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THE EVOLUTION OF WATER RIGHTS: LAWS AND RESOURCE MANAGEMENT IN INDIA

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I. ABSTRACT

Water, an invaluable natural resource, faces grave threats due to escalating demands and environmental pressures. The burgeoning human populace places immense strain on water resources, leading to a looming spectrum of scarcity. By safeguarding the purity of water, we not only secure our future but also ensure the continued vitality of the planet and all its inhabitants. In the realm of water rights in India, this study delves into the evolution of laws and resource management practices. By examining the historical development of water rights legislation, the research aims to elucidate the objectives, methods, and key findings about the intricate web of policies governing water usage. Through a comprehensive analysis, this study seeks to shed light on the evolution of water rights in India, providing valuable insights into the legal framework and resource management strategies in place.

II. KEYWORDS

Natural resource, water pollution, population, water policy and water governance

III. INTRODUCTION

According to scientific findings, the human body is comprised of around 70% water³, a crucial element. Nevertheless, excessive consumption has led to greed and wastefulness, posing a threat to this invaluable resource. Hence, it is vital to increase awareness and apply knowledge to conserve water in order to protect its rights and proper utilization. This article intends to delve into the development of laws aimed at safeguarding water resources, rights, and management practices within the Indian legal system. It seeks to elucidate the regulatory policies governing water rights and

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management. Just as constitutional fundamental rights safeguard various aspects of life, establishing a strong legal framework for water is essential to ensure responsible usage and sustainable conservation practices. Through the examination of rights concerning natural resources, particularly water, and the assessment of measures for efficient conservation, this article aims to deepen understanding of the legal mechanisms shaping water governance in India.

Additionally, this article will focus on recent modifications to the Water Act, particularly the Water (Prevention and Control of Pollution) Act, of 1974. By carefully examining the updated provisions of this legislation, such as the removal of criminal penalties for minor offences and exceptions granted to certain industrial facilities, our objective is to elucidate the implications of these alterations on water resource management and environmental conservation. Through a thorough examination of the historical progression of water laws, an assessment of water rights, and scrutiny of recent amendments to the Water Act, this article aims to provide insights into the legal framework governing water resources in India and its role in advancing sustainable water management practices and conservation endeavours.

IV. LEGAL REGULATIONS RELATED TO WATER AND ITS USAGE

India has regulations governing water and its usage, though they may not be as stringent as those for international waters. These laws cover areas such as irrigation and property water usage. The most significant legislation addressing this is the Water (Prevention and Control of Pollution) Act, of 1974. Our constitution enshrines the right to clean water suitable for drinking⁴ under Article 21⁵, guaranteeing every Indian citizen access to affordable, clean drinking water.⁶ Additionally, Article 14 ensures equality and equal protection under the law.⁷ The constitution also mandates citizens

⁴ Wahi, N. The Evolution of the Right to Water in India. *Water* 2022, 14, 398.
<https://doi.org/10.3390/w14030398>

⁵ The Constitution of India, Art.21

⁶ Cullet, P. "Right to Water in India: Plugging Conceptual and Practical Gaps." *The International Journal of Human Rights* 17, no. 1 (January 2013): 56-78.

⁷ The Constitution of India, Art.14

to protect and improve the natural environment.⁸ This dual protection, both constitutionally and statutorily, provides a strong framework for safeguarding water bodies and ensuring free access to clean water. Therefore, in accordance with this fundamental right to equality, the government is obligated to protect water as a natural resource in its purest form.⁹

A. Evolution of laws relation to water

In ancient India, water laws evolved gradually from traditional practices, religious teachings, and written codes, with references found in texts like the Laws of Manu and Arthashastra. These laws prohibited the destruction of embankments and encouraged using water bodies as village boundaries for widespread access.¹⁰ Under Islamic law, water was considered a divine gift, ensuring universal access to water sources.

During British rule, water governance shifted towards government control, with emphasis on common law principles favouring landowners' rights to water access.¹¹ Regulatory statutes were introduced to protect embankments, regulate canals, and manage river conservation. The division of responsibilities between the central and state governments regarding water management was outlined in the Government of India Act, of 1935.¹²

Post-colonial water laws and policies are influenced by colonial legacies, constitutional developments, and issues surrounding surface and groundwater irrigation, human rights, and environmental concerns.¹³ These laws also address challenges such as dam construction and water cooperation with neighbouring countries.¹⁴

⁸ The Constitution of India, Art. 51-A (g).

⁹ M.C. Mehta v. Kamal Nath, (1997) 1 SCC 388.

¹⁰ Minhas, Chandreshwari. An Overview of Water Laws in India with Special Emphasis on Groundwater Laws, HPNLU J. Env'tl. & Dev. Mgmt., vol. II, 19-20 (2020).

¹¹ Id.

¹² Id.

¹³ Dellapenna, Joseph W., and Joyeeta Gupta. Evolution of Water Law and Policy in India. 162-63 (2009).

¹⁴ Id.

The Indian Penal Code of 1860 includes numerous measures to deter environmental pollution. These provisions are intended to protect the environment from damage. Located in Chapter XIV of the IPC, Sections 268 to 294-A focus on crimes related to safety and public health. Emphasizing public well-being, these laws render any actions that endanger individuals or pollute the environment punishable.

B. Constitutional mandate

According to the Constitution, the allocation of water and water-related resources is divided between the Union and the States, with the majority falling under the jurisdiction of the latter. Specifically, the Constitution designates water as a state subject, with only certain aspects falling under the purview of the Union. These arrangements are outlined in the three lists (Union, state, and concurrent lists) of the Seventh Schedule of the Constitution. The overarching policies and principles for managing natural resources, including water, are outlined in Parts III and IV. These provisions ensure fundamental rights for citizens to access and use water freely.¹⁵ The right to life also encompasses access to water and places obligations on the state to ensure equitable distribution of this resource, promoting ecological and environmental improvements and preservation.¹⁶ In line with this, the Constitution also imposes fundamental duties on citizens to protect and enhance the natural environment.¹⁷

Although the Constitution doesn't explicitly acknowledge a fundamental right to water, court rulings suggest that such a right is implied within Article 21, which guarantees the right to life. This implication is based on interpretations made by the judiciary, as seen in the case of *Subhash Kumar v. State of Bihar*¹⁸, where the Supreme Court acknowledged that the right to life encompasses the right to access pollution-free water and air for the full enjoyment of life. Furthermore, in the *Narmada Bachao Andolan v Union of India*,¹⁹ the Supreme Court directly inferred the right to water from Article 21, emphasizing that water is essential for human survival and is

¹⁵ Id at 167

¹⁶ The Constitution of India, Art.21, Art 39(b) (c) and 48(A).

¹⁷ *Supra* Note 8

¹⁸ *Subhash Kumar v. State of Bihar*, AIR 1991 SC 420.

¹⁹ *Narmada Bachao Andolan v Union of India*, AIR 2000 SC 3751

therefore integral to the right to life and human rights as outlined in the Constitution of India.

C. THE WATER ACT, 1974²⁰

The Water Act aims to regulate and manage water pollution while ensuring the purity of water sources. It establishes Boards tasked with preventing and controlling water pollution and grants them the necessary powers and functions to fulfil these objectives, along with addressing related matters.

The act defines pollution concerning water as:

*"Pollution refers to the contamination or change in the physical, chemical, or biological properties of water, including the discharge of sewage, trade effluent, or other substances into water, directly or indirectly. This contamination or discharge is likely to cause nuisance or harm to public health, safety, or various legitimate uses of water, as well as to the life and health of animals, plants, or aquatic organisms."*²¹

The act prevents and controls the pollution of streams from water pollution. The definition of "stream" includes rivers, watercourses (whether flowing or dry), inland waters (natural or artificial), subterranean waters, and seas or tidal waters as specified by the State Government.²²

On February 15, 2024, the Ministry of Law and Justice released the Water (Prevention and Control of Pollution) Amendment Act, 2024.²³ This act modifies the Water (Prevention and Control of Pollution) Act, of 1974 to remove criminal penalties and streamline minor offences associated with water pollution. Initially, the act applies to Himachal Pradesh, Rajasthan, and the Union territories, with other states having the option to adopt it by passing a resolution.

²⁰ The Water (Prevention and Control of Pollution) Act, 1974, Act No. 6 of 1974.

²¹ The Water (Prevention and Control of Pollution) Act, 1974, § 2(e).

²² The Water (Prevention and Control of Pollution) Act, 1974, § 2(j).

²³ THE WATER (PREVENTION AND CONTROL OF POLLUTION) AMENDMENT ACT, 2024 NO. 5 OF 2024

The recent amendment aims to address certain shortcomings and update regulatory frameworks to suit present-day needs. Amendments to the Water Act are essential to bring it in line with the Air Act, as both laws have similar provisions.

D. Key Changes:

- **Decriminalization of Minor Offenses:** The focus of this amendment is to eliminate criminal penalties for minor infractions related to water pollution. It aims to remove the threat of imprisonment for minor technical or procedural errors, ensuring that penalties are proportionate to the offences committed. The goal is to promote compliance without unduly burdening stakeholders.
- **Exemption for Specific Industrial Plants:** The amended bill empowers the central government to exempt certain types of industrial plants from specific statutory restrictions outlined in Section 25. This provision seeks to streamline regulatory processes, reduce redundant surveillance efforts, and alleviate unnecessary burdens on regulatory agencies to enhance efficiency.
- **Enhanced Regulatory Oversight:** These measures aim to strengthen regulatory oversight and standardization across states. They authorize the central government to establish guidelines for appointing chairpersons of State Pollution Control Boards and issue directives regarding the granting, refusal, or revocation of industry-related consents. Additionally, they mandate specific qualifications, experience, and procedures to ensure fair appointment of chairpersons.

Critics argue that the bill concentrates power and undermines principles of federalism. They also raise concerns about potential reductions in transparency when dealing with water pollution issues. Relaxing certain regulations could compromise the accountability of industries and regulatory agencies, leading to less transparency in managing environmental concerns.

V. CASE LAWS

A Public interest litigation filed by Mr. M. C. Mehta, an environmentalist in concern to this matter, under Article 32 of Indian Constitution which ensures that if there is any violation of fundamental rights, we can knock the doors of court directly for this matter, it was observed by the Supreme Court that water of River Ganga was highly toxic near Kanpur city- as the sewage water was being discharged as well as its effluents, this causes environment degradation Bodies were thrown into water.²⁴ Also, supply of water and sanitary conditions in the entire city was not proper and not up to the marks which should be like how a normal city should exist like.

- It was the contention by the respondents that in the city of Kanpur- due to their lack of physical facilities and technical know-how and funds- it was not possible for them to install the proper treatment facilities.
- The Court, rejecting their contentions, said that “the financial capacity of a tannery should be considered irrelevant while requiring them to establish primary treatment plant, just like an industry which cannot pay minimum wages to its workers cannot be allowed to exist; the tanneries which cannot set up a primary treatment plant cannot be permitted to continue.”
- The court ordered the Tanneries which did not appear before the court should stop functioning and before they restart, they must install pre-treatment machineries for trade effluents.

In another case of *M.C. Mehta vs. Kamal Nath and others*²⁵ Span Motels Pvt. Ltd., a privately held company owned by the proprietor of Span Resorts, embarked on an ambitious project named Span Club. During this time, Mr. Kamal Nath, then serving as the Minister of Environment and Forests, directly engaged with the owner of Span Motels. He sanctioned a lease of 27.12 bighas of land to the company for their project. However, this approval resulted in encroachment upon the Beas River. The subsequent construction activities exerted significant pressure, leading to a deviation in the river's course and consequent erosion of nearby lawns. To mitigate potential

²⁴M C Mehta v. UOI, [1987] 4 SCC 463

²⁵ (1997)1 SCC 388

flood hazards posed by the river, the proprietors chose to utilize bulldozers and earthmovers to alter its course, thereby safeguarding the motel from possible future flood-related damages. This caused a massive flood in 1995 destroying properties worth 105 crores.

The court invoked the Public Trust Doctrine, which asserts that certain resources such as air, sea, water, and forests hold such paramount importance to the collective populace that subjecting them to private ownership would be inherently unjustifiable. These resources, being gifts of nature, should be freely accessible to all regardless of social status. The doctrine mandates that the government safeguard these resources for the benefit of the public rather than allowing their exploitation for private or commercial gains. Consequently, the court invalidated the prior approval from the Ministry of Environment and Forests and the lease agreement for 27.12 bighas of land granted to the company. The Himachal Pradesh Government was directed to take over the area and restore it to its original natural state. Additionally, the court ordered the motel to compensate for environmental restoration costs, following the Polluter Pay Principle. Furthermore, the court-mandated the reversal and removal of pollution caused by the motel's construction along the Beas Riverbanks.

VI. SUGGESTION TO IMPROVE WATER USAGE AND ITS CONSERVATION.

As it plays an important role in water usage thus the steps to prevent water wastage that the government case uses are:

1. Reduce the usage of industries that lead to affluent being drained into water.
2. Ensure sewage treatment plant installation.
3. Amendments to Water Laws
 - Implement stricter regulations on water usage by industries, including mandatory water recycling and treatment before discharge.
 - Introduce laws that mandate the installation of water-efficient technologies and appliances in new constructions and renovations.

- Establish water pricing structures that incentivize conservation, such as tiered pricing or water budgets.
4. Access of water should be available to each corner without any taxes, charges.
 5. Sustainable development should be treated as a primary concern.
 6. Launching public awareness programmes and educating people on the impact of individual action for protection and conservation of water resources.
 7. Using innovative techniques such as smart irrigation systems, water-efficient appliances, or advanced water treatment methods.

VII. CONCLUSION

According to reports, India accounts for a total of 17% of the world's population but only has 4% of world's fresh water.²⁶ When we talk about the essential requirements for life, it entails food, water. Thus, it becomes quintessential to preserve this essential need of life. Not just a requirement for mankind but becomes a necessity for every living species which exists on this planet including plants, animals, microorganisms etc. We need to address these difficulties faced by common man who suffers and is not treated with clean drinking water at an affordable rate. It should be matters of concern to the government due to increasing amount of demand and global factors that are affecting the natural flow of water. Implement stricter regulations on water usage by industries, including mandatory water recycling and treatment before discharge and the introduction of strict laws that mandate the installation of water-efficient technologies and appliances in new constructions and renovations in urgently needed. In is also needed that industries and agriculture sector use innovative technologies to preserve technology. Thus, preservation of water becomes not only important for the people in this age but also for the upcoming generation, we have a duty to save our resources to the utmost level and give it as a wealth and a gift. It should be an act that starts with our own acts of helping sustain life on this earth,

²⁶NITI Aayog (2019), Composite Water Management Index, Available at: Pg 187
<https://niti.gov.in/sites/default/files/2019-08/CWMI-2.0-latest.pdf>.accessed on 04Apr, 2024

we all need to take a pledge to save our mother earth and it becomes the responsibility of this generation to prevent before any disaster takes place on earth.

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