

Privatization of Public Utility Services in India: Constitutional Safeguards, State Responsibility and the Basic Structure Doctrine

S. Gnanaprakash

B.Sc., LL.B., LL.M (Pursuing), LL.M Student, District of Salem, Tamilnadu, India

Abstract: *Public utility services such as water supply, sanitation, drainage, waste management and other essential municipal services constitute an important component of social welfare and have significant constitutional implications in India. In recent years, State Governments and local authorities have increasingly adopted privatization, outsourcing and public-private partnership models for the provision and management of such services. The growing involvement of private entities in functions traditionally performed by Municipal Corporations raises important questions concerning constitutional accountability, equality, accessibility and the continuing responsibility of the State. This article examines the constitutional implications of privatizing public utility services in India with particular reference to Fundamental Rights, Directive Principles of State Policy and the Basic Structure Doctrine. It analyses whether the State can delegate the performance or management of essential public services to private entities while continuing to discharge its constitutional obligations towards citizens. The article particularly considers the relevance of Articles 14 and 21 and judicial interpretations concerning the right to life, dignity and access to essential services. The study further examines the changing role and accountability of Municipal Corporations when essential public services are transferred or outsourced to private entities. It considers whether privatization may create challenges relating to equal access, affordability, transparency, accountability and effective remedies for citizens. The article analyses relevant constitutional principles and judicial decisions to determine the extent to which privatization can coexist with the State's continuing obligations under the Constitution. The article argues for a constitutional safeguards framework to ensure that privatization does not result in dilution of citizens' rights or reduction of public accountability. It concludes by examining the need for effective regulatory mechanisms, contractual safeguards, transparency, grievance-redressal mechanisms and continuing governmental oversight so that efficiency-oriented privatization remains consistent with constitutional governance, social justice and the welfare-oriented objectives of the Indian Constitution.*

Keywords: Privatization, Public utility services, Municipal Corporations; State Responsibility, Constitutional Obligation of state, Article 21; Basic Structure Doctrine

1. Introduction

Public utility services constitute an essential part of everyday human life and the functioning of a welfare-oriented society. Services such as drinking water supply, sanitation, drainage, waste management, public health and other basic municipal services are closely connected with the health, dignity and quality of life of citizens. Although the expression “public utility services” is not exhaustively defined in the Constitution of India, the provision and regulation of several essential services are closely associated with the constitutional responsibilities of the State and local authorities. The contemporary constitutional understanding of the right to life under Article 21 has further expanded the significance of access to basic necessities and a clean and healthy environment.

The provision of public utilities in India has historical roots extending well before the establishment of the modern constitutional State. Ancient Indian settlements developed organised systems for the management of water and

sanitation. Archaeological evidence from Tamil Nadu, including the Keeladi excavations, indicates the existence of drainage channels, ring wells and water-related infrastructure in early settlements.¹ The Chola period also demonstrates organised approaches to water management through irrigation tanks, channels, sluices and systems for their maintenance. Historical inscriptions relating to the Chola period record activities such as desilting tanks, repairing tank bunds, maintaining sluices and restoring surplus weirs, demonstrating the importance given to systematic water management.²

During the colonial period, the administration increasingly developed institutional mechanisms for municipal governance, public health, water supply, sanitation and drainage. Municipal institutions and public works departments became important instruments for the administration of urban infrastructure. The historical records of the Madras Presidency, for instance, contain governmental measures concerning irrigation, water distribution and the regulation of water resources.³ These developments

¹ Tamil Nadu Rural Development and Panchayat Raj Department, “History of PRIs in Tamil Nadu”, referring to archaeological findings at Keeladi concerning drainage channels, ring wells and water-related infrastructure. (https://www.tnrd.tn.gov.in/rdweb_news/site/project/reports/Public/HistoryofPRIs.php?utm) (on 01.10.2026, 11:01Am)

² Tamil Nadu Raj Bhavan historical material records a Chola-period irrigation tank associated with Parantaka Chola and inscriptions concerning desilting, bund repair, sluice repair and surplus-weir

repair(<https://tnrajbhavantour.tn.gov.in/tnrb-website-archive/Archives/Website1621/PressReleases/2019/PR020619-1.pdf?utm>) (on 01.10.2026, 01.20Pm)

³ Tamil Nadu Archives records various colonial-era Public Works Department orders concerning water distribution and regulation in the Cauvery delta and Mettur reservoir, illustrating the institutional development of water administration. (<https://tamilnaduarchives.tn.gov.in/WEB/EN/RECORDS/IMPGO?utm>) (Last visited on 01.10.2026, 01.52Pm)

contributed to the emergence of a more formal administrative framework for the delivery and regulation of public utility services.

After independence, the Constitution of India established a welfare-oriented constitutional framework in which the State assumes significant responsibility for social and economic well-being. The Directive Principles of State Policy reflect the constitutional commitment towards social welfare, public health and the improvement of living conditions. Article 21 has also received an expansive judicial interpretation, under which the right to life is understood not merely as a right to physical existence but as encompassing conditions necessary for a dignified life. The Supreme Court has recognised that access to clean and pollution-free water is connected with the right to life under Article 21.⁴ In *Narmada Bachao Andolan v. Union of India*, the Supreme Court observed that water is a basic necessity for human survival and recognised its relationship with the right to life and human rights.⁵

The constitutional significance of public utility services therefore extends beyond their administrative or economic character. They may directly affect the enjoyment of fundamental rights and the implementation of Directive Principles. At the same time, the increasing involvement of private entities in the provision, management and operation of essential public services has introduced a new dimension into this constitutional framework. Governments and local authorities may employ outsourcing, contractual arrangements, public-private partnerships and other forms of private participation in order to improve efficiency, infrastructure and service delivery. However, such arrangements raise important questions regarding the continuing constitutional responsibility of the State, equality of access, affordability, accountability and the availability of effective remedies to citizens.

The transfer of the performance or management of an essential public utility service to a private entity does not necessarily terminate the constitutional responsibility of the State. Rather, it raises the question of how that responsibility should operate when the actual delivery of the service is undertaken by a non-State actor. This issue becomes particularly significant in relation to Municipal Corporations, which traditionally perform important functions relating to water supply, sanitation, drainage and other essential urban services.

Against this background, the privatization of public utility services requires examination not merely as an issue of administrative or economic policy but also as a question of constitutional governance. This article therefore examines the relationship between privatization and the constitutional obligations of the State, the accountability of Municipal Corporations, the protection of Fundamental Rights and Directive Principles, the existing regulatory framework and the implications of the Basic Structure Doctrine. The study seeks to determine whether the pursuit of efficiency through

privatization can be reconciled with the constitutional requirement that essential public services remain accessible, accountable and consistent with the rights and welfare of citizens.

Method of Study: Study adopts a doctrinal legal research method based primarily on constitutional provisions, statutes, judicial decisions, government and institutional materials, and relevant secondary literature, supplemented by contemporary public-utility developments as contextual examples.

2. Meaning of Public Utility Services and Privatization

2.1 Public Utility Services

The expression “**public utility services**” generally refers to services that are essential or significantly important to the life and welfare of the community and which, because of their public character, require an appropriate degree of governmental regulation and oversight. Such services commonly include **water supply, electricity, sanitation, transportation, communication, healthcare and other services necessary for the effective functioning of society**. The concept is therefore concerned not merely with the identity of the service provider but also with the public importance and essential character of the service.⁶

Indian legislation provides statutory recognition to several services as public utility services. **Section 22A(b) of the Legal Services Authorities Act, 1987** defines “**public utility service**” to include **transport services, postal, telegraph and telephone services, the supply of power, light or water to the public, public conservancy or sanitation, hospital or dispensary services and insurance services**. The provision further permits the Central or State Government to declare additional services as public utility services in the public interest.⁷ This statutory formulation is particularly significant for the present study because it expressly recognises water supply and public sanitation, which form an important part of municipal public utility services.

The Industrial Disputes Act, 1947 also contains a statutory definition of “public utility service” in **Section 2(n)**. It includes, among other services, **industries supplying power, light or water to the public and systems of public conservancy or sanitation**.⁸ Although the definition operates for the purposes of industrial dispute regulation and cannot be treated as a universal constitutional definition, it demonstrates the legislative recognition of the essential and public character of these services.

2.2 Privatization

The concept of privatization, in contrast, concerns the manner in which such services are provided or managed. Privatization does not necessarily mean the complete sale or transfer of a

⁴ *Subhash Kumar v. State of Bihar*, (1991) 1 SCC 598.

⁵ *Narmada Bachao Andolan v. Union of India*, (2000) 10 SCC 664.

⁶ E.S. Savas, *Privatization and Public-Private Partnerships* (Chatham House Publishers, 2000).

⁷ The Legal Services Authorities Act, 1987, Sec 22A(b).

⁸ The Industrial Disputes Act, 1947, Sec 2(n)(iv)–(v).

public undertaking to a private entity. It may encompass a range of institutional arrangements through which private entities participate in the financing, ownership, management, operation or delivery of activities traditionally undertaken by government.

Scholar E. S. Savas, one of the prominent writers on privatization, broadly describes privatization as greater reliance on private institutions rather than government to satisfy societal needs.⁹ According to Savas, privatization may involve reducing the role of government or increasing the role of private institutions in the production of goods and services and the ownership of property.¹⁰ This broad understanding encompasses arrangements such as contracting, franchising and public-private partnerships.

Privatization of public utility services may therefore take different forms, including outsourcing, contractual operation, management contracts, concessions, franchising and public-private partnerships. In such arrangements, the private entity may undertake the actual delivery or management of a service while the State or local authority may retain regulatory, supervisory or contractual responsibilities.

For the purposes of this article, “**privatization of public utility services**” may accordingly be understood as **the transfer, delegation or substantial participation of private entities in the financing, management, operation or delivery of essential public services that have traditionally been provided, controlled or regulated by the State or local authorities**. This working definition is particularly relevant to municipal services such as **water supply, drainage and sanitation**, where privatization may alter the institutional relationship between the citizen, the Municipal Corporation and the private service provider.

The distinction between public utility and privatization is therefore important. “Public utility service” identifies the **nature and public importance of the service**, whereas “privatization” concerns the **institutional mechanism through which that service is provided or managed**. A service may remain a public utility even when its actual operation is entrusted to a private entity. Consequently, privatization does not by itself determine whether the State's constitutional responsibilities towards citizens have ceased; rather, it raises the constitutional question of how those responsibilities continue to operate in a privatized service-delivery framework.

3. Constitutional Basis of State Responsibility

The Constitution of India does not contain a single, comprehensive provision expressly imposing upon the State an obligation to provide every form of public utility service. However, the constitutional responsibility of the State in relation to essential public services emerges from the combined operation of Fundamental Rights, Directive Principles of State Policy, constitutional provisions relating to

local self-government and the judicial interpretation of Article 21. Accordingly, the provision of essential public utilities cannot be viewed merely as an administrative or economic function; in appropriate circumstances, it may have a direct relationship with constitutional rights and State obligations.

Article 21 provides that no person shall be deprived of life or personal liberty except according to procedure established by law. The Supreme Court has progressively interpreted the expression “**life**” to mean more than mere physical existence and to include conditions necessary for a meaningful and dignified life. In **Subhash Kumar v. State of Bihar**, the Supreme Court recognised that the right to life includes the right to enjoyment of **pollution-free** water and air for the full enjoyment of life.¹¹ The judgment consequently established an important constitutional connection between environmental quality, water and Article 21.

The constitutional significance of water was further considered in **Narmada Bachao Andolan v. Union of India**, where the Supreme Court observed that water is a basic requirement for human survival and is connected with the right to life and human rights under Article 21.¹² Although the judgment did not establish an unrestricted fundamental right to receive every form of public service from the Government, it demonstrates that access to essential water resources can acquire constitutional significance when examined in the context of life and human dignity.

The Directive Principles of State Policy strengthen this constitutional framework. Article 37 declares that the Directive Principles are not enforceable by any court but are nevertheless fundamental in the governance of the country and it is the duty of the State to apply them in making laws. Article 38 directs the State to promote the welfare of the people by securing a social order informed by justice. Article 47 specifically places upon the State the duty to raise the level of nutrition and the standard of living and to improve public health. These provisions provide a constitutional foundation for State action concerning services such as sanitation, water supply and public health.

The constitutional framework therefore connects public utility functions with welfare, public health, environmental protection and the conditions necessary for a dignified life. The Supreme Court has specifically recognised the relationship between Articles 21, 47 and 48A in cases concerning pollution-free water.¹³

3.1 Municipalities as institutions of local self-government

The 74th Constitutional Amendment Act, 1992 introduced a further constitutional dimension by recognising Municipalities as institutions of local self-government under Part IX-A. Article 243W permits State Legislatures to endow Municipalities with powers and responsibilities necessary for functioning as institutions of self-government. The Twelfth Schedule identifies functions that may be

⁹ E.S. Savas, “Privatization and Public-Private Partnerships,” *The Economic Times* (25 January 2002).

¹⁰ *Id.*; see also E.S. Savas, *Privatization and Public-Private Partnerships* (Chatham House Publishers, 2000).

¹¹ *Subhash Kumar v. State of Bihar*, (1991) 1 SCC 598.

¹² *Narmada Bachao Andolan v. Union of India*, (2000) 10 SCC 664.

¹³ *A.P. Pollution Control Board II v. Prof. M.V. Nayudu*, (2001) 2 SCC 62.

entrusted to Municipalities, including “water supply for domestic, industrial and commercial purposes” and “public health, sanitation conservancy and solid waste management.”¹⁴ Consequently, water supply and sanitation occupy a constitutionally recognised position within the framework of urban local governance.

This constitutional arrangement is particularly significant when public utility services are provided through Municipal Corporations. The constitutional recognition of municipal functions does not necessarily require that **every service** must be physically operated by public employees or directly by the Municipal Corporation. The Constitution permits legislative and administrative arrangements concerning the manner in which these functions are discharged. Nevertheless, where an essential service has a direct connection with fundamental rights or public health, the transfer of its operation to a private entity raises the separate question of whether the State and the concerned local authority continue to bear regulatory, supervisory and accountability responsibilities.

The judicial development of Article 21 also demonstrates that constitutional responsibility may extend beyond the traditional distinction between governmental functions and private service delivery. In **A.P. Pollution Control Board II v. Prof. M.V. Nayudu**, the Supreme Court reaffirmed the development of the right to a healthy environment as part of Article 21.¹⁵ Similarly, the Court has recognised that **pollution-free water** forms part of the constitutional protection of life and that the State has a duty to ensure access to clean drinking water.¹⁶

Therefore, the constitutional basis of State responsibility for public utility services may be understood as a combination of three dimensions: first, the **enforceable protection of life, equality and dignity under Fundamental Rights**; second, **the welfare-oriented obligations reflected in the Directive Principles**; and third, **the constitutional allocation of essential municipal functions under Part IX-A and the Twelfth Schedule**. These dimensions become particularly important when the State chooses privatization as a mechanism for delivering essential services.

3.2 Recent Tamil Nadu Developments: SUEZ Water Supply and Private Participation in Drainage

A recent development in Tamil Nadu provides a significant contemporary context for examining the constitutional responsibility of the State and Municipal Corporations in

relation to public utility services. **In February 2026, SUEZ announced that it had been awarded a 25-year concession to provide water services to more than one million residents of Salem**, following procurement by the Salem City Municipal Corporation. The project is intended to rehabilitate and modernise the urban water infrastructure and provide technology-enabled, continuous water supply.¹⁷ The Salem project demonstrates a model in which the Municipal Corporation remains the public authority responsible for the service, while a private entity assumes a substantial role in the provision and management of the water service.

The development is particularly relevant because the Tamil Nadu Government has also moved towards **private participation in underground drainage projects**. In **September 2026, the State's Municipal Administration and Water Supply Department called for Detailed Project Reports from private entities for the proposed expansion of underground sewerage projects in the Madurai and Nagercoil Corporations**. The proposals are reported to involve private participation under a Public-Private Partnership model, with the Madurai project estimated at approximately **₹2,337.48 crore** and the Nagercoil project at approximately **₹189.82 crore**.¹⁸

The Nagercoil proposal reportedly includes the construction of sewage collection infrastructure, approximately 111 kilometres of pipelines connecting households to the drainage system and pumping infrastructure, while the Madurai proposal includes renovation of existing underground drainage infrastructure, expansion into newly incorporated corporation areas and wastewater treatment facilities.¹⁹

These developments are significant from a constitutional perspective because water supply, sanitation and public health fall within the sphere of functions constitutionally contemplated for urban local bodies under Article 243W read with the Twelfth Schedule. The participation of private entities therefore raises a distinct legal question: whether the transfer of operational or managerial functions affects the continuing responsibility of the Municipal Corporation and the State to ensure **accessibility, equality, public health, accountability and effective regulation**.

The issue is not merely whether private participation is legally permissible. The more important constitutional question is whether, after entering into a concession, outsourcing arrangement or public-private partnership, the State and the Municipal Corporation continue to discharge their

¹⁴ Constitution of India, arts. 243W and Twelfth Schedule, Entry 5 (water supply) and Entry 6 (public health, sanitation, conservancy and solid waste management).

¹⁵ *A.P. Pollution Control Board II v. Prof. M.V. Nayudu*, (2001) 2 SCC 62.

¹⁶ *Subhash Kumar v. State of Bihar*, (1991) 1 SCC 598; *Narmada Bachao Andolan v. Union of India*, (2000) 10 SCC 664.

¹⁷ SUEZ, “In Salem, Tamil Nadu, SUEZ will serve over 1 million people with quality drinking water”, 25 February 2026. SUEZ states that it was awarded a 25-year concession following procurement by Salem City Municipal Corporation. (<https://www.suez.com/en/news/press-releases/salem-suez-serve-people-water-group-largest-supply-india?utm>) (Last Visited on 01.10.2026,02:20Pm)

¹⁸ *Indian Express Tamil*, 30 September 2026. The report states that the Tamil Nadu Municipal Administration and Water Supply Department sought DPRs from private entities for Madurai and Nagercoil underground sewerage projects. (<https://tamil.indianexpress.com/tamilnadu/tn-government-private-partnership-underground-sewerage-scheme-madurai-nagercoil-12591972?utm>) (Last Visited on 01.10.2026,02:30Pm)

¹⁹ *Deccan Chronicle*, “Opposes Privatization of Drainage Systems”, 1 October 2026. The report provides details concerning the proposed Madurai and Nagercoil projects, including the estimated project values and proposed infrastructure. (<https://www.deccanchronicle.com/southern-states/tamil-nadu/cpi-opposes-privatization-of-drainage-systems-1992103?utm>) (Last Visited on 01.10.2026,02:45Pm)

constitutional responsibilities towards citizens. Where the service concerns essential requirements such as drinking water and sanitation, the consequences of service failure, unequal access or inadequate regulation may directly affect interests protected under Articles 14 and 21.

Accordingly, the recent Tamil Nadu developments provide a contemporary case study through which the relationship between constitutional State responsibility and privatized service delivery can be examined. The Salem water-supply concession and the proposed private participation in underground drainage projects in Madurai and Nagercoil illustrate different forms of private involvement and provide an empirical basis for analysing whether institutional privatization changes only the method of service delivery or also affects the constitutional accountability of public authorities.

Privatization may alter the institutional method through which a public utility is delivered, but it does not, by itself, resolve the constitutional question of State responsibility. Where the service concerns matters such as **drinking water, sanitation or public health, the State may still be required to maintain an appropriate regulatory and supervisory framework to ensure that constitutional values, equality, accessibility, public health and accountability** are not undermined by the change in the service provider. This continuing responsibility forms the constitutional foundation for examining the effect of privatization on public utility services in India.

4. Privatization and the Basic Structure Doctrine

The Basic Structure Doctrine represents one of the most significant developments in Indian constitutional law. It emerged from the constitutional conflict concerning the extent of Parliament's power to amend the Constitution and the protection of Fundamental Rights. In **Kesavananda Bharati v. State of Kerala**, the Supreme Court held that although Parliament possesses extensive power to amend the Constitution, such power cannot be exercised so as to alter or destroy the basic structure of the Constitution.²⁰ The doctrine subsequently developed through decisions such as **Indira Nehru Gandhi v. Raj Narain and Minerva Mills Ltd. v. Union of India**, in which constitutional supremacy, judicial review, rule of law and the balance between Fundamental Rights and Directive Principles received significant protection.²¹

The relevance of the Basic Structure Doctrine to privatization of public utility services requires careful constitutional examination. The doctrine does not, by itself, prohibit the State from engaging private entities in the provision of public services. Nor does the Constitution require that every public utility must always be directly operated by the Government.

The constitutional concern arises when privatization becomes a mechanism through which the substance of constitutional obligations is weakened while the formal responsibility of the State remains unchanged.

Fundamental Rights are principally enforceable against the “State” within the meaning of **Article 12**, while **Article 32 and Article 226 provides a constitutional remedy before the Supreme Court and High court for the enforcement of Fundamental Rights**.²² Consequently, the increasing transfer of essential public functions to private entities raises an important question concerning the **accountability of the new service provider**. If an essential public function is transferred to a private entity, the legal relationship between the citizen, the public authority and the private service provider may become considerably more complex.

However, it would be legally incorrect to conclude that citizens **automatically lose their constitutional remedies** merely because a public service is privatized. The Supreme Court has developed the concept of **public function and public duty** in determining whether constitutional or public-law remedies may operate against private bodies. In **Zee Telefilms Ltd. v. Union of India**, the Court considered whether a private body performing functions of public importance could fall within the scope of Article 12.²³ Although the Court ultimately held that the Board of Control for Cricket in India was not “State” under Article 12, it recognised the availability of public-law remedies in appropriate circumstances against bodies performing public functions.

Similarly, in **Binny Ltd. v. V. Sadasivan**, the Supreme Court observed that the jurisdiction under Article 226 may, in appropriate cases, extend to a private body when it performs a public function or discharges a public duty.²⁴ The Court thereby recognised that the private character of an entity does not necessarily provide complete immunity from judicial scrutiny where the function performed possesses a public character.

More recently, the Supreme Court has reiterated that constitutional jurisprudence has developed mechanisms enabling citizens to enforce Fundamental Rights and public duties in appropriate cases even against entities which are not “State” in the strict sense under **Article 12**, particularly where such entities perform public functions or duties.²⁵ This development is important in the context of privatized public utility services because essential services such as **water supply, sanitation and drainage** may retain their public character even when their operation is entrusted to private entities.

Nevertheless, privatization may create a potential **accountability gap**. Under direct public provision, citizens may ordinarily identify the governmental or municipal authority responsible for the service and **invoke statutory**,

²⁰ *Kesavananda Bharati v. State of Kerala*, (1973) 4 SCC 225.

²¹ *Indira Nehru Gandhi v. Raj Narain*, 1975 Supp SCC 1; *Minerva Mills Ltd. v. Union of India*, (1980) 3 SCC 625.

²² Constitution of India, arts. 12 and 32. Article 32 and Article 226 specifically confers original jurisdiction on the Supreme Court and High court for enforcement of Fundamental Rights.

²³ *Zee Telefilms Ltd. v. Union of India*, (2005) 4 SCC 649.

²⁴ *Binny Ltd. v. V. Sadasivan*, (2005) 6 SCC 657.

²⁵ *Kaushal Kishor v. State of Uttar Pradesh*, (2023) 4 SCC 1. The Supreme Court discussed the development of constitutional principles concerning private entities performing public functions and duties.

administrative and constitutional remedies against that authority. When the actual provision of an essential service is transferred to a private entity, responsibility may become divided between the Government, Municipal Corporation, regulator and private concessionaire. The citizen may therefore face uncertainty regarding the identity of the authority responsible for service failure, discriminatory access, excessive charges or inadequate service.

This creates what may be described as the “**constitutional accountability displacement**” problem. The State may transfer the operational performance of a public function to a private entity without being able to transfer the constitutional values and responsibilities attached to that function. If the State continues to exercise regulatory, contractual or supervisory control, the constitutional responsibility cannot simply disappear through a change in the identity of the service provider.

The principle becomes particularly significant in relation to Article 21. Where an essential public utility has a direct relationship with life, dignity, health or environmental protection, privatization cannot be assessed solely according to contractual or commercial considerations. The State must also consider whether the institutional arrangement preserves meaningful access, equality, accountability and effective remedies. The Supreme Court's jurisprudence has progressively recognised that public functions performed by private entities may attract public-law obligations in appropriate circumstances.²⁶

The relationship between privatization and the Basic Structure Doctrine can therefore be understood through the constitutional **principles of judicial review, rule of law, equality, constitutional supremacy and protection of Fundamental Rights**. The Basic Structure Doctrine does not mean that privatization itself is unconstitutional. Rather, it provides a constitutional framework against which attempts to alter the institutional mechanism of governance may be examined where such alteration has the effect of undermining essential constitutional principles.

The central constitutional concern is therefore not the mere entry of private entities into public utility services, but whether privatization results in a **substantive dilution of constitutional accountability**. If the State retains responsibility for ensuring essential services, it cannot avoid that responsibility merely by transferring operational functions to a private entity. The constitutional identity of the service may continue even after its institutional provider has changed. Accordingly, privatization should be accompanied by effective regulatory supervision, transparent contractual obligations, equality safeguards, accessible grievance mechanisms and meaningful judicial or public-law remedies. Such safeguards can ensure that the change from public provision to private participation remains a change in the

mode of service delivery, rather than a mechanism for transferring or weakening the constitutional responsibility of the State.

5. Existing Regulatory Framework for Privatization in India

India does **not presently have a single comprehensive legislation** governing the privatization of all public utility services. Instead, the legal framework is fragmented across the Constitution, sector-specific legislation, municipal laws, public procurement requirements, regulatory institutions, government policies and contractual arrangements. The applicable framework therefore depends upon the nature of the public utility, the identity of the public authority and the form of private participation adopted.

At the constitutional level, **Article 243W** read with **the Twelfth Schedule provides the framework for assigning functions to Municipalities**. The Twelfth Schedule specifically includes water supply for domestic, industrial and commercial purposes, public health, sanitation, conservancy and solid waste management among the matters that may be entrusted to Municipalities.²⁷ This constitutional framework is significant because privatization of a municipal service does not remove the constitutional character of the underlying municipal function. The manner of delivery may change, while the public authority may continue to exercise statutory and regulatory responsibilities.

At the statutory level, sector-specific legislation provides different regulatory mechanisms for particular public utilities. **The Electricity Act, 2003** is an important example of a statutory framework that expressly accommodates private participation while establishing regulatory institutions and mechanisms for protecting consumers. The Act provides for the development of the electricity industry, promotion of competition, **protection of consumer interests, regulation of tariffs and the establishment of the Central Electricity Authority, Central and State Electricity Regulatory Commissions and an Appellate Tribunal**.²⁸ The electricity sector therefore demonstrates that private participation can operate within a statutory regulatory structure rather than outside public regulation.

The Public-Private Partnership (PPP) framework constitutes another important component of India's approach to private participation in public services. The Government of India's PPP framework defines a PPP as an arrangement between a Government or statutory entity and a private sector entity for the provision of public assets and/or public services, involving private investment or management for a specified period, with defined risk allocation and performance

²⁶ *Pradeep Kumar Biswas v. Union of India*, (2002) 5 SCC 111; *Zee Telefilms Ltd. v. Union of India*, (2005) 4 SCC 649; *Binny Ltd. v. V. Sadasivan*, (2005) 6 SCC 657. The Supreme Court's later jurisprudence recognises that entities performing public functions may attract public-law obligations even where they are not “State” in the strict Article 12 sense.

²⁷ **Constitution of India**, art. 243W read with **Twelfth Schedule**, Entries 5 and 6. The Twelfth Schedule includes water supply and public health, sanitation, conservancy and solid waste management among municipal functions.

²⁸ **Electricity Act, 2003**, (https://www.indiacode.nic.in/indiacode/handle/123456789/2058?view_type=browse&utm_) (Last Visited on 02.10.2026,04:30Pm)

standards.²⁹ The framework places considerable importance on competitive bidding, contractual allocation of responsibilities, performance standards and risk-sharing arrangements.

The Department of Economic Affairs, through its PPP Cell, performs an important policy and institutional role in relation to PPP projects. Its responsibilities include policy matters, schemes and programmes concerning PPPs, capacity building and appraisal and approval of Central-sector PPP projects under the applicable guidelines.³⁰ The PPP framework therefore provides an institutional mechanism through which private participation in public infrastructure and services can be assessed and structured.

The contractual dimension is particularly important in public utility privatization. Unlike an ordinary private commercial transaction, a PPP or concession concerning an essential public service may involve public assets, governmental authority, user charges, long-term contractual obligations and services affecting large sections of the population. The Government's PPP framework recognises that the rights and obligations of the Government, users and private concessionaire principally arise from the relevant PPP contract.³¹ Consequently, concession agreements, service-level requirements, tariff provisions, performance standards, termination clauses, monitoring mechanisms and grievance-redressal provisions become important instruments of public accountability.

At the municipal level, State legislation provides the statutory foundation for the provision of water, drainage and sanitation services. In Tamil Nadu, the **Tamil Nadu Urban Local Bodies Act, 1998** contains provisions relating to water supply, drainage and sewerage. **Section 156** concerns the entrustment of specific water supply, drainage or sewerage schemes to municipalities, while **Section 157** provides for the municipal supply of drinking water and the determination and collection of water charges.³² These provisions are particularly relevant when examining private participation in Tamil Nadu's municipal public utility services because the statutory responsibilities of the local authority continue to provide the institutional framework within which service delivery takes place.

The Tamil Nadu Urban Local Bodies framework also demonstrates that water supply and sanitation are treated as continuing municipal functions. The State's Urban Local Bodies Department identifies equitable and adequate supply of safe drinking water and effective delivery as important responsibilities of urban local bodies.³³ Therefore, where a Municipal Corporation engages a private entity for the

operation or management of a water or drainage project, the contractual involvement of the private entity must be examined together with the statutory responsibilities of the Municipal Corporation.

Another important component of the regulatory framework is public procurement. Where private entities are selected through tenders, the **process must comply with applicable procurement legislation, rules, tender conditions and principles of fairness and transparency**. In public utility projects, competitive selection is particularly significant because the private entity may receive long-term operational rights over an essential service or public infrastructure. The Government's PPP framework itself emphasises open competitive bidding and predetermined performance standards in the selection and operation of PPP projects.³⁴

The regulatory framework must also be considered in relation to environmental and public health legislation. Water supply, sewage treatment, sanitation and waste-management projects may be subject to environmental standards, pollution-control requirements and public-health regulations. Consequently, privatization does not convert an essential public utility into an ordinary private commercial activity free from statutory regulation. The existing framework therefore operates through several layers: **constitutional allocation of municipal functions, sector-specific legislation, State municipal laws**, PPP policies and guidelines, procurement procedures, regulatory authorities, environmental and public-health legislation and contractual safeguards. However, the absence of a single comprehensive statute governing privatization of public utilities also raises questions concerning uniformity of standards, accountability, citizen participation, tariff regulation and remedies.

This fragmented regulatory structure becomes particularly significant where an essential public service is transferred to a private entity through a long-term concession or PPP. The legal issue is not simply whether the Government possesses the power to enter into such an arrangement, but whether the regulatory and contractual framework sufficiently protects public interests after the private entity assumes operational responsibility. The effectiveness of privatization therefore depends not only upon the legality of the initial transfer but also upon continuing governmental supervision, measurable service standards, transparency, affordability, grievance redressal and effective remedies.

Accordingly, the existing Indian framework permits substantial private participation in public utilities, but it generally does so through a combination of sectoral regulation, municipal legislation, PPP arrangements and

²⁹ Government of India, **Public Private Partnership in India**, PPP India, Department of Economic Affairs, (<https://www.pppinindia.gov.in/faqs?utm>) (Last Visited On 02.10.2026,04:45Pm)

³⁰ Department of Economic Affairs, Government of India, Infrastructure Policy and Planning Division — PPP Cell (<https://dea.gov.in/our-organizations/infrastructure-policy-planning-division?utm>) (Last Visit on 02.10.2026,05:10)

³¹ Government of India, Public-Private Partnership (PPP), (<https://ies.gov.in/arthapedia/concept/public-private-partnership-ppp?utm>) (Last Visited On 02.10.2026,05:15pm)

³² Tamil Nadu Urban Local Bodies Act, 1998, Sec 156–158. (<https://tnsfc.tn.gov.in/assets/pdf/TN-ULB-Act-1998.pdf?utm>) (Last Visited On 02.10.2026,05:30pm)

³³ Government of Tamil Nadu, Municipal Administration and Water Supply Department, **Water Supply** (<https://tnsfc.tn.gov.in/assets/pdf/TN-ULB-Act-1998.pdf?utm>) (Last Visited On 02.10.2026,05:30pm)

³⁴ Government of India, PPP India, FAQ on Public Private Partnerships, (<https://ies.gov.in/arthapedia/concept/public-private-partnership-ppp?utm>) (Last Visited On 02.10.2026,06:15pm)

contractual controls rather than through a single privatization statute. This regulatory structure provides the foundation for examining whether existing safeguards are sufficient to preserve constitutional accountability when essential public utility services are delivered through private entities.

6. Suggestions and Conclusion

6.1 Suggestions

The privatization or private participation in public utility services requires a regulatory framework that protects both efficiency in service delivery and the constitutional interests of citizens. The following safeguards may strengthen the existing framework:

- **A clear statutory framework for public utility privatization should be developed.** India presently relies upon sector-specific legislation, municipal laws, PPP policies and individual contracts rather than a comprehensive framework applicable to the privatization of essential public utilities. A clear legislative framework may prescribe minimum standards relating to transparency, affordability, accessibility, accountability and continuity of essential services.
- **Secondly, privatization should not result in the transfer of constitutional responsibility.** Where a Municipal Corporation or other public authority delegates the operation of water, sanitation, drainage or similar essential services to a private entity, the public authority should continue to exercise effective supervision and regulatory control. The contractual transfer of operational functions should not be treated as a transfer of constitutional obligations.
- **Public utility contracts should contain enforceable service-level standards.** Concession agreements and PPP contracts should clearly prescribe minimum service quality, continuity, coverage, response time, maintenance obligations, environmental standards and consequences for non-compliance. These standards should be capable of independent verification.
- **Affordability and equality of access should be expressly protected.** Essential public services should not become inaccessible because of excessive user charges or discriminatory service arrangements. Any determination of tariffs or user charges should take into account the essential nature of the service and the interests of economically vulnerable sections of society.
- **An effective grievance-redressal mechanism should be mandatory.** Citizens should have an easily accessible mechanism through which complaints concerning interruption of service, poor quality, excessive charges, discrimination or other deficiencies can be addressed. The mechanism should clearly identify whether responsibility lies with the private operator, Municipal Corporation, regulator or another public authority.
- **Transparency and public participation should be strengthened.** Major privatization and PPP arrangements concerning essential public utilities should disclose relevant information concerning the concession period, service standards, user charges, performance obligations, monitoring mechanisms and termination provisions, subject to legitimate confidentiality requirements.

- **Independent monitoring should be strengthened.** Where an essential public utility is operated by a private entity for a long period, monitoring should not depend exclusively upon the contracting authority. Appropriate independent technical, financial and regulatory oversight may reduce the possibility of accountability gaps.
- **Constitutional and public-law remedies should remain practically accessible.** The private character of a service provider should not itself become a barrier to judicial or statutory remedies where the entity performs a public function or discharges a public duty. The contractual framework should clearly preserve mechanisms for regulatory intervention and citizen protection.
- **Privatization decisions should be preceded by a public-interest assessment.** Before transferring an essential municipal service to a private entity, the concerned authority should assess the likely effects on affordability, universal access, vulnerable communities, public health, environmental protection, employment, service continuity and long-term public accountability.
- **The performance of private operators should be periodically reviewed.** Long-term concessions should not be treated as irreversible arrangements. Contracts should contain appropriate review, corrective action and termination mechanisms where predetermined public-service obligations are not fulfilled.

6.2 Conclusion

Public utility services occupy a distinctive position within the constitutional and administrative structure of India because their importance extends beyond ordinary commercial transactions. Water supply, sanitation, drainage, public health and related services directly affect the living conditions and dignity of citizens. Although the Constitution does not expressly require every public utility to be operated directly by the Government, the constitutional significance of essential services emerges from Fundamental Rights, Directive Principles of State Policy and the constitutional framework governing Municipalities.

The study demonstrates that privatization does not, by itself, amount to the abandonment of State responsibility. The State may adopt private participation, outsourcing, concessions or public-private partnerships as mechanisms for improving infrastructure and service delivery. However, the change in the identity of the service provider cannot automatically result in the disappearance of the public character of the service or the constitutional responsibilities associated with it. **The principal concern is therefore the possibility of constitutional accountability displacement.** When an essential public service moves from direct governmental operation to private management, the citizen may encounter multiple institutional actors—the Municipal Corporation, State Government, regulator and private concessionaire. Unless their respective responsibilities are clearly defined, the division of functions may produce uncertainty concerning accountability and remedies.

The Basic Structure Doctrine does not prohibit privatization of public utility services. Nevertheless, the constitutional principles protected through the doctrine, including constitutional supremacy, rule of law, judicial review and the

protection of Fundamental Rights, provide an important framework for evaluating governmental action. Privatization should therefore not become a mechanism through which constitutional accountability is indirectly weakened. The contemporary development of private participation in municipal water and drainage services in Tamil Nadu illustrates the practical significance of this issue. The SUEZ water-supply concession in Salem and the proposed private participation in underground drainage projects demonstrate that essential municipal functions may increasingly involve private entities. These developments make it necessary to distinguish between delegating the operation of a public service and transferring the constitutional responsibility for that service. The former may be permissible within the existing legal framework; the latter cannot simply be assumed to follow from privatization.

Ultimately, the constitutional question is not whether public utility services must always remain exclusively in government hands. The more appropriate question is whether any chosen model of service delivery continues to **protect equality, dignity, accessibility, public health, accountability and effective remedies**. Privatization can therefore coexist with constitutional governance only when the State retains meaningful regulatory responsibility and **ensures that the transformation of the service provider does not become a transformation of the citizen's constitutional protection**.

References

Cases

- [1] Zee Telefilms Ltd. v. Union of India, (2005) 4 SCC 649.
- [2] A.P. Pollution Control Board II v. Prof. M.V. Nayudu, (2001) 2 SCC 62.
- [3] Binny Ltd. v. V. Sadasivan, (2005) 6 SCC 657.
- [4] Indira Nehru Gandhi v. Raj Narain, 1975 Supp SCC 1.
- [5] Kesavananda Bharati v. State of Kerala, (1973) 4 SCC 225.
- [6] Minerva Mills Ltd. v. Union of India, (1980) 3 SCC 625.
- [7] Narmada Bachao Andolan v. Union of India, (2000) 10 SCC 664.
- [8] Pradeep Kumar Biswas v. Union of India, (2002) 5 SCC 111.
- [9] Subhash Kumar v. State of Bihar, (1991) 1 SCC 598.

Legislation

- [10] Constitution of India, 1950.
- [11] Electricity Act, 2003.
- [12] Industrial Disputes Act, 1947.
- [13] Legal Services Authorities Act, 1987.
- [14] Tamil Nadu Urban Local Bodies Act, 1998.

Books and Scholarly Works

- [15] Savas, E. S. Privatization and Public-Private Partnerships. Chatham House Publishers, 2000.
- [16] Starr, Paul. "The Meaning of Privatization." Yale Law & Policy Review, Vol. 6, 1988.

Government and Institutional Sources

- [17] Department of Economic Affairs, Government of India. Public Private Partnership in India. ([https://dea.gov.in/our-](https://dea.gov.in/our-organizations/infrastructure-policy-planning-division?utm)

[organizations/infrastructure-policy-planning-division?utm](https://dea.gov.in/our-organizations/infrastructure-policy-planning-division?utm))(Last Visit on 02.10.2026,05:10)

- [18] India Code. Legislative Department, Government of India.
- [19] Supreme Court of India. Official Judgments and Constitutional Materials.
- [20] Government of Tamil Nadu, Municipal Administration and Water Supply Department, (<https://tnsfc.tn.gov.in/assets/pdf/TN-ULB-Act-1998.pdf?utm>)(Last Visited On 02.10.2026,05:30pm)
- [21] SUEZ. "In Salem, Tamil Nadu, SUEZ will serve over 1 million people with quality drinking water." 25 February 2026. . (<https://www.suez.com/en/news/press-releases/salem-suez-serve-people-water-group-largest-supply-india?utm>)(Last Visited on 01.10.2026,02:20Pm)