

## Measures for preventions of water pollution under the water (Prevention and control of pollution) Act, 1974: A critical analysis

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### Abstract

United Nations Declaration on Human Rights U/A 31 recognise the right to clean and accessible water that is adequate for health and wellbeing of an individual and family. Right to water is also a fundamental right U/A 21 of the Constitution of India. In order protect this right Indian legislators have passed Water (Prevention and Control of Pollution) Act, 1974. This article is an attempt to critically analyse the law and judicial trend with respect to same.

**Keywords:** Water, Pollution

### Introduction

"Water" falls under the category of "state subject" as provided under schedule VII of the Constitution of India. Under Articles 249 and 252 of the Constitution of India, the state has jurisdiction over the subject called "Water".

States like Assam, Bihar, Gujarat, Haryana, Himachal Pradesh, Jammu & Kashmir, Karnataka, Kerala, Madhya Pradesh, Rajasthan, Tripura and West-Bengal passed the resolution in both the houses of their respective state legislatures to pursue article 252(1) of the Constitution. The resolution was related to prevention and control of water pollution, which necessarily should be regulated by the Parliament, effective through law.

In accordance with the above resolutions, The Parliament enacted the Water (Prevention and Control of Pollution) Act, 1974.

Right to water has also been recognised as the fundamental right. In, *Susetha v. State of Tamil Nadu* <sup>[1]</sup>. The court has observed, the water bodies are required to be retained. Such requirement is envisaged not only in view of the fact that the right to water as also quality of life are envisaged under Article 21 of the Constitution of India, but also in view of the fact that the same has been recognized in Articles 47 and 48 A of the Constitution of India. Article 51-A furthermore makes a fundamental duty for every citizen to protect and improve the natural environment including forest, lakes, rivers and wildlife. It was also clarified that 'natural water storage resources are not only required to be protected but also steps are required to be taken for restoring the same if it has fallen to disuse.'

### Water pollution and measure under the Water (Prevention and Control of Pollution) Act, 1974- An Analysis

#### *Pollution – Defined*

The act has defined the term "Pollution" in following words; such contamination of water or such alternation of physical, chemical or biological properties of water or such discharge of any sewage or trade effluent or of any 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 to public health or safety, or to the life and health of animals or plants or of aquatic organism <sup>[2]</sup>.

This definition clearly enumerates the property which can be termed harmful, and which can be said to be the factor which is responsible for 'pollution'. In other words, if all the above-mentioned properties are present in a given amount of water, it can be termed as 'harmful. Nevertheless, even the presence of one of them is also enough to cause or initiate the contamination.

However, with the impact of globalization on human civilization, there is a constant pressure on natural resources, which keeps on changing the properties of pollution'.

The concept of "sewage effluent" is defined under Section 2(g) of the Act, which is as follows;

"Sewage effluent" means waste matter from any sewerage system or sewage disposal works that also includes sewerage from open drain.

It is thus, the waste matters, which is found in, the open drains. Term "trade effluent" is categorically defined under Section 2(k) of the Act.

"Trade effluent" includes any liquid, gaseous or solid substance, which is discharged from any premises, used for carrying on any industrial operation or process, or treatment and said disposal system, other than domestic sewage

According to 2(gg), "sewer" means any conduct or channel, open or closed, carrying sewage or trade effluent.

Protection and prevention of water pollution is the primary object behind inclusion of these definitions. These definitions help in interpretation and speedier and correct determination of environmental disputes

### Main objectives of the act

The main objectives of the Act are <sup>[3]</sup>:

- To provide for the preclusion and control of water pollution; and
- Maintaining or restoring of propriety of water;
- To establish the Central and State Boards for the prevention and control of water pollution;
- Conferring and assigning such powers and functions to the Boards relating thereto and for matters connected therewith,

- To establish Central and State water testing laboratories to enable the Board to assess the extent of pollution, lay down standards and establish fault or evasion.
- To provide penalties for the contravention of the provisions of the Act.

#### **Prohibition on use stream or well for disposal of polluting matter etc.**

A person is not permitted knowingly to use any venomous, lethal or polluting matter, which can be gravely injurious to the health of the citizens, into any of the flowing water body, such as a stream or a blocked water body, like well or in sewer or on land.

A person shall not knowingly allow into a flowing water body, or stream, any matter which in combination with other matters impede the proper flow of water of stream resulting into substantial, aggravation of pollution<sup>[4]</sup>.

These restrictions, which are considerably imposed and thereby approved by legal authorization, and whereby the offender can be taken to the court of law of the relevant land.

#### **Restriction on new outlets and new discharges**

No person shall, without the previous consent of the state board,

- Launch any industry or any treatment and disposal system which is likely to discharge sewage or trade effluent into a stream or well, sewer or on land; or
- Suggest the use of any new outlet for the discharge of sewage; or
- Generate any new discharge of sewage<sup>[5]</sup>.

In *Mahabir Soap and Godakhu Factory v. Union of India*<sup>[6]</sup> the consent for the continuation of industry was refused by the State Board. The refusal came because the factory was located in the populated area and there was a public complaint.

Thus, by virtue of the public complaint, and the fact that the location of the factory falls under the populous area of the said locality, the State Board has refused the continuation of the complaint. For the purpose of the statute, reasons cannot be said to be non-relevant.

Moreover, any refusal or denial is under the discretionary power of the State Board Hence, not through the Court to go into the modesty of reasons and substitute its own opinion in place of the decision of the State Board. Hence, the court cannot simply substitute its decision *over* the state Board decision.

In *M. C. Mehta v. Union of India*<sup>[7]</sup>, the Supreme Court held that the financial capacity of the tanneries should be considered as irrelevant while requiring them to establish primary treatment plants.

Like in case of an industry, which is incapable of paying minimum wages to its workers should not be allowed to exist, in case of a tannery there should be an existence of a primary treatment plant.

Thus, even when the State Board approves it by a consent order, it is for the benefit of the population, that, it has to be made mandatory. While taking into consideration the benefit of the population, it has been mandatory that it does not entitle the incumbent to comply with the conditions mentioned in the consent order. Failure to comply with the requirement of putting up effluent treatment plant does results in the lapse of the consent, which is however, punishable under the court of law.

#### **Furnishing of information by state board**

If, due to an accident or any other unforeseen act or event, any venomous, noxious or polluting matter is being discharged, or is likely to be discharged at any place, and if the place happens to be nearby any industry, operation. Process or any treatment or disposal system is being carried on. Into a stream or well or on sewer or on land resulting into pollution, then the person in charge of such place shall intimate the occurrence of such accident. In other words, the person shall event it to the State Board and such other agencies or authorities as may be prescribed<sup>[8]</sup>.

#### **Pollution of stream or well - referring to emergency measures**

In case of an accidental or unforeseen act or event, any harmful, venomous, noxious or polluting matter makes its presence or likely to enter into any stream or well or on (and). In such cases the Board may carry out operation by recording the reason in writing, and that too for any of the following purposes like:-

- (i) Removing that matter and disposing it of;
- (ii) Remedying or removing any pollution caused by its presence;
- (iii) Issuing orders restraining or prohibiting the concerned person from discharging any poisonous, noxious or polluting matter<sup>[9]</sup>.

Thus, the above stated reasons, if proved can be detrimental and can force the Board to take appropriate action against the party concerned. However, under section 33 of the Act the Board has the power to make application to the courts, which is for restraining apprehended pollution of water in streams or wells.

The court, on its behalf may direct such person to remove the polluting matter. If such a person fails to do so, the court may authorise the Board to remove it and recover the expenses from the concerned person.

Thus, recovering the expenses has been kept as a clause to be implemented while necessary.

In respect to that, the case of *Maharaja Shri Umaid Mills Ltd., Pali v. State*<sup>[10]</sup> deserves special mention. It was held under that case. that the proceedings under section 33 of the Act are criminal in nature. Therefore, if the complaint in proceedings under section 33 of the Act is dismissed, then the restoration of the same is not permissible as there is no provision in Criminal Procedure Code for review of order.

Thus, the supremacy of Section 33 of the Act was kept intact in order to ensure proper justice.

#### **Directive powers**

In 1988, a new provision under section 33-A was added. The stated provision says that the Board, while exercising its powers and performance of its functions can issue any directions to any person, which will include those for

- (i) The closing, prohibition or regulation of any industry, operation or process; or
- (ii) The stoppage or regulation of supply of electricity, water or any other service

However, it must be noted that the decision under section 33-A of the Act should not be based on irrelevant considerations

Thus, 'relevance' has been made the keyword which is incidentally not based on irrelevant considerations and which

will allow court action. It should be noted that it should not be taken arbitrarily.

While both irrelevance and arbitration is considered to be in inconsistency under the section act, it should also be noted that those provisions only would make the Board move the court.

This has been further exemplified in the *Mandu Distilleries Pvt Ltd. v. M.P. Pradushan Niwaran Mandal* <sup>[11]</sup>. Stating the precedence of the Court verdict, the Board ordered for the stoppage of production altogether. It also went ahead with the directions of closing down the industry.

But, notably, the grounds stated in the show-cause notice and basis of orders were not the same. There was a denial of principles of natural justice and consequent violation of inbuilt procedural safeguards. Both of them have been taken into consideration, while taking note of the said case. However, the Court quashed the said order.

In another such case, called *Bhavani River V Sakthi Sugars Ltd* <sup>[12]</sup>, directions were issued by the Pollution Control Board. The directions were reserved for the industry for ensuring proper storage of effluents in lagoons. It also directs for proper treatment effluent.

Some of the said directions were not complied with and as a result of this some effluent reached the river Bhavani and polluted its water. Despite enough time given, no remedial steps were taken by the industry. Thus, the Court directed the industry to be closed.

The above judgment of the Court envisages that the closure of the industry is essential since in spite of time given, the industry has not complied with the directives.

### Penalties

The Act provides for different penalties. The prescription of them is related to violating different provisions of the Act.

- For failure to give information as required under section 20 of the Act, the punishment is imprisonment. This punishment may be extended to three months or a fine is levied, which may be extended to ten thousand rupees or both. If, failure continues, an additional fine is to be levied, which may be extended to five thousand rupees per day during the period failure continues.

Thus, negligence is taken into a cognizable offence category and thereby a fine is levied when there are any violations.

- For violation of orders or any direction prohibiting discharge of any polluting matter into stream or well or land, under section 32; or violation of court order restraining pollution of water, under section 33; or for violating the directions of the Board, under section 33-A the punishment prescribed is imprisonment from one year six months to six years and fine. If the failure continues, an additional fine which may extend to five thousand rupees per day during the period of failure. If the failure continues for beyond one year, then the imprisonment shall not be less than two years but which extended to seven years and with fine.

Thus, direction prohibiting discharge of polluting materials are not only, punishable, but also an imprisonable offence.

- For permitting any poisonous, noxious or polluting matter into any stream, well or land, the punishment shall be imprisonment for a term of one year six months to six years and with fine.

Thus, punishment prescribed for polluting stream, well, or land is punishable by law.

- For pollution of stream or well or land by discharge of sewage or trade effluent, the punishment shall be imprisonment for a term of one year six months to six years and with fine.

Section 45 of the Act provides enhanced penalty after previous conviction which shall be imprisonment for a term of two years to seven years and with fine.

- For violating any other provision of the Act, the penalty prescribed is imprisonment which may extend to three months or with fine which may extend to ten thousand rupees or both. In case of continuing contravention, an additional fine which may extend to five thousand rupees for every day during the period such contravention or failure continues.

All these prescribed punishment for the said offences does show the efforts of the national government in taking rigorous actions against individuals neglecting the cause of environmental pollution. It also establishes the attitude of the government in dealing these offences.

### Power of the government to supersede the board

The Central Government has the power to supersede the Central Board or any Joint Board and the State Government has the power to supersede the State Board if the respective government is of the opinion:-

- That the Central Board/Joint Board or State Board, as the case may be, has persistently made default in the performance of the functions imposed on it by or under this Act; or
- That the circumstances exist which render it necessary in the public interest to do so.

However, the government cannot supersede the Board for a period exceeding one year and if the government is superseding the Board on the grounds mentioned above, it is required to give reasonable opportunity to such Board to show cause why it should not be superseded and it shall consider the explanation and objections, if any, of such Board.

Nevertheless, the case to supersede the Board is made available and that it is for the benefit of the environment issue.

The Central Government as well as the State Government has the power to make rules to carry out the purposes of the Act. However, no rules can have demonstrative effect.

### The darker side- the reality

Even though the Act has provided for various measures to control the pollution of water, and established authorities to check the same, the practical realities are different. Almost all rivers in India are highly polluted, which forced the govt. to launch the Ganga Cleaning Campaign. Even the Supreme Court has highlighted this darker reality in many cases.

In *M.C.Mehta v. Union of India* <sup>[13]</sup>, the tanneries were discharging effluent in Ganga and they were not setting up primary treatment plant in spite of being asked to do so for several years. They also did not put up their appearance in the Supreme Court to express their willingness to take appropriate steps to establish the pre-treatment plant. In view of these circumstances the Court directed them to stop working their tanneries.

In *State of M.P. v. Kedia Leather and Liquor Ltd* <sup>[14]</sup>, the M.P. State Pollution Control Board was neither taking any action nor

inspecting the various industries discharging pollutants in contravention of the provisions of the Water Act.

In *Delhi Bottling Co. Pvt. Ltd. v. Central Board for the Prevention and Control of Pollution* <sup>[15]</sup>, the board took a sample of the trade effluents from a bottling company's discharge stream. The Board got the trade effluent analyzed and found that it did not conform to the requirements of the consent order granted to the company. The Board files a suit under Section 33 of the Act and accordingly the court issued an injunction requiring the company to establish a treatment plant. The order of the Court was challenged on the sample by the Board, had requested that the sample be analyzed by the Delhi Administration laboratory. The court held that the sample was not taken in strict compliance, the case was decided in favor of company was violating its consent orders. The Supreme Court held that the appellate authority under the Water Act, in this case, erred in holding that the principle of "promissory estoppel" was applicable to this case.

14. [2003] Insc 385

15. AIR 1986 DEL 152

### Conclusion

On November 18, 2014 The High Level Committee (Chair: Mr. TSR Subramanian) to Review Various Acts Administered by the Ministry of Environment, Forest, and Climate Change in its report recommended inclusion of relevant provisions of the Water (Prevention and Control of Pollution) Act, 1974, and Air (Prevention and Control of Pollution) Act, 1981 in the Environmental (Protection) Act, 1986, and repealing these two Acts. However this may not be good step, because something which is very basic and essential to all living things and hich is recognized as fundamental right, need a special attention. The establishment of National Green Tribunal is a welcome step as it is expected to provide speedy justice in case of disputes relating to water pollution. The only thing that is lacking and needs attention is awareness and proper implementation of this Act.

### References

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2. Sec. 2(e), the Water (Prevention and Control of Pollution) Act, 1974
3. The Long Title, the Water (Prevention and Control of Pollution) Act, 1974
4. Id. Sec. 24.
5. Id. Sec. 25
6. A.I.R. 1995 Ori 218
7. A.I.R. 1988 S.C. 1037 at 1045. See also *Vineet Kumar Mathur v. Union of India* (1996) 1 SCC 119
8. Section 31. Water Prevention and Control. Act. 1974.
9. Id, Section 32; see also 25 A.I.R 1998 Raj 9
10. A.I.R. 1998 Raj 9
11. AIR. 1995 M P. 57
12. (1998) 2 SCC 601. See also *Re. Bhavani River-Sakthi Sugar Ltd.*, (1998)6 SCC 335; *M.C. Mehta v. Union of India*, (1996)4 SCC 35; *M C. Mehta v Union of India*. (1996) 4 SCC 750, *F.B. Taraporawala v. Bayer India Ltd* , (1996) 6 SCC 58, *M C Mehta v. Union of India*, A.I.R. 1988 S.C. 1037; *Indian Council For Environment- Legal Action v Union of India*, (1996) 3 SCC 212; *Indian Council For Environment-Legal Action v Union of India*. (1996) 5 SCC 281 and *S. Jagannath v. Union of India*, (1997) 2 SCC 87
13. 1992(1)SCALE196, 1992Supp(2)SCC633