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**BRIDGING THE HUMAN RIGHT TO CLEAN WATER AND  
INTELLECTUAL PROPERTY RIGHTS ON WATER TECHNOLOGY IN INDIA**

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**Abstract:**

India, country which has unproportionate distribution of clean water, land and population, is facing growing scarcity of water. No rain for about 200 days at a stretch in city like Chennai is recent example of worst water crisis in 30 years. Many cities particularly those using single source of water that are climate dependent, are looking for alternative sources of water supply. Patent on water technology are on rise. Intellectual Property guarantee monopoly rights to the owner for limited period of time. Human Right to access to Clean Water at affordable rates is a Basic Fundamental Right for all human beings. Intellectual Property Rights are also recognised one of the Human Rights by various international and national instruments. Intellectual Property Rights in recent years have become increasingly relevant in current times. The paper tries to interconnect the Human Right to Clean Water and Intellectual Property Rights law. The paper includes constitutional and judicial perspective on clean water as human right and patent on water technology as one of the important intellectual property which can play a major role in solving the global problem of access to clean water. Lastly, the paper gives suggestions and recommendations to strike a balance between the rights of intellectual property owners and human rights of clean water.

**Key Words:** Human Rights to Clean Water, Intellectual Property Rights, Water Technology, Constitutionalism, etc.

## **Introduction:**

India, country which has unproportionate distribution of clean water, land and population, is facing growing scarcity of water. No rain for about 200 days at a stretch in city like Chennai is recent example of worst water crisis in 30 years. Just few days back mother nature showered her blessings with some relief of rain. Just one year before on April 12<sup>th</sup>, 2018, Cape Town was declared a “Day Zero”<sup>1</sup> which was worst of a historic drought, although the water supply is still tenuous. Somehow, the city evade disaster with a combination of water conservation and efficiency measures and a little help from Mother Nature. Still, serious challenges in establishing resilient, sustainable water supply, rain-water harvesting, managing water waste and many other still prevail.

India, home to 16 percent of the world’s population, has only 2.5 percent of the worlds land area and 4 percent of the world’s water resources at its disposal. Precipitation in the form of rain and snowfall provide over 4,000 trillion litres of fresh water to India.<sup>2</sup> Most of this freshwater return to the seas and ocean via the many large rivers flowing across the subcontinent. A portion of this water is absorbed by the soil and is stored in underground aquifers. A much smaller percentage is stored in inland water bodies both natural (lakes and ponds) and man-made (tanks and reservoirs). Of the 1,869 trillion litres of water reserves, only an estimated 1,122 trillion litres can be exploited due to topographic constraints and distribution effects<sup>3</sup>. (NCIWRD, XIth Five Year Plan). The demand for water has been increasing at a high pace in the past few decades. As of 2010 consumption in the country is approximately 581 trillion litres with irrigation requirements accounting for a staggering 89 percent followed by domestic use at 7 percent and industrial use at 4 percent<sup>4</sup>. (NCIWRD, XIth Five Year Plan).

Water is scare natural resource, conservation and protection for the same is inevitable for the sustaining of human beings. Of all our natural resources, water reinforces sustainable development. Not a single sphere of environmental life or human endeavour is left where water is not required. Urban development, population and globalization has added to the enforcement of sustainable use of water. Consequently, government and private sector are looking for alternative sources of water supply that can supplement inconstant rainfall and meet the demands of growth. A differentiated portfolio of water sources is required to ensure public health as well as social and environmental sustainability.

Human Right to clean water is interwoven with other Human rights. Human right to environment, human right to health, human right to life, Right to equality, Right to Clean Water without discrimination, etc. Various international instruments support the importance of human right to water. There are no constitutional provisions in our country which directly protects right to clean water. Various landmark judgements support human right to clean water. Art. 21 Right to life includes right to clean water.

To solve the problem of clean and affordable water for all as a Basic Human Right, we need to collaborate various latest technology to purify water to make it reusable and thus solve the unmanageable problem faced by majority of the population. Intellectual Property Rights can help produce many water saving technologies which can help us to attend our desired goal.

The basic concept of Intellectual Property Rights (IPR) is that it gives monopoly rights to the owner for limited period. If IPR is helping in producing patent technology to find out inexpensive methods of converting saline water into fresh water, to find out methods of rain-water harvesting, to manage the flood waters, to find technology to treat waste water, any other technology to protect and preserve wet lands, etc and related issues. IP promote R&D activities intended at providing safe drinking water at affordable cost and in adequate quantity using suitable Science and Technology involvements evolved through indigenous efforts. Since quality is the main consideration of safe drinking water, processes which imply nano-material and filtration technologies have been focused. The initiative also includes the pilot testing of credible number of products and referencing of selected technologies to the social context of the application region.<sup>5</sup>

Human Rights Law and Intellectual Property Rights Law both are two different sets of law since their beginning. Today's progressive era it has been observed that both are interconnected. IPR in recent years have become relevant in different areas which includes health, trade, traditional knowledge, environment, food security, etc. Intellectual Property Rights are enshrined as Human Rights in the UDHR<sup>6</sup>, ICESCR<sup>7</sup>, ICCPR<sup>8</sup>, VDPA<sup>9</sup> and other international and national instruments.

## **HUMAN RIGHT TO CLEAN WATER:**

### **International Instruments:**

Human Rights and water resources are among the most persuasive issues to have apprehended the attention of the world communal in recent years. Because of that, this topic

is among the top global development agenda and inhabit a projecting place at conferences and forums.

Human Rights nexus closely with water and development. In 1972 the United Nation Conference on the Human Right Environment, held in Stockholm, acknowledged water as one of the natural resources that looked-for to be shielded. Principle 2 of the Stockholm Declaration on Human Environment states that “natural resources of the earth including the air, water, land, flora and fauna and especially representative samples of natural ecosystems must be safeguarded for the benefit of the present and future generations through careful planning or management, as appropriate.”<sup>10</sup>

In 1977, the United Nations held the Mar del Plata Water Conference in Argentina. The Conference, ardent entirely to discussing the emerging water resources problems, issued the Mar del Plata Action Plan, which was designed to address those problems.<sup>11</sup>

In 1992, Dublin Conference on Water and Development<sup>12</sup> and the Rio Summit on Environment and Development<sup>13</sup> recognized, among other things, the Basic Right of all human beings to have access to clean water and sanitation.

The acceptance of the seriousness of water problems resulted in the establishment in 1996 of the World Water Council (WWC)<sup>14</sup> who worked as think tank on water resources matters and the Global Water Partnership (GWP)<sup>15</sup> who established a working partnership among all units involved in water to support countries in cohesive water resources management. Work done by these two institutions led to the holding of the First World Forum in Marrakech, Morocco, in 1997,<sup>16</sup> the Second World Water Forum in the Hague, the Netherlands, in 2000,<sup>17</sup> the third one in Kyoto, Japan, in 2003,<sup>18</sup> 4th World Water Forum, Mexico 2006,<sup>19</sup> 5<sup>th</sup> World Water Forum, Istanbul 2009,<sup>20</sup> 6<sup>th</sup> World Water Forum, Marseille 2012,<sup>21</sup> 7<sup>th</sup> World Water Forum, Daegu & Gyeongbuk 2015,<sup>22</sup> 8<sup>th</sup> World Water Forum, Brasilia 2018.<sup>23</sup>

In 1999, the General Assembly issued a resolution on “The Right to Development”,<sup>24</sup> as universal and inalienable and reemphasized that Right to Development, inter alia includes right to food and clean water and shelter are fundamental human rights and their promotion helps both National Governments and for International community.

Various other International Human Rights Treaties and their Protocols like The Convention on the Elimination of All Forms of Discrimination against Women (art. 14 (2)),<sup>25</sup> International Labour Organization (ILO) Convention No. 161 concerning Occupational Health Services (art. 5),<sup>26</sup> The Convention on the Rights of the Child (arts. 24 and 27 (3)),<sup>27</sup>

The Convention on the Rights of Persons with Disabilities (art. 28)<sup>28</sup> also support for the Right of Water and Basic and Fundamental Human Rights among the important once.

The United Nations General Assembly (in July 2010)<sup>29</sup> and the United Nations Human Rights Council (in Sep, 2010)<sup>30</sup> acknowledge that access to safe drinking water and sanitation is a right implied by the established Human Right to an adequate standard of living. Un member states are thus bound for the realisation of the rights to clean water and sanitation services.

In September 2015, at a special session of the UN General Assembly, Right to Water and Sanitation (Goal No 6) is included in The Sustainable Development Goals (SDGs)<sup>31</sup>.

Water being the most basic and limited natural resources, need to be given top most priority and a base to achieve all other closely connected Human Rights.

### **Constitutional Perspective:**

There is no express provision pertaining to Right to water in our Constitution of India<sup>32</sup> which is the base for law making and judicial pronouncements. Judiciary have played active part and gave many judgements in support of Right to water which is included as part of Article -21 – Right to life and personal liberty<sup>33</sup> Part III (Fundamental Rights). Article 39(b) (c)<sup>34</sup> of Part IV Directive Principles of State Policy – directs the state to make policy towards securing distribution, ownership and control of the material resources of the community to best sub serve the common good and also to protect the operation of economic system so that they do not concentrate of wealth and means of production to the common detriment. Article 42<sup>35</sup> – the state shall make provision for securing just and humane conditions of work. Article 47<sup>36</sup> – duty of the state to raise the level of nutrition and the standard of living of its people and improvement of public health.

Apart from the Directive to the State "to protect and improve the environment," a special provision is enshrined in Part IV-A of the Constitution of India. The newly inserted Article 51A provide for fundamental duties of the citizen of India. Article 51 (A) (g)<sup>37</sup> deals with the fundamental duty with respect to Environment – to protect and improve the natural environment including forests, lakes, rivers and wild-life.

The National commission was set up by a resolution of the NDA Government of India led by Atal Bihari Vajpayee on 22 February 2000 to review the constitution by going through the

amending process and proposed for the new Article 30 D which recognized that every person shall have right to safe drinking water.<sup>38</sup>

Water rights exist in the Indian Constitution as rights relating to wetlands adjacent to rivers and streams under Article 262<sup>39</sup>: Adjudication of disputes relating to waters of inter State Rivers or river valleys.

### **Judicial Approach to Human Right to Water:**

Human right to water has been evolved in India from Judicial Activism towards fundamental human right to water. Such kind of right is implied in Article 21 of the Constitution of India. The right to life is broadly interpreted to involve right to clean environment and right to clean water as part of it.

In the landmark judgement of *Bandhu Mukti Morcha V/s Union of India (1984)*<sup>40</sup> held that privilege of citizen to receive safe drinking water (potable water) is part of the right to life under Article 21. Similar judgement was given in *Subhas Kumar V/s State of Bihar (1991)*<sup>41</sup>, the Supreme Court asserted that right to live is fundamental rights and it includes right to clean water. In *M.C. Mehta V/s Kamal Nath (1997)*<sup>42</sup> court accepted the Public Trust Doctrine as a part of jurisprudence. Court also mentioned that state is the trustee of all natural resources and is under legal duty to protect all the resources. In *Vellore Citizen Welfare Forum vs. Union of India(1997)*<sup>43</sup> Supreme Court expressly held that the constitutional and statutory provisions protect a person's right to fresh air, clean water and pollution free environment. In *Shajimon Joseph v. State of Kerala (2006)*<sup>44</sup> the Kerala High Court made it clear that it was the duty of the State to provide safe drinking water to the citizens. In *A.P. Pollution Control Board II v. Prof. M.V. Nayudu, (2001)*<sup>45</sup> the Indian Supreme court held that safe drinking water is the first importance in any country. It also mentioned India being part of the UNO water conference and opined that, the "Right to access to safe drinking water is fundamental to life. In *Narmada Bachao Andolan Vs. Union of India*"(2000)<sup>46</sup> the Supreme Court sustain the Govt. of India decision to construct over 3,000 dams on the river Narmada and mentioned the importance of Right to safe drinking water and basic need for the survival of the human beings and is part of right of life and human rights as enshrined in Article 21 of the Constitution of India. In *Voice of India vs. Union of India (2010)*<sup>47</sup>, Supreme Court acknowledged the fact that after 60 years of independence Indian legislature not able to provide clean water to the Indian citizen and needs special attention. Various judgement signifies the notable work of Indian Judiciary which recognizes water as basic human right.

### **Intellectual Property Rights:**

The property generated with the help of human intellect is called “Intellectual Property”.<sup>48</sup> It is creations of the mind. It may be in various forms such as inventions, books, designs and symbols, artistic creations, performances, etc. Intellectual Property (IP) is protected in law by various names like patents, trademarks, copyright, designs, geographical indications, etc which aid people to earn acknowledgement or financial advantage from what they invent or create. The main objective of IP system is to maintain balance between the owners interest and broader public interest. This stimulates creativity and innovation. Intellectual property rights refers to the general term for the assignment of property rights through patents, copyrights and trademarks. These property rights allow the holder to exercise a monopoly on the use of the item for a specified period.

The IP system is a factor to be reckoned with, in the cause of technology transfer, technology development, industrial and economic progress, export trade, identifying new markets and their retention and in the promotion of national inventive, innovative and creative activity.<sup>49</sup>

### **International Instruments:**

In 1300s at Alp Mountains, the people who identified the mines for the first time use to dictate terms on the surrounding available resources like water, wood. In Germany, in 1409, a special privilege was given in construction of model mill to store grains. In India, during Harappa civilization, special marks were identified on the pottery indicating as trademarks. Initially, inventions were kept secret so that it is well protected. As technology developed, as a matter of national prestige the inventions were exhibited. This led to origin of an international understanding as Paris Convention for protection of intellectual property rights.<sup>50</sup>

An international organisation called United International Bureaux for the Protection of Intellectual Property (BIRPI)<sup>51</sup> was established in 1893 in Berne, Switzerland to carry out the administrative tasks relating to Intellectual Property. After United Nations Organisation (UNO)<sup>52</sup>, International Trade Organisation (ITO)<sup>53</sup> was established. General Agreement on Tariffs and Trade (GATT)<sup>54</sup> came into existence in 1948 to remove trade barriers, promotion of world trade and resolution of trade related disputes. In 1986-94 Uruguay Rounds led to the creation of World Trade Organisation (WTO)<sup>55</sup> on January 01, 1995, which is the successor of GATT. WTO's main aim was to help fair and free trade flow among the member countries. WTO gave much importance to protection of intellectual property rights. as the

extent of protection and execution of these rights differs extensively around the world, these differences have become the source of dispute to international economic relations.

The WTO's agreement on Trade-Related Aspects of Intellectual Rights (TRIPS)<sup>56</sup> provides the guidelines to narrow the gap that has occurred due to the differences among member countries. TRIPS made common and uniform international rules to harmonize IPR laws. The TRIPS agreement has become the most comprehensive and influential international agreement on intellectual property rights (IPRs). It establishes minimum standards on IPRs.

Various conventions, instruments and treaties are there to protect different IPR like patent, trademark, copyright, Geographical Indications, layout design of integrated circuits, plant varieties and farmers rights, biological diversity and traditional knowledge, etc.

In 1970, The [Convention establishing the World Intellectual Property Organization](#) (WIPO)<sup>57</sup> comes into force and BIRPI is thus transformed to become WIPO. The newly established WIPO is a member state-led, intergovernmental organization, with its headquarters in Geneva, Switzerland. In 1974, WIPO joins the United Nations (UN) family of organizations, becoming a specialized agency of the UN. All member states of the UN are entitled, though not obliged, to become members of the specialized agencies.

### **Constitutional Perspective:**

The Constitution of India guarantees various fundamental rights such as the right to life<sup>58</sup> which includes right to dignity, privacy, clean environment which includes clean air and water, health, etc. Property rights were deleted from the Chapter on Fundamental Rights of the Constitution in 1978. Right to property was a fundamental right under Article 19 (f)<sup>59</sup> but later it was substituted through the 44<sup>th</sup> amendment. the insertion of another Article i.e. Article 300A<sup>60</sup> through the 44<sup>th</sup> Amendment, changed it to a Constitutional right from fundamental right and due to this change any legislation violating the constitutional "Right to Property" could now be challenged only in High Courts and not directly in the Supreme Court.

IP is a form of property and is entitled to a legal right. The United States Constitution specifically protects the Intellectual Property.<sup>61</sup> There is no constitutional restrictions on the power to make laws on Intellectual Property. Article 253<sup>62</sup> mandates the recognition of the international aspect of laws, legislations, and agreements and empowers the Indian parliament to enforce the international treaties through law making process. Certain provision

in Article 372<sup>63</sup> also validates the pre-constitutional law subject to certain condition laid down in the provisions.

The Supreme Court in the *K.T. Plantation* (2011)<sup>64</sup> ruling holds that intellectual property enjoys a high degree of protection and includes intangibles like copyright and other intellectual property.

### **Interface between Human Right to Clean Water and Intellectual Property Rights:**

Human Rights law and Intellectual Property Rights (IPR) law are two completely dissimilar areas of law. Since their commencement, they developed remotely from each other. They never overstepped in each other's fields. But it is been pragmatic in recent times that both the areas of law are interconnected to each other. One school of thought says both Human Rights Law and IPR Law are fundamentally different with each other and IPR law infringes on different areas of Human Rights law, especially when economic, social and cultural rights are concerned. Another school of thought says both IPR Law and Human Rights Law can co-exist with each other.

If we refer to the TRIPS Agreement – fundamental treaty of IPR law, there is no reference to Human Rights. If we refer to the 1948 Universal Declaration of Human Rights Article 27<sup>65</sup> – fundamental document to human right law, it protects authors “moral and material interest” in their “scientific, literary or artistic productions and International Covenant of economic, social and cultural rights Article 15(1)(c)<sup>66</sup> - in general seeks to ensure that states provide an environment within which the development is undertaken for the better upright of society. Article 15(1) is more specifically concerned with the balance between the individual and collective rights of all individuals to enjoy the fruits of specific development.

We can see an indirect reference to IPR law and thus we can see the interconnection between Human Rights and Intellectual Property Rights. This is where the conflict between the two areas of law arises. Human Rights are much broader rights compared to individual privilege or claims for IPR. There cannot be any IP rights which violate and infringe upon human rights.

IPR should be subsumed to human rights, national interests and the preservation of genetic resources. In fact, intellectual products are basically social products. This should not be forgotten when granting certain 'rights' to innovators. Therefore, Intellectual Property Rights cannot be considered as 'rights' as in the case of immutable human rights. In this sense,

Intellectual Property Rights are only certain 'privileges' conferred on individuals or corporate innovators. Overall, a human rights perspective to intellectual contributions will be meaningful if it completely dissociates itself from existing intellectual property rights regimes and examines all intellectual contributions by individuals and groups as falling within the scope of Article 15(1).

**Reducing conflicts between human rights to clean water and Intellectual Property Right in water technology:**

Right to clean water is basic human right. For resolving the war between Human Rights and IPR, the comprehensive rights which are being diluted should be recognized. Here, the emphasis is to be given on two points – the neglected rights of the access to water and the social implication of the TRIPS Agreement on water technology.

Every human being has equal right to basic human right of clean water. Water technology is protected under IPR regime, which conflicts against the basic human right to clean water. Various water technology, which can help to provide basic human right to clean water to all, are protected through patents and the human beings are deprived of their legitimate share. Thus, the existing flaw in the IPR regime leads to the exploitation of the water as natural resources by water technology owner, which leads to the violation of human rights to clean water to all. In this respect, IPR law infringes on the domain of Human Rights law. The governments should enact legislations, such that the clean water is made available to all equally with the help of water technology. The governments can also protect patents, copyrights, etc. for those objects, which can help provide clean water to all and not allow to commercialise such water technology by protecting the human right to clean water to all and IPR rights to water technology owners.

Water is not a medicine. Protection of patented pharmaceuticals can cause restrictions on the access to these pharmaceuticals, which would adversely affect one's right to health. There should be transfer of technology to the developing countries for the water technologies (purification, desalination, metering, groundwater, irrigation) to make it more accessible to all.

The Human Rights bodies should develop specific interpretations of the equivocal rights (mainly economic, social and cultural rights) so that they can comply with the terms of the TRIPS Agreement. Secondly, if the TRIPS Agreement is viewed from a Human Rights perspective, then the consumers of Intellectual Property products will be on an equal footing

with the owners of Intellectual Property products. The agreement views the consumers of these products inferior to the owners of these products. But if a Human Rights dimension is added to the agreement, then the consumers will also become holders of these internationally guaranteed rights. Thirdly, instead of advocating minimum standards for IPR protection, the governments should impose maximum standards for IPR protections. This would act as a limit for the increasing standards of IPR protection. Lastly, the international forums on IPR, such as the World Intellectual Property Organisation (WIPO), the World Trade Organisation (WTO), etc., while making new laws on IPR, should analyze the laws with a Human Rights perspective. It is only in such circumstances that the Human Rights Law and IPR law will be able to co-exist with one another properly.

Intellectual property rights have two thought process. On one hand, there is a growing consciousness that such protection is a motivational factor for creative work; however, on the other hand, granting an absolute protection to the intellectual work can be unfavourable to the further progress of humanity. To strike a right balance between IPR and Human Rights with special reference to clean water which is the most basic need of any human being, there should be limitation to the rights given to the owner of the IPs.

The constitution of India compels national legislation, to exemplify the terms of a treaty for it to be enforceable in courts in India.<sup>67</sup> Treaties are *per se* unenforceable in courts but are to be incorporated through national legislation. The Supreme Court of India, in the area of human rights – especially in respect to personal liberty, often iterated that to the extent provision of any treaty is in consonance with the Constitution (such as Article 21), it would be read along with such provision or right.<sup>68</sup> At the same time, when there are national law embodying international conventions, or treaties, the courts do take into consideration their provisions, rulings of foreign courts in the area, and so on.<sup>69</sup> In an unusual case, the Madras High Court had to decide whether the enactment of a provision in the Patents Act infringed provisions of the Trade-Related Aspects of Intellectual Property Rights (“TRIPS”).<sup>70</sup> The holding was *arguendo*, if the enacted provisions did violate TRIPS, the court ruled that it lacked capacity to determine and grant the relief, as it could not direct the Indian Parliament to enact a law. Given the dualist nature of the Indian legal system and its relation to international obligations undertaken by the government, courts in India do not have the competence to pronounce on possible treaty violations, in the face of domestic legislations covering the issue. Hence, even if some provisions of the Patents Act violated India’s commitments under the TRIPS, the only remedy available would be the amendment or re-enactment of the law by the Parliament.

This would mean that the responsibility of ensuring that the laws in India are compatible with the international obligations under TRIPS would be on the Parliament. While the courts may adopt an interpretative approach that could read the statute in harmony with the TRIPS, however where such harmonious construction would not be possible, the obligation would fall on the Parliament to suitably modify the law to make it TRIPS compliant.

### **Conclusion:**

Costa Rica's experiment without military began in 1948 when Defense Minister Edgar Cardona proposed the idea to spend more for education and health.<sup>71</sup> The country's secret is something that virtually no other country in the world can claim — no standing army. It has used the savings from defense spending to improve education, health care and a durable social safety net. Right to health includes right to clean water.

Water has existed since the antiquity of the world, the recognition of water as a human right and states' efforts to treat it as such are recent events. Inclusion of water and sanitation as one of the Sustainable Development Goals<sup>72</sup> by UN shows the importance of water worldwide. Government of India allocates huge amount from the budget to the Ministry of Water and Sanitation.<sup>73</sup> Water Technology can accelerate the efforts to achieve SDG Goal 6 - Ensure availability and sustainable management of water and sanitation for all. Intellectual Property law must be in-line with Human Rights law. Water as natural resource – was taken for granted from ages. Now with the climate change and other environmental issues the importance of water is being recognised and thus the necessary changes to help the achievement of clean water by all should be thoughtfully handled.

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<sup>20</sup> For more details *see* <http://www.worldwatercouncil.org/en/istanbul-2009> (last visited on 5 Jun, 2019).

<sup>21</sup> For more details *see* <http://www.worldwatercouncil.org/en/marseille-2012> (last visited on 5 Jun, 2019).

<sup>22</sup> For more details *see* <http://www.worldwatercouncil.org/en/daegu-gyeongbuk-2015> (last visited on 5 Jun, 2019).

<sup>23</sup> For more details *see* <http://www.worldwatercouncil.org/en/brasilia-2018> (last visited on 5 Jun, 2019).

<sup>24</sup> General Assembly Reaffirms Importance Of Right To Development As Integral Part Of Fundamental Human Rights - Press Release GA/9532 <https://www.un.org/press/en/1998/19981209.ga9532.html> (last visited on 16 Jun, 2019).

<sup>25</sup> Convention on the Elimination of All Forms of Discrimination against Women New York, 18 December 1979 *see* <https://www.ohchr.org/en/professionalinterest/pages/cedaw.aspx> (last visited on 18 Jun, 2019).

<sup>26</sup> C161 - Occupational Health Services Convention, 1985 (No. 161) Adoption: Geneva, 71st ILC session (25 Jun 1985 [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C161](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C161) (last visited on 15 Jun, 2019).

<sup>27</sup> Convention on the Rights of the Child - Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989 entry into force 2 September 1990, in accordance with article 49 <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx> (last visited on 18 Jun, 2019).

<sup>28</sup> Convention on the Rights of Persons with Disabilities <https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx> (last visited 13 Jun, 2019).

<sup>29</sup> On 28 July 2010, through [Resolution 64/292](#), the United Nations General Assembly explicitly recognized the human right to water and sanitation and acknowledged that clean drinking water and sanitation are essential to the realisation of all human rights. <https://www.un.org/press/en/2010/ga10967.doc.htm> (last visited on 17 Jun, 2019).

<sup>30</sup> Human Rights Council, Fifteenth session, Agenda item 3, Promotion and protection of all human rights, civil political, economic, social and cultural rights, including the right to development. Resolution adopted by the Human Rights Council - 15/9 Human rights and access to safe drinking water and sanitation. [http://ap.ohchr.org/documents/dpage\\_e.aspx?si=A%2FHRC%2FRES%2F15%2F9](http://ap.ohchr.org/documents/dpage_e.aspx?si=A%2FHRC%2FRES%2F15%2F9) (last visited on 19 Jun, 2019).

<sup>31</sup> Sustainable Development Goal 6 - Ensure Availability And Sustainable Management Of Water And Sanitation For All. <https://sustainabledevelopment.un.org/sdg6> (last visited on 20 Jun, 2019).

<sup>32</sup> To see more details on Constitution of India see <https://www.india.gov.in/my-government/constitution-india> (last visited on 1 Jun, 2019).

<sup>33</sup> Article 21 in The Constitution Of India 1949 - Protection of life and personal liberty No person shall be deprived of his life or personal liberty except according to procedure established by law.

<sup>34</sup> Article 39 in The Constitution Of India 1949 -

39. Certain principles of policy to be followed by the State: The State shall, in particular, direct its policy towards securing

(a) that the citizens, men and women equally, have the right to an adequate means to livelihood;

(b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;

(c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;

(d) that there is equal pay for equal work for both men and women;

(e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;

(f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment

<sup>35</sup> Article 42 in The Constitution Of India 1949 - Provision for just and humane conditions of work and maternity relief The State shall make provision for securing just and humane conditions of work and for maternity relief.

<sup>36</sup> Article 47 in The Constitution of India 1949 - Duty of the State to raise the level of nutrition and the standard of living and to improve public health The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.

<sup>37</sup> Article 51A(g) in The Constitution Of India 1949 - (g) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures

<sup>38</sup> The National Commission to review the working of the Constitution (NCRWC) also known as Justice Manepalli Narayana Rao Venkatachaliah Commission was set up by a resolution of the NDA Government of India led by Atal Bihari Vajpayee on 22 February 2000 for suggesting possible amendments to the Constitution of India. It submitted its report in 2002. Ministry of Law, Justice and Company Affairs Department of Legal Affairs - <http://legallaffairs.gov.in/ncrwc-report> (pg. 18) (last visited on 21 Jun, 2019)

<sup>39</sup> Article 262 of Constitution of India 1949: Adjudication of disputes relating to waters of inter State Rivers or river valleys (1) Parliament may by law provide for the adjudication of any dispute or complaint with respect to the use, distribution or control of the waters of, or in, any inter State River or river valley (2) Notwithstanding anything in this Constitution, Parliament may by law provide that neither the Supreme Court nor any other court shall exercise jurisdiction in respect of any such dispute or complaint as is referred to in clause ( 1 ) Co-ordination between States.

<sup>40</sup> *Bandhua Mukti Morcha vs Union Of India & Others - 1984 AIR 802, 1984 SCR (2) 67*

<sup>41</sup> *Subhash Kumar vs State Of Bihar And Ors - AIR 420, 1991 SCR (1) 5*

<sup>42</sup> *M. C. Mehta V. Kamal Nath and Others – (1997)1 SCC 388*

- <sup>43</sup> Vellore Citizens Welfare Forum. Versus. Union Of India - AIR 1996 SC 2715; (1996) 5 SCC 647
- <sup>44</sup> *Shajimon Joseph v. State of Kerala W.P.(C) No. 16681 of 2006 - 2007(1)KLT368*
- <sup>45</sup> *A.P. Pollution Control Board II v. Prof. M.V. Nayudu*, (2001) - AIR 1999 SC 812; (2001) 2 SCC 62; (2001) 9 SCC 605.
- <sup>46</sup> *Narmada Bachao Andolan Vs. Union of India* (2000) - 10 S.C.C. 664.
- <sup>47</sup> *Voice of India vs. Union of India* (2010)
- <sup>48</sup> Vinod V. Sople – Managing Intellectual Property, The Strategic Imperative (Fourth Edition), PHI Learning Private Limited, Jan 2014. Pg 4.
- <sup>49</sup> Shahid Alikhan (Former Deputy Director General of WIPO), Intellectual Property and Socio-Economic Development, NIPO Souvenir, World IP Day, April 23, 2003.
- <sup>50</sup> [http://www.bspublications.net/downloads/05afc26c1e9088\\_Ch-1\\_IPR%202nd%20Ed\\_Subba%20Rao.pdf](http://www.bspublications.net/downloads/05afc26c1e9088_Ch-1_IPR%202nd%20Ed_Subba%20Rao.pdf) (last visited on 26 Jun, 2019).
- <sup>51</sup> WIPO – Brief History - <https://www.wipo.int/about-wipo/en/history.html> (last visited on 23 Jun, 2019).
- <sup>52</sup> United Nations - <https://www.un.org/en/about-un/> (last visited on 22 Jun, 2019).
- <sup>53</sup> World Trade Organisation - <https://docs.wto.org/gattdocs/q/GG/SEC/53-36.PDF> (last visited on 22 Jun, 2019).
- <sup>54</sup> World Trade Organisation - [https://www.wto.org/english/tratop\\_e/gatt\\_e/gatt\\_e.htm](https://www.wto.org/english/tratop_e/gatt_e/gatt_e.htm) (last visited on 24 Jun, 2019).
- <sup>55</sup> World Trade Organisation - [https://www.wto.org/english/tratop\\_e/trips\\_e/intel2\\_e.htm](https://www.wto.org/english/tratop_e/trips_e/intel2_e.htm) (last visited on 24 Jun, 2019).
- <sup>56</sup> World Trade Organisation - [https://www.wto.org/english/tratop\\_e/trips\\_e/intel2\\_e.htm](https://www.wto.org/english/tratop_e/trips_e/intel2_e.htm) (last visited on 24 Jun, 2019).
- <sup>57</sup> WIPO – Brief History - <https://www.wipo.int/about-wipo/en/history.html> (last visited on 23 Jun, 2019).
- <sup>58</sup> Article 21 of Constitution of India 1949. See for instance, *Kharak Singh v. State of Uttar Pradesh*, AIR 1963 SC 1295, *Francis Coralie v. Union Territory of Delhi*, AIR 1981 SC 746, *ParmanandaKatara v. Union of India*, AIR 1989 SC 2039.
- <sup>59</sup> Omitted from Constitution of India - Art. 19(1) All citizens shall have the right - (f) to acquire, hold and dispose of property....
- <sup>60</sup> Article 300 A of the Constitution of India 1949. Article 300 A includes all type of property capable of being owned [*Union of India v. Martin Lottery Agencies Ltd.*(2009) 12 SCC 209]. It includes tangible, intangible, corporeal and incorporeal property. Article 300 A does not confine to land alone but includes intangible property like copyright, intellectual property rights, mortgage, money, any interest in the property, lease, license. The pension and gratuity are a valuable right of individual therefore protected under article 300 A.
- <sup>61</sup> Article 1(8) of the U.S. Constitutions which provides “To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries”
- <sup>62</sup> Article 253 of Constitution of India 1949 - Legislation for giving effect to international agreements 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.
- <sup>63</sup> Article 372 in The Constitution Of India 1949 - Continuance in force of existing laws and their adaptation (1) Notwithstanding the repeal by this Constitution of the enactments referred to in Article 395 but subject to the other provisions of this Constitution, all the laws in force in the territory of India immediately before the commencement of this Constitution, all the laws in force in the territory of India immediately before the commencement of this Constitution shall continue in force therein until altered or repealed or amended by a competent Legislature or other competent authority.
- <sup>64</sup> *K T Plantation Pvt Ltd & Anr V/S State Of Karnataka* - 2011 Lawsuit(Sc) 820.
- <sup>65</sup> Article 27 of Universal Declaration of Human Rights, 1948 was proclaimed by the United Nations General Assembly in Paris on 10 December 1948 (General Assembly resolution 217 A) as a common standard of achievements for all peoples and all nations. <https://www.un.org/en/universal-declaration-human-rights/> (last visited on 3 Jun, 2019).
- <sup>66</sup> Article 15(1)(c) International Covenant of economic, social and cultural rights Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 entry into force 3 January 1976, in accordance with article 27 <https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx> (last visited on 4 Jun, 2019).
- <sup>67</sup> Article 253, Constitution of India, 1949.
- <sup>68</sup> *Jolly George Varghese and Anr. v. The Bank of Cochin*, AIR 1980 SC 470, *Apparel export Promotion Council v. A.K. Chopra*, AIR 1999 SC 625; *Kubic Dariusz v. Union of India* AIR 1990 SC 605.
- <sup>69</sup> *Novartis AG v. Union of India & Others* 2013 (6) SCC 1.
- <sup>70</sup> *Novartis A.G. v/s Union of India* (2007) 4 MLJ 1153.

<sup>71</sup> <https://www.usatoday.com/story/news/world/2018/01/05/costa-rica-celebrate-70-years-no-army/977107001/>  
(last visited on 1 Jul, 2019).

<sup>72</sup> Sustainable Development Goals - <https://sustainabledevelopment.un.org/sdg6> (last visited on 29 Jun, 2019).

<sup>73</sup> Ministry of Water and Sanitation - <https://jalshakti-ddws.gov.in/> (last visited on 28 Jun, 2019).

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