CHAPTER - 7

CONCLUSION AND SUGGESTIONS

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I

The approach

Earth is the planet that embraces in itself various forms of life in soil, air, water created billions of years ago of which man too is an integral part. Man through his efforts, initiations, skill and inventive genius has created his own state of environment. In his increased activities he has accelerated the pace of environmental influences and has upset the equilibrium between human activity and nature and has shaken the very foundation of human survival. Protection of our environment has become a matter of prime concern and great value.

Water is a common and unusual as well as extraordinary substance in the world. In our daily life water is so essential that we cannot think of anything without water. The ancient man, who clearly sensed its importance, made it a central feature of great many mythologies including that of creation. Many religions accept water as a symbol of spiritual purification. Its cleaning virtue stands as a mystical representation of the cleansing power of religion.

Water has many curious aspects, It is universally present and has remained unchanged over millions of years. It is at once the servant and master of human being. Yet, a common man is aware of its importance only when it fails or endangers him, then he gets dramatic impact accompanied by strange ideas, conclusion and solution. The most noteworthy trait of water is that it is most useful for its purifying and cleaning quality. Without clean water, we can’t think of a clean and healthy environment. It cleans the dirty things of our body as well as things. Water is the storehouse of energy. The climate of the world is tempered by the ability of water to soak up and store the sun’s heat and to release it slowly. The efficacy of water is increased by its contact with the Sun’s rays. Like the other elements and aspects of nature, water too inspired ancient man. Later on when he realized the utility of water and wished to keep the water places clean and safe, he clearly understood its importance of religious level and
made the Gods as the presiding deities. This unwittingly worked on the social and religious psychology of the layman. Water has been worshipped not only in India, but in many European and other Asian countries.\(^2\)

Since water is one of the essential factors in the preservation of the life and growth of the crops, it naturally plays an important role in man’s life. Similarly, agriculture and commence would provide an additional importance to water as a means of irrigation and transportation, which again find expression in cult of water worship.

The presence of tanks near the place of worship is common. In ancient time, the rulers had taken special concern to construct temple tanks with the dual object of providing water to temple rituals and also providing drinking water to the community. The builders of other tanks had a noble object with great social concern, the rulers considered it as a religious merit. People started worshipping water due to its holiness, miraculous, supernatural and divine character. Water has both physical cleanliness and spiritual well being. People had greatly respected the source of water and strived to maintain its quality belonged to the place of worship. The rulers’ command to maintain the purity of water was highly respected not out of fear of sanction but for the reason that it affects their normal life for which water is so essential.

II

Human Rights Perspective:

In view of utility, social significance and importance of water for all living beings environmental law has evolved definite principles towards protection against water pollution both at the International and Municipal levels.

The most effective heightened way of protecting a human value in modern times is to treasure it as human right. The right as a trump rather than product of policy has a different status and strategies.
International Human Rights developments, have paved the way for such an approach from Universal Declaration to various human rights conventions (Supra, Chapter 3).

Since access to sufficient and quality water is one of the most fundamental resources to sustain life, any approach of disregarding the positive rights dimension of it is improper. This logically requires avoidance of narrow interpretation and embracing of a different understanding and recognition of right to water through state measures and programmes.

CEDAW (Convention on the Elimination of ALL Forms of Discrimination against Women) directly makes a reference to a right to water as a human right. It obligates states parties to eliminate discrimination against women, particularly in rural areas to ensure that women “enjoy adequate living conditions, particularly in relation to housing sanitation, electricity and water supply, transport and communications.”

Art. I (10) of Vienna Convention (1993) state that the ‘right to development’ is a ‘universal and inalienable right and an integral part of fundamental human rights.’ Art. 8(1) of the Declaration on the right to development says that “State should undertake, at the national level, all necessary measures for the realization of the right to development and shall ensure, inter alia, equality of opportunity for all in their access to basic resources.” The rights to food and clean water are fundamental human rights and their promotion constitutes a moral imperative both for national government and for the International community.

The year 2003 was identified by the United Nations as International year of Freshwater with the aim partly, of reaffirming the UN’s Millennium Development Goal “to halve, by the year 2015,” the proportion of people who are unable to reach, or to afford, safe drinking water and “to stop the unsustainable exploitation of water resources.” The link between social well-
being and environmental health is now well recognized and any attempts to secure social well being that do not acknowledge the environmental realities will ultimately fail.

Formally acknowledging water as a human right and giving content and effect to this right could be a good way of encouraging the international community and governments to enhance their efforts to satisfy basic human needs and to meet the Millennium Development Goals. It could serve to increase the pressure to translate such a right into concrete national and international legal obligations and responsibilities, and to focus attention on the need to resolve conflicts over the use of shared water.

The right to water is only powerful if governments and civil society recognize, protect and publicise the right. If it does not become generally known that there is a right to water, people will not be able to use it to assist them to access water supply. Indian courts have recognized right to water as a basic human right in a series of cases which have been discussed in Chapter I of the thesis. The right to safe drinking water as a human right is implicitly recognized under Art. 21 of the constitution. The scope of Art. 21 provide for the wholesome environment to every one in which right to water is also recognized as a basic human right.

III 7.2. THE FINDINGS:

The new emerging challenges to the problem of water pollution and degradation of environment is largely attributed to the growth of urbanization and industrialization. Considering the challenges of pollution of water there is need to tone up the administration to the expected level for better performance to combat the problem of water pollution. Solution to the problem should be through innovative legal approach. The past experience is required to be
The research effort in the thesis has explored the avenues existing through legal regime governing water pollution and analyzed the research problem in a more objective way to find solution. The researcher is of the opinion that international law has greatly contributed for framing and recognizing right to water as a human right. Importance of the right to water as a human right heralded a new era in the legal regime governing water pollution in India for the reason that the community recognized their right to have safe drinking water as part of their right to life mandated under Art. 21 of the constitution. The reasons for and magnitude of water pollution show that unless the administrators exhibit and exercise their strength of power under the statute, the problem may remain unresolved. Water as a source of strength for the sustenance of life is analyzed in the background of sacredness of water through religious practice of worshipping nature. Ecology is balanced when the people consider nature as super power.

The discussion carried in Chapter 2 has unfolded the historical development of legislations relating to water pollution and shud light on the need to have special laws relating to environmental protection. The common law provisions, criminal law provisions and tort laws and other state laws had provided less power to the state to address the problem of environmental degradation. The era of special law began after Stockholm declaration which facilitated for the enactment of Water Act 1974. Subsequently, Indian government thought of bringing an umbrella legislation in the year 1986 (Environment Protection Act). The experience of the application of these laws have made the Pollution Control Board to exercise vast powers to combat pollution of water and air. This is mandated through the 42nd Amendment to the constitution. Thus, the trend of development was towards strengthening the legal framework and towards creating a human right atmosphere for right to water. However, the trend of development regarding tanks has been discouraging and
disappointing. Compared to the earlier administrative policies about construction of tanks for the use of all living beings, there has been determination both in the quality and quantity of water. Owing to encroachment of tank-bed and diversion of sewage, the position is not satisfactory. Law has not adequately responded in this regard.

A detailed analysis of the Chapter 3 lays focus on the application of International Environmental law principles like ‘polluter pays’ principle, Intergeneration equity principle, precautionary principle and sustainable development principle for the development of municipal law, which recognizes the right to water as a basic human right. The application of public trust doctrine is also seen from the angle of right to water as a human right. All these developments could take place by conferring a human rights status to right to environment. The Bangalore Declaration 1993 made this development of smooth sail. The distinction between human rights approach and an approach confined to legal policy can be seen here.

The findings in the analysis of Chapter 4 gives a picture of the legislative development in the sphere of water legislation with special focus on water pollution. In the present context, some of the provisions of Indian Easements Act 1882 are to be repealed as they confer the easementary right to the owner of the property to pollute water. The provision is contrary to the constitutional mandate of providing wholesome environment which is implicit in Art. 21 of the constitution. The findings in the analysis of legislation’s like Karnataka Tank Panchayat Act 1911, Water Act 1974, Environment (Protection) Act 1986 and Karnataka Ground Water (Regulation for Protection and sources of drinking water) Act 1999 and 73rd and 74th constitutional amendment provide an insight to address the problem of water pollution. By and large the status confer more powers to the pollution control boards to combat the problem of pollution.
It is interesting to note the findings about the working of Pollution Control Board. The expert committees constituted to conduct audit of the functioning of the State Pollution Control Boards made serious observations like understaffing, lack of infrastructural facilities and inadequate finance and lack training for the staff. It suggested for improvement of the working of the Boards.

The findings of the analysis of Chapter 5 focus on the active judicial response to environmental problem. The decision of the Apex Court and various High Courts show the new path for enforcement of duty to protect environment. The kinds of directions given by the Courts against the polluters are highly commendable. The judge’s role as ‘protector of environment’ is displayed through imposing heavy penalty against polluters. The application of ‘polluter pays’ principle is frequently made use of to prevent and control pollution. Environmental activism is visible through trend setting judgments in *Kamalnath’s case, Vellore Citizens case* and *S. Jagannath’s case* where international principle of ‘polluter pays’ was applied and public trust doctrines relevance was highlighted. The above approach has strengthened the human rights dimension of right to water.

The findings of the empirical analysis in Chapter 6 point out that there is lack of co-ordination between Pollution Control Board and City Corporation, Mysore University and City Corporation, Mysore Urban Development Authority and Pollution Control Board, Zoo Authority and City Corporation in tackling the problem of water pollution in Mysore City lakes. In spite of series of directions issued to the city municipal corporation by the State Pollution Control Board, the officers of the Corporation have not taken serious notice to prevent the entry of sewage water to city lakes. Lack of coordination among various authorities is a serious problem to be tackled on priority. Precious lake water is targeted due to lack of social concern and commitment among the public officers. The restoration of lake to its original position has become impossible for the reason that the extent of damage caused to local lakes has reached the stage of
irreparable position. The state of affairs does not suit to the human rights approach.

IV

Legal regime governing water pollution under criminal law

Special legislation regarding environmental pollution and preservation of water under the Water Act 1974 do not provide efficacious and expeditious remedies to abate public nuisance and pollution. Under all these legislation’s action can only be initiated through the Pollution Control Boards specially created under Water and Air acts and no common citizen can directly agitate the jurisdiction of ordinary civil courts to get a prompt remedy against pollution and nuisance with which he is aggrieved. Operational histories of these Boards suggest that they are always stricken by bureaucratic lethargy much akin to an ordinary government department. This happens at the cost of environmental degradation and pollution. It is often felt by the environmental activists and public-spirited individuals to resort to the provisions of criminal law. The general legislation’s concerning pollution control is Indian penal Code 1860 and Criminal Procedure Code 1973. This set of laws can play a crucial role in preventing and controlling all kinds of pollution.

Provisions of IPC and Cr. PC provide more effective, speedy and available remedy to every individual. The Apex Court in Municipal council, Ratlam case observed that although these two codes were of ancient vintage of social justice the Constitution of India made it a remedial weapon of versatile use.

In general, pollution control in India was not unknown as Indian Penal Code being one of the earliest legislation’s of the country contains provisions relating to offences affecting the public health, safety, convenience, decency and morals. Sec. 277 may be used to prevent water pollution in certain areas. The sole object of the provision was to safeguard the public health, safety and
convenience by prescribing penal sanction for those acts, which makes
environment polluted.

It is not necessary and need not be permissible to interpret the IPC at the
present day in accordance with the notions of criminal jurisprudence prevailing
at the time when the code was made. It is legitimate to construe the code with
reference to the modern needs. One of the important steps in the present context
is the proper handling of nuisance by water in the substantive criminal law.

**Water Pollution under Sec. 277 and 430 of IPC**

Long standing concern for purity of water is evident in Sec. 277 and 430
which lay down that whoever voluntarily corrupts or fouls the water of any
public spring or reservoir, so as to render it less unfit for the purpose of or which
is ordinarily used shall be punished. The water of public spring or reservoir is
available to every one as a right in common. Therefore, no one should disturb
the public enjoyment. In Gwalior Rayon the court took the correct view where
Directors and Managers were prosecuted under Sec. 277 for polluting the
chambal river running in a continuous stream by putting certain waste into it
from the factory. Sec. 430 protects the sources of water supply against mischief.
As such it applies equally to irrigation channels and other sources of irrigation,
such as tanks and ponds, whereas, Sec. 277 applies if the water fouled so as to be
unfit for use.

In short, it can be said that though the most comprehensive attempt for
prevention and control of water pollution is sought to be made by the Water act
1974. Yet, does not mean that prior to that there was no attempt at legal control
for Water Pollution. Sec. 277 and 430 are the best examples for this.

**Remedy under the Criminal Procedure Code:**

Code of Criminal procedure 1973 deals with the maintenance of public
order and tranquility. The Cr. PC vests power to stop a nuisance or other injury
into two broadly worded provisions sec. 133 & 144. The power is persuasive and can instantly prevent any noxious activity or nuisance provided, the authorities are fearlessly vigilant to initiate public interest action against pollution evasion. In relation to public nuisance by pollution the provisions of the code are wider in application and more effective and are intended primarily to remove public nuisance and prevent its recurrence. When all other remedies fail, a citizen can always bank on sec. 133 of Cr. PC to move a Magistrate’s Court for removal of the nuisance of pollution.

Sec. 133 makes provision for conditional orders by a Magistrate for removal of nuisance. The Magistrate can on a ‘police report’ or ‘other information’ take necessary action to abate public nuisance, which includes environmental pollution. The term ‘other information’ includes in it wide sweep information supplied by ordinary citizens. Though Magistrate’s power to issue a conditional order under sec. 133 appears discretionary, the Apex Court has taken a remarkable step, by construing Sec. 133 of the Cr. PC to enable citizens to bring action against the public bodies to force them to be vigilant to keep the environment unpolluted. The Supreme Court not only adopted the view that right to environment is a part of fundamental right to life and liberty, it has played a significant role in providing life and vigour to statutory provisions dealing with environmental protection and improvement.

It is clear from the above discussion that judiciary has done well in maintaining healthy environment by providing flesh and blood to the dry bones of statutory provisions. Further, expanding horizons of public Interest Litigation, the Court has enabled the people to protect environment. The Court’s approach is to recognize wholesome environment as an aspect of human right.
Legal Regime Governing Water Pollution under Civil Law

Easements in natural stream

The Indian Easement Act provides an easement to divert water by means of dam, to obstruct the flow and flood the lands of other owners or to pollute water. The enjoyment must be an easement without interruption, and for 20 years. Therefore a diversion of water for irrigation must have been such as to cause material injury during the whole of that period. In the case of an easement to pollute water, the Easement Act provides that the said period of 20 years begins when the pollution first prejudices, perceptibly the survient heritage. A right to commit public nuisance cannot be acquired by prescription. In artificial channels, owners of lands abutting them have no natural rights to the use of water or to its flow but may acquire easements, either as against other persons owning lands above or below or against the maker or owner of the channel. The owner of land abutting an artificial stream has a right to complain of pollution of the stream unless an easement to pollute water has been acquired.

In inland lakes and ponds, owners of lands abutting them have rights of user as in the case of natural streams, and may acquire easements in derogation of such rights. In surface water not flowing in a defined course, there are no rights to user and flow as in natural streams; nor can such rights be acquired by prescription.

The right conferred on the owner of the hand to pollute water through easement is against the philosophy of the Water act 1974. The easement provision allows for pollution of water through acquired right. This is in opposition of the constitutional mandate under art 48A and Art. 51A of the constitution. The provision to pollute water through easement should be declared as unconstitutional as it is inconsistent with the fundamental right to life under Art. 21 of the Constitution, which provides for guaranteeing a wholesome
environment as a basic human right. The easement right to pollute water is a violation of right to safe drinking water as human right.

**Tortious Liability for environmental wrongs**

The tortious liability for environmental wrongs emerged out of public nuisance. The entire law on environment protection is an offshoot of the liability for nuisance under the law of torts. The judicial interpretation of the fundamental right to life, in terms of environment protection, is the result of judicial activism in Public Interest Litigation. The ‘polluter pays’ principle has its roots in strict liability. The expansion of the scope of environmental tort or mass tort is evident with the evolution of absolute liability rule in environmental cases. Art. 21 (Right to life) includes the right to unpolluted environment by implication. Art 47 directs the state to improve the living standards and public health. Intentional trespass is actionable per se under the law of torts, a person who suffers personal injury or damage to property could sue and succeed by proving special damage. Nuisance means anything which annoys or hurts. Pollution of water is nuisance if it changes the natural qualities of water which is actionable under the common law as an infringement of proprietary rights such as riparian rights polluting deliberately is a crime.

Pollution of the river is a public nuisance. The remedy is available under tort law for preventing public nuisance. The petition by a person who is not a riparian owner, is maintainable because he is interested in protecting the lives of the people using the water of the river. It is maintainable as Public Interest Litigation. The nuisance caused by the pollution of the river Ganga is a public nuisance, which is widespread in range and indiscriminate in its effect and it would not be reasonable to expect any particular person, to take proceedings to stop it as distinct from the community at large. The Nagar Mahapalika of Kanpur has to bear the major responsibility for the pollution of the river near Kanpur city. On account of failure of authorities to obey the statutory duties for several years, the water in the river Ganga remains polluted. Although parliament and
state legislature have enacted many laws imposing duties on the Central and State Boards and the municipalities for prevention and control of pollution of water, many of those provisions have just remained on paper without any adequate action being taken to control pollution.

Prior to the special legislation’s relating to environment, the court used to apply tort law to provide remedy against pollution. The importance of the tort law cannot be ignored due to the fact that judiciary tries to interpret the provisions relating to public nuisance. The tone of the judgment is not to be understood as soft. Mere presence of law may not effectively serve the purpose unless the judiciary supports it through meaningful interpretation for the benefit of the society. Different stages of legal development have paved the way for special laws like Water Act, Air Act and Environment (Protection) Act to address the problem of environment degradation

VI
Shortfall in the Water Prevention and Control of Pollution Act 1974

The Water Act undoubtedly represent India’s concerted effort to deal with the problem of water pollution comprehensively at the national level. Even though the object of the Act is to prevent and control water pollution and also to maintain and restore the wholesomeness of water, the result has been found to be not encouraging to the expected level.

In spite of the fact of adoption of amendments to the Act in 1978 and later revision in 1988, the Water Act still suffers from some shortcomings which put a big question mark on its efficacy to check and prevent the water pollution.

Definitions of some important terms like “pollutants, discharge of pollutants, toxic pollutants” etc are not provided in the Act. In the absence of clear-cut definition possibilities are more to escape the liability for violations of law in relation to water pollution.
The Act provides a comprehensive definition of stream but it does not include an estuary. It is not certain whether this is covered under the river or sea or tidal water. The exclusion of estuary within the definition may not attract the penalty for violation. If the estuary is polluted it does not attract punishment for the reason of its exclusion under the definition of stream.

In Sec. 2(e), a great deal of emphasis has been made for pollution from point source only. There is lack of meaningful control of non-point source.

The Constitution of the Boards under this Act, represented by vested interests responsible for pollution. Therefore, the structural framework of Boards is not strong enough to resist effectively, the external influence on decision making and implementation. Inclusion of representatives of vested interests render the boards structurally a weak agency for control of pollution. The solution lies in making the Boards more compact by giving representation to social groups and persons having expertise and vision in environmental protection.

Regarding water pollution in Tungabadra River, a case study report has indicated a situation wherein the Chairman of the Karnataka Pollution Control Board was replaced at the behest of the Karnataka High Court order for having involved in irregularity in the discharge of his duties. The Board authorities instead of initiating action against the polluting industry for river water pollution, the supported the industrialists argument about water pollution. The board staff were involved in serious offence of accepting the bribe to help the polluting industry instead of supporting the voluntary organization which was fighting for the cause of environment.

The Committees which went into the working of state Pollution Control boards in India (Bhattacharya Committee & Belliappa Committee) made some
startling disclosure of certain facts for failure of the Board’s functioning. Two reasons attributed for failure of State Boards functioning were inadequate technical staff and lack of infrastructural facilities. Some of the State Boards are facing financial crisis due to inadequate budgetary allocation by the Government.

The culpability under sec. 24(1) depends on the knowledge on the part of the polluter. He can escape liability if he succeeds in proving that his case falls within one or more exceptions contained in Sub section (2). This undoubtedly dilutes the efficacy of the Act.

In making consent orders by State Boards, under Sec. 25 and 26, there is no provision provided in the Act for public participation in decision making process. The general public who are victims of pollution are kept in dark in the absence of such a provision as to who applies for consent and what kind of pollutants are discharged to water courses in their neighborhood. Provisions for fixing up standards of quality and targets for eradication of pollution are conspicuous by their absence in the scheme of the Act.

The addition of citizens suit provisions though a welcome step, the cases for its enforcement is still very few in India as people are less conscious and concerned with public nuisance like pollution. However, the complainant has, except with the intervention of the court, no other means to compel the Board to investigate alleged water pollution. Moreover, the Board is empowered to withhold the relevant information to complainant if it deems the release of information against public interest.

There is need to disclose the information to the public where the extent of pollution is beyond the limit fixed by the Board under right to Information Act 2005. Unless important information relating to water pollution is not known by the NGOs their role becomes limited State Board’s denial to disclose such information.
Of late the higher judiciary in India has admonished the Pollution Control Boards for failing to implement environmental laws. The Pollution Control Boards must learn to institutionalize the enforcement regime instead of their present role of knee jerk responses to court directives. By and large despite a two decade of judicial activism, improvement in the culture of environmental law enforcement especially to maintain air and water quality has not reached to a satisfactory level.

The Pollution Control Boards are starved of funds. They receive only a fraction of their requirements. The result is inadequate infrastructure in terms of laboratories, monitoring equipment, inadequate staff both technical and administrative and an inability to discharge their primary functions. This is among the main causes for the poor enforcement of the Water Act, Air Act and the Environment (Protection) Act.

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

The Act does not provide for the mechanism for the control of prevention and control of water pollution but has been adopted as part of economic incentive for controlling pollution and to augment the resources of Pollution Control Boards for effective implementation of the provisions of Water Act. There have been some shortcomings noticed in the operation and application of Water Cess Act. One of the problems in levying the cess on polluting industries has been the different approach adopted by various courts in the interpretation of industries. For example in M/s. Champarao Sugar Company Ltd. Vs. State of Bihar\(^3\) it has been held that Sugarcane being not vegetable, held that sugar industry is not vegetable product falling under entry 15 of the Schedule I. On the other hand in Kishan Sahkari Chini Mills Vs. State of Uttar Pradesh\(^4\) the Allahabad High Court extended the term vegetable beyond common kitchen. Vegetable to include sugarcane and held sugar industry fall under entry 15 of schedule for the purpose of cess. The Water Cess Act appears to allow one to
pollute more by paying cess at a higher rate. Hence, a more scientific approach is needed for the collection and levy of cess. The principal sources of funding for the Pollution Control Boards are grants received from the government and revenue collected under the Water Cess Act 1977. There is need for proper enforcement of the Cess Act to ensure adequate funding for the Pollution Control Boards.

Water Cess is imposed on the water consumed by local bodies and designated industry. Even after more than 2 decades after its enactment there is no proper remittance of the revenue collected to Pollution Control Board regularly. What needs to be done is that the Pollution Control Boards must initiate steps to recover cess from local bodies. Since the Pollution Control Boards have lacked initiative for all these years what is perhaps necessary is a directive from the Control Pollution Control Board or Ministry of Environment and Forest.

Another possible reform to improve recovery is to have a special cess wing in the administration, comprising two or three officers. At present in most Pollution Control Boards there is no such division of responsibility and officers charged with Pollution Control as revenue authorities. If the local bodies and industry within a State which “consume” water are to be taxed, it is essential that each Pollution Control Board designate specialist officers for this important task.

There is need for amending the provision of Sec. 25 which provides rebate of 25% where an industry complies with the standards laid down under environment protection act. The water cess rates should be substantially enhanced to address the problem of pollution. The provision of law for imposition of cess should act as a deterrent and it should not be considered as a source of revenue to the state. Indirectly, the levy of cess allows the pollution of water through payment.
Certainty of Standards

Under the present pollution control regime there is no certainty in respect of applicable standards of permissible pollution. This lack of clarity and certainty undermines strict enforcement and the imposition of criminal sanctions.

Another problem which arises is that the industry specific standards in the Schedule I to the Environment Protection Rules are restricted to only selected parameters. The Schedule is not exhaustive.

Since the applicable environmental norms are starting point of pollution control regulation, it is imperative that the legislature step in and clarify the issues mentioned above.

The practice relating to the grant of consents under the Water Act varies considerably from State to State. Some Pollution Control Boards consents for a fixed period, usually ranging from 1 to 3 years. The practice of others is to issue open-ended consents. There is a need to introduce a uniform procedure.

A reasonable solution to this dilemma would be to classify industry depending on their polluting nature, and to issue consent for either longer or shorter periods. This practice has been introduced in Maharashtra where low polluting industry are issued consents for longer periods and heavy polluters are kept on a tight leash by annual consents.

Despite specific legislation’s getting enacted to deal with the problem of pollution individuals and organizations continue to opt filing pollution related cases under general criminal law. In *P.C. Cherian Vs. State of Kerala* the Kerala High Court struck down the objection to a private person becoming the party in public nuisance case initiated by Magistrate. Further, the Court expanded the scope of Sec. 133 Cr. P.C. by reading it along with Sec. 268 of IPC. The Court further rejected the argument that polluting industry obtained
licence from appropriate authority for carrying out the activity, saying that required licenses could not be a defence for continuing public nuisance. The powers of the Pollution Control Board in no way affected the powers of the Magistrate to abate nuisance caused by pollution. The Court opined that a welfare state was bound to protect the right to life of its citizen and was also bound to protect the citizens right to health and peaceful life. It may be inferred that general criminal law provision may provide more efficacious remedy to the affected parties in case of industrial pollution.

**Shortcomings in Administration of PCB**

Centralized administrative governing mechanism envisaged under the laws as is being put into action in the hierarchical implementational structures poses two problems.

1. The State Boards and State Governments are expected to comply with the directions given by the Central Board and Central Government,
2. Little or no scope exists for the involvement of the local communities and local self government institutions to have any significant say in the decision making processes and application of law at the local level, to suit the peculiar environmental conditions. This normally appears to run counter to the spirit of 73rd and 74th amendments to the constitution that ushered in the democratic decentralization process.

The following are major causes for sad state of affairs of State Pollution Control Boards.

1. Lack of co-ordination among various agencies like local authorities and government departments have made in a mutually exclusive way
2. Frequent change of Member Secretary and Chairman
3. Lack of direction in the line of attack
4. Lack of funds
5. Lack of staff
6. Lack of Information storage
7. Lack of surveillance to identify willful defaulters
8. Lack of Instrument support
9. Lack of innovative approach and study
10. Lack of Trust on industries

Added to this is the significant element of political intervention in the constitution of enforcement agencies, that has contributed in a big way to the malfunctioning and corruption of the system.

The provision stipulates the condition that one should be a person having special knowledge or practical experience in respect of matters relating to environmental protection (Sec. 3(2)(a), 4(2)(a) & 14(1)(a) of Water Act). While making appointments the government without any exception, have interpreted the stipulation to mean a Civil Engineer, agricultural scientist or even a company consultant.

A careful analysis of the laws may reveal their inherent deficiencies which are closely linked to lapses in enforcement. The key person for enforcement of the Water Act is the Chairman of the State Pollution Control Board who should 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 Chairman without requisite qualifications and experience. The Member Secretaries 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 subordinates. Besides the Chairman and Member Secretary, as per the provisions of the Act, the State Pollution Control Board is supposed to have 15 members nominated by the
Government. Most of these part time members nominated by the Govt. departments are drawn from local civic authorities.

In a good number of cases where decisions are taken, the polluters have been given the benefit of doubt because of technical reasons as the Boards could not adequately meet the “onus of proof.” The state Pollution Control Boards prefer to take direct action under Sec. 33A of the Water act rather than moving to the Court. Even in such cases, the polluters can delay the action by seeking ‘stay order’ from the court.

Another legal lacunae faced by the Pollution Control Boards relates to prosecution against public servants. According to the provisions of sec. 197 of the Cr. P.C. permission from the government is required for prosecution of such persons and more often than not it becomes difficult for the Boards to take legal action against them.

The most serious lacunae in the Act is the over dependence on the legal system. There are various provisions of the Act, though well intentioned, are difficult to enforce. For instance, according to Sec. 18 of the Act, the Central Pollution Control Board can issue directions to the State Boards, which are binding on them. However, at the same time, the Act makes it obligatory for the Boards to comply with the directions of the State Governments. When the directions of two authorities are not mutually complementary and, at times totally contradictory. The Central Board can take over such functions of the State Boards with the approval of the Central Government. But, in reality, it is impractical to enforce such provision of the Act.⁶

The provision of safe drinking water has important equity and development implications. On the one hand, unavailability of potable water in the desired quantities has implications for the quality of life in terms of the time spent in collecting water. On the other hand, the consumption of contaminated
water has adverse impacts on human health and productivity. In the event of inadequate access to water for domestic purposes, women and children are known to spend a substantial proportion of their time in collecting it. A study conducted by Das Gupta showed that a section of women in Delhi, Hyderabad and Ghaziabad on an average spent almost four hours a day simply in collecting water. A woman in Baroda region of Gujarat spent seven hours a week.

VII

7.3. SUGGESTIONS

On the basis of the above study conducted regarding the problems faced by the community in relation to water pollution in India, the following suggestions are offered for consideration in implementing a sound environmental policy. We have many environmental laws and regulations, which if followed in the right spirit, will improve environmental quality. However, despite having such legislation, the ground realities are different. The degradation is also felt in all other spheres of right to environment. It is essential to remove the impediments to the effective enforcement of law and also to bring necessary legal reforms to upgrade water right as human right. With this objective in mind, following suggestions are offered for consideration at the appropriate time to combat the problem of water pollution.

There is a need to amend the provision of Sec. 4 of the Water Act 1974 which provides for the constitution of State Board in which part time members are nominated by the State Government. The inclusion of only permanent members through appointment by the Government be considered to make the Board more effective.

1. The composition of the Pollution Control Boards should be restructured to accommodate representatives of Scientists from academic institutions, faculty of Environmental Engineering Institute, academicians, representative of voluntary organizations, one or two members of the legislative bodies and
journalists who have shown consistent interest in environmental issues. All the appointments shall be made on full time basis for a period of three years. Effective monitoring of environmental problems can be better addressed if the members of the Board consists of multifarious functional interest. The presence of too many government representatives in the Board as at present may not be an effective composition. Lack of interest by those representatives may ultimately result in inefficient handling of the problems of environment. Lack of initiative by the part time members would ultimately lead to delay in decision making process. The direct impact of such defective composition of the Board may give scope for violation of environmental laws by the polluters and the net result would be towards serious setback for the enjoyment of right to safe drinking water as a basic human right.

2. The burden of proof in the case of violation of the provisions of law leading to water pollution should be shifted to the polluter from the Pollution Control Board as it stands now, in order to make the polluter more responsible to the society. Since the polluter is responsible for degradation of water quality, he must come with necessary proof that he has not polluted the water. In most of the laws relating to socio-economic crimes the burden of proof lies on the accused person, similarly in the case of water pollution the same benefit shall be extended.

3. Section 28 of the Indian Easements Act 1882 shall be repealed; or as an alternative it may be declared as unconstitutional by judiciary as it violates the basic human right to safe drinking water which is implicitly recognized under Art. 21 of the constitution.

4. The present rates of cess imposed under the provisions of the Water Cess Act 1977 for pollution of water by the industrialists is very meagre and it virtually allows the water pollution through payment. The quantum of cess should be substantially increased to act as a deterrent for the polluters so that the Pollution Control Board may effectively perform their task of prevention
of water pollution. The provision of Water Cess Act levying cess defeats the recognition of right to water as a human right.

5. There is need to strengthen proper coordination between Pollution control Board and local authorities, Pollution Control Board and Industries, Pollution Control Board and NGOs. Lack of coordination ultimately result in environmental degradation. The researcher has identified the lack of coordination between Pollution Control Board and Mysore City Corporation, Mysore Urban Development Authority, and Mysore University, Mysore zoo authority in solving the problem of water pollution of three lakes. An integrated approach should be set into service to avoid such situation.

6. Mere enactment of laws relating to environment will not yield better result unless there is change in the mindset of enforcers and polluters. Self-regulation by the industrialist could only provide very efficacious remedy to the problem of water pollution. Negotiation with affected groups should be resorted to for combating pollution problem. Periodical interaction by enforcers could only provide desired remedy.

7. Capacity building among enforcers, industrialists and NGOs need to be considered. Upgradation of the skills of Pollution Control Board’s staff shall also be done in order to address the pollution problem.

8. The state Pollution Control Board should impart training to technical persons through in-house mechanism on the implications of the provisions of the Water Act, Air Act and Environment (Protection) Act for effective implementation and capacity building on legal matters.

9. There is need to build up a strong and effective information system on environment so that wide dissemination of information will be available to the task groups. There must be transparency in the administration of regulatory authorities.
10. Environment related disputes are to be disposed off on time bound schedule to build up public confidence in the judiciary.

11. The government should encourage private organizations in areas of environmental audits, Environmental Impact Assessment and design of Pollution Control systems.

12. Construction of wall along the lakes is needed. Dumping of debris in the lake area should be prohibited. Around the lake area green belt be developed to improve the oxygen in the lake through aeration and temperature management.

13. The lake area is to be declared as ‘protected area’ and necessary personnel may be deployed by the state agency or local authority under whose jurisdiction the lake is maintained to combat water pollution. Special Fund shall be created as ‘Lake Development Fund’ through public contribution and levy of special cess to maintain the lake area. A display board is necessary to indicate the catchment area, shoreline area and water quality status in each lake. Periodical inspection shall be made by the Members of the Lake Monitoring Committee. The Pollution Control Board should take samples for analysis and water quality standard shall be displayed in the board every month. In case of deterioration of water quality due to pollution, the matter may be brought to the notice of the concerned authorities to take appropriate action against the polluters.

14. To regulate the lake area, it is appropriate to have a Lake Monitoring Committee with public-spirited citizens / environmental groups consisting of NGOs, Government Officers and Pollution Control Board authorities to tackle the water pollution of lakes.

15. Each town should have Sewage Treatment Plant. Effective Planning shall be made in such a way to see that no sewage line should connect the natural water course. The experience regarding pollution of Mysore City lakes could
have been avoided had the authorities initiated timely action for prevention of sewage’s entry into lake water.

16. Water pollution through industrial effluents should be monitored through an Industrial Monitoring Committee comprising of Pollution Control Board officers, representatives of NGOs and District Collector. The Committee should have the power to free access to find out details inside and outside industry.

17. Enhancing environmental awareness is essential to harmonize individual behaviour with the task of environmental conservation. Environmental education is the principal means of enhancing awareness among the different target groups. Such education may be formal or informal or combination of both. There is need for establishment of Environment Education Centres at the District level. Members of NGOs be made part of the composition of such centre. Environment awareness campaign should reach to the masses. Representatives of print media and electronic media may be involved in the process of spreading awareness among different target groups.
END NOTES


2. *Ibid.*, p. 2. Water places attracted large number of people and many legends are woven around them. Gradually, along with growth of religion, civilization, these legends were influenced by various religious sects, social beliefs and customs, social laws and convictions. They depict the social pattern and civilization, trade prosperity and many other traits of the groups of people residing around them, and this led to water worship. Water is worshipped in Egypt, Iran, Greece, Rome, Syria, Jordan, Mongolia etc., water washes away evil, diseases and old age, from where arose the idea that there was somewhere a fountain of youth or of immortality. Water cleanses us morally. It is a belief that strength returns after bath.

3. 1989 PI JR.

4. AIR 1987 ALL.


6. Dilip Biswas, Chairman, Central Pollution Control Board: Environmental Legislation; Challenges of enforcement.