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A COMPREHENSIVE ANALYSIS OF THE LEGAL FRAMEWORK FOR WATER POLLUTION CONTROL IN INDIA: STATUTORY EVOLUTION, JUDICIAL ACTIVISM, AND INSTITUTIONAL EFFICACY

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Abstract

India is undergoing one of the worst crises in water quality in the world, due to uncontrolled industrial development, rapid urbanisation and inadequate wastewater management. This research offers a doctrinal critique of India's legal and institutional framework for water pollution prevention and control. Mapping the journey of environmental law and policy from the Stockholm Conference in 1972 to recent decriminalisation amendments in 2024, this analysis assesses the success of the Water (Prevention and Control of Pollution) Act, 1974 and the Environment (Protection) Act, 1986. It particularly focuses on the recent jurisprudential transformation of the Indian judiciary - especially the Supreme Court and the National Green Tribunal (NGT) - in expanding the scope of Article 21 of the Indian Constitution to incorporate the Polluter Pays Principle, the Precautionary Principle, and the Public Trust Doctrine. The article concludes that although India has exceptionally high-quality substantive law, enduring capacity problems, political meddling and a lack of technological infrastructure within State Pollution Control Boards (SPCBs) have a profound adverse impact on environmental outcomes. The paper suggests a shift towards strict liability regimes for local governments and the installation of "real-time" monitoring infrastructure.

Keywords: Water Pollution Law, Environmental Jurisprudence, Article 21, National Green Tribunal, Water Act 1974, Central Pollution Control Board.

1. Introduction

India's water degradation is a threat to public health, ecology, and economy. The NITI Aayog's Composite Water Management Index (CWMI) of 2018 concludes that around 70% of India's surface water is polluted; a ranking of 120 out of 122 countries in the global water quality index (NITI Aayog, 2018). This bleak assessment is supported by the Central Pollution Control Board (CPCB), which reported that in 2022, among 603 Indian rivers monitored, 311 polluted stretches were identified, which are unfit for drinking and bathing (CPCB, 2022).

Unheated and untreated municipal sewage (comprising almost 72% of the pollution load), unheated industrial waste containing heavy metals and agricultural runoff largely contribute to this problem. India has developed a rich and multifaceted body of environmental law to cope with this in the past five decades. This is because there are constitutional directions, special laws and progressive judicial activism. However, the issue of pollution of rivers is an ever recurring one and raises a question whether the laws are effective and there are institutions that are able to implement them effectively.

The aim of this paper is to examine this legal framework. It explores the evolution of the water pollution law in India, the function of the judiciary in filling the legislative gap and the institutional hurdles in achieving effective implementation of the water pollution law.

2. Literature Review

The concept of "paradox of advanced jurisprudence and retrogressive implementation" is frequently mentioned in the scholarly discussion on the topic of environmental law in India. Jurists such as Upadhyay (2001) and Divan and Rosencranz (2002) have diligently recorded how the historical Indian Supreme Court essentially as a de facto body of law, created a new form of Indian environmental law by expanding the fundamental right to life in Article 21 of the Indian Constitution. Instead of it being an usurpation, they argue that judicial activism was a reaction to the failure of statutory boards.

However, the institutional aspects have been stressed in recent literature. Greenstone and Hanna (2014) estimate that air pollution control policies have had measurable health benefits in India, whilst water pollution control policies, such as the National River Conservation Plan, have had little impact on water quality in large rivers. A recent study by the Centre for Science and Environment (CSE, 2021), has attributed this to the "hallowing out" of State Pollution Control Boards (SPCBs) by under-resourcing, under-staffing and political interference. This study furthers these critiques by taking into account recent shifts in law, including those from

2024 in the Water Act, in the discussion on the effectiveness of institutions.

3. Research Methodology

The approach used in conducting this research is doctrinal and critical approach. It is based on primary sources like the Constitution of India, the Water (Prevention and Control of Pollution) Act (1974), Environment (Protection) Act (1986) and the National Green Tribunal Act (2010). It also makes extensive use of case studies to understand the working of the environmental doctrines, analysing case decisions of the Supreme Court of India and the National Green Tribunal (NGT). It is also based on secondary sources like government reports (CPCB, NITI Aayog), journal articles and reports of environmental NGOs to assess the socio-legal dimension and institutional issues related to the regulatory system.

4. The Constitutional Framework

The Indian Constitution of 1950, in its original form, had no provision for environmental protection. The UN Conference on the Human Environment in Stockholm (1972) marked a shift in this regard. The 42nd Amendment (1976) incorporated environmental management into the Constitution in Article 48A (Directive Principles of State Policy) and Article 51A(g) (Fundamental Duties).

The most important legal development came with the judicial interpretation of Article 21 (Right to Life). In Subhash Kumar v. State of Bihar (1991), the Supreme Court firmly declared the right to a life is inseparable from the right to enjoyment of pollution-free water and air. This transformed the once statutory responsibility for environmental protection into a Constitutional right. The Kerala High Court further placing this in context in Attakoya Thangal v. Union of India (1990), it acknowledged the right to "sweet water" as an essential facet of life.

The courts also imported international environmental principles to strengthen this constitutional guarantee. It applied the Public Trust Doctrine - holding the State holds rivers in public trust - in M.C. Mehta v. Kamal Nath (1997) to prevent the State from alienating natural resources, such as rivers, for private commercial exploitation. Subsequently, in A.P. Pollution Control Board v. Prof. M.V. Nayudu (1999), the Court constitutionalised the "Precautionary Principle", placing the onus on the polluter to demonstrate the ecological safe nature of their activities.

5.The Statutory Architecture

5.1 The Water (Prevention and Control of Pollution) Act of 1974

Passed under Article 252(1) of the Constitution, the Water Act of 1974 set up the basic "command-and-control" regulatory framework for water. It established the Central and State Pollution Control Boards (CPCB and SPCBs). Section 24 outlaws the discharge of polluting matter to a stream, well or sewer. Section 25 describes the heartbeat of its regulatory regime by requiring that no industrial unit or local authority can operate an effluent discharge without obtaining 'Consent to Establish' (CTE) and 'Consent to Operate' (CTO) from SPCB.

The strict interpretation of these sections was confirmed in Two Gujarat SPCBs v. Saurashtra Chemicals (1993), which affirmed the SPCB's power to withhold consent if the treatment standards are not met. Expansively, in Tirupur Dyeing Factory Owners Association v. Noyyal River Ayacutdars (2009), the Supreme Court saints the mandate of the Tamil Nadu SPCB for 'Zero Liquid Discharge' (ZLD) from textile industries, highlighting the Act's potential to mandate technological changes.

5.2 The Environment (Protection) Act, 1986 (EPA)

After the Bhopal Gas Tragedy, in 1984, Parliament passed the EPA as an omnibus act. The EPA's Section 5 provides the Central Government with extreme powers that it can issue binding directions of closure, prohibition or regulation of any industry or the shutdown of essential services (electricity, water supply etc). This provision was invoked in the Bichhri Village case (Indian Council for Enviro-Legal Action v. Union of India, 1996), in regards to the "rogue" toxic chemical production which was shut down by the Supreme Court under the EPA and also resulted in the enforcement of "Absolute Liability" to cover the costs of restoration of groundwater.

5.3 2024 - Legislature Stands the Paradigm: Decriminalisation

In a bid to promote the "ease of doing business", the Parliament amended the Water Act in 2024. Under the previous laws, non-compliance with the Water Act attracted stringent criminal penalties such as imprisonment. In 2024, several non-compliances were decriminalised, with punishment reduced to financial penalties, between "₹10,000 and ₹15 lakh" (MoEFCC, 2024). While the government claims decriminalisation will ease the burden on the judiciary and eliminate harassment by government authorities, environmental experts warn that financial penalties may be regarded by big conglomerates as a "cost of doing business", undermining the law's deterrent function.

6. Judicial Activism and NGT

Historically, the Indian judiciary has been the last line of defence for the environment. In M.C. Mehta v. Union of India (Ganga Pollution Case, 1987), the Supreme Court shut down several tanneries along the Ganga and laid down the hard-and-fast rule that an industry without sufficient capital to install an effluent treatment plant lacks the right to operate.

This type of specialised adjudication was institutionalised with the creation of the National Green Tribunal (NGT) in 2010. The NGT operates on the principles of natural justice, and is legally bound to apply the Polluter Pays and Precautionary Principles. The NGT has delivered a wide array of judgements. In Manoj Mishra v Union of India (2015), the NGT introduced the 'Maili se Nirmal Yamuna' scheme with buoyed prohibitions and fines against dumping. Furthermore, under O.A. No. 673/2018, the NGT, while taking suo motu cognizance of the 351 stretches of polluted rivers identified by the CPCB, directed State Governments to prepare time-bound action plans, failing which, it threatened to impose hefty environmental compensation.

7. Institutional Effectiveness and Enforcement

While we have progressive legislation, on the ground, it's a grim situation due to institutional tenderlocks. Firstly, SPCBs are severely under-staffed. According to a 2021 study by the CSE, a number of boards have over 40% vacant positions for technical staff, making continuous physical inspection of thousands of industries challenging. Second, the regulatory burden still overwhelmingly focuses on industrial waste while disregarding that more than 70% of water pollution is due to untreated municipal sewage. Local governments often lack financial resources, land or technical expertise to construct and operate large Sewage Treatment Plants (STPs). Lastly, the use of self-reported data from industry and manual sampling by SPCB inspectors opens wide doorways for manipulation and data adulteration.

8. Conclusion and Recommendations

The laws governing water pollution in India are good. They are not working well. The Constitution and the Environment (Protection) Act 1986 give a lot of power to protect the environment. However new laws like the Water Act Amendments of 2024 are making it harder to enforce these rules. These new laws focus on making it easier to do business, which can harm the environment. Indias rivers are still getting polluted, which shows that the laws are not being enforced properly. There are government agencies and departments involved in regulating

water pollution but they often do not work together. This causes confusion. Makes it hard to enforce the laws.

To fix this problem we need to make some changes:
We need to use technology to check data but we also need to make sure that the data is accurate and not manipulated. We need to give municipalities the money and resources they need to treat sewage and waste water. If we punish them for not doing their job we also need to help them do it. We need to make sure that the people in charge of regulating the environment are experts in the field not politicians or bureaucrats. They should be independent. Have the power to make decisions without interference.
Until we make these changes the right to clean water will remain a promise. We need to make sure that our regulatory institutions are strong have money and are independent. Then can we ensure that our rivers and water bodies are clean and safe, for everyone.

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