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# A Critical Analysis of the Water Pollution Act 1974

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## ABSTRACT

*Water, as one of the most crucial elements for human survival, faces significant threats due to human-induced pollution. Internationally, The United Nations Conference on Human Environment in 1972 in Stockholm, drew attention to the preservation of natural resources, including water, and efforts have been made worldwide to combat pollution. In India, the Water Pollution Act of 1974 was enacted to address these concerns. However, despite legislative measures, shortcomings persist, particularly in the ambiguity surrounding fines and punishments outlined in the legislation.*

*This paper examines the judicial response to controlling water pollution in India in light of these legislative deficiencies. Through a comprehensive analysis of legal cases and precedents, it evaluates the effectiveness of the judiciary in enforcing water pollution laws, highlighting areas of success and areas needing improvement. By scrutinizing judicial interpretations and interventions, this study aims to provide insights into the challenges and opportunities in mitigating water pollution through legal avenues and also proposes suggestions.*

**Keywords:** *Water pollution, definitions, ambiguous, pollution.*

## I. INTRODUCTION

In 1972, United Nations Conference on Human Environment was held at Stockholm, Sweden to take appropriate steps for the preservation of natural resources of the earth. India was one of the most active participants and therefore it urged and took concrete measures to bring uniform law all over the country for broad environmental problems endangering the health and safety of our lives and for the preservation of flora and fauna which among other things, include the preservation of the quality of air and control of air pollution. Based on the concluding guidelines of this conference, the Water Act was formulated by the govt. of India in 1974 and was enacted in the same year by the Parliament. It was first specific and comprehensive legislation institutionalizing simultaneously the regulatory agencies for controlling water pollution. The Water Act has 64 sections. It was first amended in 1978 and then again in 1988.

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It is comprehensive in its coverage, applying to streams, inland waters, subterranean waters and sea or tidal waters.

## II. WATER POLLUTION AND ITS TYPES

According to the *American College Dictionary*, 'pollution' is defined as: "to make foul or unclean; dirty." As per the *Water (Prevention and Control of Pollution) Act, 1974* (hereinafter Water Act), "'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 major 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 plants or of aquatic organism<sup>2</sup>.

The sources of water pollution are many and varied. They can be divided into two distinct categories, i.e. *point* and *non-point sources*. *Point sources* are those sources that are determinate and identifiable and occur when harmful substances are emitted *directly* into a body of water. For example, Industrial Effluents, like the Exxon Valdez oil spill best illustrate a point source of water pollution.

*Nonpoint sources* are those sources that are indeterminate and not easily identifiable and deliver pollutants indirectly through environmental changes. An example of this type of water pollution is when fertilizer from a field is carried into a stream by rain, in the form of run-off which in turn affects aquatic life.

Generally, the types of water pollution can be divided into following heads:

**Natural Pollution:** Natural pollution has always with us. There has been waste material in water right from the first appearance of men, animals and plants on the earth.

**Industrial Pollution:** Water pollution is also caused by industrial activities through discharging floating matter, settleable solids, colloidal matter, dissolved solids, toxic substances, sullage etc,

**Sewage Pollution:** This pollution consists of raw or partially treated domestic waste. Urban centres are generally divided into Class I Cities (those with a population of over 1 lakh) and Class II Cities (those with a population between fifty thousand and 1 lakh). Total sewage generation from urban centres in India grew from about 5000 million liters a day in 1947 to around 30,000 billion liters a day in 1997. Besides Industrial and Municipal wastewater, there

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<sup>2</sup> Section 2(e) of the water pollution act,1972.

exist subsidiary causes of water pollution, including certain religious and social practices. For example, carcasses of humans and animals alike are disposed in the holy rivers.

**Thermal Pollution:** This occurs due to power plants and factories. The excess heat discharged by power plants into a stream, lake or river causes pollution as an increase in natural temperature of water upsets the natural balance. Fish cannot survive in high temperature, which also kills natural foods of river life. Hot water is put into water courses by industries that use water for cooling purposes, Steel mills; oil refineries and breweries use large quantity of water for cooling.

**Radioactive Substances Pollution:** This type of pollution is more difficult to handle. These materials are produced in the making of uranium and other radioactive substances or in testing of the thermonuclear devices that produce nuclides in blast devices and fallouts.

**Agricultural Pollutants Pollution:** Agricultural pollutants include fertilizers, herbicides and pesticides. Pollution caused by these agents is generally spread over vast areas by irrigation water or rain water; the pollutants include nitrates, phosphates and sulphates.

#### **(A) Effects of water pollution:**

When our population was limited, water supplies seemed endlessly renewable. We could then afford to foul one water source, abandon it, and move on to another. This however is not the case as the exponential rates of population have already reduced the availability of water to below its per capita availability. Polluted waters pose serious threat to communities living nearby, and which depend on that source for most of their activities.

The most common threat of water pollution to mankind is water borne diseases. It is estimated that 73 million work days are lost every year due to water related diseases, such as typhoid, infective hepatitis (jaundice), cholera, diarrhoea and dysentery. Many of them become epidemic proportions. The cost of treating them and loss in production amounts to Rs. 600 crores a year. Also, waterborne diseases kill more than thirty million people and cause about 900 million cases of illness in the world annually.

### **III. LEGAL APPROACHES TO WATER POLLUTION: A CRITICAL ANALYSIS OF ENVIRONMENTAL LEGISLATIONS IN INDIA**

The Constitutional provisions provide the bed-rock for framing of environmental legislation in the country. According to the VII Schedule of the Indian Constitution, the areas of responsibility between the Central and State Governments have been defined through the subject grouped in Central, concurrent and State lists. Environment does not figure in any of

these lists, as yet and there is no explicit provision for environmental protection in the Constitution although the directive principles, in the amendments of the Constitution, through Articles 48(A) and 51A (g) assign specific responsibilities on the State and the citizens. Most of the environment related laws enacted by the Parliament have been based on the Articles **252** and **253** of the Constitution.

The legal approaches to control water pollution can be divided into three stages:

- Ancient Indian Jurisprudence;
- Common Law Remedy (or pre-independence legal approaches); and
- Modern Legal Mechanism (post-independence legal approaches).

#### **(A) Ancient Indian Jurisprudence**

Preservation of nature is as old as civilization itself. There is evidence that the people in Harappa and Mohenjo-Daro were nature-worshippers, and that the forces of nature were treated with reverence and piety. Manu writes in, 'The laws of Manu', "*And from light as it transforms itself come the waters, which are traditionally known to have the quality of taste; and from the waters comes earth, with the quality of smell. This is the creation in the beginning.*"<sup>3</sup> There are also innumerable prohibitions against the defilement of water, including a bar on urinating in water, throwing any other bodily fluids or excrement into the rivers. Years later too wrote at length about conservation of nature in his treatise, the *Arthashastra*. He wrote about the duty of state in maintaining forests, preserving sources of water, and protecting wildlife. Many Ashokan edicts also spell out rules and guidelines for the use and preservation of natural resources.<sup>4</sup>

#### **(B) Common Law Remedy (or pre-independence legal approaches)**

##### **a. Common Law Remedy**

The origin of water pollution control law in India can be traced to the common law remedies introduced in the courts by British in the three Presidency Towns of Calcutta, Madras and Bombay. These Common law remedies were of three categories

#### **Liability for Escape of Noxious Object**

The Strict Liability on a person for the damage caused by the escape of a dangerous or noxious object can be traced back to the famous rule in *Rylands v. Fletcher*<sup>5</sup> wherein **justice Blackburn**

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<sup>3</sup> Ch., Verses 46-49, at p. 78.

<sup>4</sup> Ch. Verse 56, at p. 79.

<sup>5</sup> 1868 LR 3 HL 330

observed:

*“We think that true rule of law is that the person, who for his own purposes, brings on to his lands, and collects and keeps there, anything likely to do mischief if it escapes, must keep it there at his own peril and if he does not do so he is prima facie answerable for all the damage which is the natural consequence of its escape.”*

### **Careless Use of Noxious article or Pollutant**

The careless use of noxious article or pollutant could give rise to an action in law of negligence, as also in the law of nuisance.

### **The Infringement of Property Rights in Water**

Every riparian owner enjoys a natural right to the flow of water in his stream, substantially in quality and quantity<sup>6</sup>. In this head it is interesting to note that under the Easement Act, every owner of land has a natural right that within his own limits, the water, which naturally passes or percolates by, over or through his land shall not—before so passing or percolating—be unreasonably polluted by other persons. Thus it has been opined that the Act gives landowners and users a reasonable right to pollute. But the term ‘reasonable’ read with the spirit of the other provisions of the Act, nevertheless, a clear indication that pollution was to be prohibited to the greatest extent possible.

#### **b. Pre-Independence Legal Approach**

Long standing concern for the purity of water and environment generally is evident from sections 277 and 278 of IPC, 1960. Section 277 lays down that whoever voluntarily corrupts or fouls the water of public spring or reservoir will be punished. Section 278 lays down that voluntarily vitiating the atmosphere in any place so as to make it noxious is punishable

#### **(C) Modern Legal Mechanism (post independence legal approaches)**

##### **a. Factories Act, 1948:**

Section 12 provides for effective arrangements for disposal of water and effluents by factories.

##### **b. Criminal Procedure Code, 1973**

Under Section 133 the magistrate has been given powers to remove any unlawful constructions.

##### **c. Water (Prevention and Control of Pollution) Act, 1974**

The Water (Prevention and Control of Pollution) Act, 1974 was promulgated as a Central

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<sup>6</sup> Wood v. Wand 1849 3 Ex. 748.

Legislation under **Article 252** of the Constitution. Since water belongs to the *State list*, a Resolution from two or more State Legislatures empowering the Parliament to enact the legislation on the subject was required. Also, the Act became effective at the State level and when it was adopted by the State Legislatures. Although the Act was passed in 1974, it took several years for its adoption throughout the country and for setting up enforcement machinery. For the first time, a big attempt at prevention and control of water pollution was made by the Water (Prevention and Control of Pollution) Act, 1974 (hereinafter water Act). This Act was enacted to provide for the prevention and control of water pollution and maintaining or restoring of wholesomeness of water, and for the aforesaid purposes to provide for the establishment of Boards for prevention and Control of Water Pollution and by conferring on such Boards adequate powers.

#### IV. CRITICAL ANALYSIS OF THE PROVISIONS IN WATER ACT: HOW FAR EFFECTIVE

It is often argued that our enforcement mechanism is very weak although the laws are very well drawn up. But, a careful analysis of the laws may reveal their inherent deficiencies which are closely linked to lapses in enforcement. There are many *shortcomings* in the provisions of the Water Act, 1974, which can be mentioned under different heads:

##### 1. Definitional shortcomings:

*Firstly*, in the *Preamble* itself which only speaks of “*prevention and control of water pollution*” and **not** “*total prohibition of water pollution*”.

*Secondly*, in the term ‘outlet’<sup>7</sup>, it is not clear whether intention to pollute water is a prerequisite for application of this Act.

*Thirdly*, the definition of ‘pollution’<sup>8</sup> **does not** include ‘pollution of water due to its radiological disintegration.

*Fourthly*, the definition of the term ‘Stream’<sup>9</sup> **does not** include ‘rain water’, thereby giving *right to pollute the rain water*.

*Fifthly*, some very relevant and important terms like pollutants, toxic pollutants, discharge of pollutants etc. *are not defined*.

##### 2. shortcomings Regarding Fines and Punishments:

Possible offences are not specifically defined and also the punishments prescribed are not

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<sup>7</sup> See section 2(dd) of The Water (Prevention and Control of Pollution) Act, 1974

<sup>8</sup> See section 2(e) of The Water (Prevention and Control of Pollution) Act, 1974

<sup>9</sup> See section 2(f) of The Water (Prevention and Control of Pollution) Act, 1974

applicable to for all probable violations.

Punishments mentioned on the Act are not such as to give a deterrent effect. Punishment is provided only if violation is committed “knowingly”. It is not provided for “negligent” acts<sup>10</sup> of the polluter.

The Fines prescribed are also small and also, imprisonment as a punishment is not compulsory in all cases of violations<sup>11</sup>.

The key person for enforcement of this Act is the Chairman of the State Pollution Control Board who should be professionally qualified and appointed on a full time basis. *However, the Act does not stipulate such requirement.* Several State Pollution Control Boards are headed by part-time Chairmen without requisite qualifications and experience. Also, the Member Secretaries of the Pollution Control Boards are often drawn either from administrative service or even forest service, who, do not have the requisite technical background in pollution control. As a result, it becomes difficult for them to provide proper leadership and guidance to their sub-ordinates.

## **V. JUDICIAL RESPONSE TO CONTROL OF WATER POLLUTION—A JUDICIAL ACTIVISM: A CASE BASED ANALYSIS**

Despite having an impressive line-up of laws within the statute books, the Indian legal system has constantly been failing in terms of enforcement. Bureaucratic lethargy, lack of sensitivity amongst legislators towards environmental problems, and an errant industrial-manufacturing combine with state inefficiency are some of the reasons ,which prompted the judiciary in general and Supreme Court in particular to step in and correct the wrongs.

But the question is, can the environment be protected at present times when almost all the countries in South-East Asia are still at their developing stages? Development comes through industrialization, which in turn the main factor behind the degradation of environment. To resolve the issue, the Judiciary had to make a balance between economic development and preservation of the eco-systems; therefore judiciary came with a doctrine called '*Sustainable Development*', i.e. there must be a balance between development and ecology.

*Subhash Kumar v. State of Bihar*<sup>12</sup> was one of the first few cases wherein the Supreme Court emphasized the importance of protecting and conserving the natural environment. The scope

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<sup>10</sup> There is no concept of absolute liability under The Water (Prevention and Control of Pollution) Act, 1974 See section 24 of The Water (Prevention and Control of Pollution) Act, 1974

<sup>11</sup> See sections 24, 25 and 26 of Water Act, 1974.

<sup>12</sup> AIR 1991 SC 420, at p.424.



of Article 21—the right to life—was widened when the court read into it the “*right to wholesome environment*.”<sup>13</sup> The court went even further and said, “The Right to Life includes the Right to enjoyment of pollution-free water and air for a fuller enjoyment of life.”

The greatest milestone in the development of water quality control jurisprudence has been the string of *Ganga Pollution case*, which opened new vista in the direction of protecting environment and pollution caused by hazardous activities of the industries, the court has summed up the main causes of pollution of the Ganga precisely as “urban liquid waste” and “industrial waste surface run-off”. **Venkataramaih J**; observed that:

*“Under the law of the land, responsibility for treatment of the industrial effluents is that of the industry. While the concept of “strict liability” should be adhered to in some cases, circumstances may require that plans for sewerage and treatment systems should consider industrial effluents as well”*

In *Kanpur Municipalities Case*<sup>14</sup>. In this case the court *suo moto* laid down a series of guidelines for the municipality on issues like removal of wastes, construction of sewer lines, construction of urinals etc.

*Indian Council for Enviro-Legal Action v. Union of India*<sup>15</sup> popularly known as *Bichhiri case* struck a blow to chemical industries in Rajasthan, which were releasing highly toxic effluents and untreated sludge into the environment, leading to the pollution of underground aquifers. The court took the question of liability of the respondent from the different angle and stamped the validity of “*polluter pays Principle*” and “*absolute liability*” in this case.

Another historical case is the *Vellore Tanneries Case*<sup>16</sup>. A PIL was instituted by the plaintiffs against the tanneries in Tamilnadu, which had been releasing vast amount of untreated sludge into river water. As a result, arable lands, wells used for agriculture and drinking water sources were affected. The court in this case recognized ‘*the Precautionary Principle*’, reiterated ‘*Polluter Pays Principle*’ and fined the tanneries.

## VI. CONCLUSION AND SUGGESTIONS

From the above parts of this paper it is clear that the situation of water pollution is taking a turn in our country. The reasons for this are many. The root cause, as researcher feels, is the

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<sup>13</sup> The first case which is historic in the environmental jurisprudence and begins with a tough judicial approach for environmental protection is, perhaps, *Municipal Council, Ratlam v. Vardhichand* AIR 1980 SC 1622. See also, *M.C.Mehta v. U.O.I (Delhi Stone Crushing Case)* 1992 (3) SCC 256; *Virender Gaur v. State of Haryana* 1995 (2) SCC 577.

<sup>14</sup> *M.C.Mehta v. U.O.I* AIR 1988 SC 1115

<sup>15</sup> AIR 1996 SC 1446.

<sup>16</sup> *Vellore Citizens Welfare Forum v. U.O.I* (1996) 5 SCC 647.

explosion of population whereby it becomes practically impossible to cope effectively with environmental problems, even if the desire to do so is there. Secondly, the planning is also defective. Thus the result is that the growth of resources is not keeping pace with the growth of in population and resources per capita are diminishing, as a consequence, there is an ever-increasing pressure on water resources too. This is resulting in large scale water pollution which is growing very rapidly.

To combat the growing menace of water pollution in the country, the Union government had promulgated the Water (Prevention and Control of Pollution) Act, 1974 to preserve the wholesomeness of water. In addition, Environmental (Protection) Act, 1986 was passed and prior to that pollution Control Boards was established both at the union and state level.

However the biggest culprit in realizing the desired results of control of water pollution is the industrialists—states combine which has been frequently flouting the water pollution control laws. For example, in Delhi, Effluent Treatment Plants [ETPs] have been installed or under installation for only 16 out of total 63 polluting units. According to the study there are 28 approved industrial areas in Delhi with a total of 21,627 industrial units. Nearly two thirds of all industrial units are located in six larger industrial areas namely Anand Parbat Industrial Estate (17.23%), Mayapuri Industrial Area (15.10%), Okhla Industrial Area (11.34%), Narela Industrial Area (9.59%), Wazirpur Industrial Area (7.70%) and Kirti Nagar Industrial Estate (6.82%). Only one third of the units are located in the remaining 22 industrial areas. More than 50 percent of the industrial units are the major sources of solid waste pollution, but, no measurement has been taken to resolve this problem of pollution<sup>17</sup>. Thus under these circumstances, it is imperative that the water pollution control laws be made more stringent and adequate provision for funds and trained personnel to the agencies entrusted with the task be added. A proper State-Centre coordination and the strong determination [on the part of official agencies to make the laws click and deliver] should also be ensured. The role of judiciary in controlling water pollution and conservation has been laudable which are very clear from the number of cases decided by the Apex Court in India. The judicial activism has proved to be useful in these cases in controlling pollution of water and improvement of the environment.

### **(A) Suggestions**

There should be some *amendments* with respect to the following definitions:

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<sup>17</sup> Pollution from Small Scale Industrial Sector of Delhi available on <http://www.ncaer.org/Upload/others/106/Pollution.pdf>. (19th August, 2021).

The definition of ‘**pollution**’ should be amended to include ‘pollution of water due to its radiological disintegration’ within its ambit.

The definition of the term ‘**Stream**’ should be amended to include ‘rain water’, thereby not giving any scope to pollute the rain water.

Some very relevant and important terms like pollutants, toxic pollutants, discharge of pollutants etc should be defined.

Section 4(2) (a) should be amended so as to provide for the qualification criteria for the chairman to be appointed under the Water Act.

Section 24 should be amended as it does not put any liability on a person if she/he unknowingly does anything which causes pollution. The concept of ‘absolute liability’ should be introduced.

There should be a system of compulsory public hearing.

There is a need of specific provision in the Act for Public Participation, for better implementation of the Act.

There should be provisions in the Act for fixing up standards of quality and targets for eradication of pollution.

Trained personnel to the agencies entrusted with the task should be added.

Equally important is the establishment of a National Environment Protection Authority which should also be made a department of Ministry of Environment but have sufficient authority.

Also setting up of environment court to tackle pollution cases, more media involvement and dissemination of information through documentation centres is required at both centre as well as state level

Above all, it is necessary to make the best out of the existing conditions by generating social consciousness about the environment by forming social action groups and the importance of people’s participation in fighting the increasing menace of water pollution in our country, because it is all up to us either to perish or to preserve the environment and protect the earth

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**VII. REFERENCES**

1. Water (Prevention and Control) Act, 1972
2. Indian Penal Code, 1860

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