

MONITORING AND STANDARD COMPLIANCE OF VARIOUS WATER LAWS IN INDIA: A LEGAL APPROACH

¹Mr. T.M. Jethani, ²Dr A Subramanyam

¹ Research Scholar (Part-Time), School of Law, Vel-Tech Rangarajan Dr. Sagunthala R&D Institute of Science & Technology, Avadi, Principal, Viva College of Law, Virar, Dist Palghar.

²Research Supervisor, Dean & Professor of Law, School of Law, Vel-Tech Rangarajan Dr. Sagunthala R&D Institute of Science & Technology, Avadi, Chennai.

annamsubrahmanyam@gmail.com

ABSTRACT

Water is essential to sustain Life in all forms Water conservation is necessary. Therefore the water right has been read as a part of the right to Life Under Article 21 of the constitution of India. Water in the natural environment Supports a variety of ecosystem Services to cater to the basic needs and to also support economic and cultural activities. According to UNDP: Water the stuff of Life and a basic human right is at the heart of a daily crisis faced by countless Millions of the world's most vulnerable people¹. Inefficient use of water resources as well as pollution caused by reckless industrialisation and the increase in human population have led to a Scarcity of potable water. Some of the causes of water pollution are industrial and Urban waste, and oil leakages². pesticide and fertilizer, Marine dumping of waste, acidification of rain, and overall increase in Marine water temperatures. Contaminated water results in water-borne diseases affecting human beings Plants and animals. It has its impact on agriculture as well thus affecting the economy. In light of international developments especially the Stockholm conference of 1972, to which India is a party, there was a need to focus on sustainable development and water pollution being the most glaring of menace there was a need to check it through legislation. The laws of Manu also addressed issues related to the regulation of water, such as pollution and its impact on health.

1. Introduction:

1.1 Definition of the Water

Act:

The purpose of the Legislation was not only the prevention and control of water pollution but also the maintenance and restoration of the wholesomeness of water. Under the Water Act, pollution is considered a nuisance or an evil that harms public health. The Water Act defines the pollution of Water as follows: Pollution means such contamination of the water of such alteration of the physical, chemical or biological properties of water or Such discharge of any Sewage or trade effluent on of any other Liquid, gaseous or Solid substance into water (whether directly or indirectly) as may or is likely to create a nuisance or render Such water harmful or injurious public health or Safety, or to domestic, Commercial, industrial Agricultural or other legitimate uses or the Life and health of

¹ United Nations Development Programme: Human Development Report 2006- Scarcity

² This is caused by due desolation of excessive natural water

animal or plants of aquatic organism.

Water bodies and streams are useful for several purposes. They are a habitat for many aquatic organisms in Mohan Viniyog Pvt Ltd V. State of West Bengal³. The Calcutta High Court held that the filling up of waterbodies and Streams results in alteration of the physical properties of water. Hence the term 'pollution' has to be construed in a wide sense, and not in a narrow manner. Definitions of Sewage effluent, trade effluent and 'stream' in the Water Act are also conspicuous. Sewage effluent means effluent from any Sewage System or Sewage disposal works and includes sewage from open drains. Trade effluent is an illustrative definition as Including any liquid, gaseous or Solid substance that is the discharge of from any premises Used for Carrying on any industry, operation or treatment and disposal system other than domestic sewage. The definition of 'stream' is also an inclusive one. It includes river, flowing or dry water courses natural or artificial inland water artificial one or Sea or tidal waters. However, when the stream relates to sea or tidal water, it is defined to include only to such an extent, or as the case may be to such a point as the state government May specify by notification in the official Gazette.

Prohibition of disposal of polluting matter to streams or well or sewer on land is the key to the regulation Under the water Act. According to this system, no person shall knowingly cause or permit poisonous, noxious or polluting matter to enter into steamed or well sewer or on land. The prohibition extends to a case, where the entry of any other matter impedes the proper flow of water in a manner lending likely to head to a Substantial aggravation of pollution. Although, violation of These provision is against the public interest and leads to penal consequences, this offence stands different from public welfare offences. In a modern welfare State, as the knowledge about the harm and men's rea are the most important elements to Constitute an offence Under the water Act. Prohibition of discharge of polluting matter is not absolute. The law allows discharge of sewage or trade effluent after treatment No person without obtaining the consent of the state pollution control Board established Under the water act or take any Steps establish any industry which is likely to discharge Sewage or trade effluents⁴. An Application for consent has to be made by the person who intends to establish any industry or Cary out an Operation or process or treatment of disposal System. The Consent can be given with or without condition without conditions violation of the condition may lead to withdrawal of consent and prosecution.

1. Methodology:

1.1 Objective of Study

The objective of the present study is Undertaken with the following points.

- To study the content of water and what impurities make the water polluted.
- To study when water is said to be fit for Human consumption and for animals and plants.
- To analyze the constitution of the Central and state pollution control boards
- To observe the legislation enacted by legislative authority for the safety of human

³ AIR 2007 Cal 190 (NOC).

⁴ Water (prevention and control of pollution) Act, 1974

beings.

1.2 Hypothesis

- To Verify the Quality of water, and to see whether it is Safe for Drinking purposes for Human beings, Animals and plants.

1.3 Research Methodology and Source of Data

The Research project study is completely alone in the Doctrinal study. The Secondary Source is also done in the form of Doctrinal Research. The Secondary Sources of Data Are Books, Journal, Articles, website Citation

2. Central and State Pollution Control Boards:

2.1 The Central Board

The Water Act provides for the constitution of the Central and state pollution control boards empowered to carry out a variety of functions to promote the cleanliness of streams and wells and to prevent and control pollution of water. The Central Pollution Control Board advises the Central Government, co-ordinates the activities of state pollution control boards, provides them with technical assistance and guidance, organises training of personnel for pollution control, collects and compiles technical and statistical data, lays down water quality standards and executes nation-wide pollution control programmes⁵. It may step into the shoes of the state pollution control boards when the Central Government directs it to do so. This could happen when the Central Government believes that any state pollution control board has defaulted in complying with any direction issued by the Central Board, and that a grave emergency has arisen as to warrant immediate action.

2.2 State Board

The state pollution control boards carry out programmes identical to those of the Central Pollution Control Board within the territory of the state⁶. They plan comprehensive programmes, advise state governments and collect and disseminate information. They collaborate with the Central Pollution Control Board in organising training programmes, inspect sewage and trade effluents treatment plants. They lay down standards for water quality, evolve methods of treatment and disposal of sewage and trade effluents, formulate modes of the utilisation of sewage and trade effluents for agriculture, and advise the state governments of the location of industries. The most significant power of a state pollution control board is to make, vary or revoke an order for the prevention or control of discharge. In the exercise of this power, the state pollution control board can require any person concerned to construct new, or modify existing systems for disposal, and to adopt remedial measures necessary for the control of water pollution⁷.

2.3 Joint Boards:

Chapter III of the Act deals with the Constitution of the Joint Board and its composition.

2.3.1 Constitution of Joint Board:

Section 13 provides that a Joint Board for a specified period, which can be further renewed, can be constituted by an agreement. The agreement may be entered into:

⁵ Water (prevention and control of pollution) Act, 1974 S-16

⁶ *ibid*, SCC 17(1).

by two or more Governments of adjoining States; or by the Central Government (in respect of one or more Union Territories) and one or more Governments of States adjoining to such Union Territories. An agreement under this section may- provide for apportionment of the expenditure in connection with the Joint Board; determine which of the participating Governments shall exercise and perform the several powers and functions under this Act; provide for consultation concerning particular matters arising under this Act; and make such incidental and ancillary provisions, not inconsistent with this Act, as may be deemed necessary or expedient for giving effect to the agreement. Agreement under this section is required to be published in the official gazette of the participating States and participating Union Territory, as the case may be.

2.3.2 Composition of the Joint Board:

Section 14(1) provides that a Joint Board constituted by an agreement between two or more Governments of adjoining States shall consist of following members: One full time chairman to be nominated by Central Government. He should have special knowledge or practical experience relating to environmental protection. A person having knowledge and experience in administering institutions dealing with environmental protection is also eligible.

Two officials from each of the participating States are to be nominated by the concerned participating State Government to represent that Government. One person is to be nominated by each of the participating State Governments to represent local authorities functioning within the State concerned. One non-official member is to be nominated by each of the participating State Governments to represent the interests of agriculture, fishery industry, or trade in the concerned State. Two persons to be nominated by the Central Government to represent the companies or corporations owned, controlled or managed by participating State Governments.

One full-time Member Secretary to be appointed by the Central Government. He should possess qualifications, knowledge and experience in scientific, engineering or management aspects of pollution control. Section 14 (2) provides that a Joint Board constituted by an agreement entered into by the Central Government (in respect of one or more Union Territories) and one or more Governments of States adjoining to such Union Territories, shall consist of the following members: One full-time chairman to be nominated by the Central Government. He should have special knowledge or practical experience relating to environmental protection.

A person having knowledge and experience in administering institutions dealing with environmental protection is also eligible. Two officials to be nominated by the Central Government from the participating U.Ts. and two officials to be nominated from the participating States. One person to be nominated by the Central Government representing the local authorities functioning within the participating U.T. and one person to be nominated by the State Government representing the local authorities functioning within that participating State. One non-official member to be nominated by the Central Government and one person to be nominated by the participating State Government to represent the interests of agriculture, fishery or industry or trade in the Union territory or the State, as the case may be.

Two persons to be nominated by the Central Government to represent the companies or corporations owned, controlled or managed by the Central Government and situated in

the participating U.Ts. and two persons to be nominated by the Central Government to represent the companies or corporations owned, controlled or managed by the participating State Governments. One full-time Member Secretary to be nominated by the Central Government. He should possess qualifications, knowledge and experience in scientific, engineering or management aspects of pollution control.

When a Joint Board is constituted by entering into an agreement by the Central Government in respect of one or more U.Ts. and one or more Governments of the adjoining States, then the Central Board shall not exercise the powers and perform the functions of a State Board for that Union Territory.

2.3.3 The Power to Issue Directions:

While the Central Government can give directions to the Central Pollution Control Board, the latter in turn can issue directions to the state pollution control board. The directions issued by the Central Government and the state government will bind both the Central Pollution Control Board and the state pollution control board respectively. Consequent to the enactment of the EPA, an amendment to the Water Act conferred more potent and meaningful powers on the boards. It laid down that a board may, in the exercise of its powers and performance of its functions, issue any direction in writing to any person, officer or authority and such person, officer or authority shall be bound to comply with such direction. This means that a state pollution control board as well as the Central Pollution Control Board can issue directions to an industry to stop functioning. An explanation of the provision declares that this power includes the power to direct closure, prohibition, or regulation of any industry, operation or process stoppage or regulation of supply of electricity, water or any other services.

The state pollution control boards are empowered to take samples of effluents. The Water Act confers on any person empowered by the board, the power to enter any place for performing the functions of the board and determine whether any order or direction is being complied with. However, a plain reading of the statutory provision shows that the authorized person can make the seizure of any plant, record, register, document or any other material object only to procure evidence for prosecution. The identical provision in the EPA, on the other hand, confers a wider power. It can be used for prevention and mitigation of environmental pollution.

2.4 Conditions of Consent:

The state pollution control board decides whether an application for consent can be granted. It also decides in each case the conditions subject to which consent is to be given. The board maintains a register of conditions. Violation of conditions may lead to prosecution or cancellation of consent, person who has been given consent does not carry out the work prescribed as part of the conditions of the consent, the board can, on its own accord, execute the work and recover the expenses from the person concerned. In case of emergency of poisonous, noxious or polluting matter being present in any stream or well or on land, the board could take such measures, as it deems necessary and expedient. These measures include those for remedying and mitigating the pollution. The board can issue orders prohibiting or restraining the person from discharging polluting matter or from making unsanitary use of a stream or well. 21 In case of apprehended pollution, the board can make an application to a court not below the rank of judicial magistrate of the first

class for injunctive relief.

2.5 Structure of Board:

The structure and the mode of the constitution of the Central and state pollution control boards are provided in the Water Act. Each board will have a chairman, who has special knowledge and experience on matters relating to environmental protection and a full-time member-secretary possessing qualifications, knowledge and experience in scientific, engineering and management aspects of pollution control. A board has official members, not exceeding five members; not exceeding three, from the fields of agriculture, fishery, industry or trade; and two persons representing government corporations. While the Central Pollution Control Board has members, not exceeding five, representing the members of the state pollution control boards, the state board has members, not exceeding five, representing the local bodies within the state. The governments concerned nominate all members and appoint the member secretary.

3. 1988 Amendment:

The above-mentioned defects notwithstanding, the 1988 amendment of the Water Act brought crucial changes that merit scrutiny. It is an improvement over the past practice where a court could take cognizance of such complaints only with the permission of the board. Currently, the court can admit a complaint if the person has already given the board 60 days' notice of his intention to make the complaint. The mandatory notice period has its merits and demerits. On one hand, it induces the board to energize its preventive measures. On the other hand, it renders the polluting entity sufficient time to cover up their commissions or omissions. Another change is that, once a complaint has been made, the board, on demand, has to make available to the complainant the relevant reports in its possession. This change will enable the complainant to prove the contentions before a court of law. However, the privilege to refuse disclosure in the public interest may at times induce the board not to disclose materials even if the disclosure is in the public interest.

Submission of annual reports by the Central Pollution Control Board and state pollution control boards to the respective governments is another change brought out by the 1988 amendment. The original position was that on receipt of the report from the board, the government had to submit the report to the legislature within six months. Manifestly, such a position does not provide a definite date for the submission of a report to the legislature, as it is always dependent upon the submission of a report by the board to the government. The change filled up this lacuna and specifically laid down that the annual report should be submitted to the government by the board within four months from the first date of the previous financial year. The government should cause such a report to be laid before the legislature within nine months from the last date of the previous financial year. This made it peremptory to bring the annual reports to the legislature for their deliberations within nine months of the board's activities of the relevant year. The change is meant to give greater control to the legislature over the working of the boards.

4. Water Act and Groundwater Pollution:

Certain doubts were raised relating to the role of the Water Act in the control of pollution of groundwater. The Water Act does not refer to groundwater pollution. Unlike the British law, the Water Act does not provide specifically for the control of dumping of waste on the land, which may eventually pollute underground water streams. The question

can be examined in light of the definition of 'stream' given in the Water Act. Streams include subterranean waters. The plain meaning of subterranean waters is nothing but 'underground' waters. Thus, the control of pollution of subterranean streams includes control of pollution of groundwater. However, in the beginning, scant attention was paid by the pollution control boards to taking up measures of control over groundwater. The amendment of the Act in 1978 prohibits the discharge of poisonous, noxious and other polluting matter not only into any stream or well, but also 'into sewer or on land. Dumping of polluting matter on the land, which may eventually pollute groundwater, came to be regulated after the introduction of this amendment. Such a liberal interpretation may be viewed as conferring on the pollution control board, powers to take up appropriate measures against pollution of groundwater.

Rules have been framed under the EPA for the control, collection, treatment, storage and disposal of hazardous wastes. These rules have conferred on pollution control boards, the power to grant authorization for the activities connected with disposal of hazardous wastes. The rules are silent on the question of whether the board should consider the various effects of hazardous waste on groundwater before it grants authorization for disposal in a particular locality. However, the board is not barred from incorporating objective standards of maintaining groundwater safety when the authorization is issued.

Despite the potential provisions, it may well be that burdened with too many responsibilities and weakened by institutional pressures the boards are reluctant to act. The boards seldom interpret the provisions of the statute in such a liberal fashion as to assume powers at this level. Hence, it is desirable to look at the problem of groundwater from a wider perspective. Inevitably, the question reaches larger dimensions of strategies for effectively managing land and water resources in the country. Definite legislation with a comprehensive mechanism of control and management is necessary to be enacted for the sustainable use of groundwater.

4.1 Pollution Control: Judicial Perspective:

For a long time since the enactment of the Water and Air Acts, industries have invariably disregarded the directions of pollution control boards and violated the conditions of consent with impunity. The boards, being the agencies envisaged to control pollution, stood as helpless witnesses to these tragic happenings. This malady stirred the conscience of the courts. The very negligence of the boards in their functioning also came to the notice of judicial vigilance.

4.2 Strengthening the Hands of Agencies:

The Ganga Pollution case⁸ is a specific illustration where the Supreme Court noticed the utter indifference of the tanneries, and ordered to stop the discharge of trade effluents into the river Ganga. It rightly held that the immense adverse effect on the public at large by the discharge of trade effluents would outweigh any inconvenience caused to the polluting entities on account of the closure. Specific directions were issued to the tanneries either to set up primary treatment plants (PTP) or to stop their functioning. The Central Government, state pollution control board and the district magistrate were asked to monitor the enforcement of its orders. Assignment of such a watch-dog function to the authorities was unprecedented. It gave them more awareness and strength for taking up anti-pollution

⁸ Water (prevention and control of pollution) Act, 1974 S-17.

measures.

Directions to the Kanpur municipal authority in another MC Mehta case⁹ is a sequenceto the tanneries cases. In that case, the sewage system in Kanpur was in complete disarray. Therefore, the level of pollution of the river Ganga at Kanpur was higher, and the water had become unfit for drinking, fishing or bathing. The Supreme Court fixed the responsibility on the nagar mahapalika of Kanpur and directed it to improve its sewage system within six months in co-ordination with the state pollution control board¹⁰. General directions issued by the Supreme Court in the case are notable. High courts were asked not to grant stay¹¹ of proceedings to prosecute industrialists and other persons who pollute the water of the river Ganga. In extraordinary circumstances, the high court should dispose of such cases within two months from the date of institution. These directions were particularly significant as the Supreme Court said that the directions applied mutatis mutandis to all other mahapalikas and municipalities which had jurisdiction over the areas through which the river Ganga flows.

Rapid industrialization and urbanization and the resulting exodus of rural people to urban areas have had their adverse consequences. Cities like Delhi have turned into virtual dustbins with garbage strewn all over. In *Wadehra v Union of India*,¹² the Supreme Court issued several directions to the government and other pollution control agencies, particularly the municipal authorities in Delhi, who were found to be remiss in performing their statutory duties of collecting and disposing of garbage and waste. Significantly, the court took the view that government should construct and install incinerators in all hospitals and nursing homes with 50 beds and above. Disposal of hospital wastes requires urgent attention. It is ironic that hospitals that treat and cure diseases become sources for spreading diseases by exposure to dangerous bio-medical waste.

4.3 Offences by Companies:

Section 47 of the Water Act incorporates the principle of vicarious liability. This section provides that where an offence against this Act has been committed by a company, every person who, at the time when the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. But there shall be no liability of any such person if he proves: - that the offence was committed without his knowledge; or that he exercised all due diligence to prevent the commission of such offence. Where an offence against this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributed to any neglect on the part of, any director, manager, secretary or another officer of the company then such officers shall be deemed to be guilty of that offence and shall be proceeded against and punished accordingly.

4.4 Offences by Government Departments:

⁹ M.C. Mehta V. U.O.I. AIR 1988 SC 1037.

¹⁰ M.C. Mehta V. U.O.I. AIR 1988 SC 1115.

¹¹ *ibid*, P. 1126.

¹² (1996)2 SCC 591 P-608.

Section 48 of the Water Act is also based on the principle of vicarious liability. This section provides that where any Department of the Government commits an offence under this Act, the Head of the Department shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. However, there shall be no liability of the Head of the Department- if he proves that the offence was committed without his knowledge; or that he exercised all due diligence to prevent the commission of such offence.

4.5 Cognizance of Offences:

Section 49 of the Water Act provides that the Court shall take cognizance of any offence under this Act only if the complaint is made by- a Board or any officer authorized on this behalf by Act; or any person who has given notice of not less than sixty days of the alleged offence and of his intention to make a complaint to the Board or the authorized officer.

4.5.1 Miscellaneous Provisions:

Chapter VIII of the Water Act contains certain miscellaneous provisions. The important provisions are discussed as under:

4.5.2 Central Water Laboratory:

Section 51 provides that the Central Government may, by notification in the Official Gazette, - establish a Central Water Laboratory; or specify any laboratory or institute as a Central Water Laboratory to carry out the functions entrusted to the Central Water Laboratory under this Act. The Central Government may, after consultation with the Central Board, make rules prescribing- The functions of the Central Laboratory; The procedure to be followed by the said Laboratory in analysing the sample and preparing the report; Such other matter as may be necessary or expedient to enable the laboratory to carry out its functions.

4.5.3 State Water Laboratory

Section 52 provides that the State Government may, by notification in the Official Gazette, -establish a State Water Laboratory; or specify any laboratory or institute as a State Water Laboratory to carry out the functions entrusted to the State Water Laboratory under this Act. The State Government may, after consultation with the State Board, make rules prescribing- The functions of the State Laboratory; The procedure to be followed by the said Laboratory in analyzing the sample and preparing the report; and Such other matter as may be necessary or expedient to enable the laboratory to carry out its functions.

4.5.4 Analysts:

The Central Government may appoint Government Analysts for the analysis of samples of water or sewage or trade effluent sent for analysis to any laboratory established by the Central Government. The State Government may appoint Government Analysts for analysis of samples of water or sewage or trade effluent sent for analysis to any laboratory established by the State Government. The Central Board or the State Board with the approval of the Central Government or the State Government, as the case may be can also appoint Board Analysts for analysis of samples of water or of sewage or trade effluent sent for analysis to any such laboratories.

5. Conclusion:

Under the Water Laws in India. Pollution Control Board carries out various functions. It is mainly a regulator of various environmental laws. and it carries out its operation whenever any complaint is received by the person or a group of persons regarding water pollution or discharge of trade effluent in the river or well. The concerned officer will be deputed on-site to investigate the matter within its jurisdiction and report to the concerned authorities. Pollution Control Board has its enforcement policy which was laid down, in the year 2006. The board does inspection Monitoring and standard compliance of various manufacturing Units regularly implementing various environmental laws under the Water Act, of 1974. Content is the basic document through which stringent conditions are imposed for preventing, and controlling any abatement of pollution. The Board will concentrate more on the precautionary principle while granting consent to the industry imposing the concept of conservation, the possibility of incorporating the life cycle approach and finally disposal of waste in an environmentally sound scientifically safe manner.