

Understanding the Human Dignity Component of a Right to Water: Lahore, Pakistan

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## **INTRODUCTION**

The purpose of this report is to aid Pakistani jurisprudence in exploring how other countries through their jurisprudence have identified and protected a right to water as a human dignity right. Additionally, this report is to help contribute to the Pakistan College of Law's efforts to bring a case in the courts in Pakistan alleging that the water situation in Lahore violates the people's rights to dignity. Other courts around the world have either discussed solely water as a dignity right or have used other means such as the environment and the right to life, in order to promote or declare water as a dignity right. The cases discussed in this report come from Pakistan, Israel, Colombia, India, and Argentina. Of those jurisprudences, the Pakistani, Israeli, Colombian, and Indian constitutions mention dignity as a right held by the people, as well as the right to life. Only the Argentine Constitution does not mention dignity as a right but has a court decision that promotes water as a necessity for the right to a healthful, balanced environment fit for human development. With the exception of Pakistan, Colombia and Argentina were selected because their constitutions are one of the most progressive in the Western Hemisphere, and there exist caselaw unique to each country protecting water as a dignity right. Israel was selected as it is geographically one of the most western countries in Asia and the Middle East that discusses water as a human dignity right. India was chosen based on its geographic proximity and similar issues that Pakistan faces with water. Pakistan was of course examined for caselaw that demonstrates the protection of water as a dignity right in its own backyard.

There is an imperative need to use the human right of dignity as a legal instrument to effectuate change in Pakistani jurisprudence and promote the enforcement of potable water as a dignity right in Lahore, Pakistan. For those living in Pakistan, but particularly in the city of Lahore, it is self-evident that the water quality is a dire issue. The Ravi River and the

underground water tables from which Lahore derives its water is extremely polluted.

Compounding the issue, the sanitary system within Lahore is failing. Raw sewage is not uncommon as a water pollutant.

Lahore, situated in the Northeast of Pakistan, is the second largest city in Pakistan, and is the capital of the Punjab Province<sup>1</sup>. Lahore lies in the upper Indus plain near the Ravi River, a tributary of the Indus River, which flows on the northern side of Lahore<sup>2</sup>. To the East, Lahore borders the Punjab Province of India.

All throughout Pakistan, water has been subjected to a wide variety of pollution. Pakistan suffers from water pollution from raw sewage, industrial wastes, and agricultural runoff. There exist limited natural fresh water resources, and a majority of the population does not have access to potable water. Scant attention is devoted to pollution<sup>3</sup>. In recent history, the central government of Pakistan had issued plans to resolve the issue, but little has been done to effectuate change.

The Ravi River is mainly used for agriculture purposes. There are irrigation canals that divert the water from the river towards the intended farmland. The water pulled from the Ravi River is high in contamination of heavy metals which is found within the crops watered from the river. Additionally, municipalities discharge sewage into the river without having taken the necessary procedures to sanitize the waste<sup>4</sup>. Lastly, the river is polluted from industry disposing

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<sup>1</sup> Encyclopedia Britannica, Lahore Pakistan, <https://www.britannica.com/place/Lahore>, 2018

<sup>2</sup> New World Encyclopedia, Lahore, <http://www.newworldencyclopedia.org/entry/Lahore>, June 20, 2018

<sup>3</sup> Ronaq, S. (2014, February 28). Pakistan's Enormous Environmental Challenges. Retrieved October 15, 2018, from <https://www.sharnoffsglobalviews.com/environmental-challenges-pakistan-220/>

<sup>4</sup> Social and Environmental Management Unit, Punjab Irrigation and Drainage Authority (PIDA), N. F. (2014, August 28). Pollution of River Ravi. Retrieved October 23, 2018, from <http://www.thewaterchannel.tv/thewaterblog/292-pollution-of-river-ravi>

of their waste. All the communities that lay downstream on the banks of the Ravi River are affected by such high contamination.

Compounding the water pollution from the river that runs North of Lahore, the city of 8 million citizens is running short of water. City water is derived in Lahore from underground reservoirs. About 160 million liters of ground water is extracted daily via different means such as hand pumps, motor pumps and tube-wells, and is delivered to Lahore residents through water supply schemes, water filtration plants and water tankers<sup>5</sup>. Though there is surface water from which the municipality and other governmental agencies can draw from, the government and the people of Lahore are drawing water from the underground water tables without much restriction. This has resulted in the water table decreasing dramatically from about 30 to 60 feet to under 600 feet. The alarming fact is that there is no groundwater to be found in Lahore within a depth of 600 feet. Any reservoir available is highly contaminated owing to the poor domestic sewerage system and the inappropriate disposal of industrial wastewater<sup>6</sup>.

The UNHCR, The UN Refugee Agency, in 2002 released General Comment No. 15 regarding the right to water as a human dignity right. As a matter of simple biology, the UNHCR recognizes water as an absolute necessity for human life. Without water, the body begins to dehydrate and soon thereafter life will cease. However, the right to water extends beyond a biological necessity and is included as a necessity for an adequate standard of living. Water is necessary not only for consumption, but also for cooking and basic sanitation, both on a municipal level (sewage) and on domestic level (basic personal hygiene). Water is required for a

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<sup>5</sup> The Dawn Newspaper, B. I. (2016, October 01). Lahore water crisis. Retrieved October 23, 2018, from <https://www.dawn.com/news/1287238>

<sup>6</sup> The Dawn Newspaper, B. I. (2016, October 01). Lahore water crisis. Retrieved October 23, 2018, from <https://www.dawn.com/news/1287238>

range of different purposes, besides personal and domestic uses . . . for instance, water is necessary to produce food (right to adequate food) and ensure environmental hygiene (right to health). Water is essential for securing livelihoods (right to gain a living by work) and enjoying certain cultural practices (right to take part in cultural life)<sup>7</sup>.

There is an absolute trickle-down affect with the pollution in the water and its scarcity. Water is an essential building block for the existence of life, and for there to exist a decent adequate standard of living, necessary for life to be carried out in a dignified manner.

### **PAKISTAN**

Early within the document, the Constitution of Pakistan recognizes human dignity and the sanctity of life. First the constitution address “life” in Article 9 Security of Person, “No person shall be deprived of life or liberty save in accordance with law”<sup>8</sup>. Shortly thereafter the constitution address “dignity” in Article 14 Inviolability of Dignity of Man, etc., “The dignity of man and, subject to law, the privacy of home, shall be inviolable”<sup>9</sup>. With these clauses from the Constitution of Pakistan, it is recognized that human dignity is a priority and a right that the government must adhere to.

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<sup>7</sup> United Nations. (2002, November). Committee on Economic, Social and Cultural Rights, General Comment No. 15 (2002): The right to water (articles 11 and 12 of the International Covenant on Economic, Social and Cultural Rights). Retrieved October 23, 2018, from <http://www.unhcr.org/en-us/publications/operations/49d095742/committee-economic-social-cultural-rights-general-comment-15-2002-right.html>

<sup>8</sup> Constitution of Pakistan. (1973, April 12). Retrieved October 24, 2018, from <http://www.pakistani.org/pakistan/constitution/part2.ch1.html>  
Part II: Fundamental Rights and Principles of Policy, Chapter I Fundamental Rights, Article IX Security of Person

<sup>9</sup> Constitution of Pakistan. (1973, April 12). Retrieved October 24, 2018, from <http://www.pakistani.org/pakistan/constitution/part2.ch1.html>  
Part II: Fundamental Rights and Principles of Policy, Chapter I Fundamental Rights, Article XIV Inviolability of Dignity of Man, etc.

There have been several cases arising from Pakistani jurisprudence that concern water as a right. In 2003, Nestlé, “in order to increase its profitability in its water business had elected to set-up a water bottling plant close to Karachi City by tapping into and making free use of the sub-soil water aquifer lying underneath the Education City area in order to make huge profit”<sup>10</sup>. Sindh Institute of Urology & Transplantation and Others vs Nestlé Milkpak Limited., Suit No. 567 of 2004, (High Court of Sindh at Karachi). Nestlé was not the only company that was restrained from drawing excessive amounts of groundwater. The Coca-Cola Company faced similar restrictions which resulted in their cancellation of their license. In the decision involving the Coca-Cola Company, it was held that, “Ground water is a national wealth and it belongs to the entire society. It is a nectar, sustaining life on earth. Without water, the earth would be a desert”. Id.

The Nestlé case is an example of the courts recognizing water as a national wealth, and that water is important in sustaining life. This decision enforces the constitutional idea that nobody shall be deprived of life. And with life, the recognition of dignity becomes second nature. Life cannot exist without water, therefore, for “man” to live a dignified life, inviolable, as decreed by the Constitution of Pakistan, access to water is part of that inviolable right. The Court affirms that water does not belong to one “man” or to one corporation, and that it must be shared for the benefit of all. “As a good neighbor, it may have a moral obligation not to make excessive use of ground water, so as to affect the persons in the neighborhood”. Id.

Other cases have pointed out that water pollution is in breach of Pakistan’s right to life as guaranteed by the constitution. In the Punjab Province of Pakistan, existed an illegal coal mine

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<sup>10</sup> Sindh Institute of Urology & Transplantation and Others vs Nestlé Milkpak Limited., Suit No. 567 of 2004, (High Court of Sindh at Karachi).

that was contaminating the water reservoir of the residents and mine workers of Khewra. The petitioners in the case argued that the mining activity is illegal and such coal mining activity was polluting the water catchment area from which the residents drew their water. Here the Supreme Court of Pakistan invoked Article 9 of the Constitution, “no person shall be deprived of life”, and then broadened the meaning of life. The word “life” has to be given an extended meaning and cannot be restricted to vegetative life or mere animal existence.

Where access to water is scarce, difficult or limited, the right to have water free from pollution and contamination is a right to life itself. This does not mean that persons residing in other parts of the country where water is available in abundance do not have such right. The right to have unpolluted water is the right of every person wherever he lives<sup>11</sup>.

Salt Miners v Director, Industries and Mineral Development, 1994 SCMR 2061, Supreme Court of Pakistan.

The Salt Miners case recognizes the right to life in relation to the access of clean water ten years prior to the Nestlé case. It proves that the Pakistani courts are very conscious of the fact that there is a need to protect and uphold that right as decreed in their constitution. It also shows that the language in Pakistani constitution are not just words on the page, and that the Supreme Court validates the idea of the sanctity of life.

The word ‘life’ in the Constitution has not been used in a limited manner. A wide meaning should be given to enable a man not only to sustain life but to enjoy it. Under our Constitution, Article 14 provides that the dignity of man and subject to law the privacy of home shall be inviolable. The fundamental right to preserve and protect the dignity of man under Article 14 is unparalleled and could be found only in few Constitutions of the world. The Constitution guarantees dignity of man and also right to ‘life’ under Article 9 and if both are read together, question will arise whether a person can be said to have dignity of man if his right to life is below bare necessity line without proper food, clothing, shelter, education, health care, clean atmosphere and unpolluted environment

Id.

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<sup>11</sup> Salt Miners v Director, Industries and Mineral Development, 1994 SCMR 2061, Supreme Court of Pakistan

Remarkably, the Pakistan Supreme Court affirms the right to water as a dignity right in conjunction with the right to life. Without access to unpolluted water, man cannot exist to live a dignified life. Already, there is caselaw from Pakistan courts that recognize potable water as a dignity right, and access to such water is necessary. To live below those means is to live without dignity. Municipalities that do not afford to its citizens the right to potable water are in violation of the Constitution of Pakistan. Since life cannot exist without water, Lahore, which is unable to provide potable water, is in violation of the right to life in the constitution. Therefore, Lahore is in violation of the dignity of man as provided in the constitution.

Lastly, the High Court of Karachi affirms that that the right to life and dignity in relation to water in a similar matter. The defendant in the case decided to build a commercial building on a plot of land that is not zoned for such use.

It is claimed that with the proposed construction the original low density residential character of the neighbourhood would be completely destroyed resulting in violation of civil, statutory and the constitutional rights of the Plaintiffs to life as envisaged in Articles 9, 14, 23 and 25 of the Constitution as the quality of life of the Plaintiff as also of the other inhabitants of the area would become progressively worse. . . Amongst the various adversities which according to the Plaintiff shall be faced by them on account of the impugned construction, are, depletion in the electric and water supply due to unplanned overloading of the system, overflowing sewerage, traffic jam and parking problems, noise and air pollution and break down in municipal services etc<sup>12</sup>.

Navid Hussain and Ors. v. City District Government, Karachi and Ors., 2007 C L C 912, (High Court of Karachi 2005).

The Hight Court of Karachi is elevating the basic services that a municipality provides for its residents to the same level as the constitutional right to life and dignity. Quality of life of the residents is put above any one man and his desire to make money. Here, the municipality

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<sup>12</sup> Navid Hussain and Ors. v. City District Government, Karachi and Ors., 2007 C L C 912, (High Court of Karachi 2005)



affirmatively acts to protect the quality of life of its residents and invokes Articles 9 and 14 of the Constitution to do so.

Pakistan Courts have caselaw that discusses the right to water and the right to life jointly and inseparably. The caselaw discussion puts forth that the constitutional right to life in Pakistan cannot be upheld and enforced without the recognition of the right to water. Additionally, the courts discuss the right to water, its potability and its scarcity, as part of the greater good of Pakistani well-being. The right to water enforced as a right to life and dignity has been affirmed in Pakistani caselaw from the most rural areas of Pakistan, to its metropolises.

### **ISRAEL**

Israel as one the most western countries in the Middle East, and has adopted a series of Basic Laws. These Basic Laws were adopted in the beginning of Israel's foundation. In 1950 it was the First Knesset (First Assembly) that began to adopt a series of Basic Laws which together would hold as a constitution for the new state of Israel<sup>13</sup>. One of the most recent Basic Laws enacted by Israel is the Basic Law: Human Dignity and Liberty. Enacted in early spring of 1992, this Basic Law states in section 1, "Fundamental human rights in Israel are founded upon recognition of the value of the human being, the sanctity of human life, and the principle that all persons are free; these rights shall be upheld in the spirit of the principles set forth in the Declaration of the Establishment of the State of Israel". Section 2 of this Basic Law states, "There shall be no violation of the life, body or dignity of any person as such<sup>14</sup>.

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<sup>13</sup> The Knesset in the Government System, The Constitution. (2007). Retrieved October 23, 2018, from [http://knesset.gov.il/description/eng/eng\\_mimshal\\_hoka.htm#4](http://knesset.gov.il/description/eng/eng_mimshal_hoka.htm#4)  
See, The Harari Proposal

<sup>14</sup> Shamir, Prime Minister, Y., Herzog, President of the State, C., & Shilansky, Speaker of the Knesset, D. (1992, March 17). Basic Law: Human Dignity and Liberty. Retrieved October 24, 2018, from [https://www.knesset.gov.il/laws/special/eng/basic3\\_eng.htm](https://www.knesset.gov.il/laws/special/eng/basic3_eng.htm)

The matter of Abu Masad v. Water Commissioner, 2011 (Isr.)<sup>15</sup> involves six Bedouin plaintiffs that have made a settlement in the Negev region of Israel. The settlements are typically unplanned and disorganized in terms of “city planning”. The settlement established is not recognized by the Israeli government, therefore illegal, and what makes the matter more complicated is the group’s trespassing on state land in Negev, and the disenfranchisement of the of this indigenous group by the Israeli government. Since the formation of the Israel state in the 1950’s, the Bedouins have been displaced from their lands.

Today the 190,000 Bedouins living in the Negev are the most disadvantaged citizens in Israel and are struggling for their rights of land ownership, equality, recognition, and the pursuit of their distinctive way of life. About 60% of the Bedouin citizens live in seven failing government-planned towns. The remainder 40% live in dozens of villages that are not recognized by the government as well as in several new recognized townships. These Israeli citizens do not receive basic services, such as running water, electricity, roads, proper education, health and welfare services. In addition, they live under the continuous threat of home demolition, crop destruction and further displacement.<sup>16</sup>

The Bedouins in this matter are no different than described above. When it comes to obtaining water, the Bedouins transport the water from nearby legally established villages which are typically many miles away from their settlement. Another option is that the Bedouins seek authorization from the Israel Water Authority and the Israel Land Administration, the administrative bodies that have jurisdiction for granting the connection of individuals in illegal settlements to private water connection points<sup>17</sup>. This is of course an extended bureaucratic process. Once the Water Authority grants the application for a private water connection to the

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<sup>15</sup> Abu Masad v. Water Commissioner, 2011 (Isr.)

<sup>16</sup> *Dignity and the Right to Water in Comparative Constitutional Law: Israel’s Supreme Court Extends the Human Right to Water*, Itzhak E. Kornfeld, (2013), page 11, Retrieved November 19, 2018

<sup>17</sup> *Dignity and the Right to Water in Comparative Constitutional Law: Israel’s Supreme Court Extends the Human Right to Water*, Itzhak E. Kornfeld, (2013), Retrieved November 19, 2018

illegal settlement, the government pays for the new run-off waterline from the watermain to the access point, which is near a roadway. It is the Bedouins who are responsible for the expense of transporting the water from the access point to the individual residences. As a result, the settlements are equipped with tanks to hold the water to make the process easier.

In Abu Masad v. Water Commissioner, six Bedouin families applied to have a water connection established once meeting the Court's requirements to even entertain an application. Once having done so, their illegal settlement was examined, and their application was deliberated only to have five applicants denied and one applicant granted a water connection. The denied applicants appealed the decision to the Director of the Water Authority based on the Israeli water law only to be denied again. The applicants lodged an appeal with the High Court of Israel.

Justice Procaccia from the Israeli High Court wrote for a unanimous court. She recognizes the government's argument that it does not deny its obligation to provide water to the Bedouins. Rather it denied their application because the Water Authority is authorized to provide water to legally constructed households and buildings. However, Justice Procaccia writes that the government of Israel has an obligation to provide water to its communities as it provides for statutorily in the Basic Laws concerning human dignity, and in the International Covenant of Economic, Social, and Cultural Rights (IECESCR), which was ratified by the government.

Justice Procaccia began her analysis of Israel's constitutional scheme by noting that Israel recognizes the right to water first and foremost as a statutory right by virtue of the Water Law. Nonetheless, she noted that an independent constitutional right to water was not granted prior to this case by virtue of the country's Basic Law. But water is vital to the very existence of a

person, and to his existence with dignity<sup>18</sup>. Therefore, the Court had to consider whether water is granted as a constitutional right deriving from the constitutional right to life with dignity, as stated in the Basic Law. And if the Court upholds water as a constitutional right, by virtue of the Basic Law, then the government of Israel is obligated to provide water to the extent needed for minimal existence with dignity<sup>19</sup>. In this matter, the right to water was affirmed as a constitutional right deriving from the right to life with dignity, as stated in the Basic Law.

[T]he idea that the dignity of a person [is undeniably] a constitutional right [that] also includes the right of a minimum of human existence, such as a roof over one's head, basic food, and basic medical care, and that the state is obligated to ensure that a person's level of existence does not go below a minimum required for living with dignity has put down deep roots in the Israeli legal system.

Abu Masad v. Water Commissioner, 2011 (Isr.)

Justice Procaccia found that, accessibility to water sources for basic human use falls within the realm of the right to minimal existence with dignity<sup>20</sup>, and that there is a line of the Court's cases that has held that human dignity means living, "without being subdued by distress and encounter unbearable depravity . . ."<sup>21</sup>

The Constitution of Pakistan is not unlike the Israel's Basic Law of Human Dignity. Both bodies of law recognize the right to life and its sanctity, as well as the dignity of man which is inviolable. The Israeli High Court made a ruling connecting water as a key component to upholding the constitutional right to life and dignity. Again, these two constitutional rights are

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<sup>18</sup> *Dignity and the Right to Water in Comparative Constitutional Law: Israel's Supreme Court Extends the Human Right to Water*, Itzhak E. Kornfeld, (2013), page 17, Retrieved November 19, 2018

<sup>19</sup> *Dignity and the Right to Water in Comparative Constitutional Law: Israel's Supreme Court Extends the Human Right to Water*, Itzhak E. Kornfeld, (2013), page 17, Retrieved November 19, 2018

<sup>20</sup> *Dignity and the Right to Water in Comparative Constitutional Law: Israel's Supreme Court Extends the Human Right to Water*, Itzhak E. Kornfeld, (2013), page 19, Retrieved November 19, 2018

<sup>21</sup> *Dignity and the Right to Water in Comparative Constitutional Law: Israel's Supreme Court Extends the Human Right to Water*, Itzhak E. Kornfeld, (2013), page 18, Retrieved November 19, 2018

supported by each country's body of law. To not have potable water is to deprive one of life. According to Justice Procaccia, a situation to be without a substance required for life would constitute an unbearable depravity. The issue in Israel was establishing a waterline connection to "illegal" villages on state property, whereas the issue in Lahore, and Pakistan in general, is scarcity and sanitation. Whatever the situation may be, supply or potability of water, it is universally accepted that without water, living cannot exist. Therefore, in the interest of a right to a dignified life, water is a requisite for a minimal existence with dignity. With a similar body of law as Pakistan, Israel has affirmatively protected the right to water as a human dignity right.

### **COLOMBIA**

Right after the preamble, under Title I Fundamental Principles, Article I, the Colombian Constitution goes out of its way to specifically state that Colombia, a democratic, participatory and pluralistic government, shall function, "based on the respect of human dignity"<sup>22</sup>. Thereafter, it is not until Title II, Article 21 of the Colombian Constitution where it guarantees human dignity as a right. The constitution states that, "The right to dignity is guaranteed. The law will provide the manner in which it will be upheld"<sup>23</sup>. The Colombian Constitution is expansive in its declaration of human and individual rights. The constitution guarantees the right to culture, the right to information, the right to privacy, the right to development of personality, right to the freedom of expression, and religion, and the right to academic freedom, just to mention a few. Additionally, what is also equally important is Colombia's constitutional right to life. Title II,

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<sup>22</sup> Constitution of Colombia (1991 rev. 2005). Retrieved October 25, 2018, from [https://www.constituteproject.org/constitution/Colombia\\_2005.pdf](https://www.constituteproject.org/constitution/Colombia_2005.pdf), Title I: Fundamental Principles, Article 1

<sup>23</sup> Constitution of Colombia (1991 rev. 2005). Retrieved October 25, 2018, from [https://www.constituteproject.org/constitution/Colombia\\_2005.pdf](https://www.constituteproject.org/constitution/Colombia_2005.pdf), Title II: Rights Guarantees, and Duties, Article 21

Article 11 states, “The right to life is inviolate”<sup>24</sup>. Twice, human dignity is mentioned in this constitution, indicating its high value. Colombia is a progressive Latin American state that acknowledges right in the forefront of their governing document that human life and dignity shall be respected.

Colombia, situated in the northwest corner of South America, is not unfamiliar with the plight of there being a lacking in the rule of law. It is a virus that has infected the vast majority of Latin America, and it is a very difficult virus to be rid of. Many people who reside in various Latin American countries suffer with the ordeal that there are many of those who believe they are above the law. From the poorest common man in the street, to local and federal police, to government leaders and heads of state, the rule of law is ignored and trampled upon. With the existence of this mentality, this virus, it is an arduous struggle to use the rule of law to enforce basic order let alone human dignity. However, Colombia, in its Constitutional Court, took a position, and made a stand to hold true to the values and principles dictated in their constitution; that human dignity is going to be upheld by law.

In 2016, the Constitutional Court of Colombia decided a case that determined the rights of nature and the environment, but with it affirmed human dignity rights. The case came out of the Department of Choco, located on the West-Northwest coast of Colombia, and it involved the pollution of the Atrato River. The Department of Choco is unique because it is home to a large afro-indigenous population. This diverse population was created by the mixing of the indigenous Andean community with African slaves brought by the Spaniards during colonization. As a result, this afro-indigenous community, which is relatively isolated from other metropolitan areas

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<sup>24</sup> Constitution of Colombia (1991 rev. 2005). Retrieved October 25, 2018, from [https://www.constituteproject.org/constitution/Colombia\\_2005.pdf](https://www.constituteproject.org/constitution/Colombia_2005.pdf), Title II: Rights Guarantees, and Duties, Article 11

in Colombia, has developed their own norms, traditions, and practices that is heavily influenced and dependent upon the Atrato River, which flows through the community.

The Constitutional Court of Colombia handed down a decision that recognized the heavy pollution of the Atrato River due to legal and mainly illegal mining. Pollution of the river included the dumping of heavy metals such as cyanide and mercury. The decision makes note of the destruction to the environment from excessive dredging and the creation of sandbars that have distorted the natural flow of the river. Additionally, the decision recognizes that the river is a way of life for the afro-indigenous community, as it is the source of food, water, work, and other cultural practices and traditions. Though the decision focuses on the protection and the rights of the environment, the court includes in their decision human dignity rights of those communities that are dependent on the Atrato River and the surrounding environment.

The Colombian Constitutional Court achieved protecting human dignity by implementing a Social Rule of Law. The Colombian Social Rule of Law model seeks to achieve social justice, human dignity and general well-being by subjecting public authorities to constitutional principles, rights and social duties. Atrato River, Judgement T-622/16, Constitutional Court, (Colombia 2016)<sup>25</sup>. These constitutional principles and duties provide for the protection of water, and food amongst other necessities of life. Water is a derivative right under the Colombian Constitution under this Social Rule of Law model. This model is all encompassing of individual rights for the benefit of the people's well-being. Water is a necessity, and for this community the Atrato River is more than a source of drinking water. The Atrato River is part of their daily practices and traditions, which include religion. Therefore, for this community to live a dignified

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<sup>25</sup> Atrato River, Judgement T-622/16, Constitutional Court, (Colombia 2016)

life, and the Colombian Constitutional Court made sure that water is amongst the many other factors necessary to live a dignified life.

The Colombian Constitutional Court forces the State to intervene decisively, within the constitutional framework, to protect people in their human dignity and demand social solidarity when it is indispensable, to guarantee the full effectiveness of fundamental rights. *Id.* Clean water free of pollution is necessary to live a dignified life. Additionally, the Colombian Constitutional Court acknowledges the idea of bio-culturalism in relation to the afro-indigenous community in Choco. This idea stems from the fact that this community's way of life is intimately tied to nature, from drinking water, to agriculture, to religious practices, to education and to commerce. The same holds true in Lahore. The right to clean water is a human dignity right that is tied to their relationship to nature. When governments allow for there to be unchecked pollution, it inevitably violates the right to life. In Pakistan, industry that pollutes the river, pollutes crops. Colombia, just as Pakistan, provides for the inviolable right to life in their constitutions, and acknowledges the principle of human dignity as a fundamental right. Protecting water and the access to it, is in keeping with that principle.

The Colombian Constitutional Court ruled on another matter protecting the right to water. In Alberto Castilla et al. v. Colombia, Sentence C-035/16 (Constitutional Court of Colombia)<sup>26</sup> the Court faced a similar situation to that of the Atrato River case. The Court nullified a law that permitted the mining in ecologically important areas. The ecological area affected in this matter was a páramo<sup>27</sup>. The Court's reasoning in this decision is that the mining of the páramo was affecting the government's duty to protect the fundamental right to water and a healthy

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<sup>26</sup> Alberto Castilla et al. v. Colombia, Sentence C-035/16 (Constitutional Court of Colombia)

<sup>27</sup> Páramo: Spanish; a high treeless wetland-plateau in tropical South America.



environment. The Court regards páramos as “carbon sinks”, which means that these ecological areas are essential for the “regulation of the “hydrological cycle and sequestering carbon”. Id.

Though again the Colombian Constitutional Court is focusing on the environment, it does so by recognizing that the people of Colombia have a constitutional right to water. The Court takes a lead role in mandating the leaders in government to enforce that constitutional right. The Colombian Constitutional Court understands that the security of potable water in Colombia can only be guaranteed if the government takes steps to enforce the constitution. Additionally, it is the duty of the Colombian government to ensure that the right to dignity is upheld in all aspects of the law. The destruction and pollution of water sources violates the Colombian right to life. There is no dignity in life when there is life without water.

Colombia and Pakistan share the issue of industrial abuse and waste contaminating a source of drinking water. Similarly to Israel, Colombia derives the right to water through its constitutional provisions of the right to life and dignity. Colombia grounds these rights through a cultural basis, as the indigenous community’s life and dignity is dependent upon their access to the river, a body of water which is the source of their food, education, commerce, and religion. Colombia exemplifies using caselaw in order to uphold the right to water as a dignity right and protect that right from industrial abuse.

## INDIA

The Constitution of India recognizes the dignity of man. In its preamble, the Indian Constitution assures to its citizens, “Fraternity assuring the dignity of the individual and the unity and integrity of the Nation”<sup>28</sup>. It is held in Article 21 of the Indian Constitution that, “No person shall be deprived of his life or personal liberty except according to procedure established by law.”<sup>29</sup>

The matter of M.C. Mehta v. Union of India, involves a motel that was causing pollution on the banks of the Beas River. The pollution was an assortment from construction to the discharge of untreated human waste. The court in its decision stated, “Any disturbance of the basic environment elements, namely air, water and soil, which are necessary for ‘life’, would be hazardous to ‘life’ within the meaning of Article 21 of the Constitution”. M.C. Mehta v. Union of India, WP 182/1996 (2000.05.12) (Beas River Case)<sup>30</sup>. The Court stipulates in its decision that it is the duty of the people to protect the environment, because to do so ensures the protection of their life. Though the decision does not make any reference to the dignity of man and water as a human right, the decision stresses that polluted water is of course not viable for life.

This sentiment hones on the idea, again, that without clean water, life with dignity cannot exist. The Constitution of India states that life shall not be deprived, thus deprivation of clean water is a deprivation of life. Multiple Water Prevention and Control of Pollution Acts have been passed over the years to corral the issue of water pollution, however the Court reverts back to the constitution so that its decision has the full force and effect necessary to clean the Beas River. In

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<sup>28</sup> Constitution of India (1949). Retrieved November 5, 2018, from [https://www.india.gov.in/sites/upload\\_files/npi/files/coi\\_part\\_full.pdf](https://www.india.gov.in/sites/upload_files/npi/files/coi_part_full.pdf), Preamble

<sup>29</sup> Constitution of India (1949). Retrieved November 5, 2018, from <https://lawlex.org/lex-bulletin/article-21-right-to-life-livelihood/3631>, Article 21 Protection of Life and Personal Liberty

<sup>30</sup> M.C. Mehta v. Union of India, WP 182/1996 (2000.05.12) (Beas River Case)

order to protect life, in order to protect the environment and in order to protect air, water and soil from pollution, this Court, through its various judgments has given effect to the rights available, to the citizens and persons alike, under Article 21 of the Constitution”. Id. Therefore deprivation of clean water is a deprivation of life under the Constitution of India.

The matter of Perumatty Grama Panchayat vs State of Kerala<sup>31</sup> reinforces Article 21 of the Indian Constitution. The case involves the excessive extraction of ground water. The Coca-Cola Company was the center of the issue as the company was extracting large amounts of underground water to make its sodas, and such extraction was causing water scarcity for the people of the municipality of Perumatty Grama Panchayat. In response to the scarcity, the municipality passed an ordinance revoking the license of Coca-Cola from drawing so much water.

In the Court’s decision, it agreed with the counter-measures taken by the municipality. The Court stated that, “The underground water belongs to the general public”, thus reinforcing the idea that water is a natural resource of the state, and that the state has an obligation to protect it for its citizens. The State has got a duty to protect ground water against excessive exploitation and the inaction of the State in this regard will be tantamount to infringement of the right to life of the people guaranteed under Article 21 of the Constitution of India. The Apex Court has repeatedly held that the right to clean air and unpolluted water forms part of the right to life under Article 21 of the Constitution. Perumatty Grama Panchayat vs State of Kerala, 2004 (1) KLT 731.

The aforementioned case involving Coca-Cola is an affirmative example of the right to water being used as a right to life. Though not explicitly stated by the Court that the people of

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<sup>31</sup> Perumatty Grama Panchayat vs State of Kerala, 2004 (1) KLT 731

India have a right to water, by upholding the municipality's decision to prevent Coca-Cola from drawing excessive amounts of water when water is scarce in affect accomplishes that.

Similar to Pakistan, India is not unfamiliar to water scarcity and pollution. India much like Pakistan, used its court system to protect water as a human dignity right, and prevented mass pollution and consumption. Just like Israel and Colombia, India derives its right to water through the Indian constitutional provision Article 21, the right to life. For there to be a minimal existence of human dignity, there must be access to water for its most basic use. India affirms the right to water as a human dignity right through their own caselaw.

### **ARGENTINA**

Interestingly, the Constitution of Argentina follows in similar suit to the U.S. Constitution in regard to its the preamble. However, for a progressive constitution that guarantees a multitude of rights that are not found in the U.S. constitution, the right to human dignity is not found. The closest clause in the Constitution of Argentina that advances some sense of human dignity can be found in Chapter 2: New Rights and Guarantees, Article 41. It states, "All inhabitants enjoy the right to a healthful, balanced environment fit for human development, so that productive activities satisfy current needs without compromising those of future generations, and have the duty to preserve the environment"<sup>32</sup>.

The matter of Mendoza, Beatriz S. y otros v. Estado Nacional y otros, Supreme Court of Justice of the Nation (Argentina 2006)<sup>33</sup> involves the pollution of the Matanza River and its creek. The affected community brought an action against the state of Argentina, the Province of

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<sup>32</sup> Constitution of Argentina (1853, reinst. 1983, rev. 1994), Retrieved November 11, 2018, from [https://www.constituteproject.org/constitution/Argentina\\_1994.pdf?lang=en](https://www.constituteproject.org/constitution/Argentina_1994.pdf?lang=en), Chapter 2 New Rights and Guarantees, Article 41

<sup>33</sup> Mendoza, Beatriz S. y otros v. Estado Nacional y otros, Supreme Court of Justice of the Nation (Argentina 2006)

Buenos Aires, the City of Buenos Aires, and forty-four industrial companies for the pollution of the Matanza River and the surrounding environment. The suit against the various governing entities was for not protecting the affected community and preventing such pollution which resulted in personal injury. Additionally, funds were acquired by loan by the governing bodies to remediate the damage done to the river and the environment, but such funds were diverted to unknown accounts. The suit brought against the various companies was for not using new technology that would help mitigate risk and damage to the environment.

In this decision the Court stated under Article 41 of the Argentine Constitution that, “All inhabitants enjoy the right to a healthy, balanced environment, suitable for human development and for productive activities to meet present needs without compromising those of future generations and have the duty to preserve it. Environmental damage will generate priority obligation to recompense, as established by law. Id. The Court further holds the City of Buenos Aires responsible for the quality of the water enjoyed by its citizens, stating that, the Autonomous City of Buenos Aires is also held responsible in its character of [co-riparian rights of the river and creek], which constitutes, in the area of its jurisdiction, a good of its public domain and, in addition, being obliged to use its waters equitably and reasonably. Id.

Though the Argentine Supreme Court does not recognize explicitly a human dignity right to water, it does recognize a right to a healthy environment, much like in Colombia. The Court realizes that a well-developed life for its citizens involves the protection of the environment. The Court mandates that the governing bodies have a duty to protect and preserve, “the flora and fauna of its ecosystem”. Id. It is a simple chain reaction. The pollution of the Matanza River where the people derive their water for daily use is not conducive for a well-developed life, a

right guaranteed by the constitution. Failure to protect water as part of the environment is failure to protect the people's right to a developed life.

It is asserted that the Argentinian people's right to a developed life is synonymous to living a dignified life. Argentina derives its power to protect water as a human right by relating its pollution to affecting the people's ability to live a healthy developed life. Similarly to Colombia, the environment and its relationship to the people, is the basis for protecting water as a human dignity right.

### **CONCLUSION**

The caselaw provided from the various countries spanning the globe demonstrates how universal the idea is that water is an important aspect of life that needs to be protected. Water is a biological necessity in order for there to be life. It is the building block of life that helps quench our thirst and tame our hunger. Water according to the United Nations has been recognized not only as a biological necessity but also for physiological needs. Such physiological necessities include the ability to bathe and other related aspects of personal hygiene, all necessary to live a dignified life.

The common denominator through the caselaw presented is that water is necessary for life. Each country presented has some aspect of the right to life either explicitly or implicitly stated. It is recognized in these various countries that life is important if not sacred, and that it is a right that cannot be violated. And yet when it comes to water, with the exception of Argentina, the right to water is derived and enforced through the right to life. The commonality of law and philosophy between these countries is based on a simple equation. The right to human dignity

cannot be upheld and enforced without there being a right to life, which consequently depends on the right to water.

Other courts have upheld the right to water as a human dignity right through the environment. Through caselaw, Colombia and Argentina tie the right to human dignity (or a developed life) to the protection and the right to water. In Argentina, water as a right is being protected for physiological reasons, such as drinking, cooking, and bathing. All of which is necessary for a well-developed life. Colombia in contrast, takes it further and protects water as a human dignity right because it is also a source of tradition, religion, and livelihood. Water is the means in which the indigenous community in Colombia live a dignified life. The Atrato River is the basis of their culture.

It is the recommendation of this report to examine water as a human dignity right derived from the Pakistani Constitutional right to life. The city of Lahore may be able to assert that the people's constitutional right to life is being violated, and as a result, their human dignity, because there is poor access to potable water. Using India as an example, as well as caselaw from Pakistan, both countries protected their water for the greater good of the population, by preventing large industries from overdrawing water when it is scarce. Lastly, examining what the United Nations has discussed, water as a human right can be asserted as a biological necessity and as well as physiological-domestic necessity.

What is held in common between all of the caselaw from each country, is that protecting water as a human dignity right is almost always derived from the constitutional right to life. These rights are inseparable and the logic that binds these rights is universal; there is no life without water. Therefore, in order to live a dignified life, the right to water must be protected and

enforced not only as a biological necessity, but also in relation to how communities relate to it, such as the case in Colombia.