 27 (2) provides that legislative and other measures should be taken by the states to respects, promote and fulfill the progressive realization of the right on the basis of available resources.

Policy and Programmes related to the Right at National Level

(I)- Department of Provincial and Local Government (DPLG)

Following measures have been instituted by the DPLG under review:

(a)- Municipal Service Partnership (MSP)

The basic aim of the MSP is provide that kind of clear policy framework which will be capable of influencing and gathering resources of public institutions, non-governmental organizations (NGOs),and community based organizations (CBOs), and the private sector for fulfilling the aim of overall development objectives of the country(Anonymous 2002).

(II)- Department of Water Affairs and Forestry (DWAF)

The DWAF has reported some measures which were to be introduced during thecurrent reporting period:

(a)- Free Basic Water (FBW) Policy

Alleviation of poverty is the main aim of this policy and this has been ensured by no denial of access to basic water supply. Making free women from drudgery and community health is the underlying aim of this programme which was initiated in December 2000 by and a policy document came into existence due to this. Free basic water supply is available to the South Africans because out of 309 municipalities 214 have already implementing the FBW Policy.[11]

Legislative Framework

[11] Section 9(1) regulation in terms of the Water Services Act of 1997, provides for free basic water supply. According to this s 9(1) regulation, 25 liters of portable water per day must be provided for each individual or when calculating it in terms of households, 6 kiloliters of portable water should be provided per household per month. This should be done at a flow rate of not less than 10 liters per minute, within 200 meters of a household and with effectiveness such that no consumer is without a supply for more than seven full days in any year.

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Following are the legislative framework which developed during the reporting period for actual realization of the rightto have access to sufficient water.

(a)- Municipal Systems Act No. 32 of 2000

The legislative framework to Municipal Services Partnership Policy has been provided by the Municipal Systems Act as reported by DPLG.

(b)- South Africa, Water Services Act, Act 108 of 1997

This Act was enacted with keeping in mind to provide access to the rights of basic water supply and sanitation services. The Preamble of the Act ensures basic water and sanitation services to all. The most important feature of this act is that it specifies the role of government as a custodian (Unknown 2007). In this regard some important provisions of the Act are as follows:

Section 3- Right of access to basic water supply and basic sanitation

1. Everyone has a right of access to [a] basic water supply and basic sanitation.

2. Every water services institution must take reasonable measures to realize these rights.

3. Every water services authority must, in its water services plan, provide for measures to realize these rights (1997).

This provision aims to ensure the availability of services; it also guides institutions with respect to the progressive realization of availability for all. The use of the word “basic” implies a minimum standard, defined in the Act itself and further clarified in regulations and policies (Albuquerk 2012). The Act also provides establishment of water committees, which shall be liable to ensure water services to all citizens (1997).

South Africa, Regulation relating to compulsory national standards and measures to conserve water 2001, paragraph 3:

The minimum standard for basic water supply services is […]

b) A minimum quantity […]

(iii) (with such an effectivenessthat no consumer is without supply for more than seven full days a year.

The State has a duty to raise awareness of the need for adequate sanitation and to ensure that the construction, maintenance, and the disposal and treatment of waste is regulated so that this complies with the human right to sanitation(Meta 2006).The State must ensure that water and sanitation facilities are always present which may be arranged through building codes or regulations according to set standards(Bain, Cronk et al. 2014).

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Right to Water in India:

The constitution of India is a basic document which describes set-up of the Indian government which is based on distribution of powers among various organs of the government. It is called the Bible" of Indian citizens (Praveen 2014) because it ensures various fundamental rights of the citizens for the protection of their life and freedoms, directive principles of state policy to make the state answerable for non-compliance of its duties towards citizens, fundamental duties of the citizens towards state and other human beings for assurance of fundamental rights n a better way (Kothari and entitled 2006). The Indian constitution is one of the very few documents of the world which has provisions about protection of environment which includes protection of water resources too. These provisions are the effects of Stockholm conference held at International level regarding various issues of environmental protection (DESAI 1987).

Fundamental Rights (Part-III) Art.21:

The 'fundamental rights' enumerated in our Constitution which came into force in the year of 1950which includesright to equality, freedom, right to life, education, freedom from exploitation and forced labour, religiousfreedoms, minority and cultural rights as well as rights to constitutional remedies. There is no express recognition of right to water in the Bill of Rights nor, is it mentioned in the directive principles (Sharma 2015). Originally the "Right tosafe drinking water" is not a part of the constitution as a fundamental right. Water rights exist in the Indian Constitution as riparian rights under Article 262 which was created to resolve state river water disputes (Mary 2006).

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

Fundamental human right to water has evolved basically through judicial interpretations not through legislative actions. Decisions of Indian Supreme Court deem such kind of right implied in Article 21. The right to life has been interpreted to include all facets of life and to include the right to clean environment also which is a basic need to sustain life (1981). In an

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important ruling of*"A.P. Pollution Control Board II v. Prof. M.V. Nayudu"*(2001).In*"Narmada BachaoAndolan"*, the Supreme Court uphold the Indian government's decision to construct over 3,000 dams on the river Narmada but considered the importance of Right to safe drinking water as well and held that "water is the basic need for the survival of the human beings and is part of right of life and human rightsas enshrined in Article 21 of the Constitution of India"(2000).

Directive Principles of State Policy - Part-IV (Art.47, 48-A, 37, 36, 31-C):

Other than Article 21 of the Indian Constitution the directive principles of state policy also provideindirectly about protection of the right. Article 48A requires the state not only to adopt a protectionist policy but also to provide for the improvement of polluted environment. Therefore, the state may impose restrictions on the use of factors affecting life and development of body of human beings, animals and plants. It may, in addition, take necessary measures for the improvement of environment.

Fundamental Duties (Part-VI-A):

Apart from the Directive to the State "to protect and improve the environment", a special provision isenshrined in Part IV-A[12] of the Constitution of India. Inthis Part, the newly inserted Article 51A provides forcertain fundamental duties of the citizen of India. Article 51 (A) (g) specifically deals with the fundamental duty with respect to Environment.

Legislative Powers (3 fold Distribution):

The Constitution of India had adopted, from the Government of India Act 1935, a threefold distribution of legislative powers between the Union and the states (1950). The environmental legislative powers are available under all the three lists, [13] namely the Union List, the state list and the concurrent list.

Although the Union government can enact laws on any of the items in the Union list and concurrent list, in certain cases(1950). It can also enact laws on items in the State list too. In fact, the Union government, however, has been conferred with sweeping powers for the purpose, which has so far remained unused. It is contained in Article 253, which provides:

[12] Inserted by the Constitution (Forty-Second Amendment) Act 1976, S.II, (w.e.f. 3rd January, 1977).
[13] They are as follows, List I (Union List) - Entry 52, 53, 54, 55 and 57; List II (State List) Entry 6, 14, 17, 18, 21, 24 and 25 and List III: (Concurrent List). Entry 17A, 17B and 20.

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"Notwithstanding anything in the foregoing provisions of this chapter, .Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body"(1950).

Accordingly, this article empowers the Parliament to make law for implementing any "treaty" "agreement", "convention" or "international decision". One can deduce the necessary mandate for this purpose from the Directive Principle in Article 51 (c)[14] as well as entries l3 and 14[15] in the Union-list (Pandey 2004). Putting together all these, the Parliament appears to have a comprehensive power under Article 253 to enact laws on any of the entries in the state list. The Union government can in fact legislate on any of the items in the State list, even though there is no prima facie international obligation (vide, the reference to decisions made at any international conference) Robert: B.Looper (B.Looper 1955-56).

In scope of Article 253 remains to be tested, yet itis feared that it might lead to an:

"Inevitable and irresistible invasion ofthe state list by the Parliament because of the vast range of subjects covered by theconventions, treaties, agreements and recommendationsof various specialized agencies and international conferences (to which India belonged)"(B.Looper 1955-56). As Article 253, empowers the Parliament to encroach on thestate list for environmental protection, it might be a goodidea to explore the potential of this article throughjudicial examination.

Water-Pollution Control Laws:

Water (Prevention and Control of Water Pollution) Act, 1974

Other than constitutional provision concerning "Right to safe drinking water in India" it is worth-while to elaborate here water pollution control laws in India.

In 1962, an expert committee on water pollution was appointed by ministry of health. This expert committee recommended that specific laws should be enacted at union as well as state level ((CSE) 1984-85). But this idea was changed by central council of local self – government in 1963 because it recommended a single law by parliament on the subject in

[14] Article 51(C) (Part IV) provides: The State shall endeavor to foster respect for international law and treaty obligations in the dealings of organized peoples with one another.

[15] Seventh schedule, List I: Entry 13- Participation in international conferences, associations and other bodies and implementing of decisions made thereat. Entry l4 - Entering into treaties and agreements with foreign countries and implementing of treaties, agreements and conventions with foreign countries.

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place of different laws for state and union. Though the subject of local self-government is itself a subject of state list which is covered under entries 6 and 17.[16] Parliament does not have power to make laws on the subjects of entries 6 and 17 except articles 249, 250 and article 252 of the Indian constitution.That is why in 1965 a draft bill was circulated to the governments of all the state and it was requested to pass enabling resolutions as it was required by article 252 (1) (1949). Because it was necessary to empower parliament to enact such laws on behalf of the state governments.[17]

In 1969, The Prevention of Water Pollution Bill was introduced in Rajya Sabha when it was adopted by six states which required enabling resolutions. The Bill was referred to a joint committee in August 1970. This committee did a lot of modifications in the Bill in many respects and after modifications it was presented to parliament in 1972. The Bill took form of Water (Prevention and Control of Pollution) Act, 1974[18] (hereinafter the Water Act) after being passed by parliament in 1974 (1974).

The Water Prevention and Control of Pollution), Act, 1974 is statute per excellence in India.[19]The act is very relevant from the aspect because it's seeks maintain and restore "wholesomeness of water". The object of the act states pollution[20] of water in rivers and streams has assumed a considerable and important place.In the act it has been tried to ensure, that domestic and industrial effluents should not be allowed to be discharged until treated adequately.

[16] Entry 6 and 17 of List II are as follows: Entry-6: Public health and sanitation; hospitals and dispensaries, Entry-17-Water, that is say, water supplies, irrigation and canals, drainage and embankment, water storage and water power subject to the provisions of Entry 56 of List I.

[17]Article 252 (1)states: If it appears to the legislatures of two or more states to be desirable that any of the matters with respect to which parliament has no power to make laws for the states except as provided in Articles 249 and 250 should be regulated in such states by parliament by law, and if resolutions to that effect are passed by all the Houses of Legislatures of those states, it shall be lawful for parliament to pass an Act for regulating thatmatter accordingly and any Act so passed shall apply to such states and to any other state by which it is adopted afterwards by resolution passed in that behalf by the House or, where there are two houses, by each of the houses of the legislature of that state.

[18] The Act 6 of 1974 received the assent of the President of India on 23 March 1974. It is now adopted by almost all the states in India.

[19]Two state enactments preceding this central law were: the Orissa River Pollution Prevention Act, 1953 and the Maharashtra Prevention of water Pollution Act, l969

[20] section 2 (e) defines "pollution" as such contamination of water or such alteration of the physical, chemical or biological properties of water or such discharge of any sewage or trade effluent or of any other liquid, gaseous or solid substance into water (Whether directly *or* indirectly) as may, or is likely to, create a nuisance or render such water, handful or injurious to public health or safety, or to domestic, commercial, industrial, agricultural or other legitimate uses or to the life and health of animals or plants or of aquatic organisms.

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The act covers various types of waters within its ambit (1974). It is a very comprehensivedefinition and covers all changes in physical, chemical or biological properties of water. It also covers the rise in temperature of water and radioactive substances in the water (1991).Further the act has used two streams in relation to water pollution stream and well. The "stream" here includes- 1) river; 2) water courses (whether flowing or for the time being dry); 3) inland water (whether natural or artificial); 4) subterranean water (underground water); 5) sea or tidal water (Shastri 2017).The Act provides about the penal provisions for all incase of pollution of water by individuals, companies, industries and government employees.

Conclusion

It is clearly expressed that the human right to water is getting a significant space at international level. It has become so popular just because of its importance for sustenance of human life. Different countries have recognized it in different ways till here are some gaps between the theoretical and practical aspects. Environmental and ground level conditions of India and South Africa whether it is population or economic conditions of the residents of both countries are more or less similar. Though the policy and legal documents of both countries has given great importance to the right still there are differences.

The South African Constitution expressly recognizes the Right to have sufficient water. For ground level implementation of the right local municipalities are responsible. While the Indian Constitution contains it impliedly India judiciary has played very significant role in the recognition of the right. Water is the subject of the state basically and variouspolicies have been made for ground level implementation. A specific Act water Act, 1974 have been enacted for strong existence of the right. Still some reformations are needed.

A strong co-ordination among all the stake-holders at all levels is required, whether it is national, provincial or local. Water is something without which human life is a lie so it should be free to all people without considering their social, economic and cultural level. At present time everyone is not enjoying the right in these countries because of worst honesty and accountability at the level of administration, lack of infrastructure and financial resources. The right can be ensured by making the state more responsible in two ways such as, state must ensure availability of water to all people which means providing those facilities which makes it easily accessible to everyone especially to the vulnerable and the marginalized group of society. It must ensure that water is within the reach of economic capabilities of all

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people. Thus, assurance of human right to water is only possible if the water is available to all without any kind of economic or social discrimination. Responsible steps should be taken by the states to ensure, realize and improve the right to the fullest.

 Copyright © 2019Authors

ISSN:0971-1260
Vol-22- Issue-14-December-2019

References:

(1949). Central Government Act

The Constittuion of India. India.

(1950). Constitutional Law of India. India, Consititution of Canada. **Article 246**.

(1950). Constitutional Law of India. India, Constitution of Canada. **Article 249, 250 & 252**.

(1950). Relations Between Union and States (Part XI). Constitutional Law of India. India, Constitution of Canada. **Article 253**.

(1974). Water (Prevention and Control of Pollution) Act. India. **Section 13(1)**.

(1981). Francis Coralie Mullin v. Adm'r, Union Territory of Delhi S.C.R., Supreme Court. **2:** 516.

(1991). Bombay Environmental Action Group v. State of Maharastra. All India Reporter, Bombay **301**.

(1997). South Africa Water Services Act, 1997. South Africa. **Section 11:** 70.

(1997). South Africa, Water Services Act,. South Africa. **Section 3:** 70.

(2000). Narmada Bachao Andolan v. Union of India All India Reporter, Supreme Court. **375**.

(2001). A.P. Pollution Control Board II v. Prof. M.V. Nayudu. Supreme Court Cases, Supreme Court. **62**.

(2006). Convention on the Rights of Persons with Disabilities. New York. **Article 28**.

(2010). The Future We Want (The Human Right to Water and Sanitation). International Document. **Section 1:** 53.

(CSE), C. f. S. a. E. (1984-85). The State of India Environment. Second Citizen,s Report. New Delhi, Centre for Science and Environment (CSE). **Second:** 344.

AGENCY, E. E. T. (2008). "Water Scarcity." Water Facts.

Albuquerk, C. d. (2012). "Special Rapporteur on the human rights to water and sanitation, Mission to Uruguay,." Retrieved 18/12/2017, 2017.

 Copyright © 2019Authors

ISSN:0971-1260
Vol-22- Issue-14-December-2019

Albuquerque, C. d. (2010). Issue of Human Rights Obligations Related to Access to Safe Drinking Water and Sanitation. U.N. General Assembly, Geneva, United Nations**:** 10-18.

Anonymous (2002). RIGHT TO SUFFICIENT WATER. Law. South Africa. **Ph.D.**

B.Looper, R. (1955-56). "The Treaty Power in India" (British Yearbook of International Law)

B.Looper, R. (1955-56). "The Treaty Power in India" (British Yearbook of International Law).

Bain, R., et al. (2014). "Fecal contamination of drinking-water in low-and middle-income countries: A systematic review and meta-analysis." PLoS Med**11**(5): e1001644.

Basingstoke, U. K. a. P. M. (2006). United Nations Development Programme, Human Development Report 2006:

Beyond Scarcity–Power, poverty and the Global Water Crisis, United Nations. **1**.

Chávarro, J. M. (2014). "The Right to Water in the Case-Law of the Inter-American Court of Human Rights" Anuario Colombiano de Derecho Internacional**7**: 39-68.

CRAVEN, M. C. R. (1995). "THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL, AND CULTURAL RIGHTS: A PERSPECTIVE ON ITS DEVELOPMENT ".

DESAI, B. H. (1987). LEGAL CONTROLS OF. WATER POLLUTIONA CASE STUDY OF INDIA. International Legal Studies DivisionSchool of International StudiesNew Delhi, IndiaJawaharlal Nehru University**DOCTOR OF PHILOSOPHY:** 66/114.

Devlaeminck, D. (2013). The Human Right to Water and the Responsibility to Protect. Philosophy. Hamilton, Ontario, University of Guelph,Hamilton, Ontario. **Masters of Arts:** 125.

Gleick, P. H. (1998). "The human right to water." Water policy**1**(5): 487-503.

Gupta , J., Ahlers , R. and Ahmed , L. (2010). The human right to water: moving towards consensus in a fragmented world.Review of European Community and International Environmental Law. **19:** 294-305.

Holmström, L. (2012). Water and sanitation, a fundamental human right? School of Business and Economics, Legal Science. Innsbruck, Austria, Linne University. **Bachelor:** 40.

JOHN SCANLON, A. C. N. N. (2004). "WATER AS A HUMAN RIGHT?" **31**.

 Copyright © 2019Authors

ISSN:0971-1260
Vol-22- Issue-14-December-2019

Kothari, J. and P. p. f. t. w. entitled (2006). The Right to Water: A Constitutional Perspective'Water, Law and the Commons'Delhi International Environmental Law Research Centre (IELRC).

Mary, R. (2006). "RIGHT TO WATER: Theoretical Concerns and Practical Issues" The Indian Journal of Political Science**67**(4): 759-766.

Meta, L. (2006). Chapter 3: Do human rights make a difference to poor and vulner-able people? Accountability for the right to water in South Africa", Rights Re-sources and the Politics of Accountability.

Murthy, S. L. (2013). "The human right (s) to water and sanitation: history, meaning and the controversy over privatization." Berkeley Journal of International Law (BJIL)**31**(1).

Norbert Brunner, V. M., Ponnusamy Sakthivel, Markus Starkl and Christof Tschohl (2015). "The Human Right to Water in Law and Implementation" Laws(4): 413-471.

Organization, W. H. (2004). Guidelines for drinking-water quality, World Health Organization.

Pahl-Wostl, C., M. Craps, A. Dewulf, E. Mostert, D. Tabara, and T. Taillieu. (2007). "Social learning and water resources management." Ecology and Society**12**((2)).

Pandey, J. N. (2004). Constitutional Law of India. Allahabad, Central Law Agency.

Praveen, P. (2014). "Article 21: a Reservoir of Right to Water?" Bhatter College Journal of Multidisciplinary Studies, **IV**.

Prüss-Ustün , A., Bartram , J. , Clasen , T. , Colford , J. , Cumming , O. , Curtis , V. , Bonjour , S. , Dangour , A.D. , De France , J. , Fewtrell , L. , Freeman , M. , Gordon , B. , Hunter , P.R. , Johnston , R.B. , Mathers , C. , Mäusezahl , D. , Medlicott , K. , Neira , M. , Stocks , M. , Wolf , J. and Cairncross , S. (2014). "Burden of disease from inadequate water, sanitation and hygiene in low- and middle-income settings: a retrospective analysis of data from 145 countries . Tropical Medicine and International Health " **19**(8): 894-905.

Robert Bos, D. A. I., Carolina Latorre, Neil Macleod, Gérard Payen, Virginia Roaf & Michael Rouse (2016). Manual of the Human Rights to Safe Drinking Water and Sanitation for Practitioners. London (U.K.), International Water Association(IWA).

Secretary-General, U. N. (2011). The Millennium Development Goals Report 2011,. Jenewa, United Nations. **52**.

 Copyright © 2019Authors

ISSN:0971-1260
Vol-22- Issue-14-December-2019

Sharma, B. K. (2015). Introduction to the Constitution of India. New Delhi, Prentice Hall India Learning Private Limited.

Shastri, P. S. C. (2017). Environmental Law. Lucknow, Eastern Book Company.

Singh, C. Water Rights in IndiaLaw. Cochin. **Ph.d.**

Thor, E. M. (2013). "The Human Right to Water in the United States: Why So Dangerous?" Global Business & Development Law Journal**26**: 26.

U.N. (1978). Convention on the Elimination of All Forms of Discrimination against Women. Convention on the Elimination of All Forms of Discrimination against Women. New York,, United Nations. **Artcile 14**.

U.N. (1989). Convention on the Rights of Child (CRC). New York. **Article 24**.

U.N. (2010). General Comment 15Committee on Economic, Social and Cultural Rights, United Nations.

U.N. (2010). The Right to Water. Geneva, Unted Nations.

U.N. (2010). United Nations General Assembly (2010), Resolution A/RES/64/292. Resolution A/RES/64/292. United Nations., United Nations.

U.N.H.C.R. Report on the Scope and Content of the Relevant Human Rights Obligations Related to Equitable Access to Safe Drinking Water. United Nations, United Nations**:** 21.

U.N.Water (2017). "Human Rights to Water and Sanitation." Retrieved 14/12/2017, 2017, from http://www.unwater.org/water-facts/human-rights/.

Unknown Human Right to Water. Law. **P.hD.:** 1-13.

Unknown (2007, 15/04/2007). "Summary of the Water Services Act, no. 108 of 1997." Retrieved 19/12/2017, 2017, from https://ossafrica.com/esst/index.php?title=Summary_of_the_Water_Services_Act%2C_no._108_of_1997

W.H.O. Health in Water Resources Development, W.H.O.

 Copyright © 2019Authors

ISSN:0971-1260
Vol-22- Issue-14-December-2019

Winkler, I. T. (2012). The Human Right to Water: Significance, Legal Status and Implications for Water Allocation,. Oxford, Hart Publishing,Oxford.

Winkler, I. T. (2014). The human right to water: significance, legal status and implications for water allocation, Bloomsbury Publishing.

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