

## Pivotal Court Judgment's Regarding to Manage & Control Water Pollution and Protection of Environment

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"All people, whatever their stage of development and their social & economic conditions, have the right to have access to drinking water in quantum and of a quality equal to their basic needs."<sup>1</sup>

— Supreme Court of India (2000)

### Introduction:

Man is both creator and molder of his environment, which gives him physical sustenance and affords him the opportunity for intellectual, moral, social and spiritual growth. In the long and tortuous evaluation of human race on this planet a stage has been reached, when through the rapid acceleration of science & technology, man has acquired power to transform his environment in countless ways and on an unprecedented scale. Both aspects of man's environment, the natural and manmade, are essential to his well being and to the enjoyment of basic human rights even the right to life itself. The whole natural resources are for enjoyment of all living creatures, they can enjoy it. Human being are one of these living creatures on earth, but now in modern era human beings enjoying these natural resources blindly & without care and caution for other & next generations of themselves and of other living creatures.

In year 1972 The Stockholm Declaration was the first holistic approach to deal with the problems of environment like- natural resources (including water resource), human settlement, human health, ecosystem, environment & development etc. It also broadly speaks about the need of the international law relating to liability & compensation for the victim of the pollution and such other environmental damages.

On 5<sup>th</sup> Dec. 1972 The United Nations Environment Programme (UNEP) was also created by The United Nations General Assembly to promote environmental law and address major environmental issues.

Significance of purity and sufficiency of water were also explicitly emphasized in the proclamation on Nov. 10, 1980 when the United Nations declared the "International Drinking Water Supply and Sanitation Decade". India is also a signatory of this declaration.

Hence, with the beginning of 70<sup>th</sup> decade of 19<sup>th</sup> century the pollution and exploitation of various natural resources (including water resource) has been an emerging problem and for controlling these exploitation

of natural resources, to manage them, to develop them various national and international laws, rules & regulations, summits & programmes have being held. Similarly in India also, The Water (Prevention & Control of Pollution) Act has been passed in 1974 and various rule & regulations also have been made. The Indian Constitution has also take the cognizance of the said problem and in all of these the Indian Judiciary have also highly contributing with interpreting these laws & regulations. By giving directions to the appropriate authorities, by providing principles & methods for how to utilize these natural resources & also ordering sanctions (punishments) to infringers and the remedies to victims, if there is violation of the said principals and methods to manage & control water pollution and protection of environment.

### What Is Water Pollution In Legal Sense?

The term "pollution" may be defined in number of ways. In simple sense we can say that, it is an undesirable state of the natural environment being contaminated with harmful substances which may be consequence of human or natural activities.

The Water (Prevention & Control of Pollution) Act, 1974 defined the term 'water pollution' as, "pollution" means such contamination of water or such alteration of the physical, chemical or biological properties of water or such discharge of any sewage or trade effluent or 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 to public health or safety, or to domestic, commercial, industrial, agricultural or other legitimate uses, or to the life and health of animals or plants or of aquatic organisms.<sup>2</sup> Thus, the definition provided under this Act is very comprehensive and covers all changes in physical chemical or biological properties of water. The definition also covers rise in temperature of water and discharge of radio-active substances in the water.<sup>3</sup>

### Important Enactments In India:

In India the Central Government and State Governments have passed various statutes to contain and control the problem of water pollution and ecological imbalances. Before independence the legal control for

water pollution was also available in British India. Juristic archaeologists, willing to dig in to legislative debris will discover that the Britisher's wanted Indians to keep away from pollution.

The first Act concerning control of water pollution in India is the Shore Nuisance (Bombay & Kolaba) Act, 1853. This statute was operative in Bombay and Kolaba only. Another statute dealing with the water pollution is the Oriental Gas Company Act, 1857. This Act provided punishment for pollution of water caused by the company.

The Indian Easement Act, 1882 has recognized the doctrine of 'riparian rights' to unpolluted water. Section 7 of the Act, in Illustrations (f) and (h) mentions that, every owner has right to get unpolluted water without material alteration in quantity and temperature.

Other legislative majors to control the water pollution were provided under Obstruction in Fairways Act, 1881, the Indian Ports Act, 1908, the Inland Steam Vessels Act, 1917, the Indian Forests Act, 1927, and The Merchant Shipping Act, 1958. These enactments though did not deal directly and exclusively with water pollution but had some provisions dealing with it. The first Act which directly dealing with water pollution and provide specific i.e., Indian Penal Code, 1860. It provides: "Whoever voluntarily corrupts or fouls the water of any public spring or reservoir, so as to render it less fit for the purpose for which it is ordinarily used, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both."<sup>4</sup>

After independence of India the Indian Parliament drew immense inspiration from the proclamation adopted by the UN conference on the Human Environment, which took place at Stockholm, 1972 and enacted the Water (Prevention & Control of Pollution) Act, 1974. Subsequently, the Government has enacted the Water (Prevention & Control of Pollution) Rules, 1975; The Water (Prevention & Control of Pollution) Cess Act, 1977 and The Water (Prevention & Control of Pollution) Cess Rules, 1978; Environment (Protection) Act, 1986; Indian Ports Act, 1908; Orissa River Pollution Prevention Act, 1953; River Boards Act, 1956; The Maharashtra Prevention of Water Pollution Act, 1969.

Judicial Directions (Principles & Methods) Controlling Water Pollution & Protection of Environment:

Though the Water (prevention and control of pollution) Act, 1974 was passed for the prevention and control of water pollution and the maintaining or restoring of wholesomeness of water, and the Air (prevention and control of pollution) Act, 1981 was passed for the prevention, control and abatement of air pollution but it is the Indian Judiciary which has given a very important and valuable directions to the appropriate authorities for the purpose of preservation and protection of environment.

Here we are analyses the contribution of Judges to the jurisprudence of Environmental Law and to the development of international environmental law. The analysis seeks not only to deal with the specific content of each judgment but also to draw a broader picture of views of the Judges towards protection and development of environment and related laws. Thus, following are the some of the pivotal judgments given by the courts regarding principles & methods controlling water pollution & protection of environment:-

Rajiv Ranjan Singh V/S State Of Bihar <sup>5</sup>

The petition was based on a report in the newspaper that, M/S Shiv Shankar Chemical Industries was polluting the environment by discharging harmful effluents into the water bodies and also discharged noxious fumes.

The Court held that, there was a need to balance between the necessity to protect the environment and the pressing need for industrialization of the State. It agreed with the scheme suggested by the Second Committee Experts to restart manufacturing processes of the industry but with adequate safeguards. It felt that this would be in accordance with the dicta laid down in M.C .Mehta v/s Union of India <sup>6</sup>

The Court has not only allowed the continuation of manufacturing process but it has also imposed certain conditions on the polluting industry which are of great importance. The conditions imposed are:

- 1) The distillery must set up properly designed lagoons, double lined by polythene shuts avoid any risk of ground water pollution having their retaining and holding capacity equivalent to 100 days effluent discharge. This must be to the complete satisfaction of the Board.
- 2) The entire area where lagoons exist or will be further dug up the used as storage for the effluent should be effectively fenced to a height of five feet by a pucca wall or 7 stand barbed wire fences to check the entry of cattle or human beings into lagoon area.
- 3) The Unit should provide for centrifugal separation for the fermented sludge so the initial stage itself and used either for cattle feed or manure.
- 4) The factory should be separated by a 5 meter high and 150 meter long earth in take with close plantation on the top along the slopes. This should be able to limit the odour reaching the villagers to some extent.
- 5) Two deep tube wells shall be provided for the villagers at the cost of the industry.

Municipal Council Ratlam V/S Vardhichand And Others.<sup>7</sup>

The residents of a locality within the limits of Ratlam Municipality, tormented by stench and stink by open drains and public excretions by nearby slum dwellers moved the Sub-Divisional Magistrate under Sec. 133 Cr.PC to require the Municipality to construct drain pipes with the flow of water to wash the filth and stop the stench

towards the members of the Public. The Municipality pleaded paucity of funds as the chief cause of disability to carry out its duties.

The Magistrate gave directions to the Municipality to draft a plan within six months for removing nuisance. The High Court approved the order of the Magistrate, to which the Municipality further appealed to the Supreme Court.

The Supreme Court through J. Krishna Iyer, upheld the order of the High Court and directed the Municipality to take immediate action within its statutory powers to construct sufficient number of public latrines, provide water supply and scavenging services, to construct drains, cesspools and to provide basic amenities to the public.

The Court also accepted the use of sec. 133 Cr.PC for removal of public nuisance. A responsible municipal council constituted for the precise purpose of preserving public health and providing better finances cannot run away from its principal duty by pleading financial inability. *M. C Mehta V/S State Of Orissa*<sup>8</sup>

A writ petition was filed to protect the health of thousands of innocent people living in Cuttack and adjacent areas who were suffering from pollution from sewage being caused by the Municipal Committee Cuttack and the SCB Medical College Hospital, Cuttack.

The Court reprimanded the authorities and directed the government to immediately act on the matter. Also, the court recommended setting up of a committee to take steps to prevent and control water pollution and to maintain wholesomeness of water meant for human consumption amongst other things. A responsible Municipal Council is constituted for the precise purpose of preserving public health. Provision of proper drainage system in working conditions cannot be avoided by pleading financial inability of Municipal Council.

*Sri Durga Glass Works, Firozabad V/S Union Of India*<sup>9</sup>

This petition was filed by the petitioners to quash the orders for recovery of the amount of cess under the Water (Prevention & Control of Pollution) Cess Act, 1977. The petitioners contended that since the glass industry was not specified in the Schedule of the above Act, they were not liable to pay the cess.

The Court held that the glass industry clearly falls under the 2nd entry in the Schedule to the above Act. It was not possible for any industry to function without consumption of water. The Court also held that, the principle of absolute liability in case of pollution extending not only to compensate the victims of the pollution but also the cost of restoring the environmental degradation (the "polluter pays" principle) is in consonance with the above Act. The Court held that to protect the fundamental right to life envisaged under Article 21 of the Constitution, environmental laws need to be observed.

*Hamid Khan v/s State*<sup>10</sup>

The State of M.P. had provided tube-wells for the supply of drinking water to certain villages. Before digging the tube-wells, certain tests had to be performed to determine the portability of the water. There was no test for fluoride content among the tests prescribed. Due to the high fluoride content of the water, a number of people had contracted skeletal and dental fluorosis. This matter was brought to the notice of the Court through this PIL.

The Court recognized that the State had failed in its duty under Article 47 of the Constitution and under Art.21, to improve the health of public providing safe drinking water. The Court directed that all the persons who are suffering from skeletal and dental fluorosis as mentioned in the list prepared by the Collector of that district be given free medical treatment, and if surgery be required, the person be given Rs. 3000 over and above the cost of treatment, and the others, Rs. 200.

**Conclusion:**

Mrs. Indira Gandhi was the first head of state address the International Conference on Human Environment at Stockholm in 1972. She, voicing her concern about degrading environment, opined that problem of pollution, poverty and pollution are inter-related problems and must to tackle together. Thus, the subject of environment started receiving a lot of attention since then. Development and Environment: where to balance? To decide the balance between development and environment, Supreme Court held as follows in this authority *Bombay Environmental Action Group v/s State of Maharashtra*.<sup>11</sup>

The court held that since all the possible environmental safe guards have been taken, the check and control by way of judicial review should come to an end. Once an elaborate and extensive by all concerned including the environmentalists the state and the central authorities, is undertaken and affected and its result is judicially considered and reviewed, the matter should stand concluded. Endless arguments, endless reviews and the endless litigation in a matter such as this can carry one to no end and may as well turn counterproductive. While public interest litigation is a welcome development, there are nevertheless limits beyond which it may as well cease to be in public interest any further.

This judgment proves the attempt of the court to balance needs of the environment with the needs of the community at large and needs of the developing country. Environmental Education: The need to use the media in propagating environmental values in schools and in entertainment sectors:-

Supreme Court accepted the principle that, through the medium of education awareness of the environment and its problems related to pollution should be taught as a compulsory subject. In the case of *M.C.Mehta*

v/s Union of India, the petitioner prays for the issuance of a Writ so as to direct Cinema halls to exhibit slides containing information relating to environment in national and regional languages and for broadcast thereof on the All India Radio and exposure thereof on the television in regular and short programs with a view to educating the people of India about their social obligation in the matter of upkeep of the environment. Further the petitioner pleads the Court to direct the Government in making the subject of 'environment' be made a compulsory subject in schools.

The Court considered the growth of environmental awareness in India. It also considered the scope and functions of law and our Constitution and concluded that the State had a duty to disseminate information amongst the citizens. It passed the following directions:

- 1) The Ministry for Environment was ordered to make the requisite slides. Government was ordered to ensure that they are displayed in the cinema halls.
- 2) The Ministry of Information and Broadcasting was ordered to make short films containing environmental information to be shown in cinema halls.
- 3) Ordered the All India Radio and Doordarshan to develop a plan to enable environmental education of the masses.
- 4) Ordered State governments, Education Boards and Central Government to introduce environmental education as a compulsory subject in schools and colleges in a graded way.

The Court held that the Ministry of Information and Broad Casting of Government of India should without delay start producing information films of short duration on various aspects of environment and pollution, bringing out the benefits for society on the environment being protected and the hazards involved in the environment being polluted.

Hence, the preservation of ecology, environment and forest is a duty of state and every individual, as it aims to achieve social and economic justice. And court itself made it clear in its various judgment viz. Sachidanand Pandey v/s State of W.B.<sup>12</sup>, M/s Lipton India Ltd. v/s State Of Uttar Pradesh<sup>13</sup>, Tehri Bandh Virodhi Sangharsh Samiti v/s State of UP and others.<sup>14</sup>, LK Koolwal v/s State of Rajasthan and others.<sup>15</sup>, Indian Council for Enviro-Legal Action v/s Union of India<sup>16</sup> Narmada Bachao v/s Union of India<sup>17</sup> that, the court must enforce the fundamental duties lies upon the state and individuals as provided under provisions of Constitution of India and should not depend only on the policy makers.

**References:**

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2. 1990 (2) SCALE 1003
3. AIR 2000 Supreme Court Page No. 3751

4. All India Reporter 1980 Supreme Court Page No.1622
5. All India Reporter 1981 Bombay High Court Page No. 301
6. All India Reporter 1988 Rajasthan High Court Page No. 2
7. All India Reporter 1988 Supreme Court Page No.1037
8. All India Reporter 1992 Orissa Page No.225
9. All India Reporter 1992 Patana High Court Page No. 86.
10. All India Reporter 1996 Allahabad High Court Page No. 173.
11. All India Reporter 1996 Supreme Court Page No. 1446.
12. All India Reporter 1997 Allahabad High Court Page No.1179.
13. All India Reporter 1997 Madhya Pradesh High Court Page No.191.
14. BEAG v/s State of Maharashtra All India Reporter 1991 Bombay High Court Page No. 301.
15. Judicial pronouncement in cases viz.- Narmada Bachao Andolan v/s Union of India, (2000) 10 SCC 664 at 767, Hinchlal Tiwari v/s Kamala Devi (2002) 6 SCC 496, and Atmalinga Reddy v/s Union of India (2008) 7 SCC 788 at 799-800.
16. Section 2 (e) of The Water (Prevention & Control of Pollution) Act, 1974.
17. Section 277 of The Indian Penal Code 1860.