

WATER POLLUTION AND ITS LEGAL CONTROL

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This paper will address one of the greatest issues of our time contamination of water. An effort is made to discuss through a number of the pertinent laws related to water and to study the operation of the judicial pronouncement because it influences the pollutants of water. The human society is dealing with an extraordinary hassle in the interim as to whether or not mankind is able to control, via regulation, his cutting-edge technology which, bestowing exceptional advantages on the one hand, degrades his surroundings and threatens his biology at the different. Like different professions, the law has been helpless in trying to halt the growing degradation of our surroundings. It is turning into obvious that unrestricted commercial growth and urbanization has contributed to the pollution of the main rivers and lakes of our nation. The fuel operated automobile and of the generation of power, with the help of carbon and sulphur compounds are poisoning the air. Further, it involves incredible worry that mercury and other Industrial side-effects are making fish unfit for human utilization. There is a reasonable indication that the utilization of DDT and different pesticides has, influenced the biology and the existence of plant and creature life in numerous parts of the world.

In India there is an ever increasing worry in reference to the deterioration of environment due to urbanization, industrialization and modernization of agribusiness, all of which have accumulated pace over the recent two decades of planned economic development. The issues of natural environment deterioration brought about by urbanization and populace growth are faltering in greatness - a threat may not be not faced by any developing nation previously. India has significant skill and technical innovations, however is seriously constrained financially according to the size of the issue, in spite of the fact it can observed in absolute terms it might be that more has been done here over the most recent 15 years than in any other developing nation. In India, natural resource isn't sufficient to guarantee improvement or forestall further natural crumbling. The circumstance may go out of hand except if some clear, arranged measures are embraced right away¹.

The individual's decent standard of life which was only possible by the virtue of healthy and decent environment was not thought of until the Forth Five Year National Economic Plan(1969-70 to 1973-74).The Fourth Five Year National Economic Plan for the first time took note of air pollution and water contamination, soil disintegration, misuse of nature's resources and so forth. It expresses that every people has the commitment to keep up and to take care of the productive capability of land, air, water and wildlife so that the future generations has the option to live in a healthy environment.

India has an industrial base, mechanical skills and makes locally a vast majority of instrumentality vital for ecological contamination control. Nevertheless in any case, industry and municipal authorities are not adequately propelled with want for improvement of the environment and its remedial actions. The control of water resources is the most direly required natural measure. A Water Authority has been set up under the Water (Prevention and Control of Pollution), Act, 1974². The query of how clean the earth ought to be and to what degree pollution can be considered an ideal for the most conducive utilization of natural resources require cautious examination. Information assortment and assessment are required so as to develop quality measures and public policy³.

¹Planning for harmonious development recognises the Unity of nature and man and is only possible through comprehensive appraisal of economic and ecological environmental issues, long term considerations must prevail over short-term commercial considerations: social costs and benefits must be the yardstick rather than private gains and losses' centralized responsibility for environmental planning and adequate number of qualified specialists are lacking. These deficiencies must be overcome.

²Refer section 3 & 4 of which provide setting up of both Central and State boards.

³In India urban pollution is a greater problem than industrial pollution. Although the latter is virtually uncontrolled. Of the 2431 towns in India, 176 are seweraged; this covers 25 million people, 33% or the urban and 7% of the total population. No Municipality has the resources to bridge the gap in services due to population growth. Sewage treatment has been given the low priority because of financial limitations; methods borrowed in

Water contamination is consistently expanding both in amount and poisonous substance. About in every single manufacturing or production hub, for example, Mumbai, Calcutta, Delhi, Chennai region have become epicentre of contamination. The ramifications of the contamination issues are staggering and exhaustive enactments are required, looking to deal with these issues. Likewise, it is felt that while legislative action is basic for a thorough contamination control plan, nature can't trust that antagonistic interests will devise an enforceable plan. While the Water (Prevention and Control of Pollution) Act, 1974 gives for the Boards to be set up both at the Central and State level to devise working solution for contamination control, private cures should also be used if the pollution control isn't so powerful through agencies established under the above mentioned acts. This brings us to the debate on the degree to which the common law can be considered as a weapon against prevention and control water pollution.

Remedies

A couple of common law remedies are accessible to those who are adversely affected by the contamination of water. The common law controls can be arranged into three:

- (a) Obligation for the escape of noxious substance;
- (b) The reckless use of toxic articles or pollutants; and
- (c) The encroachment of property rights in water.

- (a) **Obligation for the escape of Noxious Substance:** the rule related to the liability of any person on the escape of vicious substance brought by any person on his land can be cited in "Rylands Vs Fletcher"⁴ Justice Blackburn observed:

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

This is the rule of absolute liability. It implies that if anybody gathers a combustible or explosive item on his premises, and if he permits it to escape, then he is liable to make good the loss suffered by the aggrieved. However, he is under an obligation to make good the loss if the loss suffered by the aggrieved is the direct consequence of the escape of the dangerous object. In one case it was found that a municipal authority applied tar on the road and the tar got away from the roadway on to the offended party's water-cress beds which caused undoubted harm to the water-cress. The Plaintiffs had the option to recuperate harms suffered by him. In this manner it gives a clear idea that if there is irregular use of land, then damages should be granted against the respondent⁵. It would be appropriate to address here whether pesticide used by a farmer for the improvement of his yield would be considered to be making an abnormal use his land. The view is that the use of pesticide may be viewed as the natural and genuine use of the land.

- (b) **The reckless use of toxic articles or pollutants** In this area a reference will be made to the reckless use of pernicious items, which are termed as "perilous things" and to analyse it with regards to whether such reckless use will give rise to an action in "negligence".

In the law of torts negligence has two perspectives:

- (i) It might be a component in deciding liability for many torts (e.g., an aggravation might be caused purposefully or carelessly).

the past from western countries involved costs not keeping in pace with local conditions; maintenance has been poor, nearly 50% of existing plants are out of order Current research seeks methods appropriate for local conditions with low capital and running costs.*** These data have been obtained from the Human Environment Vol. II. Summaries of national reports, submitted in preparation in the United Nation Conference On the- Human Environment.

⁴(1868)L.R.3H.L.330.

⁵The theory of abnormal use has been criticized to this effect that there is no sufficient warrant for imposing the condition of extraordinary user on the operation of the rule. See R.P. Aiyer. *Law of Torts*, 476 (7th Edition).

- (ii) It is in itself an autonomous tort.

The plaintiff in an action for the tort of negligence must prove that the defendant owed to him, the plaintiff, a legal duty of care and has been guilty of a breach of that duty and a damage has been caused to the plaintiff by that breach.

It will be pertinent to address here what is a perilous article? Presumably it might be right to state that anything is a perilous item if it is utilized in a hazardous way. By applying this test a view might be held that the pesticides that we use in our nation are hazardous and if an injury can be assessed and can be proved by the virtue of incautious usage of pesticides, an action of negligence against the wrong-doer will lie.

- (c) **The encroachment of property rights in water:** Every riparian owner had a natural right to the natural flow of water in his stream, substantially unaffected in quality and undiminished in quantity⁶

*A riparian proprietor has a right to the natural stream of water flowing through the land in its natural state; and if the water be polluted by a proprietor higher up the stream, so as to occasion damage in law, though not in fact, to the first mentioned proprietor, it gives him a good cause of action against the upper proprietor unless the latter has gained a right by long enjoyment or grant*⁷

Thus common law has set a standard in regard of water contamination which may be higher than the Helsinki Rules⁸. The control of water contamination at common law depends on the property rights of the owner of land abutting a stream, along these lines, if an individual effectively pollute or on the other hand impact the normal nature of a stream any riparian proprietor downstream has an activity against him at customary law for harms or loss endured and may approach the court for a directive to limit the guilty party from furthering the acts of pollution

It may, it must be conceded that the mechanism of control as has been developed by the common law may have been very satisfactory in a non-industrial era where occurrences of pollution are negligible and restricted in their impacts. In any case, under present day conditions with tremendous groupings of industry furthermore, populace in urban territories and the improvement of water-borne sewerage frameworks etc, a few type of legal control is felt vital. In spite of the fact that there is some type of legal control in presence, it doesn't suggest that the situation under customary law has no importance. An important case in point in recent years is *Pride Of Derby and Derbyshire Angling Association v. British Cleanse*⁹ where riparian owners were awarded damages and a suspended injunction against Derby Corporation for the discharge from their sewage works.

Statutory Control

The Central Parliament has sanctioned an enactment to forestall and control contamination of water¹⁰. The Water (prevention and Control of Pollution) Act, 1974. (Hereinafter called the Act of 1974) accommodates the prevention and control of water contamination and aims at the keeping up or reinstating the healthiness of water. The Act has set up Boards and has given on these Boards certain functions and powers to accomplish the previously mentioned objects.

The Act of 1974 expands effectively on overall coastal and non-coastal water bodies¹¹ and streams which includes- rivers, water course (whether flowing or for the time being dry), inland water (natural or artificial) and sea or tidal waters to such extent, as the case may be, to such point as notified by the state government in this regard¹².

The Act also empowers the state boards with the view of preventing and controlling pollution of water to give directions to any person with reference to the discharge of sewage or trade effluent into any streams as mentioned above and also has the power to obtain information as to the abstraction of water from any stream at

⁶*John Young & Co. v Bankier Distillery Co* [1893] A.C. 691.

⁷*Wood v. Ward*. (1849) 3 ex. 748. According to Salmond: "The pollution of a natural stream is a wrong actionable at the suit of any riparian owner past whose land the water so polluted flows, and we have just seen, pollution even of underground water is also actionable. The term pollution is used here in a wide sense to include any alteration of the natural quality of the water whereby it is rendered less fit for any purpose for which it is in its natural state it is capable of being used. Thus it is actionable to raise the temperature of the stream by discharging into it hot water from a factory. •• no less than to pollute the stream by pouring into it the sewage of a town or the chemical refuse of a factory. *Salmond On Torts* 233 (13th ed.). Then he states at 234: "Pollution is actionable without proof of actual damage".

⁸Art. 9 of the Helsinki Rules defines the term "Water Pollution" as referring to any detrimental changes resulting from human conduct in the natural composition content or quality of the water of an international area"

⁹(1953) I Chapter. 149 (C.A.)

¹⁰The Water (Prevention and control of pollution) Act. 1974.

¹¹Section 2(f) Water (Prevention and control of pollution) Act. 1974.

¹²Section 19 Water (Prevention and control of pollution) Act. 1974.

any time. Under the same Act, the state boards have been empowered to take sample of water from any stream or sample of any sewage or trade effluents for its analysis. A detail as far as its procedure is concerned in connection with the analysis of sample is given under section 21 of the said Act.

Furthermore, the act also empowers the board's officials the power to entry and inspection¹³ for the purpose of determining whether any notice, order, direction served, made or given under this act has been complied with. The Water Act of 1974 also places restrictions on the establishment of new discharge outlets. However this restriction is not absolute, although the consent of respective State Pollution Board is mandatory. Detail procedure regarding the establishment of new outlet, its revocation, appeals etc are provided under section 25-29 of the said act.

The act also empowers the state government to restrict the application of the act to such area as may be notified in the official gazette after the consultation or with the recommendation of the state board. Act also provides provision relating to the prohibition on the use of stream or well for the disposal of the polluting water. Lastly, the state boards are also empowered to prevent pollution by making an application to the court restraining any person, industry from polluting streams.

Thus, state pollution boards have wide control in connection with the discharge of both new and existing discharges. It is quite evident from the above mentioned provisions that pollution of water streams are to be controlled by the state board established under the same act.

Two significant issues emerging out of the Act of 1974 might be featured here. One identifies with the inspection procedure which ought to be executed appropriately all together so that the reasons for which the Act has been passed, i.e. avoidance and contamination of water, might be adequately accomplished. Further, it is made an offence when no individual will purposely cause or allow to enter into any stream any toxic, poisonous or dirtying matter decided in agreement with so much guidelines as may be laid down by the State Board to enter (regardless of whether legitimately or by implication) into any stream or well, Further, it is made an offence when no individual will purposely cause or allow to enter into any stream any toxic, poisonous or dirtying matter decided in agreement with so much guidelines as may be laid down by the State Board to enter (regardless of whether legitimately or by implication) into any stream or well, Thus, if it appears that somebody has tossed a few thing, e.g., pesticide, which is a harmful, repulsive or polluting matter it is probably going to prompt contamination. At that point, there is a criminal offence under area section 24 read with area 43 of the Act. In such case, the issue lies in the way that the litigant may state that he didn't realize that this poison was going into the waterway or he didn't realize that it was harmful. This defence may not be justified. He may state that he didn't intentionally allow it to go into the stream, turning on the words in the relevant section "not knowingly" - "Causes or Permits". If this be the result of the relevant provision, at that point surely the law needs stringent enough in relation to this key section. Absolute restriction is required and it should be against the law to commit any act that causes pollution in stream.

The Factories Act, 1948 additionally makes arrangements for viable courses of action to be made in each industrial facility for the removal of squanders and effluents due to the producing process carried on in the manufacturing plant. The State Governments are authorized to make rules endorsing the plans required for the removal of the squanders and the effluents¹⁴ Under the Indian Penal Code¹⁵ it is an offence if a person voluntarily corrupts or fouls the water of any public spring and reservoir so as to render it less fit for the purpose for which it is ordinarily used. By the relevant provisions of the Criminal Procedure Code. 1898 a magistrate may pass an order to prevent a discharge from a factory into a river of a noxious effluent which might be injurious to the health of the community which has right to the use of water in such river¹⁶

Conclusion

The common law, as we have seen, is insufficient and excessively difficult to work in present day conditions. It may not be an exaggeration to state that in a today's era riparian rights are not practicable and in this manner should be controlled. Maybe some measure of control is important to restrict contamination. Our criminal laws contain arrangements which are not sufficient to manage natural contamination. We may analyse the practicability of implementing the criminal remedies in addition to the damage assessment and administrative sanctions to make a move against gigantic contamination of land, water and air regardless of whether by mechanical waste and effluents or by synthetic concoctions etc. yet it must be conceded while if the object of criminal law is to forestall offenses and not to punish the guilty party at that point the assent of criminal law may not be the last response to the issue of contamination. The essential object of criminal law is to forestall any

¹³Section 25 Water (Prevention and control of pollution) Act. 1974.

¹⁴S. 12 the Factories Act. 1948.

¹⁵Section 277

¹⁶A.I.R. 1926 Para 506 & 507.

criminal act. Further, we have such a large number of administrative agencies right now manage sewerage and control water pollution. Reference might be made in this association with the setting up of local authorities under the Act of 1974 and various municipal statues. It is basic that there should be compelling participation between these agencies so a greater control can be developed for the avoidance and contamination of water.

