

# WATER POLLUTION IN INDIA: DIMENSIONS OF JUDICIAL INTERVENTION

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**Abstract :** National water law is more developed than international water law. Nevertheless, India lacks an umbrella framework to regulate freshwater in all its dimensions. The existing water law framework in India is characterised by the coexistence of a number of different principles, rules and acts adopted over many decades. These include common law principles and irrigation acts from the colonial period as well as more recent regulation of water quality and the judicial recognition of a human right to water. The lack of an umbrella legislation at the national level has ensured that the different state and central legal interventions and other principles do not necessarily coincide and may in fact be in opposition in certain cases. This paper examines the justiciability of social rights, looking particularly at the Right to Water as part of the all encompassing Right to Life. In India, 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.

**Keywords :** National water law, justiciability, Environment, Constitution, Article 21, India.

## INTRODUCTION

Everyone has the right to life under Article 21 of the Constitution of India which includes pollution free environment. [1] The environment includes water, air and land and the interrelationships that exist between water, air and land and humans, other living beings, plants, microbes and property. [2] Water is the most important element for life; a person cannot survive without it, which is a characteristic of the right to life. Water exists naturally on Earth as a solid, liquid or gas. Scientists estimate that there is more than one billion cubic kilometers of water on this Earth, which covers about three-fourths of the Earth's surface. But, in fact, less than one percent is fresh and useful on the Puthuvi and is found in lakes, ponds, rivers and groundwater. The remaining saline water is found in the oceans and two percent is sealed in glaciers and ice caps. Fresh water is abundant from a global point of view and the amount of fresh water renewed by the hydrology cycle between the oceans, atmosphere, sun, and land is sufficient to meet the needs of five to ten times more than the current world population.

India is a large country with varying geographical regions and climatic conditions. In some areas it rains or in some others very rarely. Some states and regions are blessed with rivers and lakes and some others suffer from drought or floods. The disparity in water distribution thus becomes a complex problem. Questions related to the maintenance and protection of water quality are of wide importance. The quality of water available to drink is a serious threat to the survival of life. The decline in water quality is a consequence of human activities, land use practices and economic development. Land use practices affect the water quality in our streams, lakes, ground water and ultimately the marine environment. A concerted effort is being made by nations to improve the integrity of human health and ecosystems. Aggressive, positive and timely policies and actions are required to accomplish this. It is the moral responsibility of the world to ensure that generations to come inherit the world with clean water and healthy environment.

Over the last half century, India has developed a vast body of environmental laws that cover concerns related to environmental justice, pollution control, land use regulation, natural resource regulation, impact assessment, energy regulation and a host of other related areas. This framework of regulation is based on strong public intervention, and often through legislation, large-scale pressures and technical expert management of emerging environmental hazards and potential values and addressing pivots for potential risks. [3] Consequently, there is no assessment of Indian environmental law avoiding scrutiny of legislative and administrative plans that assess and manage the expected risks as well as their ability to do so is democratic and representative. Against this backdrop, this paper presents risk management as the major conceptual framework for understanding Indian environmental law and shows the importance of this framework through the example of regulation pollution risk under the scheme of the Water Act.

Risk management captures an important aspect of the conceptual foundations of modern environmental regulation and is based on a simple idea. Potential future threats or risks to the environment emanating from human activity, and may be subject to public regulation, even if this is not always possible due to available evidence and the localization of the chains of workspaces for specific instances of risky behaviour. The simplest example of this form of state intervention is the almost instinctive belief that polluting activity, for example the operation of a coal-fired power plant, should be subject to certain regulatory standards, although it cannot be definitively established Is that any such industry does harm to human health. In this regard, risk-based approaches to environmental regulation overcome limitations in earlier forms of environmental law regulation such as the Tort Law, in which the prior probability of being standards are required established between environmentally damaging human activity and a specific environmental disadvantage is high. [4]

## THE STRUCTURE OF THE WATER ACT

The Water Act emerged from the decade following the United Nations Conference on the Human Environment held in Stockholm in 1972. [5] The period witnessed increasing global recognition of the alarming loss and degradation of ecological resources, and both these statutes were products of that time and its struggle with these and related environmental concerns. [6]

Structurally the Water Act deals with the risks stemming from the pollution of surface water through the grant of consents or licences to point sources or outlets of pollution or effluents. [7] These consents or licences are tied to specified permissible standards of emission, [8] and the standards in turn are determined and policed by 'Pollution Control Boards' established both at the state and the central levels of India's federal government. [9]

There is a fundamental division of power between the Center and the States in India, reflecting the federal nature of the Indian Constitution. The mandate of the Central Pollution Control Board (CPCB) is to set environmental standards for all plants in India, meet ambient standards and coordinate the activities of State Pollution Control Boards (SPCBs). [10] Implementation of environmental laws and their implementation. Enforcement, however, is decentralized, and is the responsibility of the SPCB. Anecdotal evidence suggests widespread changes in enforcement in states. In fact it has been argued that although states cannot compete by lowering environmental standards to attract new investment, they can achieve this by lax enforcement.

Government initiatives for water resources management are outlined in the National Water Policy, 1987, National Conservation Strategy and Policy Statement on Environment and Development, and Policy Statement of Pollution, 1992. Strategy and policy statement Command and control, technical zoning, fiscal stimulus and the use of economic tools as mechanisms for water pollution control. The current way of controlling water pollution in India is to use regulatory tools with systems to monitor the standards set to achieve the government's policy goals. These standards for ambient and point source discharge are set by various government enactments.

Compliance is mandatory and penal provisions are made in the Acts. These are monitored by the Central and State Pollution Control Boards. A legal framework and sometimes fiscal stimulus schemes for standards implementation and compliance support the regulatory approach.

The two main pollution control laws in India are the Water (Prevention and Control of Pollution) Act of 1974, and the Air (Pollution and Prevention) Act, which came into existence in 1981. Subsequently, Parliament passed the Environment (Protection) Act in 1986. It was designed to act as an umbrella law for the environment, with responsibility for operating the new legislation falling on the Center and State Boards. The law prohibits the pollution of water bodies and requires that the generator of the flow / discharge has the prior consent of the SPBB. This consent for operation must be renewed from time to time. [11]

Boards are not empowered to impose fines for violations of the standards prescribed by the Act. Thus, although statutory intervention is regulated by the board through guidelines that may lead to the discontinuation or suspension of licensed activities, [12] statutory compliance with the standards is primarily based on judicial action. The medium is conceived. [13] Consequently, it is judicial management and enforcement of standards within this statutory framework that is the focal point of this investigation.

Trains its headlines on deferring 3 types of decisions that hold standards or risk management matters under the Water Act. These include - first, challenging the board's decisions and directives regarding license or consent violations; Second, cases brought in court to prevent existing or potential violations of standards; And third, criminal prosecution where the standards have been violated or where the instructions of the boards have been disregarded.

In all the above types of cases, where the board exercises its own regulatory powers to pass guidelines, an appellate authority hears appeals from decisions made by the board and, after 2010, the National Green Tribunal (NGT) further Hears appeals. The Supreme Court of India is the final court of appeal. [14] The Supreme Court of India is the last court of appeal where necessary. In criminal cases, or where the board seeks to eliminate risk through court orders, cases travel through appropriate channels of judicial process, through all manner of appropriate lower courts, high courts, and ultimately the Supreme Court. Go from Apart from these cases, by examining those decided by the High Courts, the NGT and the Supreme Court, this paper examines the postponement and review of the risk that the Indian high judiciary exercises, with examples of violations of pollution standards Is statutorily specified.

It should be mentioned that policing standards require a robust and fair procedural system for licensing to manage risk, a reliable system for collecting and testing samples, regarding the status of relevant ecological bodies a reliable collection of information in, and so on.

However, this paper applies legislative directives to manage the risks specified by the standards associated with activities licensed under these Acts. So, it is important to return the judiciary and its role as an environmental regulator, especially through its incorporation of fundamental rights into environmental governance through its public interest adjudication. Judicial intervention through public interest litigation has, since 1980s, tied the efficacy of statutory policy in the Air and Water Acts along with the Environment Protection Act of 1986, as an important facet of the constitutionally guaranteed right to life. In doing so, courts have supplemented or bolstered the regimes of risk in these statutes by reading precaution, public trust, polluter pays, sustainable development, and so on into these statutes and collectively understood the statutes and principles as embodying the values protected by the fundamental right to life. [15]

The latter statute, the Environmental Protection Act, was enacted in Bhopal to deal with the aftermath of the devastating gas leak [16] and structural to empower the Union Government to constitute specific regulatory regimes and authorities to address specific environmental problems was organized as follows. Some examples of regulatory frameworks formed under this statute include regulating solid waste, hazardous chemicals, electronic waste, noise pollution, air pollution, environmental impact assessment and so on. [17] For the purposes of this paper, it is sufficient to note that the Supreme Court has read into this statute and policy framework in the Water Act, which cautions to elaborate on the principles as well as the contents of the fundamental right to life.

The established judicial intervention in the fundamental right to life resulted in the higher judiciary and especially the Supreme Court as an agent of environmental governance by drafting worker remedies to implement the fundamental right to life as well as the policy contained in the policy is allowed to emerge in the statute. These activist interventions have been facilitated by the emergence of judicial techniques associated with public interest litigation. These include broadening the rules of standing, taking evidence from affidavits, setting up committees to lead evidence, [18] and even actively participating in environmental policy making in areas such as fuel policy, solid waste and rivers health Taking is included. In doing so, the higher judiciary, particularly the Supreme Court, has actively overseen cases, sometimes over decades, to implement the implementation of its directives. [19] Thus, it is important to note that these rights-related matters are often included in risk management planning. They should also be involved in the investigation of the Water Act and the regulation of the risk of the courts.

Finally and most recently, the enactment of the NGT also leads to another passage of matters related to water pollution. The NGT Act deals with civil matters and the NGT statute allows the higher judiciary to transfer matters of civil environment to this platform. [20] In addition to this, the statute also gives the NGT basic jurisdiction to deal with 'substantial questions that affect the environment'. Apart from the problems arising from the implementation of the Air, Water and Environmental Protection Acts, there is an appellate body to deal with the questions that come under these statutes. [21]

Thus, an examination of the risk response of Indian courts in relation to Water Act is tied to the management of standards under that Act, as much as it is to its intersection with the Environment Protection Act, the National Green Tribunal Act, as well as the PIL jurisdiction of India's higher judiciary.

Considering the penalties applicable to non-compliance in India and the extent of the powers of the SPCB, it should be emphasized that the impact of oversight on compliance will only be as strong as that faced by enforcement and plant Punishment threat. In an environment of corrupt local inspectors or bureaucratic procedures that hamstringing action against errant behavior, inspections alone are unlikely to be effective. Also, the reality is that resource constraints at the state level mean that environmental management often degenerates into crisis management. Inspections are undertaken at the time that operating consent is granted, and thereafter usually only in response to complaints, accidents or other emergencies. [22]

### JUDICIAL INTERVENTION

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 articulated in the case of *Bandhua Mukti Morcha vs. Union of India* [23] and then continued and expanded. The Supreme Court protected the right to clean water as part of the right to a healthy environment in a spate of water pollution cases coming before it from the early nineties onwards.

In *M/s Delhi Bottling case*, [24] the Court showed judicial thinking and strictly following the procedure turned a blind eye toward the ongoing environmental degradation. The Court's reasoning was that the samples were not taken in strict compliance with Sec. 21 [25] and are inadmissible in evidence. Therefore the Board has not proved that the company was violating its consent orders. Given the clear language of the statute, and the Court's determination of facts, the ruling was logical. But at the same time it should be noted that, the company did not challenge the results of the analyses itself. Also, the requirement that polluters be given notice before the Board may take a sample gives the polluters the opportunity to temporarily reduce or cease releasing pollutants during the period the sample is taken. In addition to this, the Court considered Sec. 33(1) but ignored Sec. 33(2), which empowers a court to make such an order as it may deem fit, upon receiving a Sec. 33 application from the Board. Therefore the Delhi Court could have ordered the Magistrate to retain jurisdiction of the case until samples are taken in compliance of the Water Act.

In *M. C Mehta vs Union of India* [26] also known as the Kanpur Tanneries or Ganga Pollution case is among the most significant water pollution case. The opening part of the judgment discusses the various legal provisions and the legal duties of Municipal bodies and Pollution Control Boards.

The Court directed the relocation of tanneries to a complex and also directed the Pollution Control Boards to examine the possibility of setting up of common effluent treatment plants for the Calcutta tanneries. The Court in this case had to weigh the loss of livelihood of the many workers working in these tanneries. Over emphasis on societal interest over Individual interest the Court gave a landmark judgment.

In *Re. Bhavani river case*, [27] the Supreme Court directed the various Pollution Control Boards to ensure proper storage of effluents in lagoons and for proper treatment and disposal of the treated effluent. This case considered the untreated disposal of effluents into the river Bhavani. The Court strongly opined that the directions/guidelines issued by the PCB in respect of protection of environment are to be adhered to and in case of non-adherence, such industries are liable to be shut down.

In the famous *M.C. Mehta vs. Kamal Nath case* [28], the Supreme Court held that the notion that the public had right to expect certain land and natural areas to retain their natural characteristics was finding its way into the law of the land. The *doctrine of public trust*, rests on the principle that certain resources like air, seas, waters and the forests have such a great importance to the people as a whole that it would be wholly unjustified to make them a subject of private ownership. The doctrine enjoins upon the government to protect the resources for the enjoyment of the general public rather than to permit their use for private ownership or commercial purpose. The protection of ecological values is amongst the purposes of public trusts. The state is the trustee of all natural resources which are by nature meant for public use and enjoyment. It is under a legal duty to protect natural resources. The aesthetic use and the pristine glory of the natural resources, the environment and the eco-system of the country cannot be permitted to be eroded for private, commercial or any other use unless the courts find it necessary, in good faith, for the public good and in public interest to encroach upon the said resources. Areas, which are ecologically fragile and full of scenic beauty, shall not be permitted to be converted into private ownership for commercial gains. The illegal construction and callous interference with the natural flow of river Beas has degraded the environment. It is now settled law that one who pollutes the environment must pay to reverse the damage caused by his acts. The polluter pays principle was upheld in the present case. The Court directed the Himachal Pradesh PCB to inspect the motel premises, its treatment facilities and to re-direct the course of the river.

In *Vellore Citizens Welfare Forum case* [29], the Court held that even a major foreign exchange earner like the leather industry could not have the right to destroy ecology, degrade the environment and pose a health hazard. It cannot be permitted to expand or even to continue unless it tackles the problem of pollution created by the said industry. The 'polluter pays principle and precautionary principles' are the law of the land. The polluted industries were made fully responsible to compensate the villagers in the affected area for damage to soil and ground water hence they were directed to take all necessary measures to remove sludge and other pollutants lying in the affected area. This case is important because it was the first of so many cases that MC Mehta won and brought a revolution in the Indian judiciary through his cases and his success stories. The decision given in the *Vellore citizen's case* shows the potential of controlling water pollution through the tort of nuisance. It also reveals the power of the judiciary to compensate victims where their water rights have been affected.

In contrast, there are pro-environment judgments that emphasize strict enforcement of the Water Act. The doctrines of absolute liability and public trust laid down in *Ganga Pollution cases*, *Bichhri case* and *Vellore Citizens Forum case* have gone a long way towards sternly dealing with water pollution problem. [30] It can be distinctly seen that success in prevention and control of water pollution has largely depended on concerted application of various facets of the Act and co-ordination amidst various agencies performing functions assigned under the Act.

**CONCLUSION**

Thus, as can be seen from the discussion of the recent cases above, the fundamental right to water has been articulated by the Indian courts within the rubric of the right of citizens to have 'clean' drinking water as part of the right to clean environment guaranteed under the right to life under article 21. By doing so, the court has been protecting only the negative right to not have water sources polluted. In AP Pollution Control Board, the Supreme Court did mention that all citizens have the fundamental right to have access to clean drinking water, but did not take that issue forward in order to explore whether this includes the positive obligation on the State to provide clean drinking water to all citizens. Thus we can see that the right to clean drinking water, although not articulated as a separate right, has been considered as an inseparable part of the right to a clean environment and the right to life.

1 Subash Kumar v. State of Bihar A.I.R.1991 SC 420 at P.424

2 Sec2(a) of the Environment Protection Act1986.

3. Ulrich Beck, Risk Society: Towards a New Modernity (1st ed. 1992). See also Deborah Lupton, Risk (1999).

4. Michael Duffy, Climate Change Causation: Harmonizing Tort Law and Scientific Probability, 28 Temple J. Sci. Tech. & Env't L. 185–242 (2009).

5. The Air (Prevention and Control of Pollution) Act, No. 14 of 1981, preamble.

6. For a typical statement of the troubles of the time, see Rachel Carson, Linda Lear & Edward O. Wilson, Silent Spring (Anniversary edition ed. 2002); Indira Gandhi, Of Man and His Environment (2008).

7. The Water (Prevention and Control of Pollution) Act, No. 6 of 1974, § 25.

8. The Water Act, § 24.

9. The Water Act, §§ 16(2), 17(2).

10. The CPCB and the SPCB were established in 1974 by the passing of the Water Act, 1974.

11. For more see the Consent mechanism under the Water Act, 1974.

12. Ghosh, supra note 23.

13. Neil Gunningham, Environment Law, Regulation and Governance: Shifting Architectures, 21 J. Env'tl. L. 179–212 (2009).

14 The Water Act, §§ 28, 29, 33B.

15. Lavanya Rajamani, The Right to Environmental Protection in India: Many a Slip between the Cup and the Lip?, 16 R. Eur. Community & Int'l Env'tl. L. 274–286 (2007).

16 The Environment (Protection) Act, No. 29 of 1986, Statement of Objects And Reasons.

17 Environment (Protection) Act, Schedules I-IV.

18. Mathew John, Interpreting Narmada Judgment, 36 Econ. & Pol. Wkly. 3030– 3034 (2001).

19 Rajamani, supra note 7

20. <http://indianexpress.com/article/india/sc-transfers-a-pil-of-1985-on-cleaning-of-river-ganga-to-ngt-4489911/> (last visited Feb. 27, 2017).

21 National Green Tribunal Act, No. 19 of 2010, § 14, <http://lawmin.nic.in/ld/P-ACT/2010/The%20National%20Green%20Tribunal%20Act,%202010.pdf>.

22. <http://www.worldbank.org/research/peg/wps22/indexp2.htm> visited September 2003.

23. AIR 1984 SC 802

24. *M/s Delhi Bottling Co Pvt. Ltd v Central Board for the Prevention and Control of Water Pollution* AIR 1986 Del. 152. This case is a black mark on the Judiciary, which otherwise has been hailed as the champion of the people's cause.

25. According to sec. 21 of the Water Act, the PCB officials must give at least 15 days notice before taking a legal sample, moreover the sample must be taken in the presence of the occupier, and one container of the sample must be handed over to the occupier as a matter of fair procedure.

26. AIR 1988 SC 1037.

27. AIR 1998 SC 2059.

28. *M. C Mehta v Kamal Nath* 1997 (1) SCC 388.

29. JT 1996 (7) SC 375.

30. *M.C.Mehta v. Union of India*, 1992 Supp. (2) SCC 633 and 607; *Indian Council for Enviro-Legal Action v. Union of India*, AIR 1996 SC 1446; *Vellore Citizens' Welfare Forum v. Union of India*, AIR 1996 SC 2715.