

LEGAL ASPECTS OF WATER POLLUTION AND ITS CONTROL IN INDIA

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A) WATER POLLUTION DEFINED

When something is added to the condition that makes it unclean or hazardous it is called contamination. The word contamination is gotten from Latin word —pollutes which implies debased. Water Pollution happens when the water winds up over-burden with a lot of a certain something and the sea-going creatures can't stay aware of their cleaning obligations. A few creatures may pass on and others may become too quick.

There are numerous definitional varieties of _water contamination. The term contamination of fouling water or as harming water. All in all term contamination of water implies the expansion of a remark which changes its regular characteristics. The Water (Prevention and Control of Pollution) Act, 1974 depicted contamination as —such tainting of water or such change of the physical, synthetic or natural properties of water or such release of any sewage or exchange emanating or any fluid, vaporous or strong substance, into or damaging to general wellbeing or society or to local, business, modern, rural or other genuine uses or to the life and wellbeing or creatures or plants or of oceanic living beings. This portrayal of very extensive in its scope of various sorts of water contamination and it imagines release of any toxin like household sewages, mechanical emanating of various kinds – natural acids, soluble bases oils, tar, inorganic and natural chemicals, lethal substances, for example, cyanides and sulfides, Sewage profluent and exchange gushing have likewise been characterized exhaustively. The meaning of water contamination is very wide and comprehensive. The fundamental worry of the Act is to keep up and reestablish the healthiness of water.

B) LEGAL MECHANISMS TO CONTROL WATER POLLUTION

The Indian lawful framework accommodates a few laws, which manage for the anticipation and protection for the earth when all is said in done and control of water contamination specifically. In pre-freedom India there were different institutions managing the issue of water contamination, in a roundabout way in light of the Common Law Doctrine of Riparian Rights. There was a not insignificant rundown of other applicable authorizations having aberrant bearing on the water contamination issue.

C) THE SHORE NUISANCE (BOMBAY AND COLABA) ACT, 1853

Was agent in Bombay and Colaba as it were. It approved the Collector of Land Revenue to issue notice to the gathering concerned expecting it to evacuate annoyance anyplace beneath high watermark or get

it subsided or expelled himself. The Oriental Gas Company Act, 1857 and the East India water system of Canal Act, 1859, was another statute managing water contamination. This statute gave discipline to contamination of water caused by organization. Following ten years, in 1867 the Serais Act forced an obligation on Innkeepers to keep water in the Serai fit for utilization by individuals and creatures utilizing it, as per the general inclination of the District Magistrate.

D) ORIENTAL GAS COMPANY ACT, 1857

One of the principal endeavors incorporated the Oriental Gas Company Act, 1857. Segment 15 of the Act gave that gas of the said organization should not foul the water of any stream, repository or some other place for water, generally the organization was required to pay to the Government a total of Rs. 1000/and on the off chance that the organization kept on fouling the water, at that point it was required to pay an extra aggregate of not surpassing Rs. 500/ - for every day. The East India Irrigation and Canal Act, 1859, was one of alternate endeavors where the assembly accommodated free supply of healthy water for water system purposes. In any case, in both the underlying endeavors no methodical endeavors were made to characterize fouling of water.

E) THE NORTHERN INDIA CANAL AND DRAINAGE ACT, 1873

Is it accurate to say that one was of the imperative authorizations? Area 70(3) of the Act gave that any obstruction or adjustment in the stream of water in any waterway or stream, in order to imperil, harm or render less helpful any channel or seepage work would be an offense. It gave the discipline of detainment not surpassing three months or a fine not surpassing 50 rupees or both.

In a discourse of legitimate tenets and statutory instruments disallowing water contamination in pre-free India, the India Easements Act, 1882 must be concurred due hugeness. It is considered as the most seasoned statute managing the contamination of water.

F) THE OBSTRUCTION IN FAIRWAYS ACT, 1882

The Fisheries Act, 1897, the Indian Ports Merchant Shipping Act, 1958 were other legislative measures to control the water pollution, which had some provisions dealing with it indirectly. In spite of such enactments the law attracted only a few prosecutions, that too of minor nature. The reason may be that the people were afraid of taking recourse to the time consuming judicial procedures.

G) INDIAN PENAL CODE, 1860

Chapter XIV of the Indian Penal Code, 1860, deals with ‘Of Offences Affecting the Public Health, Safety, Convenience, Decency and Morals’, and to limited extent controls the pollution problem. Section 268 defines Public Nuisance, which reads as follows:

The year 1860 was a landmark in the history of water pollution law when a systematic approach was adopted to control water pollution. Section 277¹ of the Indian Penal Code, 1860 defined fouling of water to mean —voluntarily corrupts or fouls the water of any public spring or reservoir, so as to tender it less fit for the purpose for which it is ordinarily used. The punishment prescribed for fouling of water was either Imprisonment

¹ There are other sections which may indirectly deal with water pollution for example Secs. 268, 425. of either description for a term extending to three months or with fine which may extend to five hundred rupees or with both. In order to attract the provision of this section it is necessary that the act is committed with the intention and knowledge to foul the water. Thus an act committed involuntarily will not attract Section 277, whatever the consequence might be. This section is applicable to the water of public spring or reservoir only and it will not cover water in other types of courses. The words corrupt and foul take care of purity of water but the pollution in the modern technological sense would go beyond these words. The fouling of water must render the water less fit for the purpose for which it is ordinarily used. The court considered spitting², washing one's own body or cloths therein³, and causing putrefaction by strewing branches of trees⁴, etc., as rendering the water less fit for the ordinary use. The class ridden society wanted to enforce Section 277 to punish a low caste person for taking water from a public cistern, but the Bombay High Court did not allow the above interpretation. The legislature simply prescribed a minimum punishment for the fouling of water. At that time it did not force the seriousness of water pollution. It is surprising that since then none of the state legislatures in India made any amendment to Section 277, whereas, there were many state amendments to the other sections dealing with offences affecting the public health wherein the state legislature enhanced the penalty.⁵ Section 277 forms part of the offences affecting public health and so effects of fouling of water other than affecting public health would not attract any penal action.

The Post-Penal Code era of British India did not see any major change in the regulation of water pollution. However, there were laws which included inter alio, protection of fishes⁶ animals⁷ crops or forests⁸ and human being⁹. There were provisions in the Easement Act, 1882 specifically dealing with pollution water. S. 28(d) of the Act allows the prescriptive right to pollute water to the extent of the pollution at the Commencement of the period of user or complexion of which the right arose.

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³⁷R. v. Ramkaran Lal, 13 MLR 68.

³ R. v. Bhagi (1900) 2 Bom. L.R. 1078.

⁴ R. v. Hulodhar Poroe, ILR 2 Cal. 383.

⁵ Ratanlal and Dhirajlal, The Indian Penal Code, 1987, 595-603.

⁶ For e.g. Indian Fisheries Act, 1897, Indian and Fisheries Preservation Act, 1879, Bengal Fisheries Protection Act, 1889

⁷ Poisons Act, 1919

⁸ Northern Indian Canal and Drainage Act, 1873, Indian Forest Act, 1927.

⁹ The Indian Factory Act, 1891, The Delhi Joint Water Board, 1926.

Prescriptive right is also conferred on the owner of a land where the water naturally passes over or percolates through his land. It says that no person shall _unreasonably pollute' the water or make

material alteration in quality, direction force or temperature of the water.¹⁰ The illustration (J) of Section 7 of the Act says, that every owner of land abating on a natural stream has a right to use and consume its water for the household purposes, watering his cattle for irrigation or for any manufacturing situated thereon but the provision to this illustration limits the right not to cause any 'material injury to other like owners'.

Alongside the above advancements, the English law of Torts was likewise making progress in the Indian soil yet the compensatory cure couldn't assume an imperative part in the zone of water-contamination in British India. Unexpectedly there were enactments managing Poisons (1919) Explosive Substances (1988), Cruelty to Animals (1890), Factory Act (1891, 1934), Insects and Pests (1914), however they had no reference to contamination of water.

THE FIRST PARLIAMENTARY LAW

The seeds of the Water (Prevention and Control of Pollution) Act, 1974' were sown as far back as 1962 when the Ministry of Health of the Government of India named a specialist board of trustees to set up a draft enactment to keep water contamination from household and mechanical squanders. The Committee, recommended between alia, —a focal and state enactment might be enacted. The report of the advisory group was coursed to the state governments, the Union Territories and the Central Council of neighborhood self-government. In 1965, the Central Council together with the state Ministers of Town and Country Planning thought about the report.

The state laws demonstrated no uniform practice and the states were neither adapted to deal with such a fiendishness nor had enough funds to clean their water. In these conditions the Central government chose to bring a focal water contamination law. Water being the state subject, the Center flowed a draft bill to every one of the States with the demand to pass a determination under Article 252 approving Parliament to established water contamination law for their sake. Before all else just the mechanically immature and creating states passed determination to this impact; while, the created states did not support a uniform approach in this issue, rather they needed to proceed with their own laws. It was simply after the Act of 1974 was passed that they additionally held hands with different states.

Presently going to the considerations in both the I-mites of Parliament, the Rajya Sabha and the Lok Sabha wrangles about demonstrate the accompanying bearings. Initially, both the Houses in a brief timeframe with pounding lion's share passed the Bill. This may b because of since quite a while ago proceeded with dialogs on the measure outside Parliament. Also, the Bill was invited by all the political gatherings. Be that as it may, the communists proposed an unbending control, however both the Houses supported an approach which would not unfavorably influence the mechanical development. What's

more, thirdly, the individuals demonstrated an extraordinary worry for the mechanical contamination which seriously influenced the nature of water.

Some of the improvement over the existing-legislative attempts and the shortcomings of the present exercise were: It defined the word pollution in the same language as the Maharashtra Act but still the use of strong fertilizers, pesticides and insecticides and radioactive and atomic substances in air around the factories which get deposited in the water nearby the factory, the exposure of water to temperature changes, etc., are kept outside the purview of this legislation. The Act is applicable to the water of the river, well and other water courses but the water courses of large inter-state rivers are not included. There are provisions for the central, state or joint water board for the prevention and control of water pollution. The Constitution of the board is such that there is no representation for a member of the social interest group and the lawyer. It has representatives mainly from certain avocation, business and trade and a health engineer.

The acts of company and government department also attracted the penal provisions. The Act prescribed wide ranging penalties from minimum three months to seven years imprisonment or/and fine which was not defined. The excessive punishment in the present legislation shows a shift from the liberal to hard treatment. Now the legislature realised the seriousness of water pollution. The doctrine of mens rea still water board, continued to hold the ground and the concept of strict liability had yet to gain ground in this area. If an act was committed with due diligence and without knowledge or with the consent of the board then it did not attract the penal provisions under this Act. Such provisions in fact gave a license to pollute water. Apart from the penal sanction the legislature missed giving an incentive, or assistance or encouragement to those who helped in augmenting or protecting the wholesomeness of water.

Since the Act of 1974 came into operation, the water boards were facing financial crises and in order to lessen their financial burden in 1977 Parliament came up with the Water (Prevention and Control of Pollution) Cess Act, 1977. This Act imposed cess on certain specified industries which were the main polluters of water and also every local authority on the basis of the water consumed by them. Section 7 of the Act gave an incentive to the extent of seventy per cent of cess payable for installation of a treatment plant from such date as may be prescribed. The cess money were first to be credited to the Consolidated Fund of India and then it would be disbursed by the Central Government to the Water Boards. The Act prescribed a penalty of imprisonment extending, to six months or/and fine extending to rupees one thousand for submitting false assessment return.

In 1978, the Water Pollution Act was amended in view of —the practical experience gained in the working of the Act of 1974. Parliament realized the seriousness of water pollution on the environment

and substituted 'environmental protection' in place of the restricted approach. The discharge of pollutants even on land would come within the purview of the Act. And finally, the judiciary not below the first class magistrate level could enforce the criminal sanction prescribed under the Act.

The legislature up till now concentrated on water pollution, and the industrial air pollutants polluting water did not attract the 1974 measures in one form or the other. In 1981 Parliament came forward With the Aft (Prevention and Control of Pollution) Act, 1981. This time Parliament did not make any innovation, it copied the model of 1974 Water Pollution Act. In this case also Parliament passed the law on behalf of the state legislature for implementing the decisions taken at the United Nations Conference on Human Environment held at Stockholm in 1972. The Air Pollution Act depended for its implementation on the machineries under the Water Pollution Act and it provided for the same penal provisions. Unlike the water pollution law, the present legislation confined to direct act only and acts indirectly polluting the environment would remain uncontrolled. And finally, in 1986 once again to further implement the Stockholm decisions, Parliament came forward with the Environment (Protection) Act, 1986 —to provide for the protection and improvement of environment and for matters concerned therewith. However, Section 24 (2) still allows the operation of the Act of 1974. This means that, apart from the preventive or controlling measures under the water pollution law the residue protection of water would come within the 1986 legislation. The Environmental Protection Act leaves to the Central Government to constitute authority or authorities and appoint officers for implementation of the provisions of this Act.

WATER (PREVENTION AND CONTROL OF POLLUTION) CESS ACT, 1977

The Court held that the Water (Pollution and Control of Pollution) Cess Act, was promulgated with a view to levy and collect cess from the unit which are thought to cause pollution and the funds so realized were to be entrusted to appropriate and inter alia for remedial measures. According to Section 3 of the Act, cess was payable by every person carrying on any specified industry and by every local authority.

ENVIRONMENTAL (PROTECTION) ACT, 1986

The Environment (Protection) Act 1986 clearly extends to water quality and the control of water pollution. Section 2(a) of the Act defines the environment to include water and the interrelationship which exists among and between water and human beings, other living creatures, planets, micro-organisms, and property. The Act authorizes and Central Government to establish standard for the quality of the environment and for emission or discharge of environmental pollutants from any source.

GREEN TRIBUNAL: A NEW LEGAL APPROACH

The National Green Tribunal Act, 2010 came into June 2010 to recognize the right of the victims of environmental damage and pollution, including water pollution, to claim damages and compensation. Act first time vests the power in a Tribunal to provide for ‘relief and compensation to the victims of pollution and other environmental damage’, ‘for restitution of property damaged’ and ‘restitution of environment.’ The Schedule of the Act makes it clear that the National Green Tribunal shall have jurisdiction over cases and violations under the Water (Prevention and Control of Pollution) Act, 1974. In such a manner the Act provides an enforceable right to claim damages and compensation for all victims of water pollution.

JUDICIAL RESPONSE

The Supreme Court has observed that —the right to life in Art. 21 include the right of enjoyment of pollution-free water and air for full enjoyment of life. In *M.C. Mehta v. Union of India* the Court issued extensive directions on pollution control measures in the river. A group of tanneries doing business on the banks of Ganga were alleged to be polluting the water of the river. Supreme Court issued directions to the tanneries to set-up effluent treatment plants within a period of six months. They also directed the Central Government, Pollution Control Board and the District Magistrate to oversee the work.

Emphasizing on the Access to drinking water as a fundamental right the Supreme Court was reluctant in *A.P. Pollution Control Board v. M.V. Nayudu* to permit location of a hazardous industry on the sides of lakes supply drinking water. The Court also cited the Narmada case. would follows article 254 (e.g. economic and social planning, pollution control and family planning, criminal law and procedure, adulteration of food stuffs and other goods, factories, boilers, archaeological sites other than those declare under law by parliament to be of national importance). Article 248 gives the centre residual power to legislate on any subject not covered in the three lists. Article 249 state that the centre can legislate in the national interest on any subject in the state list provided it can obtain a two third majority in the Rajya Sabha, the upper house of parliament. Article 250 empowers the parliament legislate with respect to any matter in the state list if a proclamation of emergency is in operation.

After the *United Nations Conference on the human environment held in Stockholm in June 1972*. Article 48 A and 51 A was added to the constitution of India by the 42nd amendment act 1976, which are very significant. Article 48 A was introduced to the part IV, directive principles of the state policy which read as follows. —The state shall endeavor to protect and improve the environment and to safeguard the forest and wildlife of the country. Article 51 A elaborates the fundamental duties of every citizen of India which includes the duty to protect and improve the natural environment including forest, lakes, rivers and wildlife and to have compassion for living creatures. Protection of wild animals and birds,

forest, population control and family planning were transferred from the state list to the concurrent list by the 42nd amendment Act. But environmental subjects like agriculture, land and fisheries, health and sanitation are still in the state list.

The DPSP are only the directives to the State. These are non-justifiable. No person can claim for non-fulfilling these directives. But the Supreme Court has brought the right to health under the preview of Article 21. The Supreme Court of India, in several judgments recognized that right to health is implicit in Article 21 of the Constitution of India. In *Pt. Parmanand Katara v. Union of India*¹¹, the Court was confronted with a situation where hospitals were refusing to admit accident victims and were directing them to specific hospitals designated to admit "medico legal cases". The Court ruled that while medical authorities were free to draw up administrative rules to tackle cases based on medical

¹¹ (1989) 4 SCC 286.

considerations, no medical authority could refuse immediate medical attention to a patient in need.

Such refusal amounted to violation of universally accepted norms of medical ethics and the provisions of 'right to life' guaranteed under Article 21.

In *CESC Ltd. v. Subhash Chandra Bose*¹², the Court held that the right to health of a worker is covered by Article 21 of the Indian Constitution. It was also indicated that health does not mean mere absence of sickness but would mean complete physical, mental and social well being. Facilities of health and medical care generate devotion and dedication to give the workers' best, physically as well as mentally, in productivity. It enables the worker to enjoy the fruit of his labor, to keep him physically fit and mentally alert for leading a successful economic, social and cultural life. The medical facilities are, therefore, part of social security and like gift-edged security, it would yield immediate return in the increased production or at any rate reduce absenteeism on the ground of sickness.

In a subsequent judgment in *Consumer Education & Research Centre v. Union of India*¹³, the Court dealt with the problem of occupational health hazards and diseases sustained by the workmen employed in asbestos industries. It was held that right to health and medical aid of workers during service and thereafter, is a fundamental right of workers. According to the Court, it can issue directions in an appropriate case to the State or its instrumentalities or even private employers to make the right to life meaningful and to pay compensation to affected workmen. It also held that the defense of 'sovereign immunity' would not be available to the State or its instrumentalities where fundamental rights are sought to be enforced. Relying on several previous judgments, the Court held that right to life would mean meaningful and real right to life. It would include right to livelihood, better standard of living in hygienic conditions at the work place and leisure.

The Supreme Court held that right to health and medical care is a fundamental right covered by Article 21 since health is essential for making the life of workmen meaningful

¹² (1992) 1 SCC 441.

¹³ (1995) 3 SCC 42.

and purposeful and compatible with personal dignity. The state has an obligation under Article 21 to safeguard the right to life of every person, preservation of human life being of paramount importance. The Supreme Court has in the case of *Parmanand Katra vs Union of India*¹⁴, held that whether the patient be an innocent person or be a criminal liable to punishment under the law, it is the obligation of those who are in charge of the health of the community to preserve life so that innocent may be protected and the guilty may be punished. The Supreme Court, while examining the issue of the constitutional right to health care under Arts 21, 41 and 47 of the Constitution of India in *State of Punjab v. Ram Lubhaya Bagga*, The Supreme Court, in *Paschim Banga Khet mazdoor Samity & others v. State of West Bengal & others*, while widening the scope of art 21 and the government's responsibility to provide medical aid to every person in the country, held that in a welfare state, the primary duty of the government is to secure the welfare of the people.

CONCLUSION

Man in his bid to conquer over the nature is committing many mistakes for which not only he but his coming generations will have to suffer. One of such mistake, which the man is committing, has been discussed at length. All the areas touching, "Protection of Environment in India" have been gone through. The question still remains: Are we successful in our mission to save Our Environment from Pollution?

About many long years have passed after the Ministry of Environment and Forests (MoEF) drafted a state of Legislations following the ruling of our Apex Court. But has the State Government shown any interest and tried to show an inclination strictly and effectively to implement the Rules and Regulations? The answer is big "NO". Like other States, Punjab & Haryana are making some efforts in this regard. The other states will also have to make a similar move otherwise it will be too late and our future generations will curse us.

The problem of Water Pollution assumes special significance in the world because it affects the well being of people and economic developments. For the prevention and control of Water Pollution, the Parliament enacted the Water Act, 1947. The Main objective of the Act is „To Prevent and control of Water Pollution and To Maintain or Restore Wholesomeness of Water.“ No law, howsoever, perfectly or meticulously drafted can remain free from ambiguities or drawbacks; therefore, this Water Act is not an exception.