

CONTROL OF WATER POLLUTION: CONSTITUTIONAL ASPECT IN INDIA

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Abstract: Water and life are interrelated. In India right to clean water is not a fundamental right in the Constitution. The Courts have interpreted Article 21 of the Constitution right to life encompassing the right to safe and sufficient water. Water pollution in India has a wide range of causes. Forty second amendment to the Constitution of India introduced certain significant provisions relating to environment protection. The Water (Prevention and Control of Pollution) Act, 1974 (Water Act) was passed by Indian Parliament, under article 252 of the Indian Constitution. All the States have approved implementation of the Water Act as enacted in 1974. The Act now applies to all the States and Union Territories. Water is subject in the State List under the Indian Constitution. Parliament adopted amendments to this Act in 1978 and further amended the Act in 1988. The Water Act establishes a Central and State pollution control boards. The Central board may advise the Central Government on water pollution issues, coordinate the activities of state pollution control boards, sponsor investigation and research relating to water pollution, and develop a comprehensive plan for the control and prevention of water pollution. The Water Act is comprehensive in its coverage, applying to streams, inland waters, subterranean waters, and sea or tidal waters. Standards for discharge of effluent or the quality of the receiving waters are not specified in the Act itself. The Act provides for a permit system or 'consent' procedure to prevent and control water pollution. The Act generally prohibits disposal of polluting matter in streams, wells and sewers or on land in excess of the standards established by the state boards.

Keywords: Constitution; Pollution; Water

1. Introduction

The meaning of the concept of water pollution is important since it is generally the starting point for the enactment of any water pollution control legislation and other regulation, orders, and decrees to implement the legislation. In India, there have also been significant developments in protecting the "water" through judicial interpretations. The right to life has been specifically guaranteed to all citizens under Article 21 of the Constitution.

2. Constitutional Scheme for Protection of Water in India

The part IV-A of the directive principles of the state policy, fundamental duties have been added under Article 51-A by the 42 amendment of the Constitution in 1976. Under Article 51-A (g) provides that, to protect and improve the natural environment including forest, lakes, rivers,

and wildlife and to have compassion for living creature. [1]

The state is under obligation to implement the directive principle. Article 39-A of the Constitution provides 'Right of Access to Courts' to the citizen. In exercise its powers of judicial review, the courts can enforce the Constitutional and legal rights by interpreting the Articles 21, 48-A and 51 A (g) of the Constitution.

The environment related laws enacted by the parliament under Articles 252 and 253 of the Constitution of the India. The Water Act (prevention and control of pollution) 1974 has been enacted by under article 252 of the Constitution. [2] This act became effective at the State level. The Central government's role in resolving inter-state water disputes as per the provisions under Art.262 of the Constitution. Under this Article, Parliament enacted the inter-State Water Disputes Act of 1956. Under which a number of tribunals have been set up to resolve water disputes

among the States. The Central government can also acquire legislative powers on water when two or more states desiring uniform water legislation request the union government.

The Constitutional provisions in respect of all allocation of responsibilities between the state and Centre fall in to three categories, the Union List, the State List and Concurrent List. As most of rivers in the country are inter- states, the regulation and development of the waters of these rivers, is a source of inter-state differences and disputes. In the Constitution, water is matter included in Entry 17 of List-II i.e. State List. This entry is subject to the provision of Entry 56 of List-I i.e. Union List.

Article 246 provides that specific provisions in this regard as under:

1. Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the seventh Schedule (in this Constitution referred to as the "Union List").
2. Notwithstanding anything in clause (3), Parliament, and, subject to clause (1), the legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule 9 in this Constitution referred to as the "Concurrent List).
3. Subject to clauses (1) and (20, the Legislature of any State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (in this Constitution referred to as the State List.)
4. Parliament has power to make laws with respect to any matter for any part of the territory of India not included in a State notwithstanding that such matter is a matter enumerated in the State List.
5. Article 262 provides:

6. Parliament may by law provide for the adjudication of any dispute or complaint with respect to use, distribution or control of the waters of, or in, any inter-state river valley.
7. Notwithstanding anything in this Constitution, Parliament may, by law provide that neither the Supreme Court nor any other court shall exercise jurisdiction in respect of any such dispute or complaint as is referred to in Clause (1).

Entry 56 of list I of Seventh Schedule provides that "Regulation and development of inter-state rivers and river valleys to the extent to which such regulation and development under the control of the Union the declared by Parliament by law to be expedient in the public interest"

Entry 17 under List II of Seventh Schedule provides that "Water, that is to say, water supplies, irrigation and canals, drainage and embankments, water storage and water power subject to the provisions of Entry 56 of List I".

As such, the Central Government is conferred with powers to regulate and develop inter-state rivers under Entry 56 of List I of Seventh Schedule to the extent declared by the Parliament by law to be expedient in the public interest.

It also has the power to make laws for the adjudication of any dispute relating to waters of inter-state river valley under Article 262 of the Constitution.

The present Constitutional scheme the legislative powers are divided between the Union and the States in relation to water. The Union has been given power to legislate in relation to regulation and development of inter-state rivers and river valleys. [3] This power to legislate is to extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest. The States have been given power to legislate in respect of water supplies, irrigation and canals, drainage and embankments, water storage and

waterpower. [4] This power of the states is subject to the legislative power of the Union under entry 56 of List I.

The Constitution guarantees every citizen fundamental right to equality, life and personal liberty. Art.15 (2) of the Constitution further states that no citizen shall be subjected to any restriction with regard to "the use of wells, tank, bathing Ghats".

As the Indian case illustrates there are several difficulties in realizing the right to water.[5] The Right to water has been protected as a fundamental human right by the Indian Supreme Court as part of the Right to Life guaranteed under Article 21 of the Indian constitution. The right to life has been expanded significantly over the last three decades to include the right to health and the right to a clean environment which can include the right to clean drinking water.

3. Water Protection Legislations in India

Statutory water law includes a number of pre- and post-independence enactments in various areas. These include laws on embankments, drinking water supply, irrigation, floods, water conservation, river water pollution, rehabilitation of evacuees and displaced persons, fisheries and ferries. In general, water law is largely state based. This is due to the constitutional scheme, which since the Government of India Act, 1935 has in principle given power to the states to legislate in this area. Thus, states have the exclusive power to regulate water supplies, irrigation and canals, drainage and embankments, water storage, hydropower and fisheries. There are nevertheless restrictions with regard to the use of inter-state rivers. [6]

Further, the Union is entitled to legislate on certain issues. These include shipping and navigation on national waterways as well as powers to regulate the use of tidal and territorial waters. [7] The Constitution also provides that the Union can legislate with regard to the adjudication of inter-state water disputes. [8] Art.262 of the Constitution says that;

"Parliament may by law provide for the adjudication of any dispute or complaints with respect to the use, distribution or control of the waters of, or in, any inter State River or river valley.

Notwithstanding anything in this Constitution, Parliament may by law provide that neither the Supreme Court nor any other Court shall exercise jurisdiction in respect of any such dispute or complaint as is referred to in clause (1).

Following are the enactments made to deal with different kinds of water rights and water pollution protection.

- (1) Inter- State Water Disputes Act,1956
- (2) River Board Act,1956
- (3) The Water (Prevention and Control of Pollution) Act, 1974
- (4) The Water (Prevention and Control of Pollution) Cess Act, 1977

While no substantive clauses could be adopted at the time of the adoption of the Constitution, a specific act, the Inter-State Water Disputes Act was adopted in 1956. [9] The Inter-State Water Dispute Act, 1956 has been enacted by Parliament in exercise of the power conferred by Art.262 of the Constitution. This introduces a procedure for addressing disputes among states concerning inter-state rivers that have not been solved through negotiations. It provides for the establishment of specific tribunals to adjudicate such conflicts and has been used in several cases. [10]

Parliament also enacted the River Boards Act, 1956 which provides a framework for the setting up of river boards by the Central Government to advise state government concerning the regulation or development of an inter-state river or river valley.[11] River boards can advise state governments on a number of issues including, conservation, control and optimum utilization of water resources, the promotion and operation of schemes for irrigation, water supply or drainage or the promotion and operation of schemes for

flood control. This act has, however, never been used in practice.

The intervention of the Central Government the importance of national regulations in water has already been recognized in certain areas. Thus, with regard to water pollution, Parliament did adopt an act in 1974, the Water (Prevention and Control of Pollution) Act. [12] This act seeks to prevent and control water pollution and maintain and restore the wholesomeness of water. It gives powers to water boards to set standards and regulations for prevention and control of water pollution.

The Water (Prevention and Control of Pollution) Cess Act No 36 of 1977 was passed by the Parliament under the legislative powers derived from Art.252 of the Constitution of India.

4. Right to Clean Water: Judicial Aspect of India

As the Indian case illustrates there are several difficulties in realizing protect to water. The Right to water has been protected as a fundamental human right by the Indian Supreme Court as part of the Right to Life guaranteed under Article 21 of the Indian Constitution. The right to life has been expanded significantly over the last three decades to include the right to health and the right to a clean environment which can include the right to clean drinking water. In India, there have also been significant developments in protecting the water through judicial intervention.

In the case of *M.C.Mehta v. Kamal Nath* [13] "the State is the trustee of natural resources, as a trustee the State has legal duty to protect the natural resource and these resources and these resources meant for public use cannot be converted into private ownership." This is one of the case, which the courts assert that the Public Trust Doctrine.

The Supreme Court stated in *Narmada Bachao Andolan*, [14] that "Water is the basic need for the survival of human beings and is part of the right to life and human rights as enshrined in Article 21 of the

Constitution of India ...and the right to healthy environment and to sustainable development are fundamental human rights implicit in the right to life." Understanding the right to water as implied in the recognition of the right to a clean environment, the Supreme Court has repeatedly reaffirmed the connection between public access to natural resources, including water, the right to a healthy environment and the right to life under Article 21 of the Constitution.

In India till date the right to clean drinking water has been protected by the courts only as a negative right – i.e. the right not to have water sources polluted. Such protection has stemmed from the articulation of a fundamental right to a clean and healthy environment as part of the right to life guaranteed under Article 21 of the Constitution by the Supreme Court. The concept of right to "healthy environment" has been developed as part of the right to life under Article 21 of our Constitution. This concept was first discussed in the case of *Bandhua Mukti Morcha v. Union of India* [15] and then continued and expanded. The Supreme Court protected the right to clean water as part of the right to a healthy environment. An important ruling of the Indian Supreme Court was the case of *A.P. Pollution Control Board II v. Prof. M.V. Nayudu*. [16] In this case, the AP government had granted an exemption to a polluting industry and allowed it to be set up near two main reservoirs in Andhra Pradesh – the Himayat Sagar Lake and the Osman Sagar Lake, in violation of the Environment Protection Act 1986. The Supreme Court struck down such exemption and held that the "Environment Protection Act and The Water (Prevention and Control of Pollution) Act 1974 did not enable to the State to grant exemption to a particular industry within the area prohibited for location of polluting industries. Exercise of such a power in favors of a particular industry must be treated as arbitrary and contrary to public interest and in violation of the right to clean water under article 21 of the Constitution on

India The court referred to India's participation in the UNO water conference and held that the right to access to drinking water is fundamental to life and there is a duty on the State under Article 21 to provide clean drinking water to its citizens.

The Supreme Court also referred to the *Narmada Bachao Andolan v. Union of India*[17] judgment where Kirpal, J. observed that "Water is the basic need for the survival of human beings and is part of the right to life and human rights as enshrined in Article 21 of the Constitution of India

A landmark decision is *Vellore Citizens' Welfare Forum v. Union of India* [18] dealing with compensation to victims of water pollution caused by tanneries. The Supreme Court incorporated principles of customary international law: the polluter pays principle and the precautionary principle, as an integral part of domestic environmental law, linking them with the fundamental right to life in Indian constitutional law. Emphasizing the duty of the government to prevent and control pollution, the Supreme Court held that, "the constitutional and statutory provisions protect a person's right to fresh air, clean water and pollution free environment, but the source of the right is the inalienable common law right of clean Court held that, "the constitutional and statutory provisions protect a person's right to fresh air, clean water and pollution free environment, but the source of the right is the inalienable common law right of clean environment.[19]

In *M.C. Mehta v. Union of India* [20], which concerned the pollution of the river Ganga, the Supreme Court reaffirmed the duty of the government, under Article 21, to ensure a better quality of environment and ordered the government to improve its sewage system. In *A.P. Pollution Control Board v. Prof. M.V. Nayadu* [21] the Court held that the right to access to drinking water is fundamental to life, and that the state has a duty under Article 21 to provide clean drinking water to its citizens. In *M. C.*

Mehta v. Union of India, the Supreme Court of India recognized that groundwater is a public asset and that citizens have the right to the use of air, water and earth as protected under Article 21 of the Constitution.

Conclusion

Hopefully, this paper shows that a more active way in dealing with the Constitutional provisions concerning the protection of water. In India, there is no entry on 'environment protection under the Legislative List of the Constitution. It calls upon the States 'to protect and improve the environment and safe-guard the forest and wildlife of the country. It also imposes only a duty on citizen "to protect and improve the natural environment including forests, lakes, rivers, and wildlife and to have compassion for living creature." India has one of the few Constitutions that contain specific provision for water.

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