



THE LEGISLATIVE SAFEGUARDS ON WATER POLLUTION: WHETHER REALITY OR MYTH?

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INTRODUCTION

It has been rightly said by Mahatma Gandhi that "There Is Enough For Everyone's Need But Not For Everyone's Greed."

The civilization like the previous civilization is on the brink of extinction. This is due to the ecological degradation at the name and cost of economic development. Arnold Toynble who studies the rise and fall of the symptoms of 21st civilization had finally concluded that most of the ancient civilizations have disappeared from the globe because of foreign invasions, hordes and by reason of the neglect and over exploitation of ecological resources. But unfortunately we have not learnt anything from our past and are still heading towards its doom. Since time immemorial, there has been a love-hate relationship between man and nature. Nature has been very benevolent and extends its bounty liberally. However, when exploited too much it takes back an equal measure what it gives in abundance.¹

Globally the issue of environmental pollution is one of the most highly debated subject. Industrialization, urbanization, ever increasing growth of population and the new advancements in the field of science and technology are cited as the main causes of this problem. This problem now appeared in different dangerous forms like depletion of ozone layer, acid rain, greenhouse effect, soil erosion, deforestation, air pollution, water pollution and noise pollution. This issue is taken by the Government not only at national level but also at international level. U.N. General Assembly in the year 1972 planned a resolution on the need of active co-operation among the States in the field of environment. This declaration empowers the member States to use their natural resources as per their own environment plans and schemes. This right being an absolute right subject to the provisions of United Nations Charter and Stockholm Declaration.

Water pollution is a major environmental issue in India. The largest source of water pollution in India is untreated sewage. Other sources of pollution include agricultural runoff and unregulated small scale industry. Most rivers, lakes and surface water in India are polluted.² The water resources in India are sufficient to meet out the needs of the people but there should be efficient water supply management. The water infrastructure in India includes tapping of the available water source by the water board and department in India, Proper water treatment and purification, water storage facilities with regular cleaning of water storage tanks.³

Under this topic, the author focused only on the issue of water pollution, its legislative and judicial approach and current scenario.

INTERPRETATION OF THE TERMS "ENVIRONMENT, POLLUTION AND WATER POLLUTION."

1. Environment: The term "Environment" owes its genesis to a French word 'environ' means 'encircle' and encompasses within it the land, water, flora, fauna, living creatures, forests and everything on the Earth.⁴ Einstein remarked: "The environment is everything that is nature." C.C. Park states that the term environment refers to the sum total of conditions which surrounds a man at a given point in space and time. Section 1(2) of Environment Protection Act, 1986 of U.K. states that consisting all, or any of the media namely water, air and the medium of air includes the air within the building and the air within other natural or man-made structures above and below ground.

¹Bhalla G.S., Khanna Hema, Environmental Education, Regal publication, 2013 at p.118

²<https://en.m.wikipedia.org> Visited on 20-4-18.

³Dev Manish, Water Resources Development and Management, Regal Publication, 2013 at p.57

⁴Dansini G. Indira Priya, Devi K. Uma, Regal Publications, 2013 at p.28



2. *Pollution*: The word “Pollution” refers to unintended side effects of efforts to achieve rapid economic growth and development.⁵ It is a necessary concomitant of the activities of man. The water we drink, the air we breathe, the food we have, everything is polluted. It is the main cause and consequence of modern scientific and technological development. The pollution may be defined as an unfavourable alteration of our surroundings through direct or indirect effects of changes in energy patterns, radiation levels, chemical and physical constitution and abundance of organisms. Thus it is clear that pollution occurs on the part of human beings on account of any activities against the natural resources. It may be natural and artificial. The natural pollution is due to the acts of God like earthquakes, floods, draught, cyclones etc. The artificial pollution includes all the activities on part of homo-sapiens like water, air and noise pollution.

3. *Water Pollution*: “Water Pollution” is the contamination of water bodies e.g. lakes, rivers, oceans, aquifers and groundwater. This form of environmental degradation occurs when pollutants are directly or indirectly discharged into water bodies without adequate treatment to remove harmful compounds. Water should be safe and clean for human consumption. The contaminated water with ineffective and parasitic agents, poisonous chemical and toxic substances, industrial and other wastes, sewage, pesticides and fertilizers, thermal and radioactive substances, dissolves gases, salts and minerals result in health problem and insecurity in human life. Water is also important for human body as it makes up more than two third of human body weight, and without water we would die in a few days. The human brain is made up of 95% water. A mere 2% drop in our body’s water supply can trigger signs of dehydration. Water is important to the mechanics of the human body. The body cannot work without it. In fact, all the cell and organ functions that make up our entire anatomy and physiology depends on water for their functioning.

Water serves as a lubricant in digestion and almost all other body processes. The water in our saliva helps us to facilitate chewing and swallowing, ensuring that food will slide easily down the esophagus. Water also lubricates our joints and cartilages and allows them to move freely. When dehydrated, the body rations water away from the joints. Less lubrication equals greater friction and that can cause joint, knee and back pain potentially leading to injuries and arthritis. Even our eyeballs need plenty of lubrication to work well and remain healthy. The growth of urban megalopolises, increased industrial activity and dependence of the agricultural sector on chemicals and fertilizers has led to the over-loading of the carrying capacity of our water bodies to assimilate and decompose wastes.⁶

LEGAL FRAMEWORK ON ENVIRONMENTAL POLLUTION

The degradation in environmental quality has been evidenced by enormous pollution, loss of vegetal cover and biological diversity, excessive accumulation of harmful chemicals in the atmosphere and in food chains, growing risk of environmental accidents and threats to life support system.⁷ The viewpoint attracted the attention of the legislature which resulted into the enactments of numberless laws which have been discussed below: 1. The Environment (Protection) Act, 1986, 2. The Water (Prevention and Control of Pollution) Act, 1974, 3. The Air (Prevention and Control Of Pollution) Act, 1981, 4. The Noise Pollution (Regulation and Control) Rules, 2000, 5. Constitutional Law, 6. Indian Penal Code, 1860, 7. Criminal Procedure Code, 1973, 8. Tort Law and Judicial Remedies, 9. The National Environmental Tribunal Act, 1995, 10. The Wildlife (Protection) Act, 1972, 11. Indian Forest Act, 1927, 12. Forest (Conservation) Act, 1980 and 13. The National Green Tribunal Act, 2010

Other miscellaneous enactments: 1. The Public Liability Insurance Act, 1991, 2. The Mines and Minerals (Regulation and Development) Act, 1957, 3. The Insecticides Act, 1968, 4. The Atomic Energy Act, 1962, 5. The Factories Act, 1948 and 6. The Disaster Management Act, 2005

⁵ Ibid at p.31

⁶ HazreSomnath, *Environmental Problems and Challenges: Recent Issues and Opportunities*, Regal Publications, New Delhi, 2013 at p. 91.

⁷ Tripathi S.C. *Environmental Law*, Central Law Publications 2013 at p.21



AN OVERVIEW OF WATER POLLUTION ACT OF 1974

Water is one of the most important natural resources which are required not for the survival of human beings but also for the entire animal kingdom and flora and fauna. Hence water pollution has now become a worldwide phenomenon. In this connection South Africa National Water Act No. 36 of 1998 aims at providing fundamental reforms of laws relating to water resources, reverse past inequalities and provide for matters connected therewith.⁸In this concern, various water management and monitoring programme are also launched. This is the acknowledgement that South Africa has a responsibility to ensure that it reduces national and international water courses to minimal.⁹Basically water is an universal solvent in which practically all the minerals present in soil may be dissolved. We also find water in nature in three principal forms-Atmospheric moisture, Precipitation and Soil water

Among these forms, precipitation is the chief source. Atmospheric moisture is present as invisible vapour known as humidity and also as visible vapour known as fog or clouds.¹⁰This Act represents India's first attempt to comprehensively deal with environmental issues for the implementation of the constitutional commitment made in Stockholm Declaration. On environment on March 3, 1974. The Act came into being. It is the first comprehensive and legislative setup to combat water pollution, it is a landmark legislation on environment. The main objective of this Act is to prevent and control water pollution and the maintaining or restoring of wholesomeness of water. It provides for the setting up of Central and State Boards for the prevention and control of water pollution. The contravention of the provisions relating to pollution provides penalties. It also established the Central and State water testing laboratories to enable the Board to determine the extent of pollution lay down the standards and establish guilt or default.

ROLE OF NATIONAL GREEN TRIBUNAL

Due to the recommendation of the Law Commission for setting up special and specific Courts both on original as well as appellate side have jurisdiction only on the issues relating to environment ultimately led to the establishment of National Green Tribunal Act 2010 for effective and expedition disposal of civil cases for the protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment.¹¹

Current Situation of the Tribunal:

1. The Green Tribunal has updated on the river revival.

The Tribunal has directed the Chennai River Restoration Trust to submit an elaborate report on the details of works allotted to each department for the rejuvenation of rivers. They have also been asked to provide details about the funds sanctioned to each department and the stage of implementation of the work.

2. The Tribunal directs Delhi authorities to shut factories polluting Yamuna.

The Tribunal has directed the Delhi authorities to shut down the factories that are causing Pollution in the capital. It has ordered the Delhi Pollution Control Committee to ensure that stainless steel pickling units at Delhi's Wazirpur do not operate if they do not have the requisite approvals or are polluting the environment.

3. The NGT has constituted an expert committee, headed by an IIT-Mumbai faculty, to impact the extent and specific causes of pollution in Mula, Mutharivers from sources of discharge of untreated sewage in Pune and Pimpri-Chinchwad areas.¹²

4. Judgement of NGT in M.C. Mehta vs. Union of India dt 13/7/2017 regarding Ganga river pollution, NGT notes that GAP 1 and GAP 11 has failed to yield the required results and on the contrary there has been tremendous increase in the industrial and sewage pollution load in river Ganga and its tributaries. The tribunal issued certain instructions / directions like there shall be no dumping or landfill sites for any kind of waste

⁸GhobleVrushal, "Energy, Food, Security and Environment" Regal Publications, 2014 at p.56

⁹Ibid at p.56

¹⁰Tiwari H.N., "Environment Law", Allahabad Law Agency, 2012 at p.35

¹¹Universal's The National Green Tribunal Act, 2010, Universal Law Publishing Co. Pvt. Ltd at p.1

¹²<https://m.timesofindia.com> Visited on 19-4-17.



irrespective of any technology for waste processing, within 500 metres from the edge of the river Ganga and/or its tributaries.¹³

5. To streamline the process and prevent parallel, conflicting judgements about pollution in the Yamuna, the Supreme Court transferred its PIL on Yamuna pollution to NGT by expressing its satisfaction with the NGT's judgements.¹⁴ This has been done to avoid parallel, conflicting judgements on the issue.

Judicial Appraisal:

India is coping with massive industrial pollution and extensive pressures on its dwindling natural resources; the environmental conditions were quickly deteriorating.¹⁵ This present scenario poses a real threat to human civilization and society at large not only to the present but also to the future. Although Article 21 of The Constitution provides right to live as a Fundamental Right which includes the right of enjoyment of pollution free water and air for the complete enjoyment of life. The Executive and the Legislature have performed their respective role and now there is only a ray of hope on behalf of the Judiciary. Moreover, India is a country of poor people having no knowledge and no means to tackle such situation. Hence the Judiciary has evolved certain specific principles and guidelines upon the interpretation of Indian Statutes and the Constitution. In this respect, Justice V.R. Krishna Iyer rightly coded: *"The survival of life needs an environment which sustains it and it is the human rights that make sense only one where human life can flourish and this condition mandates the prevention of propitious environment. Our founding deed therefore lays great stress on environmental and ecological justice which flamboyant phrases about fundamental freedoms are glittering gibberish. If life is dear, environment too is dear and environmental justice is thus a foremost constitutional value."*¹⁶

The Supreme Court has further added that the State, as a trustee of all natural resources were meant for public use can could not be transferred to private ownership.¹⁷ Court Judgements have emphasised that the right to life is inclusive of the Right To Livelihood and a clean environment, least tolerance to polluters invoked the principal "Polluter pays principal" which means that the absolute liability for harm to the environment extends not only to compensate the victim of pollution but also the cost of restoring the environment degradation.

The various cases on which the Court has given its decision are as follows:

1. The Supreme Court in Maneka Gandhi's case opened new frontiers in Article 21 by pointing out that environmental degradation is the complete violation of the Fundamental Right to life.¹⁸

2. The Ganga Pollution Cases¹⁹ are the most relevant water pollution cases in India. In this Case, M.C. Mehta an activist advocate and a social worker by way of a Public Interest Litigation filed a Writ Petition U/A 32 of the Constitution for the issues of Writ/Order/Direction in the nature of mandamus, directing Kanpur Municipality to restrain itself from discharging waste water into the river Ganga and the tanneries near Kanpur to stop polluting the river with sewage and trade effluents till such time that they put up necessary treatment plants for treating their effluents. The Court made the orders against the tanneries and rules against municipalities and other Government authorities. The Court further realising the water pollution of Ganga river in particular and concerned over the continuing pollution of it by the industries and municipal wastes reminded principal contained U/A 48-A, 51-A of the Constitution which provides that the State shall make every possible efforts to protect and improve the environment. The Court further pointed out that the authorities under Water Act like State Boards had not taken effective steps to prevent this problem. Keeping in view the liberal and casual attitude of these statutory authorities, The Court observed that in such situation Court has the power to issue appropriate directions to the concerned person.

¹³ www.indiaenvironmentportal.org Visited on 19-4-18.

¹⁴ Swachhindia.ndtv.com Visited on 19-4-18.

¹⁵ Daisini G. Indira Priya,, Devi K. Uma, "Environmental Law and Sustainable Development", Regal Publication.

¹⁶ Quote at keynote address at a workshop on "Judicial Enforcement Of Environmental Law" in Karnataka in 2002

¹⁷ M.C. Mehta v. Union Of India (1997) 2 SCC 353 at p.388

¹⁸ Maneka Gandhi v. Union Of India AIR 1978 SC 597

¹⁹ M.C. Mehta v. Union Of India AIR 1988 SC 1037 and M.C. Mehta v. Union Of India AIR 1988 SC 1115



The Court through J. Venkataramiah observed “*The financial capacity should be considered as irrelevant while requiring them to establish primary treatment plants. Just like an industry which cannot pay minimum wages to its workers cannot be allowed to exist, a tannery which cannot set up a primary treatment plant cannot be permitted to continue to be in existence for the adverse effects on the public at large which is likely to ensure by discharging of the trade effluents from the tannery to the river Ganga would be immense and it will not weigh any inconvenience that may be caused to the management and labour employed by it on account of its closure.*”

3. The Apex Court expressly recognised the Right to Healthy Environment under Article 21 when it held “*Right to live is a Fundamental Right of the Constitution and it includes the right of enjoyment of pollution free water and air for the full enjoyment of life. If anything endangers or impairs that quality of life in derogation of laws, a citizen has the right to have resource to Article 32 of the Constitution for removing the pollution of water or air which may be detrimental to the quality of life.*”²⁰

4. In *Aman Singh v. Union Territory Chandigarh*,²¹ The Court held that discharge of sewage on land without consent of the Board is an offence.

Therefore, it can be safely stated that Judiciary plays an active role in interpreting the Constitutional provisions in the lights of changed socio-economic perspectives despite of having the special statutory authorities like State Boards and Central Board.

5. In *Splendor Landbase Ltd. V. Delhi Pollution Control* on 30th Sep. 2010, court noted that “The problem of pollution complexes of large volumes of Sewage would have on water pollution in general particularly when such sewage joins the main.”²²

CURRENT SCENARIO

There have been a number of laws that have been framed by the Government in order to protect the water from getting polluted. In current situation as well there have been numerous steps that the Government is taking to control the water pollution. Some of them are:

1. *Australia has assured India for full technological support to clean Ganga*: Australia has assured India that it would extend full technological support for the ambitious project to cleanse the Ganga, saying measures like controlling effluent discharge could be used to clean the river. Australia has promised its full support to Ganga Rejuvenation Plan. This was communicated by Australian Minister for Foreign Affairs, Julie Bishop when she called on the Union Minister of Water Resources, River Development and Ganga Rejuvenation, Uma Bharti. Bishop said that her country has developed a “score card” to measure and control effluent discharge into the rivers which will be very useful for India in its efforts to clean the Ganga.
2. *Uma Bharti said that they will clean Ganga in next two year (2016-2018)*: Bharti said that the plan of cleaning Ganga was made in the year 1985 but nothing happened in that direction in the last 29 years. She said as per her plan, they will clean Ganga in a qualitative manner. She stated that her Ministry is taking all possible measures for the conservation of rivers in the country and efforts are being made to ensure that no river is dried up. Recently Uma Bharti declared that Ganga will become one of the clearest river by 2018.²³
3. *Clean Ganga is not possible without clean Yamuna*: Uma Bharti has said that the Centre will soon start fulfilling the promises made cleaning up river Yamuna. She said that the Government is committed to the cause of cleaning up the river, the Minister added that the plans for rejuvenation of river Ganga also include cleaning up of Yamuna as it is possible to clean Ganga without Yamuna. She also stated that a committee has been formed under the Secretary of Environment Ministry and will prepare a report on the demands of the rejuvenation of Yamuna which will be implemented by the Centre after perusal. Bharti said that the Government will soon table a Bill in the Parliament for cleaning and interlinking of Yamuna, Ganga and other holy rivers which will also fulfil the dreams of ex Prime Minister Mr. Atal Bihari Vajpayee.

²⁰ AIR 1991 SC at p.424

²¹ AIR 1993 P&H 100

²² <https://indiakanon.org> Visited on 20-4-18.

²³ <https://www.livemint.com>



4. *Cities made liable for polluting the Ganga:* The Centre said that Kolkata, Howrah, Kanpur and Allahabad are amongst the 118 towns that discharge maximum sewage into the river Ganga. The Central Pollution Control Board is monitoring the water quality at 56 locations along the main stream of Ganga. In addition to the monitoring by the CPCB, National Mission for Clean Ganga is getting water quality monitored through identified academic institutions.
5. *West Bengal will submit Rs.300 Crore proposal to prevent Ganga Erosion:* West Bengal has lend a helping hand to prevent the Ganga erosion and will submit Rs.300 Crore proposal to the Central Government for preventing Ganga erosion in Murshidabad and Malda districts.
6. *Prime Minister Narendra Modi has asked to take legal actions against polluting industrial units and suggested setting up of environment friendly crematoria along the river:* Chairing a meeting in New Delhi on Ganga cleaning process called the “Namaami Gange”, he said that the focus should be primarily on two main areas to check pollution at source-Urban sewage and industrial effluents.
7. *Karnataka High Court imposes rs.30,000 cost on a polluting unit:* The Karnataka High Court has imposed a cost of Rs.60,000 upon Nageshree Home Products on Lakkavanhalli Road in Hiriyur town of Chitradurga district for causing water pollution. A Division Bench headed by Chief Justice D.H. Waghela however disposed off the PIL filed by H.B. Manchara and 5 others after directing the owner of the polluting industry to pay cost equally among the petitioners. The unit was closed on March 10,2015.
8. *Kanpur’s 700 tanneries are a major source of pollution in Ganga:* The National Green Tribunal warned of complete closure of 700 tanneries located on the bank of river Ganga in Kanpur, terming them as one of the “highest sources of pollution.”
9. *Water Samples from 2,922 schools were found unfit:* Water samples taken from 2,922 schools were found to be unfit for drinking purpose in Chandigarh. The Punjab & Haryana High Court directed the Government to innitate immediate steps for supplying pure and safe drinking water to the students through reverse osmosis systems or by other means.
10. Centre launched Ganga Gram Programme in U.P. that would treat sewage flow from 1,600 villages located along Ganga banks in line with Seechewal model of Punjab.²⁴

CONCLUSION AND SUGGESTIONS

Water is a good resource of nature which is considered an important determining factor on which the development of not only of the agriculture and industrial sector of a country depends but also includes the life circle of human beings. But this life saving resource is not available to all the people in all the areas, timely, properly, adequately and free from pollution. So, there is a need for optimum utilization of this scarce liquid keeping in view our current and future needs as well as individual and social needs.²⁵

Hence in today’s world, subjects like environmental law are gaining importance because of a plethora of environmental problems that humanity is facing.²⁶ While natural resources are of great use for the purpose of development, if they are not judiciously used, they may use their quality and create ecological imbalance,²⁷ especially the water in this context. This problem generates a specific concern in view of the scarce availability of water and ever increasing demands as the quality of water is being degraded all over.²⁸ The extent of water pollution in India is too obvious from the fact that all the 14 major rivers are highly polluted.²⁹ Thus keeping in view the gravity of this issue of water pollution, the following suggestions are put forth by the authors to overcome this problem:

²⁴ <https://googleweblight.com>

²⁵ Dash Gyanindra, PatraSudhakar, “Sustainable Agriculture and Food Security”, Regal Publications 2014 at p.302.

²⁶ Poddar A.K., Mukherjee Swayambhu, “Forest Laws and Policies In India”, Regal Publication 2011 at p.1

²⁷ Misra, Baidyanath, “Sustainable Development Administration”, Deep and Deep Publications Pvt. Ltd, 2012 at p.11

²⁸ Thakur Kailash, “Environmental Protection Law and Policy in India”, Deep and Deep Publication Pvt. Ltd. At p.25

²⁹ Ibid at p.40



1. To include the subject of Water Resources Development in the concurrent list through constitutional amendment.
2. There is a need to introduce effective Centre-State consultation mechanism for expediting decisions on matters relating to water.
3. Institutional arrangements should be backed by legal backing for making the State to come together for holding serious discussions on sharing of water.
4. The various NGO's should come forward to support MeghaPatekar in her mission to save Earth and should launch a movement for safe drinking water.
5. It has been rightly said that without education in true sense, honesty could not be ensured and without honesty safe and clean drinking water cannot be supplied to one or all houses especially in rural areas.
6. Effective monitoring mechanism should be developed with active collaboration of the State/Central Board.
7. The Central Ground Water Authority, under the provisions of Environment Act,1986 is empowered to make such declaration and it would be the responsibility of the State Government to ensure that the exploitation in the area is regulated.
8. There should be proper arrangements for the outlet of the household water so that our natural resources like river, sea, streams are not polluted in any manner.
9. In the Act, it may be safe to include the 'estuary' in the definition of 'stream' under Section 2 (f).
10. Consent administration is the most faulty aspect of Water Act. There is a provision of deemed consent under the Act if the Pollution Control Board fails to give consent within four months after an application for this purpose is submitted. Such provisions should be deleted and if within four months, the authority has neither given nor refused the consent, the authority shall be deemed to have refused the consent on the application.
11. National Green Tribunal is playing an effective role in this direction but to continue the same trend, more and more powers should be vested upon them.
12. It is not the duty of the Legislature or the Judiciary but a person himself undertakes that he will not do anything which further cause water pollution.
13. Conducting seminars and conferences on the issue of water pollution.
14. Green infrastructure or low impact development. Green infrastructure or low impact development approaches and techniques help manage water and water pollutants at the source, preventing or reducing the impact of development on water and water quality.
15. EPA's National Pollutant Discharge Elimination System (NPDES) permit program plays an important role in minimizing the wastes and pollution load released into receiving bodies.
16. Regulating factories based on laws and ordinances.
17. Maintaining and constructing additional sewage lines and sewage treatment systems.
18. Purifying water in waterways
19. Controlling pollution from new high-tech industries such as the electronic industries.
20. Issuance of directions for implementation of Zero Liquid Discharge.
21. Implementation of National Lake Conservation Plan (NLCP) and National Wetland Conservation Programme (NWCP) and conservation and management of identified lakes and wetlands in the country which have been merged in February 2013 into an integrated scheme of National Plan for Conservation of Aquatic Eco-System (NPCA) to undertake various conservation activities including interception, diversion and treatment of waste water, pollution abatement, lake beautification, bio-diversity conservation, education and awareness creation, community participation etc.³⁰

“Every Drop Extracted Must Be Justified, Every Drop Must Be Counted, Every Drop Used Must Be Recycled And Reused Whenever Possible.”

³⁰ <https://googleweblight.com> Visited on 19-4-18.