

Legal Aspects and Remedies to Address Water Pollution Problems in India

Abstract

This review provides an insight into the legal aspect of water pollution which helps to evolve and develop laws to prevent and control water pollution. It also informs about existing laws, enforcement mechanisms and procedure to address water pollution problems. Water is a fundamental necessity for life, without water life cannot survive. So, to protect this precious resource one needs potent laws, effective enforcement mechanism and proper checks and balances which is a part of enforcement mechanism. By potent laws we mean laws which are made for the present scenario, not outdated and takes into account all the circumstances which have an impact on the object of law. Laws are made to set standards for what government and people do in a particular situation which includes the procedure and penalties to address water pollution. Effective enforcement mechanisms include central and state pollution control boards. Their job is to enforce the laws. These enforcement institutions should have a proper and effective mechanism which can check institutions irresponsible and corrupt behavior.

Keywords: Environment, Laws and Acts, Awareness, Punishment, Responsibilities.

Introduction

The earth's expanding human population and industrial growth have been known to cause serious environmental disasters. India's population reached 1.25 billion and its economy is growing at 8.5%, the fastest after China. Due to the population pressure, India pushes ahead with aggressive industrial development. Consequently, thousands of industrial clusters nationwide produce enormous amounts of untreated toxic waste that often end up in rivers, lakes, forests, and landfills. The issues of environment are the effect from the human's activities that have no civic conscious and only think the profit without concern about the impact towards the environment and their future of life. The long term effect from the environmental pollution can be seen when the ecosystem is not able to endure the pollution.

Even though India has sufficient environmental laws, weak enforcement and the lack of funds and manpower are most often the stumbling blocks for the pollution control boards Present India is facing many important environmental challenges which currently threaten both the development of India and the outlook for its future. The state of India's environment is in upset at the hands of uncontrolled human activities, and these ecological ailments are affecting social growth potential.

Water is a fundamental necessity for life, without water life cannot survive. Due to depletion of water resources, loss of indigenous species of flora and fauna and the background of overwhelming poverty are depicted in the report to detract from the positive growth of Indian people and the country as a whole So, to protect this precious resource one needs potent laws, effective enforcement mechanism and proper checks and balances which is a part of enforcement mechanism. By potent laws we mean laws which are made for the present scenario, not outdated and takes into account all the circumstances which have an impact on the object of law.

Country as large as India with about 1.25 billion population encounter special challenges that require special responses. Special challenges require special environmental regulations and enforcement mechanisms.

Laws are made to set standards for what government and people do in a particular situation which includes the procedure and penalties to address water pollution. Effective enforcement mechanisms include central and state pollution control boards. Their job is to enforce the laws. These enforcement institutions should have a proper and effective mechanism which can check institutions irresponsible and corrupt behavior. The first step in this direction the government established the Department of

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Environment in 1980 to ensure a healthy environment for the country. This later became the Ministry of Environment and Forests in 1985.

This paper provides an insight into the legal aspect of water pollution which helps to evolve and develop laws to prevent and control water pollution. It also informs about existing laws, enforcement mechanisms and procedure to address water pollution problems.

Constitutional Basis

State responsibility for environment protection was laid down under Article 48-A which comes under directive principles of state policy of Indian Constitution, it states that "The State shall endeavor to protect and improve the environment and to safeguard the forests and wildlife of the country".

Citizen responsibility for environmental protection comes under fundamental duties of Constitution of India. Article 51-A (g) states as follows: "It shall be the duty of every citizen of India to Protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures".

Indian constitution recognizes right to clean environment a fundamental right under Article 21, which says, "No person shall be deprived of his life or personal liberty except according to procedure established by law".

In *Subhash Kumar v. Bihar*, AIR 1991 SC 420, Supreme Court held that enjoyment of pollution free environment is included in the right to life under Article. 21. The Court Observed

"Right to live is a fundamental right under Art. 21 of the Constitution and it include the right of enjoyment of pollution free water and air for full enjoyment of life. If anything endangers or impairs that quality of life in derogation of laws, a citizen has right to have recourse to Art. 32 of the Constitution for removing the pollution of water or air which may be detrimental to the quality of life".

In *M. C. Mehta v. Kamal Nath* (1997) 1 SCC 388, court is of the view that any disturbance to the basic environment elements, namely, air, water and soil which are necessary for 'life' would be hazardous to 'life' within the meaning of Art. 21 of the Constitution.

In *M. C. Mehta v. Union of India*, AIR 1988 SC 1037, the Supreme Court ordered closure of tanneries which were polluting water.

In *Vellore Citizens Welfare Forum V. Union of India*, the Court took cognizance of environmental problems being caused by tanneries which were polluting all water resources, rivers, canals, underground water and agricultural land. The court issued several directions to deal with the problem. Court also stated, "The 'onus of proof' is on the actor or the developer/industrialist to show that his action is environmentally benign".

The Constitution (Forty-second Amendment) Act, 1976, inserted Art. 48-A and Art. 51 A (g) with the intention to protect the environment. Article 48A says, "The state shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country".

In *M. C. Mehta v. Union of India* the Court has said: "Articles 39(e), 47 and 48A by themselves

and collectively cast a duty on the state to secure the health of the people improve public health and protect and improve the environment"

Article 51A (g) is a fundamental duty inserted by Constitutional Forty Second Amendment, it says, "to protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for living creatures". Provisions as to fundamental duties cannot be enforced by writs. They can be promoted only by constitutional methods. But they can be used for interpreting ambiguous statutes. Where the constitutionality of an Act is challenged the court may look at Article. 51 A to uphold it.

Legal Remedies Regarding Water Pollution The Water (Prevention and Control Of Pollution) Act, 1974

Under Water Act, central and state pollution control boards are formed and act as enforcement agencies. Section.21 of the act gives power to take samples of water for analysis and procedure to be followed in this connection to state board or any officer empowered by it. It does not allow any ordinary person to take samples which is a serious drawback of the act to prevent and control water pollution.

Section 49 contains the procedure for an ordinary person to go to court for relief. It says, "No court shall take cognizance of any offence under this Act except on a complaint made by any person who has given notice of not less than sixty days, in the manner prescribed, of the alleged offence and of his intention to make a complaint, to the Board or authorized officer. The Board shall, on demand by such person, make available the relevant reports in its possession to that person: Provided that the Board may refuse to make any such report available to such person if the same is, in its opinion, against the public interest." The period of 60 days work as an alert system to the offenders. It gives them 60 days time to temper with the evidence.

The Environment (Protection) Act, 1986

This act is a general legislation to protect the environment. It provide a framework for the co-ordination of central and state authorities established under the water (prevention and control) act, 1974 and air (prevention and control) act, 1981 and the central government is empowered to take measures necessary to protect and improve the quality of the environment by setting standards for emissions and discharges; regulating the location of industries; management of hazardous wastes, and protection of public health and welfare. Like in water act, Section 11 of this act does not provide ordinary person power to take sample which is a serious drawback to prevent and control pollution.

According to Section 19, no court shall take cognizance of any offence under this Act except on a complaint made by any person who has given notice of not less than sixty days, in the manner prescribed, of the alleged offence and of his intention to make a complaint to the central government or authorized authority or officer.

Water (Prevention and Control of Pollution) Cess Act, 1977

Provides for a levy and collection of a cess on water consumed by industries and local

authorities. It aims at augmenting the resources of the central and state boards for prevention and control of water pollution. The water (prevention and control of pollution) cess rules were formulated in 1978 for defining standards and indications for the kind of and location of meters that every consumer of water is required to install.

Public Interest Litigation

Over the last twenty years, the Supreme Court of India and some High Courts of the states have led the way in the enforcement of environmental laws through citizen-led public interest litigation (PIL) that has its legal basis in the constitutional right to a healthy environment. Through this judicial activism, the courts have issued orders with specific implementation requirements that not only remedy the case at hand, but also set new policies and practices with widespread implications for the regulated community as well as regulatory agencies.

A PIL is a constitutional right under Article 32 and Article 226 of the constitution. A citizen can move to Supreme Court and High Court under Article 32 and Article 226.

In *Simranjit v. Union of India*, (1993) 1 UJ SC 32, Supreme Court says, threat of infringement of fundamental right is enough to justify issue of writ.

In *L.K. Koolwal v State of Rajasthan*, (1988), the Rajasthan High Court allowed petition of the citizens of Jaipur for the preservation of water sanitation in the city.

Thousands of litigations are pending before Supreme Court and High Courts which is the major cause for delay in justice.

Recommendations

In India, environmental statute though impressive in range and coverage is more often observed in breach than practice. Environmental law enforcement, being a highly specialized area of implementation, entrusted to different agencies under different laws, presents a none-too-happy-a picture. Lack or inadequacy of skill; less than satisfactory infrastructural facilities; poor and unimaginative understanding of the law; jurisdictional conflicts and lack of coordination, among different agencies of implementation, appear to contribute to poor and in effective implementation of the laws. Ability of some of the more resourceful industries in either camouflaging their violations and non-compliance and in exerting undue pressure on the enforcement agencies, also has contributed to the inefficiency of the enforcement apparatus. The deterrent theory of punishment employed under strict and absolute liability principle has achieved some degree of success. Hence it is time to harmonize the developmental activities with environment because development is also a very important aspect of life. In view of the involvement of complex scientific and specialized issues relating to environment, there is a need to have separate 'Environment Courts' manned only the persons having judicial or legal experience and assisted by persons having scientific qualification and experience in the field of environment. In order to achieve the objectives of accessible, quick and speedy justice, these 'Environment Courts' should be established and constituted by the Union Government in each State.

A dichotomy exists in our society- we worship Ganga river as Mokshdayani Maa but people and industries littering their waste material in river that time we forget that this is jeevandayani maa. Rapid receding of the Gangotri glacier, the source of the holy Bhagirathi, in recent times has brought the issue of global warming nearer home. Environmental issues are thus real, not scary sci-fi to be read leisurely.

Conclusion

The large scale environmental degradation has caused a global concern about the conservation and protection of the earth's environment. Hence, efforts are being made for inculcating environmental consciousness or awareness among the masses. It is education which can make the human being conscious and knowledgeable about environment and environmental problems.

There is need to improve penalties which can match the serious damage caused by acts against environment. One of the legal flaws is not allowing ordinary citizen to take samples and present it in court of law. Citizens should be empowered to collect samples and present it in court of law. The sixty day notice period is the procedural lapse which can act as an alert system to the offenders. It gives them 60 days time to temper with the evidence. There is need to aware people about the legal procedure and how they can play an active role to stop environment pollution. Citizens can be actively involved only when the enforcement institutions change their attitude towards people and they feel comfortable approaching institutions. Institutions need to shed their bureaucratic arrogance and each employee of it needs to act responsibly.

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