Chapter-6
JUDICIAL APPROACH IN WATER MANAGEMENT

Courts have profoundly contributed in the growth of law relating to water in India. This can be attributed to comparative less evolution of formal water law and to the fact that the issues relating to water have been governed under the rules of common law since colonial times. The courts have addressed a number of issues pertaining to water and its management including control over water, irrigation, groundwater, water pollution, drinking water and sanitation. In the absence of a clear and exhaustive law, the judiciary has developed the fundamental structure of water law. This chapter attempts to analyse the decisions of the courts in India in relation to different issues relating to water and its management.

The courts in India have played a significant role in adjudicating disputes on the basis of existing legal framework. The Indian judiciary has also contributed to the development of water law by evolving new principles suitable for the existing conditions. In certain judgements, the courts have also defined and demarcated few rights and principles relating to water in India. However, in certain cases, the courts have undermined certain rights as with regard to displacement, the fundamental right to water of individuals has been used to undermine the fundamental the right to water of the persons evacuated.

Water Rights

In various cases, a number of aspects and issues relating to water rights such as riparian rights, easementary rights, property rights, natural rights, prescriptive rights, and the fundamental rights have evolved, arose and developed.

“Right to water is a right to life and thus a fundamental right.” It is to be noted that the basic and fundamental right to water of every individual is different from the bunch of water rights available to users and stakeholders in a particular region.

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1 Philippe Cullet, “Water Sector Reforms And Courts In India” available at http://www.ielrc.org/content/a1006.pdf (Visited on 4 May 2016).
2 Ibid.
3 State of Karnataka v. State of Andhra Pradesh & Ors.
6.1. Fundamental Right

The judicial creation of a fundamental right to water in India is briefly explored below. In *State of Karnataka v. State of Andhra Pradesh*\(^5\) the Supreme Court has observed that “the law relating to water rights has undergone a sea change all over the world. However onus seems to be only one that has paid scant attention to the need to develop a comprehensive set of water rights. Consequently, effective management of water resources requires a sound legislative framework.”\(^6\)

The present statutory framework relating to water is supplemented by human right perspective. The Constitution of India does not expressly recognize a fundamental right to water. However, the judicial pronouncements recognize such a right as implied under right to life given under Article 21.\(^7\) Over the years, the courts in India have considerably broadened the scope of Article 21. The right to life now includes several other vital rights like right to healthy environment\(^8\), right to pollution free air and water etc. The Public interest litigation has played a commendable role in this process. The courts in India have interpreted the fundamental right to water of every person as an essential component of right to life. The following analysis of some decisions will underline the journey of Judiciary in declaring right to water as a fundamental right implied under Art.21 of the Constitution.

A significant pronouncement in this regard is *Subhash Kumar v. State of Bihar and others*\(^9\). A public interest litigation was filed by Subhash Kumar for preventing the pollution of the water of Bokaro River from the discharge of sludge or slurry from the washeries of the Tata Iron & Steel Co. Ltd. The Supreme Court declared that:

“The Constitution states that Right to live is a fundamental right under Art. 21 and it includes the right to enjoy pollution free water and air for full enjoyment of life. Anything that endangers or harms that quality of life in derogation of laws, a citizen has right to have recourse to Art. 32 of the Constitution for removing the pollution of water or air.”\(^10\)

Similarly, in *Chameli Sigh v. State of Uttar Pradesh*\(^11\) the court observed that

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\(^5\) (2000) 9 SCC 572,710.
\(^6\) Ibid.
\(^7\) P. Cullet, et. al. (eds.) *Water Governance in Motion* 35 (Cambridge University Press India Pvt. Ltd., New Delhi, 2010).
\(^9\) AIR 1991 SC 420.
\(^10\) Id. at 424.
“Any civilized society which guarantees right to live implies the right to food, water, descent environment, education, medical care and shelter. These are basic rights and needs of any civilized society. To exercise all civil, political, social and cultural rights enshrined in the Universal Declaration of Human Rights these basic human rights are essential.”\textsuperscript{12}

The courts have also explored diverse bases for the existence of right. The fundamental right has also been associated primarily to Article 47 of the Constitution.

In \textit{Hamid Khan v. State of Madhya Pradesh}\textsuperscript{13} a Public interest litigation was filed by Hamid Khan alleging complete breach of duty on the part of the state government. The litigation includes the allegations that the state government has not been taking appropriate steps before supplying the drinking water from the hand-pumps in Mandla district, which resulted in illness among the residents of the area. The water drawn from the hand-pumps had excessive fluoride which resulted in deformity among many of them.

The court observed that:

“Under Article 47 of the Constitution of India, it is the responsibility of the State to raise the level of nutrition and the standard of living of its people and the improvement of public health. It is incumbent on State to improve the health of public providing unpolluted drinking water. Slate in present case has failed to discharge its primary responsibility. It is also covered by Article 21 of the Constitution of India and it is the right of the citizens of India to have protection of life, to have pollution free air and pure water… it was the duty of the Slate towards every citizen of India to provide pure drinking water.”\textsuperscript{14}

The court held the State responsible for not taking proper precaution while providing drinking water to the citizens.

In \textit{Hinch Lal Tiwari v. Kamla Devi and Others}\textsuperscript{15}, the Apex Court held that “the material resources of the community like forest, ponds, lakes, hillock, mountains etc. are nature’s bounty. These need to be protected foe a proper and healthy environment, which enables people to enjoy a quality of life which is the essence of the guaranteed rights under Article 21 of the Constitution of India.”\textsuperscript{16}

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{12} Ibid.
\item \textsuperscript{13} AIR 1997 MP 191.
\item \textsuperscript{14} \textit{Id.}, at 193.
\item \textsuperscript{15} (2001)6 SCC 496.
\item \textsuperscript{16} \textit{Id.}, at 501.
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Another significant judgment was pronounced in *Susetha v. State of T.N.*\(^{17}\) The court observed that:

“Water bodies are required to be retained. Such requirement is envisaged not only in view of the fact that the right to water as also quality life are envisaged under Article 21 of the Constitution of India, but also in view of the fact that the same has been recognized in Articles 47 and 48A of the Constitution of India. Article 51 A of the Constitution of India furthermore makes a fundamental duty of every citizen to protect and improve the natural environment including forests, lakes, rivers and wildlife.”\(^{18}\)

In *T.N. Godavaraman Thirumulpad v. Union of India and Ors*\(^{19}\), the Court again underlined the significance of conservation and protection of natural lakes particularly those which are protected under the Wild Life (Protection) Act, 1972.

While hearing a public interest litigation filed by the people of West Kochi airing their grievances of non-availability of the supply of potable drinking water for more than three decades and the executive apathy, the High Court opined:

“Any government whether proletarian or bourgeois and certainly a welfare state committed to the cause of the common man is bound to provide drinking water to the public which should be the foremost duty of any government. When considering the priorities of the government, supply of drinking water should be on the top of the list.”\(^{20}\)

The fundamental right to water includes drinking water only.\(^{21}\) The court has made following observations in *Narmada Bachao Andolan v. Union of India*\(^{22}\):

“Water is the basic need for the survival of human beings and is a part of the right to life and human rights as enshrined in Article 21 of the Constitution of India.”\(^{23}\)

In another case *Dr. K.C. Malhotra v. State of Madhya Pradesh*\(^{24}\), the High Court explored a nexus between water, health and sanitation in regard to fundamental rights. In this case, it was alleged that there was gross negligence on the part of the Municipal Corporation of Gwalior and the Public Health and Engineering Departments in preventing the spread of an

\(^{17}\) AIR 2006 SC 2893.

\(^{18}\) *Id.*, at 546.

\(^{19}\) (2006) 5 SCC 47.


\(^{22}\) (2000)10 SCC 664.

\(^{23}\) *Id.*, at 767.

\(^{24}\) AIR 1994 MP 4.
epidemic of cholera, which resulted in the death of 12 children in 1991 and further 18 deaths in 1992. The judges ruled that “all individuals, even from lower classes and weaker sections, benefit from the protection of Article 21. This put a duty on the government to ensure, for instance, that the sewer should be covered and regularly cleaned public toilets should be provided.”

“There is a duty on the State under Article 21 to provide clean drinking water to its citizens as the right to access to drinking water is fundamental to life.”

“It is a responsibility on the State to provide adequate clean drinking water to every citizen as directed by the Constitution of India. The State is duty bound to protect water from getting polluted. This is not only a fundamental Directive Principle in the governance of the State, but is also a penumbral right under Article 21 of the Constitution of India.”

Wish of the Supreme Court and various High Courts to shelter the right to water is clearly observed in its Judicial approach to water rights regime in India to provide the basic services of life to poorest of poor. By virtue of a number of judgments the courts in India has expressed their deep concern from time to time. The recognition of a fundamental right to water by the courts is indisputable whereas, its implementation through policies and statutes is not as progressive.

6.2. Drinking Water

Drinking water is universally recognized as being the first and foremost priority among different uses of water and Indian judiciary has not been unsuccessful to give drinking water the priority it deserves. In several cases where issues of inter-sectoral distribution of water have arisen the courts have duly recognised the priority of using water for drinking. Drinking water has also been often expressed in terms of the fundamental right to water, as it forms the main component of the right to life provided under Article 21 of the Constitution. On many occasions, the judgements involving issues concerning the fundamental right to water, express drinking water. But there does not exist direct focus on drinking water in all such cases.

Two Public Interest Litigations were filed relating to the scarcity and impurity of the drinking water. The court observed that “it is the duty of both the Municipality as well as the state government to provide clean drinking water as mandated under Article 21 of the

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26 A.P. Pollution Control Board II v. Prof. M. V. Nayudu And Ors, (2001) 2 SCC 62 at 69.
While rejecting the plea of the municipality regarding the financial restraints the court was of the view that the smaller schemes that needed lesser investment should have been executed. The court criticized the State government and Municipality for not revising water taxes and directed the State Government as well as the Municipality to prepare and place before it within three months cost effective schemes.

Similarly in another case, the court directed the central and state Pollution Control Boards to jointly prepare a time bound plan for checking the industrial pollution and reclaiming the polluted water supply. Public interest litigation was filed by a practicing Advocate alleging gross negligence by the State Government for not taking appropriate steps before supplying drinking water from hand-pumps having high fluoride content leading to skeletal and dental fluorosis amongst the people of that area. The court observed that:

“It is the duty of the State towards every citizen of India to provide pure drinking water. In the present case, it is the State which is responsible for not taking proper precaution to provide proper drinking water to the citizens.”

The court ordered the state government to provide free medical treatment to the people affected by drinking water having high fluoride content in the area. The medical treatment was to surgery or callipers and shoes. In case surgery was to be done, all expenses were to be borne by the State and each of such people was to be paid Rs. 3,000/- (three thousand) apart from the free medical treatment. If artificial appliances like limbs or callipers were required by the operated people the same was to be provided by the State. For those persons who did not need surgery, callipers and other artificial appliances were to be provided at the expense of the State. The court further directed that entire exercise of providing free medical treatment and compensation shall preferably be completed within one year.

In Gautam Uzir & Anr. v. Gauhati Municipal Corp case relating to the scarcity and impurity of potable water in the city of Guwahati, it was contended that the municipal corporation is responsible for supplying adequate and safe drinking water. The municipal

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29 Ibid.
32 Id., at 193.
33 Ibid.
34 1999 (3) GLT 110
corporation in its counter affidavit said that while it is well aware about its duties with regard to supply of drinking water to the citizens, due to its financial restraints it could not enlarge its existing plant. The court made it clear that “Water, and clean water, is so essential for life and needless to observe that it attracts the provisions of Article 21 of the Constitution.”

Likewise in *S.K. Garg v. State of UP* a petition was filed by an Advocate for appropriate order and directions to ensure regular supply of water to the citizens of Allahabad. The High Court in its decision reiterated the fundamental right to drinking water. The court cited with approval the Supreme Court’s decision holding that “the need for a decent and civilized life includes the right to food, water, and a decent environment.” In view of these decisions, the Allahabad High Court directed that a high powered committee be set up to look into the problem of access to water and decide on the ways and means to solve it on a war footing. The Court also added that the committee should consult experts also in this regards, since the matter involved technical expertise. The committee would look into it and do the required in case any complaints were made by the citizens of any locality regarding non availability of water.

In another case, *Delhi Water Supply and Sewage Disposal Undertaking v. State of Haryana* the Supreme Court had observed:

“Water is a gift of nature. Human hand cannot be permitted to convert this bounty into a curse, oppression. The primary use to which the water is put being drinking, it would be mocking the nature to force the people who live on the bank of a river to remain thirsty, whereas others incidentally placed in an advantageous position are allowed to use the water for non-drinking purposes”. It was also observed that “Right to use of water for domestic purpose would prevail over other need as drinking is the most beneficial use of water and this need is so paramount that it cannot be made subservient to any other use of water, like irrigation and so on.”

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35 *Id.,* at 112
36 1999 ALL. L. J. 332.
37 The Supreme Court held in *Chameli Singh v. State of UP* (1996) 2 SCC 549: AIR 1996 SC 1051, ‘That right to live guaranteed in any civilised society implies the right to food, water, decent environment, education, medical care and shelter. These are basic human rights known to any civilised society. All civil, political, social and cultural rights enshrined in the Universal Declaration on Human Rights and Convention or under the Constitution of India cannot be exercised without these basic human rights’.
38 AIR 1996 SC 2992
In *P.R. Subhash Chandran v. Government of A.P*\(^41\), the A.P. High court stated that “under the constitution, it is a fundamental directive principle in the governance of the state and penumbral rights under Article 21 of the constitution of India for the State to provide every citizen with adequate clean drinking water and to protect water from getting polluted.”\(^42\)

In *F.K. Hussain v. Union of India and Ors.*\(^43\) a scheme formulated by the Government to enhance drinking water supply by extracting the groundwater by pumps was challenged on the ground that it would disturb fresh water equilibrium and result in salinity of the water resources. The court highlighted the importance of water thus:

“Water and rivers have dominated the destiny and fortunes of man. Plentiful rivers have brought prosperity to those who lived on their banks.”\(^44\) Expressing concern over the decreasing level of ground water the court said “*Over exploitation of water resources has to be contained*”.\(^45\) Suggesting a solution to the rising problem of water scarcity the court opined:

“Perhaps water management will be one of the biggest challenges in the opening decade of the next century. Water resources have therefore, to be conserved… Safeguards must be evolved to stop withdrawal of groundwater at a cut off level to impose restrictions and introduce a system of effective monitoring at all levels.”\(^46\)

After studying the reports of Central Ground Water Board, NEERI and CESS the court permitted the restricted extraction of the groundwater. However the court left it for the Ministry of Science and Technology and Ministry of Environment to decide the method and extent of extraction. These Ministries were authorized by the state to set up a monitoring agency and issue statutory guidelines, if need so arose.\(^47\)

While hearing a public interest litigation putting forth the grievance of people of West Kochi who were demanding supplies of potable drinking water to them, for the last more than three the court observed that supply of drinking water should be the top most priority of the government.\(^48\) The court expressed distress at the attitude of the successive Governments as they did not pay attention to long standing demand of the residents of West Kochi for potable

\(^{41}\) 2001 (6) ALT 133.
\(^{42}\) *Ibid.*
\(^{43}\) AIR 1990 Ker 321.
\(^{44}\) *Id.*, at 323.
\(^{45}\) *Ibid.*
\(^{46}\) *Id.*, at 324
\(^{47}\) *Ibid.*
drinking water. While holding that failure of the government to provide adequate safe drinking water to the citizen’s amounts to violation of Article 21 of the Constitution of India, the court directed the state to undertake and complete all steps needed for supplying drinking water in adequate quantity to the people of West Kochi within a period of six months.

Instead of abiding by the directions of the court, the Government and the Kerala Water Authority filed review petitions against the judgment.\textsuperscript{49} The competence of the Court to issue the peremptory directions was challenged. The court observed that any Government which is interested in the welfare of the people should consider finding of solutions to drinking water problems of the people as their first priority. It further observed that the government cannot absolve of its duty to supply clean drinking water by establishing the Water Authority.

A petition was filed for protecting, preserving and improving the water-bodies in the State of Gujarat.\textsuperscript{50} The court observed that development – economic as well as human would not be possible without a safe and stable supply of water.

Cautioning the State as well as the Local Bodies against transferring the water bodies vested in them, the court issued among others the following directions:

1. The State Government to notify all the water-bodies in the Official Gazette located in the State of Gujarat that vests in the State or the Local Bodies or the Area Development within three months from the date of the order.
2. The water bodies so identified shall be protected, preserved and maintained by the State, Local Bodies and Area Development Authorities.
3. The standards of water quality of the lakes and ponds to be laid by the prescribed concerned authority and periodic monitoring of lakes and ponds to check the quality of water in them.
4. Urgent measures to be taken to rejuvenate the notified water-bodies
5. Water Resources Council and Water Resources Committee to be constituted at the earliest.

In another case, where the writ petition was filed as a Public Interest Litigation by a practicing advocate alleging that the Government of Andhra Pradesh was unable to provide safe drinking water resulting in the outbreak of Cholera and Gastro-enteritis in the state and prayed to the court to direct the government to provide clean drinking water to all the citizens by replacing

\textsuperscript{49} ShajimonJosephy. State of Kerala, 2007(1)KLT368.
all the damaged and leaking drinking water pipes. Directions were also sought to replace the leaking and overflowing drainage system in the State.

While observing that the right to safe drinking water is a fundamental right that cannot be denied to the citizens on the ground of paucity of funds, the court directed the State to:

1. complete the drinking water scheme undertaken by it well within time
2. periodically check the water supplied to the people
3. open more laboratories for testing the water and create an awareness among the people through advertisement published in the newspapers that even they can get the water tested and analyzed in these laboratories on payment of nominal fees
4. Set up a few grievance cells at different locations for people to make complaints atleast during the working hours.

In a case where the people of two villages locked horns over the supply of water. Each claimed water supply to the exclusion of other. The Court held that it is the State’s responsibility to provide continue supply of water to both the villages and ordered the State to take appropriate measures in case anyone causes or attempts to cause obstruction to the flow of water. The Court was of the view that it is the constitutional mandate to ensuring supply of water to both villages. The State was directed to supply water to both villages and avert steps to hinder the flow of water to either of the two villages.

In Vishala Kochi Kudivella Samrakshana Samithi v. State of Kerala a Public Interest Litigation (PIL) was decided by the Kerala High Court addressing the grievances of the people of West Kochi who for more than three decades had been screaming for supply of potable drinking water. Observing that the petitioners ‘have approached this Court as a last resort’ the Court held that “It is a malfunction of the State and violation of the fundamental right to life enshrined in Article 21 of the Constitution of India and also a violation of human rights failing to provide safe drinking water to the citizens in adequate quantities would amount to. Hence, it is prime responsibility of every Government to give foremost importance to provide safe drinking water even at the cost of any other development programmes. Nothing shall hinder it, be it lack

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2006(1) KLT 919, para 3.
of funds or other infrastructure. A solution should be drawn out at all costs with utmost expediency instead of restricting action in that regard to mere lip service.”

Among the pertinent judgements, one cannot identify a single pattern concerning right to water as the courts have addressed it under several different issues. Certain cases address drinking water with regard to inter-State water distribution. One such case is Comdr. Sureshwar D. Sinha v. Union of India55 where the Supreme Court examined the subject of drinking water from the perspective of mass distribution to respective states. The court in its decision expressed its concern only for the residents of Delhi and that too for few particular areas mostly inhabited by higher middle class people. The court, in this case, did not express its concern of making water available to the marginalized people residing in Delhi.

In certain cases, the courts have considered the issue of drinking water in terms of regulation concerning construction of new structures. In DLF Universal Ltd v. Prof. A. Lakshmi Sagar56, the issue of drinking water was taken from a health and environment perspective. It was considered in the context of the construction of buildings near to a water reservoir used for urban drinking water needs. The court imposed several conditions for the approval of new buildings but did not expressly consider drinking water and its quality before other concerns.

The courts have also addressed the issue of drinking water in the context of commercial disputes. In Municipal Corporation Chandigarh v. Shantikunj Investment,57 the Supreme Court discussed the issue that whether providing drinking water is a part of the facilities provided by the municipal corporation. It was decided that there does not exist any duty on the part of the authorities to provide such facilities or amenities as it did not prevent the full enjoyment of the leased properties. Further, this does not entitle the private investors not to pay the dues payable under the lease. The High Court was asked by the Supreme Court to consider whether the absence of such amenities could provide the ground for ‘proportionate relief’ to the leaseholders.

It is likely that in case of residential building the court would have taken a different view of the matter. But this judgement appears to imply that the supply of drinking water to any building. This is challenging, in particular in the context of all so-called unauthorized residential

54 Ibid.
55 (2000), 8 SCC 368.
56 AIR 1998 SC 3369.
57 AIR 2006 SC 1270.
colonies, where a huge population live in technical illegality because their situation has not been regularized and not because they seek to evade the law.

Courts have also addressed the issue of drinking water from the perspective of economic interests involved in certain cases. In *Lucknow Grih Swami Parishad v. State of Uttar Pradesh*\(^{58}\), the court adjudicated a dispute over the levying of water charges by the Jal Sansthan. Six petitions give rise to the controversy pertaining to duties and obligations of local governing institutions to ensure 'water-supply', within their respective areas, for which said authorities are created under legislative enactment. This include the rights, duties and obligations of the citizens who enjoy the basic facility like water.

It was observed by the court that “No city, town, locality or area not even as an exception, is there which is not affected by water crisis. Scarcity of water and its erratic supply in urban areas is a chronic problem. Situation becomes acute, sometimes unbearable, with mercury shooting up. Even the towns, surrounded by rivers or which are situated on the banks of rivers (like Allahabad, Kanpur, Varanasi and Lucknow) are no exception. One is reminded of the famous lines ‘water water ever where but not a drop to drink.’”\(^{59}\)

The observations made by the court were as following. “Crisis is primarily due to apathy on the part of authorities who invariably failed to take prompt remedial measures at initial stage and failed to comprehend miseries of the citizens. Tendency reflecting lack of 'will' and 'sense of involvement, both politically and administratively, though unfortunate alarmingly growing and become a fashion of the day reflecting on ones' detachment towards public duty. Responsibility and accountability have been handed over by Government to Nagar Nigam to Jal Sansthan. It has further compounded the problem reflecting upon perplex psyche authority in command. It is a matter of common experience that authorities do not care to look into plethora of complaints by the consumers. Such is the matter of complaint in the present petitions.”\(^{60}\)

It was further observed that “Access to potable water is entitlement by birth. Use of water and its management depends upon different distribution patterns changing according to areas

\(^{58}\) 2000 (3) AWC 2139.
\(^{60}\) Ibid.
such as rural, urban and sub urban, etc. Occasionally it is also regulated by the people under whom it is in custody or by destitute, impoverished people, slum-dwellers, pavement dwellers and squatter settlements. In Municipal and Notified Area Councils are responsible for providing basic amenity like potable water for drinking purpose.**61**

The decision further reads that “There are many areas in India, which could be regarded as real monuments of miseries with an acute shortage of drinking water. There are also areas where organized means of water supply through pipes are forced to receive muddy or contaminated water through such systems. In some villages, women spend half their time and life for fetching water from ponds, wells, etc. They have to carry pots of water for about six to seven hours every day and in some parts of the villages people have to walk several kilometers for potable water. The Management of potable water needs meticulous handling and requires an excellent mechanism particularly when it is becoming scarce day by day. Unfortunately, the local self-Governments and statutory authorities entrusted with the job. General experience shows, have utterly failed or at least not performed their functions satisfactorily. News reports appearing now and then in newspaper bear testimony to the above stated i.e. Severe water crisis.”**62**

The court while concluding held that “Problem is invariably tackled by temporary measures resorting to superfluous dressing instead of finding permanent cure through a well-planned project, keeping aide by side in mind future requirement and also to cope up with the maintenance of its infrastructure but still keeping the cost on 'no profit no loss' basis.”**63**

In *M/s. Noorulla Ghazanfarulla v. Municipal Board of Aligarh*64, the court decided a dispute that arose between a previous private supplier of drinking water and the Municipal Board of Aligarh. It followed the cancellation of the license to confirm improved supply of water to the residents. In this case, the court was concerned with the economic consequences of the takeover and did not specifically consider the issues posed in terms of drinking water.

The question of water quality has also been addressed directly and indirectly in the context of bottled drinking water. In *Cauvery Mineral Waters Private Limited v. Bureau of

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61 Ibid.
62 Ibid.
63 Ibid.
64 AIR 1995 SC 1058.
Indian Standards\textsuperscript{65}, it was found that water which can be used for human consumption as drink or food is not excluded from the definition of food under the Prevention of Food Adulteration Act 1954.

Further, in Bureau of Indian Standards v. Pepsico India Holdings Private Limited\textsuperscript{66} in the context of a dispute over the labeling of drinking water as ‘pure’, it was found that the Bureau of Indian Standards (BIS) has sufficient authority in relation to the labeling of articles and that it can prohibit activities which mislead the public about the nature, origin, composition and properties of any good or article sought to be marketed under the BIS standard mark. Holding that packaged drinking water did not remain ordinary water any longer, the Court made following pertinent observations:-

"It is thus clear that water, which is excluded from the definition of 'food' in Section 2(v) of the Prevention of Food Adulteration Act, 1954, is ordinary water, which is clearly distinguishable from all kinds of 'mineral water' or 'natural water' and 'packaged drinking water' which may derive from any source of potable water subjected to treatments etc. Therefore, the notification issued by the Central Government dated 29-3-2001 declaring 'packaged drinking water' as 'food' for the purposes of provisions of the PFA Act, in no manner amounts to amending the provisions of the PFA Act as contended by the learned Counsel for the petitioners. The article of 'packaged drinking water' is added as an additional item as 'food' for the purposes of the PFA Act in view of its nature and substance etc. The 'packaged drinking water' as defined hereinabove is comprehensive in its term, which takes into account the water that, is being manufactured and processed by the petitioners' companies. The impugned amendments, in our considered opinion, cannot be characterised as arbitrary, capricious, unreasonable and unjust as complained by the petitioners."

Overall, the case law involving the issues of drinking water is enormous in scope but has not contributed to the evolution and growth of any exclusive and uniform body of principles in this area. This is unfortunate that drinking water which is the basic human need has not found its specific place in the legislative framework. However, the courts have taken the issue in a number of cases, in various contexts, where the state has failed to take the initiative.

\textsuperscript{65} 2003 (1) KarLJ 265.
\textsuperscript{66} 129 (2006) DLT 522.
6.3. Easementary Rights

The provisions of Easements Act, 1882 have been applied in many cases dealing with water law in order to deal with the rights of individuals, riparian owners, etc. Several rights dealt in the cases also ascertain the scope and nature of the dispute. Besides the customary, juristic and statutory rights of the people, there exist certain rights whose extent and nature are not clear or not settled. These have arisen due to two reasons: a) conflicting interpretations of statutes; and b) new interpretations of the constitutional law. The evolution of water laws has not only proclaimed sovereign rights of the state but also absolute rights on water. Though by and large, the court judgments have tended to uphold the government rights over water there have been odd cases which have either gone against the statutory provisions or interpreted them differently.

In 1932, the Privy Council itself held in the Secretary of State v. Subharayudu that the government does not have an absolute right to curtail the material right of the riparian owners over water of natural streams. The Privy Council held that government cannot arbitrarily control or regulate the supply of irrigation water.

The Privy Council further observed the following:

“A person who owns the land abutting on a stream and who as such has a certain right to take water from the stream is a riparian owner. The first and foremost right of a riparian owner is to take water for domestic use, and then for other uses connected with land, of which irrigation of the lands which form the property is one. The riparian right is a natural right and not in the strict sense of the word easement and is not capable of being lost.”

The question came up again in Secretary of State v. PS Nageswara Iyer the court held any prescriptive right that a person may obtain against the government could be the curtailment of government’s proprietary rights, but never that of its absolute sovereign rights. The Madras High Court observed the following:

“Customary right may give plaintiff all they really want but it may not give them an exclusive right to all the waters of the channel to the extent of preventing government from using the water of the channel for other purposes even without prejudice to the plaintiff’s accustomed

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69 AIR 1932 PC 46.
70 Id. at 48.
71 Id. at 49.
72 AIR 1936 Mad 923.
user.\textsuperscript{73} It was observed that “Further right by prescription can be acquired as against the proprietary right of another but not as against the sovereign right, which under Indian law the state possesses to regulate the supply of water in public streams so as to utilize it to the best advantage.\textsuperscript{74} It further held that government in this country has claimed absolute right to change the source of irrigation or the method of irrigation by which the right has been supplied and to regulate the use of waters of all public or natural streams in the best interests of the people.”\textsuperscript{75}

The Supreme Court in \textit{Tekaba AO v. Sakumeren}\textsuperscript{76} observed the following regarding the sovereign dominant ownership of the state “The disputes of village community particularly relating to access to land having water source is not a traditional civil litigation as is handled by ordinary civil courts under the Code of Civil Procedure. These are disputes to be dealt with and handled only on the basis of customs of the village communities and through a very informal procedure contained in the rules. So far as natural resources like land and water are concerned dispute of ownership is not very relevant because undoubtedly the state is the sovereign dominant owner.”\textsuperscript{77}

In Het Singh’s case\textsuperscript{78} the court had to determine that whether an easementary right could be acquired on water of the well situated in another’s land by way of prescription. The Court recognized the social custom prevailing in the country where rich people allow poor neighbors to fetch water from their well. It was further observed that such rights could be considered as a customary right and not an easement right. In this case the plaintiffs had been irrigating their fields with the water drawn from the well situated dispute for more than twenty years. The court observed that:

“A right to draw water from a well is surely a right to underground water and it is not the case that the plaintiffs' right to enjoy water from their well was interrupted by something done by the defendants to the source of water in the well which was through a defined channel, by doing something, such as drawing an excessive supply of water from their own well from the same underground source.”\textsuperscript{79}
The court did not go into the question of whether the right to draw water from another’s well for irrigating one’s field could be acquired by prescription. It was held that the right claimed by the plaintiff was not a right of easement. It was in fact something which people are entitled to do by custom in India.

In another case\(^{80}\) the court was called upon to determine whether there exists any easementary right over the water flowing into land from an artificial channel. The Court held that where the water from artificial channel had been used by the landowners openly for a long period of time easementary rights over water did exist.

When the question arose before the court regarding the easementary right of way or flow of water over that part of the land of the lessor which had not been leased to him, the court replied in negative.\(^{81}\)

6.4. **Ground water**

The Constitution has very clearly demarcated the spheres of legislation by the parliament and the state legislatures. But the entries relating to water are not exhaustive in these lists. Many aspects like groundwater have been left out. So the principles of common law were applied in many cases.

*In Karathigundi Keshava Bhatta v. Sunnanguli Krishna Bhatta*\(^{82}\) Chandra Shekhar Iyary, held that “the general rule is that the owner of a land has got a natural right to all the water that percolates or flows in undefined channels within his land and that even if his object in digging a well or a pond be to cause damage to his neighbour by abstracting water from his field or land it does not in the least matter because it is the act and not the motive which must be regarded. No action lies for the obstruction or diversion of percolating water even of the result of such abstraction is to diminish or take away the water from a neighbouring well in an adjoining land.”\(^{83}\)

In the Groundwater case\(^{84}\) M.C. Mehta, Advocate brought to the notice of the Court news item that appeared in the Indian Express on Court on 20-3-1996 under the caption “Falling Groundwater Level Threatens City”.

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\(^{80}\) *TharurPanchayat and Ors. v. Kunchayi and Anr.*, AIR 1978 Ker 50.


\(^{82}\) *AIR 1946 Mad 334.*

\(^{83}\) *Id.* at 335.

It states that the Central Government did not want to take the responsibility of regulating the withdrawal of ground water on account of two reasons, first, the inadequate organizational presence of the Board in the country and secondly groundwater being the responsibility of the State Government. However the court was of the view that

“The Act being an Act made by Parliament under Entry 13 List I read with Article 253 of the Constitution of India, it has an overriding effect. It is not necessary for us to go into this question.”

This observation of the court did not solve the long standing issue of whether groundwater is covered under List I or List II. After hearing the parties the court concluded that the primary reason for the decline in water levels of the country was increased and unregulated pumpage of water. Taking a serious note of the falling levels of ground water in certain areas of Delhi, the court directed the Central to constitute the Central Groundwater Board as an Authority under Section 3(3) of the Environment (Protection) Act having the power to resort to penal sanctions if the need so arose as per Sections 15 to 21 of the said Act. The main object for the constitution of the Board as an Authority was to regulate the indiscriminate boring and withdrawal of underground water in the country.

The groundwater is a shared resource. Therefore it is necessary to include it in resources that are already protected under the public trust doctrine just like surface water. It was also held that the state has a duty to protect it against excessive exploitation. The Andhra High Court was also of the view that deep underground water is the property of the state under the doctrine of Public Trust. The holder of the land has a user right for drawing the water in tube wells. His action cannot harm his neighbours and if it does so it would violate Article 21 of the Constitution. The need to bring ground water under the scope of public trust has been felt in State of West Bengal v. Kesoram Industries wherein the court observed as under:

“Some rights are capable of granted by holders of same or higher rights and some only by the State. Even the State, having regard to the doctrine of 'public trust', may not have any power

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85 Id. at 326.
86 Id at 327.
89 M.P.Rambabuv. District Forest Officer, AIR 2002 A.P. 256.
to grant any right in relation to certain matters, e.g., deep underground water. Deep underground water belongs to the State in the sense that doctrine of public trust extends thereto.\(^91\)

A contradicting approach was seen when the court asserted the primacy of landowner’s control over groundwater.\(^92\)

In *Venkatagiriyappa v. Karnataka Electricity Board, Bangalore and Others*\(^93\) one of the issues raised was whether a citizen has any fundamental to draw subsoil water for irrigation, business or drinking purpose particular as a part of the right to life as guaranteed under Article 21 of the Constitution. The Court opined that Article 21 can be interpreted to give the right to have drinking water only. In a developing country like India, no citizen can claim absolute right over the natural resources by ignoring the claims of other citizens. Since water is limited, its use has to be regulated for the welfare of the society. The court clarified that the right to have subsoil water for irrigation and business may amount to a right conferred under Article 300-A or a statutory right guaranteed by the provisions of some law for the time being in force.

In another case *Attakoya Thangal v. Union of India*\(^94\) public interest litigation was filed by the residents from Lakshadweep islands, in which they claimed that excessive pumping of groundwater by rich farmers was threatening the very availability for all. They claimed under Article 21 of the Constitution that their life opportunities were being threatened since the depleting groundwater resources were likely to become saline.

The court upheld their claim. Such a decision once again makes the right to water a natural or fundamental right under Article 21 i.e. right to life.

In a much debated case *Perumatty Gram Panchayat v. State of kerala*\(^95\) the Plachimada Panchayat had approved an extraction license to the Coca Cola Company. It refused the renewal of license as there was decline in the water table and decrease in water quality in the region. The Panchayat also ordered the closure of the plant on the ground that over-exploitation of water by the Company had resulted in severe scarcity of drinking water. The company then challenged the order of the Panchayat before the High Court of Kerala. The court has to decide the right of a landowner to extract groundwater from his land and the authority of the Panchayat to regulate the use of groundwater by private individuals. The Single Judge observed that “even without

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\(^91\) *Id* at 207.
\(^92\) *Hindustan Coca-Cola Beverages v. Perumatty Gram Panchayat*, 2005(2) KLT 554.
\(^93\) (1994)4 KarLJ 482.
\(^94\) 1990(1)KLT550.
\(^95\) 2004(1) KLT 731.
groundwater regulation, the existing legal position was that groundwater is a public trust and the state has a duty to protect it against excessive exploitation.”96 The judge also made a link between the public trust and the right to life and thus recognized that a system which leaves groundwater exploitation to the discretion of landowners can result in negative environmental consequences.

However, the division bench of the same high court reversed this decision and directed the gram Panchayat to resume the company’s license to use the area’s groundwater.97 The Division Bench asserted the primacy of landowners’ control over groundwater in the absence of a specific law prohibiting extraction. The judgment of the Division Bench of the High Court stated that “The industry has the right to receive water ‘without inconveniencing others. The court held that ordinarily a person has the right to draw water in reasonable limits. There is a need to do balancing of ecological rhythm with aspirations of the people in the locality and finally, the findings of the single judge might not be practical.”98

This decision of the division bench was challenged in a number of civil appeals before the Supreme Court. In the meanwhile, the Supreme Court recorded a submission by Coca Cola that it had no intention to open and resume operations in its Plachimada factory in Kerala, thus drawing an end to the 12-year-long litigation between the people of the Perumatty Panchayat and the soft drink company. The Supreme Court, in its final order did not chose to go into the various pertinent issues, thus leaving the questions of law open.

As far as the decision of the division bench is concerned, it overlooked the role of local self-governing bodies in protecting natural resources. By doing so, it did not uphold the public trust doctrine. At the same time, it diluted the liability of large corporations to be penalised for environmental pollution caused by them in the course of business.

The Plachimada case is one instance on how large companies while carrying out their business activities have shown great laxity over the damage implemented to the environment and local communities. In upholding the public trust doctrine the role of local governance bodies

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96 Ibid.
97 Hindustan Coca-Cola Beverages (P) Ltd v. Perumatty Gram Panchayat, 2005(2) KLT 554.
98 Ibid.
such as gram panchayats are clearly central to the perpetuation of such disregard for environmental and natural resources.99

In 2011, the Kerala state legislature passed the Plachimada Coca-Cola Victims’ Relief and Compensation Claims Special Tribunal Bill to decide the disputes relating to compensation to be paid by Hindustan Coca-Cola Beverages Limited for the damaged caused by it. However, it was returned without presidential assent and even termed as unconstitutional by the central government on grounds of legislative incompetence.100

6.5. Sanitation

The judiciary has made a clear linkage between sanitation and other fundamental right such as right to water and right to health. Municipality Council, Ratlam v. Vardhichand and Others101 case did not specifically place sanitation in a fundamental rights context but laid the ground for all subsequent decisions in this regard.

The case was related to the duties of municipal authorities to safeguard the rights of the residents related to public health. The issue for determination before the court was that whether a court can by affirmative order compel a statutory body to perform its duties towards the public by creating sanitation facilities at higher costs and on a time-bound basis.102 The People of informal settlements sought to hold the Municipality of Ratlam liable for not performing its duties. It was contended that the municipality had the obligation to protect the rights of the residents by ending a public health nuisance caused by pollution discharged by a nearby alcohol plant. It was also contended that the Municipality is accountable to its obligation to provide adequate sanitation facilities reducing public health risks caused by the waste gathering in water near the houses of the residents.103

Residents (the respondents) of a neighbourhood in the Municipality of Ratlam (the petitioner) filed a complaint to the Sub Divisional Magistrate. The Magistrate found the facts proven and ordered the Municipality to provide for sanitation facilities, construction of a drainage and closure of pits to prevent mosquito breeding, within two months. It was also included in the order that failure to comply with this order would lead to criminal prosecution for

100 Ibid.
101 AIR 1980 SC 1622.
102 Ibid.
103 Ibid.
failure to abate a public nuisance. It was contested by the Municipal Council on the basis that the owners of houses had preferred, on their own, to reside in that area besides being completely aware of the insanitary conditions existing there. Thus opposed their right to complain. The Municipal Council also pleaded financial restraints in providing sanitation services and construction of drains. The order of the Magistrate was dismissed by the Sessions Court, but was subsequently upheld by the High Court. The Municipality then appealed to the Supreme Court against the order of the High Court.

The Supreme Court upheld the decision of the High Court favouring the residents. It considered the case in the context of collective rights of the residents and the larger public interest. It also took into consideration pervading substantial inequality between wealthier and poorer residents of the municipality and the duty on the part of municipal authorities to stop public nuisances. The Court expressed its appreciation for the Magistrate’s decision to order the Municipality to undertake action. The Court held that “the power of the Magistrate under the Code of Criminal Procedure s. 133, forms a public duty to the members of the public who are victims of the nuisance, and so he shall exercise it when the jurisdictional facts are present as here. The Municipality could therefore not extricate itself from its responsibility.”

It was also held by the court that “the financial restraints cannot be a justified ground for non-performance of such mandatory obligations of the municipality. The Criminal Procedure Code operates against statutory bodies and others irrespective of the cash in their funds, even as human rights under Part III of the Constitution have to be respected by the State regardless of their budgetary provision.” The Court furthermore held that a “responsible Municipal Council constituted for the precise purpose of preserving public health and providing better finances cannot run away from its principal duty by pleading financial inability. Decency and dignity are non-negotiable facets of human rights and are a first charge on local self-governing bodies. Therefore, ‘providing drainage systems – not pompous and attractive, but in working condition and sufficient to meet the needs of the people – cannot be evaded if the Municipality is to justify its existence’.”

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104 Id. at 1,2 and 7.
105 Id. at para 7.
106 Id., at 9.
107 Id., at 10.
108 Ibid.
Subsequently, there was a vibrant change in the approach of the judiciary in matters regarding environment in a number of cases that came before the Supreme Court.

Mr. L. K. Koolwal\(^{109}\) moved the Supreme Court dissatisfied with the sanitation of Jaipur City. A Commissioner was appointed by the Court to visit the named places and submit his report. The Commissioner’s Report confirmed that dirtiness did exist at certain places. The Commissioner, along with two eminent lawyers namely Mr. G. S. Bafna and Mr. R. K. Kala again visited the area and submitted that the Municipality had taken some effective steps but the problem still existed though the quantum has been reduced.

It was observed by the court that bad conditions of sanitation in the city is harmfully affecting the lives of the residents and leads to the death of the citizens earlier than the natural death.\(^{110}\) The court reminded the municipality of its duty to remove all noxious or offensive matters irrespective of the availability of the funds or staff. The court gave a new interpretation to Article 51A of the Constitution by observing as under:

“We can call Article 51A ordinarily as the duty of the citizens, but in fact it is the right of the citizens as it creates the right in favour of the citizen to move to the Court to see that the State performs its duties faithfully and the obligatory and primary duties are performed in accordance with the law of land. Omissions or commissions are brought to the notice of the Court by the citizen and thus, Article 51A gives a right to the citizen to move the Court for the enforcement of the duty cast on State, instrumentalities, agencies, departments, local bodies and statutory authorities created under the particular law of the State… The right cannot exist without a duty and it is the duty of the citizen to see that the rights which he has acquired under the Constitution as a citizen are fulfilled.”\(^{111}\)

The court concluded that the acute problem of sanitation existed in Jaipur City adversely affecting the life of the citizens. The Municipality was directed to remove the dirt etc. within a period of six months and thus clean the Pink City particularly those areas that were mentioned in writ petition.

In *Virendra Gaur and Others v. State of Haryana and Others\(^{112}\)* the Supreme Court while interpreting Article 21 observed that:

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\(^{110}\) *Ibid.*

\(^{111}\) *Ibid.*

\(^{112}\) (1995)2 SCC 577.
“Article 21 protects the right to life as a fundamental right. The right to life with human dignity encompasses within its ambit, the protection and preservation of the environment, ecological balance free from pollution of air and water, sanitation without which life cannot be enjoyed. Any contrary actions would cause environmental pollution. Polluting the environment, ecology, air, water, etc. should be regarded a violation of Article 21. Therefore hygienic environment, which is an integral facet of right to healthy life and it would be impossible to live with human dignity without a humane and healthy environment.”¹¹³

In Dr. B.L. Wadhera’s case¹¹⁴ the court noted with grief that “the Historic city of Delhi-the capital of India is one of the most polluted cities in the world. The authorities, responsible for pollution control and environment protection, have not been able to provide clean and healthy environment to the residents of Delhi. The ambient air is so much polluted that it is difficult to breathe. More and more residents of Delhi are suffering from respiratory diseases and throat infections. Untreated sewage and industrial waste are freely dumped into the river Yamuna which is the main source of drinking water supply. Besides air and water pollution, the city is virtually an open dustbin it is a common sight to garbage strewn all over Delhi.”¹¹⁵

The court lambasted the Municipal Corporation of Delhi and the New Delhi Municipal Council for total failure in the discharging their obligations towards the citizens. Several directions were issued by the court, some of them are as under:

1. The experimental schemes proposed by Municipal Corporation of Delhi and the New Delhi Municipal Council were approved.
2. The Government of India was directed to install incinerators in all the hospitals and nursing homes which had the capacity of 50 beds and above, preferably within nine months.
3. All India Institute of Medical Sciences was directed to install adequate number of incinerators, etc. to dispose of the hospital waste.
4. Municipal Corporation of Delhi and the New Delhi Municipal Council were directed to issue notices to all the private hospitals or nursing homes in Delhi to make arrangements for the disposal of garbage and hospital waste and construct their own incinerators.

¹¹³ Id., at para 7.
¹¹⁴ Dr. B.L. Wadhera v. Union of India and Ors., (1996) 2 SCC 594.
¹¹⁵ Id., at 595
5. Directions were also given to the Central Pollution Control Board and the Delhi Pollution Committee to inspect periodically different areas of the city to ensure that the collection, transportation and disposal of garbage are carried out satisfactorily.

6. Delhi Government was directed to appoint Municipal Magistrates (Metropolitan Magistrates) under Section 469 of the Delhi Act and Section 375 of the New Delhi Act for the trial of offence under these Acts.

7. A duty was cast on the Doordarshan to educate the people about their civic duties through its programmes.

8. The compost plant at Okhla was to be revived.

9. Additional garbage collection centres were to be constructed.

10. The Union of India and Delhi Administration were asked to take a sympathetic view of the requests from Municipal Corporation of Delhi and the New Delhi Municipal Council for financial assistance.

11. Delhi Administration was directed to find out alternate methods of garbage and solid waste disposal by making consultations with the expert agencies like NEERI.

In _Almitra H. Patel and Anr. v. Union of India and Others_ case concerning the unsanitary situation in Delhi again, the Court once again emphasized that lack of finances do not justify the inability of the government to provide hygienic sanitary conditions.

The court recognized the problems faced by Municipal Corporation of Delhi and the New Delhi Municipal Council in the following words:

“Keeping Delhi clean is not an easy task but then it is not an impossible one either. What is required is initiative, selfless zeal and dedication and professional pride, elements which are sadly lacking here”.

The court expressed anguish at the non-implementation of the directions in B. L. Wadehra’s case of 1996 and directed as under:

1. The Municipal Corporation of Delhi and the New Delhi Municipal Council and the Cantonment Board shall ensure that the provisions related to sanitation and public health of

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116 _Almitra H. Patel and Anr. v. Union of India and Ors._, AIR 2000 SC 1256.

117 Ibid.
the DMC Act, 1957, New Delhi Municipal Council Act, 1994 and the Cantonments Act, 1924 are implemented in letter and spirit.\textsuperscript{118}

2. Cleaning of streets and public places like parks etc. on all days, including Sundays and public holidays.

3. The Municipal Corporation of Delhi and the New Delhi Municipal Council and other statutory authorities were authorized to levy and recover charges and costs from any person who violated the provisions of the Acts, bye-laws and Regulations relating to sanitation and public health.

4. The Municipal Corporation of Delhi and the New Delhi Municipal Council and other statutory authorities were to ensure proper and scientific disposal of waste.

5. The Union of India particularly the Ministry of Urban Development, Government of Delhi, Commissioner of The Municipal Corporation of Delhi, Chairman of the New Delhi Municipal Council other statutory authorities like DDA and Railways were to prevent fresh encroachment on public land.

6. The Municipal Corporation of Delhi and the New Delhi Municipal Council and other statutory authorities concerned with sanitation and public health were to give wide publicity to the name, latest office and residential telephone numbers and addresses of the Superintendents of Sanitation responsible for cleaning Delhi and redressing any complaint of the citizens of Delhi related to sanitation.\textsuperscript{119}

7. The Government of Delhi was once again called upon to appoint Magistrates for each Board/Circle/Ward under Section 20 and/or Section 21 of the Code of Criminal Procedure for ensuring compliance of the provisions of the Municipal Corporation of Delhi Act and the New Delhi Municipal Council Act within a period six weeks from the date of order.

In \textit{Environment & Consumer Protection Foundation vs. Delhi Administration and others}\textsuperscript{120} it has been interpreted by the Supreme Court that the right to water and sanitation is a basic part of the right to education. It was strictly ordered by the Court that water and sanitation facilities should be provided at all schools as a sole purpose of realising the right to education.

In this case an NGO filed a writ petition with the purpose of seeking improvement in the existing conditions of water and sanitation at all schools in the country. Earlier to this case, all

\textsuperscript{118} \textit{Ibid.}
\textsuperscript{119} \textit{Ibid.}
\textsuperscript{120} (2012) INSC 584.
States in India were ordered by the Supreme Court repeatedly to provide basic infrastructure, including toilet facilities and drinking water, in schools to ensure that children could study in a clean and healthy environment. Some States failed to comply with these orders, while some States submitted details of infrastructure facilities in schools. The data submitted showed that many schools did not provide sufficient toilet facilities for boys and girls and some schools even failed to provide safe drinking water.

As a result of this, the Court passed interim orders on several occasions throughout 2011 and 2012, stating for example “It is mandatory that all the schools must ensure toilet facilities. Empirical researches clearly show that wherever toilet facilities are not provided in the schools, parents do not send their children (particularly girls) to schools. It is a clear violation of the right to free and compulsory education of children guaranteed under Article 21-A of the Constitution”\textsuperscript{121}.

In this case, the Court reiterated the previous orders and stated: “We notice that some of the States have not completely executed the directions issued by this Court in Society for Unaided Private Schools of Rajasthan (supra) as well as the provisions contained in the RTE Act. As the Court has already issued various directions for proper implementation of the RTE Act and to frame rules, there is no reason to keep this Writ Petition pending”.\textsuperscript{122} The Court instructed all States to implement its previous orders to provide toilet and water facilities in schools within the following six months. The Court explained that this applies equally to all schools, both State and privately owned, aided or unaided, minority or non-minority. The Court emphasised the need to implement these decisions by stating that “We make it clear that if the directions are not fully implemented, it is open to the aggrieved parties to move this Court for appropriate orders.”\textsuperscript{123}

\textbf{6.6. Water Pollution}

The role of judiciary in the prevention and control of pollution of water and conservation of resources can be acknowledged in many cases. It has played a vital role in the protection of environment and has evolved many principles suitable to the existing scenario. While deciding cases, the judiciary has tried to maintain a balance between the environmental protection and the sustainable development. The innovative and dynamic attitude of the judiciary especially in the

\textsuperscript{121} Id. at para 5.
\textsuperscript{122} Id. at para 7.
\textsuperscript{123} Id. at para 10.
arena of environment protection, has often been called as ‘Judicial Activism’. It is also meaningful to mention here that most of the environmental cases have come before the courts through ‘Social Action Litigation’ or ‘the Public Interest Litigation (PIL)’. The judicial response to almost all the environmental issues concerned is generally commendable in India. The Indian Judiciary has made an extensive use of the constitutional provisions and developed a new ‘environmental jurisprudence’ of India. The concept of Sustainable development, polluter Pays principle, precautionary principle and the Doctrine of Public Trust, culled out from the various international conventions and documents are effectively implemented by the courts.

The court has taken a serious note the non-compliance of its directions to the industry regarding the stoppage of seepage from the unlined lagoon resulting in the pollution of river water and directed the closure of the polluting industry. In a case concerning pollution caused by tanneries in Calcutta, the Supreme Court observed thus:

“It is thus obvious that the Calcutta tanneries have all along been operating in extreme unhygienic conditions and are discharging highly toxic effluents all over the areas… Needless to say that the State of West Bengal and the West Bengal Pollution Control Board (the Board) are wholly re-miss in the performance of their statutory obligations to control pollution and stop environmental degradation.”

The court ordered the shifting of tanneries. None of all the tanneries was allowed to function at the present site after September 30, 1997. The State was directed to provide assistance in relocation of the tanneries. Further a pollution fine of Rs. 10,000 each was imposed on all the tanneries. The State was directed to appoint an authority to assess the loss to the environment in the affected areas by the tanneries. It was directed further to consult the expert bodies like NEERI, Central Pollution Control Board and State Pollution Control Board to frame schemes for reversing the damage caused to the environment by pollution.


125 Re: Bhavani River - Sakthi Sugars Ltd., AIR 1998 SC 2059
126 M.C. Mehta v. Union of India and Ors., (1997) 2 SCC 411
127 Ibid.
The court gave comprehensive directions for the welfare of the workmen employed in the tanneries of Calcutta. The Calcutta High Court was given the responsibility to monitor the effective implementation of the orders and directions of the Supreme Court.

Another case concerning pollution caused by tanneries was filed by Vellore Citizens Welfare Forum. The public interest litigation highlighted the pollution caused by discharge of untreated effluent by the tanneries and other industries into agricultural fields, road-sides, waterways and open lands in the State of Tamil Nadu. The public interest litigation stated that this untreated effluent ultimately reaches the main source of water supply of the area i.e. River Palar. The contamination of the river water resulted in non-availability of potable water to the residents of the area. It is stated that the tanneries in the State of Tamil Nadu have caused environmental degradation in the area. The toxic effluents percolated and contaminated the ground water as well.

Although the court concluded that “the total environment in the area has been polluted…Though the leather industry is of vital importance to the country as it generates foreign exchange and provides employment avenues it has no right to destroy the ecology, degrade the environment and pose as a health hazard.”

While trying to strike a balance between the two seemingly opposite concepts - development and ecology the court opined that “there is no uncertainty in holding that ‘Sustainable Development’ as a balancing concept between ecology and development has been approved as a part of the Customary International Law though its salient features have yet to be finalize by the International Law jurists. Some of the salient principles of ‘Sustainable Development’, as called-out from Brundtland Report and other international documents, are Inter-Generational Equity, Use and Conservation of Natural Resources. Environmental Protection, the Precautionary Principle Polluter Pays principle, responsibility to aid and cooperate, removal of Poverty and Financial support to the developing countries. We are of the opinion that the essential features of ‘Sustainable Development’ are the principles of ‘The Precautionary Principle’ and ‘The Polluter Pays’.”

The court elucidated the Precautionary Principle in the following words:

The “Precautionary Principle” - in the context of the municipal law - means:

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128 Vellore Citizens Welfare Forum v. Union of India and others, AIR 1996 SC 2715
129 Ibid.
130 Ibid.
(i) The causes of environmental degradation must be anticipated, prevented and attacked by the Environmental measures of the State Government and the statutory authorities.

(ii) Lack of scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation where there exists serious and irreversible damage.

(iii) The "Onus of proof" lies on the factor or the developer/industrialist to show that his action is environmentally benign.\footnote{Ibid.}

The Central Government was ordered to constitute an authority under Section 3(3) of the Environment (Protection) Act, 1986 and confer necessary powers on such authority to deal with the situation created by the tanneries and other polluting industries in the State of Tamil Nadu. This authority was directed to implement the "precautionary principle" and the "polluter pays" principle. The authority was allowed to evaluate the loss to the environment in the affected areas, identify the individuals who have suffered because of the pollution and assess the compensation to be paid to the affected individuals. They are also responsible to determine the compensation to be recovered from the polluters as cost of reversing the damaged environment and order the closure of the industry of the polluter in case he evades or refuse to pay the compensation imposed on him. This is done in addition to the recovery from him as arrears of land revenue. The authority was directed further to consult expert bodies like NEERI, Central Pollution Control Board, State l Pollution Control Board and frame schemes for reversing the damage caused to the environment. The scheme so framed was to be implemented by the State Government under the supervision of the Central Government.

Suspending the closure orders of all the tanneries in the districts of North Arcot Ambedkar, Erode Periyar, Dindigul Anna, Trichi and Chennai M.G.R A, the court instead imposed a pollution fine of Rs.10,000 each was imposed on the tanneries in the districts of North Arcot Ambedkar, Erode periyar, Dindigul Anna, Trichi and Chengai M.G.R. and directed them to install Individual Pollution Control Devices within prescribed period. However reopening, the tanneries had to obtain the consent of the State Pollution Control Board.

The Madras High Court was entrusted with the responsibility to monitor the matter. It was asked to set up “Green Bench" to deal with this case and other environmental matters.
The Supreme Court took notice of the news item appearing in the Indian Express dated 25-2-1996 under the alleging that the Span Resorts management was moving bulldozers and earth-movers to again turn the course of the river Beas.\textsuperscript{132}

The court while explaining the "Doctrine of the Public Trust" observed that “the resources like air, sea, waters and forests have importance to the people as a whole. It would not be justified to make them a subject of private ownership. The said resources being a gift of the nature, they should be made freely available to everyone irrespective of the status in life. The principle states that the government is to protect the resources for the enjoyment of the general public instead of permitting it for private ownership or commercial purposes. The court declared that the State serves as the trustee of all natural resources which are by nature meant for enjoyment and use of public use.”\textsuperscript{133}

Looking into the struggle between preservation of environment and need for development the court clearly stated that:

“\textbf{The resolution of this conflict in any given case is for the legislature and not the courts. If there is a law made by Parliament or the State Legislatures the courts can serve as an instrument of determining legislative intent in the exercise of its powers of judicial review under the Constitution. But in the absence of any legislation, the executive acting under the doctrine of public trust cannot abdicate the natural resources and convert them into private ownership, or for commercial use. The aesthetic use and the pristine glory of the natural resources, the environment and the ecosystems of our country cannot be permitted to be eroded for private, commercial or any other use unless the courts find it necessary, in good faith, for the public good and in public interest to encroach upon the said resources.”}\textsuperscript{134}

The court held that the Government of Himachal Pradesh committed breach of public trust by leasing the large area of the banks of river Beas to the motels only for commercial purposes.

The court held that “The public trust doctrine is a part of the law of the land.” The approval granted by the Ministry of Environment and Forest Government of India, and the subsequent lease deed in favour of the Motel were cancelled. The Government of Himachal Pradesh Government was directed to take over the land and restore it to its original condition.

\textsuperscript{133} Id., at 398.
\textsuperscript{134} Id., at 399.
The Motel was directed to pay the cost for the restoration of the environment of the affected area to the original state, shall show cause why additional pollution fine should not be imposed on it and construct a boundary wall on its land towards the river basin. Further the Motel was forbidden from making any encroachment on any part of the river basin and discharging untreated effluents into the river.

The Himachal Pradesh Pollution Control Board was directed to inspect the pollution control devices of the Motel and take necessary steps as per law, in case the pollution control devices or plant did not conform to the prescribed standards.

The issue of pollution in the river Gomti mainly by Mohan Meakins reached the Supreme Court in *Vineet Kumar Mathur v. Union of India*. The Court took serious note of the constant abuse by the State government, as well as industries by continuing to pollute water by discharging effluents and also in non-construction of common effluent treatment plants. It was held by the court that there is clear contempt of the court on the part of the concerned officers and accepted their apology and made the violation a part of their service record. The Court has successfully isolated certain principles of environmental law upon the interpretation of Acts and the Constitution, coupled with a generous opinion for ensuring social justice and safeguarding human rights.

The Court had earlier directed the industries to remove deficiencies in their effluent treatment plants by March 21, 1993 and obtain the consent of Pollution Control Board by March 31, 1993. The violation of these directions was to result in the closure of the industry. Mohan Meakins was not given consent by the consent by Uttar Pradesh Pollution Control Board and therefore it should have closed down from April, 1, 1993. However the Uttar Pradesh Pollution Control Board gave conditional consent on April 21, 1993. Though Mohan Meakins was allowed to operate its plant and factory, it was directed to remove the deficiencies in the effluent treatment plants by December 31, 1993. The Supreme Court held that it was not open to the Uttar Pradesh Pollution Control Board to grant consent on April 21, 1993. The court held the Member-Secretary and the Chairman of the Uttar Pradesh Pollution Control Board guilty of contempt of court. Though an unconditional apology tendered by both of them was accepted by the court, a severe warning was given to both not to violate the orders of the court again.

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135 (1996)1 SCC 119.
6.6.1. Ganga Pollution Cases

In *M.C. Mehta v. Union of India and Others*\(^{137}\) (Kanpur Tanneries) Public interest litigation was filed to the restrain the respondents other than the Union of India, Chairman of the Central Board for Prevention and Control of Pollution, Chairman, Uttar Pradesh Pollution Control Board and Indian Standards Institute from discharging the trade effluents into the Ganga river till they install trade effluent treatment plants.

The court observed that

“Millions of our people in the Ganga drink its water under an abiding faith and belief to purify themselves to achieve moksha release from the cycle of birth and death. It is tragic that the Ganga, which has since time immemorial, purified the Millions of our people in the Ganga drink its water under an abiding faith and belief to purify themselves to achieve moksha release from the cycle of birth and death. Scientific investigations and survey reports have shown that the Ganga which serves one-third of the India's population is polluted by the discharge of municipal sewage and the industrial effluents in the river. The life, health, and ecology of the Indo-Gangetic Plain are greatly affected by the pollution caused to the river Ganga. Dumping of garbage, throwing carcass of dead animals and discharge of effluents harms the people of Indo-Gangetic plain in numerous ways. Steps have, therefore, to be taken for the purpose of protecting the cleanliness of the stream in the river Ganga, which is in fact the life sustainer of a large part of the northern India. The Government as well as Parliament both have taken a number of steps to control the water pollution, but nothing substantial has been achieved. No law or authority can succeed in removing the pollution unless the people cooperate.”\(^{138}\)

During the proceedings the court was informed that while six tanneries had already set up the primary treatment plants for the treatment of the effluent before discharging it into the municipal sewerage and ultimately into the river Ganga, around fourteen were in the process of installing the primary treatment plants. A few tanneries sought some more time to set up treatment plants. However, all the tanneries expressed financial inability to set up secondary system for treating wastewater.

The court accepted this plea but insisted on setting up of the primary treatment plants. It declared that every tannery should establish primary treatment plants irrespective of their

\(^{137}\) AIR 1987 SC 1037.

\(^{138}\) Ibid.
financial capacity. As a strict measure, the court ordered the tanneries, which despite having knowledge of the proceedings did not bother to make an appearance in the Court and express their willingness to establish the pretreatment plants, to stop working. Central Government was directed to set up the Uttar Pradesh Board under the provisions of the Water (Prevention and Control of Pollution) Act, 1974.

Similarly in *M. C. Mehta v. Union of India*139 the Kanpur Municipality received severe criticism for its failure to discharge its statutory duties. As such several directions were issued to the municipality to improve the sewerage system and prevent the pollution of waters of River Ganga. Such directions were also issued to other mahas and municipalities that have jurisdiction over the areas through which the river flows.

Again in *M. C. Mehta v. Union of India*140 a petition was filed to prevent the discharge of effluents from tanneries thereby causing pollution in state of West Bengal. The Supreme Court with a view to control the pollution generated by tanneries, examined a proposal regarding the setting up of Common Effluents Treatment Plants (CETPs) wherever tanneries were operating. In view of the categorical findings of National Environmental Engineering Research Institute (NEERI) and several reports by the pollution control board, the court found that there is not any possibility of setting up CETPs at the existing locations. The tanneries would instead have to relocate. The tanneries which declined to relocate were not permitted to function at the present sites. A pollution fine of Rs.10,000 was imposed on each tannery. The matter was sent to the Green Bench for further monitoring.

The state government was asked to frame schemes in consultation with the expert bodies like NEERI, Central and state pollution Control Boards for reversing the damage caused to the ecology and environment.

In another case the adverse effect of the discharge of untreated effluents, chemicals and sewage by an industry in Bhagalpur on water resources, cattle and d crop was brought to the notice of Patna High Court by public interest litigation.141

Placing reliance on the decision of Supreme court given in *M. C. Mehta v. Union of India*142, AIR 1988 SC 1037 wherein the Supreme Court had given six months' time to tanneries

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139 AIR 1988 SC 1115.
140 (1997)2 SCC 411.
141 Rajiv Ranjan Singh alias Lallan Singh v. The State of Bihar and Ors., AIR 1992 Pat 86.
142 AIR 1988 SC 1037.
to establish primary treatment plants within stipulated time failing which the said tanneries
would not be allowed to carry on their business, the High Court allowed the industry to start its
manufacturing process with adequate safeguards. In case a situation arises where any person
contacts any ailment the cause of which can be directly attributed to the effluent discharged by
the industry, all expenses of treatment of such person shall be borne by the industry. Apart from
this the victim may also be awarded suitable compensation.

In a case a petition was filed under Article 32 of the Constitution by Subhash Kumar for
issuing of a writ or direction to the Director of Collieries, West Bokaro Collieries at Ghatotand,
District Hazaribagh in the State of Bihar and the Tata Iron & Steel Co. Ltd. to stop the discharge
of slurry or sludge into Bokaro river.\textsuperscript{143}

The court observed that:

“Right to live is a fundamental right under Art. 21 of the Constitution and it include the
right of enjoyment of pollution free water and air for full enjoyment of life. If anything
endangers or impairs that quality of life in derogation of laws, a citizen has right to have recourse
to Art. 32 of the Constitution for removing the pollution of water or air which may be determined
to the quality of life.”\textsuperscript{144}

While stating that affected persons, group of social workers or journalists genuinely
interested in the protection of society may file a petition under Article 32 for the prevention of
pollution, the public interest litigation filed by a person to satisfy his personal grudge is not
maintainable as it would amount to abuse of process of the Court.

The court concluded that, in the present case adequate steps had been taken by the State
Pollution Control Board and the industry concerned to prevent pollution and dismissed the
petition as it was not filed in public interest.

In another case\textsuperscript{145} a letter was written to the court alleging environmental pollution in
densely populated area having an adverse impact not only on the environment but also the health
of human beings particularly the children. The petitioner sought directions from the court to curb
pollution. During the hearing of the matter it brought of the knowledge of the court that there
was a long standing hostility between the petitioner and the owner of the industrial plant and
refinery. There was a criminal proceeding against the petitioner. The petitioner had on an earlier

\textsuperscript{143} Subhash Kumar v. State of Bihar and others, AIR 1991 SC 420.
\textsuperscript{144} Ibid.
occasion made a complaint to the Additional District Magistrate which was dismissed by him. Moreover the industry in question had complied with the provisions of the Water (Prevention & Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981. No person, body or authority ever had any complaint with the industry.

The Apex Court once again voiced concern at the misuse of Article 32 and stated thus:

“This weapon as a safeguard must be utilized and invoked by the Court with great deal of circumspection and caution. Where it appears that this is only a cloak to ‘feed fact ancient grudge’ and enmity, this should not only be refused but strongly discouraged. While it is the duty of this Court to enforce fundamental rights, it is also the duty of this Court to ensure that this weapon under Article 32 should not be misused or permitted to be misused creating a bottleneck in the superior Court preventing other genuine violation of fundamental rights being considered by the Court. That would be an act or a conduct which will defeat the very purpose of preservation of fundamental rights.”

While dismissing the petition, the court issued a word of caution against malicious petitions and stated that we must protect the society from the so-called ‘protectors’.

The Dhrangadhra Municipality alleged that Dhrangadhra Chemical Works Ltd. discharged large quantities of effluents polluting the potable water of the wells in the nearby area making it unfit human consumption and at the same time affecting the fertility of the soil as well. The Municipality issued a notice to the Dhrangadhra Chemical Works Ltd. to show cause why it should not be directed to discharge the effluent through a covered pucca drainage in the 'Ran' area of Kutch. The appellant in reply stated that it had already taken adequate measures to ensure that potable water of wells in nearby areas is not polluted. Further it stated that the scheme suggested by the Municipality was impracticable and difficult to implement for technical reasons apart from being beyond the financial capacity of the appellant.

Thereafter the Municipality requested the Government to appoint a Special Officer to decide whether the discharge of the effluent from Dhrangadhra Chemical Works Ltd's polluting water and adversely affecting the soil fertility. Held that the question whether the discharges of the effluent polluted the water and adversely affected the fertility of the soil was one for the

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146 Ibid.
147 Ibid.
148 Dhrangadhra Chemical Works Ltd. v. The Dhrangadhra Municipality, AIR 1959 SC 1271.
subjective satisfaction of the respondent Municipality and was beyond the scope of the enquiry before him.

The court held that Special Officer wrongly denied himself the jurisdiction which he should have exercised. It was also held that the Special Officer should decide whether the nuisance as alleged by the Municipality existed before imposing a heavy expenditure involving lakhs of rupees on the Dhrangadhra Chemical Works Ltd.

In another case relating to pollution of water by discharge of effluents from industrial units the question involved was whether the enactment of Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981 repealed Section 133 of the Code of Criminal Procedure, 1973.

The matter was first heard by the High Court which was of the view that the provisions of the (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981 are enlargement of the powers conferred under Section 133 of the Code of Criminal Procedure, 1973. The court observed that Water and Air pollution were considered to be species of nuisance or of the conduct of trades or livelihood injuries to the health or physical comfort to the society. As they deal with special types of nuisance, they ruled out the procedure of Section 133 of the Code. It was concluded that existence and working of the two parallel provisions would result not only in inconvenience but also absurd results. Eventually, it was considered that the provisions of the Water and Air Acts impliedly revoked the provisions of Section 133 of the Code, so far as accusation of public nuisance by air and water pollution by industries or persons covered by the two Acts is concerned. However the Supreme Court did not agree with the conclusions of the High Court. It instead stated that:

“…provisions of Section 133 of the Code are in the nature of preventive measures, the provisions contained in the two Acts are not only curative but also preventive and penal. The provisions appear to be mutually exclusive and the question of one replacing the other does not arise….”

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150 Ibid.
151 Ibid.
Water Act empowers the Board to issue directions to close, prohibit, or to regulate any industry, operation, process or storage. Directions can also be made to stop the supply of electricity, water or any other service. The orders issued by the boards on certain occasions have been challenged before the courts. The Karnataka High Court in a similar case refused to interfere with the matter and stated that “Where there are violations of various provisions of an Act and of conditions imposed for curtailing pollution, the order for closure of the industry will be valid. An industry was polluting the environment by discharging water.”

However, an order regarding closure of industry is to be passed with caution. Any order which is non conformity with principles of natural justice needs to be quashed. The Karnataka High Court while interfering with one such order observed that:

It is important that all laws are enforced fairly, as this also generates respect for the law within the community and obeys the basic notions of justice available to mankind.

In a similar case, where an order passed by the Pollution Control Board to close down the industry when the effluent treatment plant found to be in non-operation was challenged before Andhra Pradesh High Court. The Andhra Pradesh High Court called for the records of the case and found that it was not possible to hold that the order passed by the court directing the closure of industry was shockingly disproportionate, excessive, or severe.

Dr. Ajay Singh Rawat a member of social action group called 'Nainital Bachao Samiti', filed a petition in the Supreme Court stating that pollution and environmental degradation due to increase in pollution, over-grazing, lopping and hacking of oak forests, forests fires, landslides, quarrying etc. is going on unchecked in the hill city of Nainital.

The Supreme Court directed the District Judge, Nainital, to appoint a Commissioner for local inspection and to submit a report on the questions which included

(i) Whether construction of buildings, hill cutting and destruction of forest is still going on in catchment area of Nainital lake.

(ii) Whether Ballia Ravine is in a dilapidated condition.

(iv) Whether water of lake is being polluted.

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154 M/s. Ambuga Petrochemicals Ltd v. A. P. Pollution Control Board and Others, AIR 1997 AP 41.
(v) Whether heavy vehicles ply on the Mall Road etc.
Each of these questions was replied in affirmative by the Commissioner.
After going through the report and recommendations of the Commissioner, the court issued the following directives to be implemented immediately:
(i) Sewage water to be prevented from entering the lake.
(ii) Preventing the siltation of lake by not allowing the building materials to be heaped on the.
(iii) Preventing the horse dung does from reaching the lake
(iv) Banning the construction of multi-storied group housing and commercial complexes in the town area.
(v) Making illegal felling of trees as a cognizable offence.
(vi) Reducing the vehicular traffic on the Mall.
(vii) Repairing the cracks of Ballia Ravine.

The court further ordered the constitution of a monitoring committee consisting of government officials representing the concerned authorities or department and leading members of the public having interest in the matter.

Intellectuals Forum’s case related to the preservation and restoration of status quo of two tanks namely called `Avilala Tank’ and `Peruru Tank’ situated around the world famous Tirupathi Temple which were being converted to meet the requirement of shelter. These tanks were useful not only for irrigation but were also useful for improving the ground water table.

The court observed:
“…the public trust is a sort of confirmation of state power to use public property for public purposes. This is an expression of the doctrine from the angle of the affirmative duties of the State in regard to public trust. The doctrine does not exactly prohibit the alienation of the property held as a public trust from a nugatory angle. However, the state provides for a high degree of judicial scrutiny upon any action of the Government, when it holds a resource that is freely available for the use of the public no matter how consistent with the existing legislations, that attempts to restrict such free use. To properly scrutinize such actions of the Government, the Courts must make a distinction between the government's general obligation to act for the public benefit, and the special, more demanding obligation which it may have as a trustee of certain public resources…It is true that the tank is a communal property and the State authorities are

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trustees to hold and manage such properties for the benefits of the community and they cannot be allowed to commit any act or omission which will infringe the right of the Community and alienate the property to any other person or body.”

The court rejected the arguments that heavy investments have already been made and the right to shelter will be violated if the construction is halted and observed that “The right to shelter does not seem to be so pressing under the present circumstances so as to outweigh all environmental considerations.”

Given the peculiar circumstances of the case where a lot of development activities have taken place over a long time, the Court expressed its inability to rectify the damage already done. The court issued directions prohibiting any further constructions on the tanks and harvesting the rain water among others.

The issue of construction of a shopping complex on a dilapidated temple tank constructed artificially was raised in *Mrs. Susetha v. State of Tamil Nadu and Ors.* The Supreme Court decided the matter in light of the principle of sustainable development. The proximity of the area to the sea, presence of around five tanks in and around the said area, absence of shortage of water in the area and conversion of the tank in question into a sewage collection pond and dumping yard over the period of time, the court allowed the construction of shopping complex.

6.7. Large Developments Projects: Dams

In India, the Large scale river development project commenced in 1930 with Mettur dam on the Cauvery river and got accelerated after independence with Bhakra Nangal and Hirakud projects. These dams are the keystone of large scale multi-purpose river projects proposed to meet several needs like water supply for agricultural uses, power generation and flood moderating. Presently, dams have been constructed on all major rivers in the country or being constructed. It is noteworthy that construction of dams particularly on large scale is one of the most controversial issue, both domestically and internationally. It involves the grievances of the persons displaced or to be displaced as well as environmental matters. In recent years, public protest, international human rights and environmental pressures concerning construction of such dams have increasingly been noticed. The main issues in the citizens’ campaigns are

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157 Ibid.
158 Ibid.
159 Mrs. Susetha v. State of Tamil Nadu and Ors., AIR 2006 SC 2893.
displacement and environmental hazards. This in turn lead to judicial intervention owing to the litigation filed against these projects. Consequently judiciary has come up with new interpretation and founded the water law relating to large scale developments projects particularly dams.

These Large dams are often ecologically flawed and economically unjust if damage to environmental and health fully measured. One method to determine and evaluate the socio-economic and bio-physical changes resulting from a planned project is its Environmental Impact Assessment. It is helpful for policy makers in assessing the environmental damage as well as advantages from the purposed project.\textsuperscript{161} In 1997, Parliament enacted the National Environment Appellate Authority Act which proposed to set up an authority to look into and hear the grievances of the people regarding environmental matters. It was to be headed by a retired Justice of the Supreme Court or Chief Justice of a High Court and comprising experts with technical knowledge on ecological matters. This Authority is empowered to hear appeals filed by the persons aggrieved by the order granting environmental clearance in an area where industrial activity is restricted under section 3(1) and 3(2)(v) of the Environment(Protection)Act. This includes project clearance granted by the Impact Assessment Agency.

In A.P. Pollution Control Board \textit{v. Prof. M. V. Nayudu and Others}\textsuperscript{162} the Supreme Court regarded the constitution of the National Environment Appellate Authority as approximating an ideal forum with judicial as well as technical expertise to adjudicate on complex environmental issues.

The case was related to establishment of an industry near the water bodies carrying activity involving hazards to the environment. Under the notification, ‘vegetable oils including solved extracted oils’ were listed in the ‘RED’ hazardous category as per the Pollution Control Board. On 31.3.1994, the Municipal Administration and Urban Development, Government of Andhra Pradesh banned various types of development within 10 km radius of two lakes, Himayat Sagar and Osman Sagar, in order to scrutinize the quality of water in these reservoirs which supplied water to the twin cities of Hyderabad and Secunderabad. In January 1995, the respondent company with the object of setting up an industry for production of B.S.S. Castor oil derivatives purchased 12 acres of land in Peddashpur village. The A.P. Pollution Control Board

\textsuperscript{161} Ibid.
\textsuperscript{162} AIR 1999 SC 812.
rejected the application of the industry since the proposed site fell within the 10 km radius and such a location was not permissible. The unit was a polluting industry and fell under the red category of polluting industry. The Board opined that it would not be desirable to locate such industry in the catchment area of Himayat sagar.

It was examined by the court that whether pollution be actually caused by the purposed project. The court also pointed out the difficulties faced by environmental courts in dealing with technological or scientific matters. It was observed that the Courts did not possess the requisite expertise in all technical and scientific matters of extreme complexity. The authorities or tribunals dealing with such matters must have the persons expertise in technical as well as environmental laws besides judicial members. Such defects in the constitution of these bodies could undermine the very purpose of the legislations. It emphasized that widespread toxic pollution was a major threat to essential ecological processes. In this connection it pointed out the importance of the precautionary principle in environmental law. It was also observed that it is appropriate to place the burden of proof on the person or entity proposing the activity that was potentially harmful to the environment. It was held that when dealing with environmental matters the Supreme Court and the High Courts could make a reference to the expert bodies/Tribunals having expertise in scientific and technical aspects for investigation and opinion. Any opinion rendered by such bodies would be subject to the approval of the Court.

Therefore the Supreme Court referred the following questions to the Appellate Authority under the National Environmental Appellate Authority Act, 1997: (a) Is the respondent industry a hazardous one and what is its pollution potentiality, taking into account, the nature of the product, the effluents and its location? (b) Whether the operation of the industry is likely to affect the sensitive catchment area resulting in pollution of the Himayat Sagar and Osman Sagar lakes supplying drinking water to the twin cities of Hyderabad and Secunderabad? The court, therefore, referred the above issues to the above-said Appellate Authority for its opinion and requested the Authority to give its opinion, as far as possible, within a period of three months from the date of receipt of this order.

The Supreme Court again used the principle of agency deference to reject a challenge to raising the level of the Mullaiperiyar Dam. In Mullaperiyar Environmental Protection Forum

The court was called upon to determine whether increasing the water level beyond the present level would adversely affect the safety of the dam.

The orientation of Mullaiyer reservoir was such that the flow of wind would be away from the dam during the south west monsoon. The Government Officers of the state of Tamil Nadu stated that they have not noticed any significant wave action. Since the expert committee had found that there would be no adverse impact on flora and fauna. The court directed the State of Tamil Nadu to undertake the strengthening measures that were suggested by Central Water Commission.

In another case, a petition was filed under Article 32 of the Constitution of India praying for issuance of directions to the Government to conduct more safety tests to ensure the safety of the dam. Other allegations leveled included failure of the concerned authorities to comply with the conditions attached to the Environmental Clearance. Attention of the court was also sought to be drawn towards the rehabilitation aspects.

The court referred to the Sardar Sarovar Project wherein it was held that in case where two or more options are available and the Government takes a policy decision then it is not proper for the court to re-examine the matter by way of appeal.

The benefits of the dams were summed up by the court in the following words:

“India has an experience of over 40 years in the construction of dams. The experience does not show that construction of a large dam is not cost-effective or leads to ecological or environmental degradation. On the contrary there has been ecological up-gradation with the construction of large dams.”

The court observed:

“It is for the Government to decide how to do its job. When it has put a system in place for the execution of the project and such a system cannot be said to be arbitrary, then the only role which the Court has to play is to ensure that the system works in the manner it was envisaged. It is made clear in that decision that the questions whether to have an infrastructural project or not and what is the type of project to be undertaken and how it has to be executed, are part of policy-making process and the courts are ill-equipped to adjudicate on a policy decision

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164 Mullaperiyar Environmental Protection Forum v. Union of India and Ors, AIR 2006 SC 1428.
166 Ibid.
so undertaken… This Court cannot sit in judgment over the cutting edge of scientific analysis relating to the safety of any project.”\textsuperscript{167}

The role of courts was also spelt out in these words:

“…it is the responsibility of the Courts to see that in the undertaking of a decision, no law is violated and people's fundamental rights as defined under the Constitution are not contravened upon except to the extent permissible under the Constitution.”\textsuperscript{168}

The court admitted that during the construction of the dam, the displacement of people from the proposed project sites and the areas to be submerged is a serious issue that deserves serious attention. It stressed on the need to have a properly drafted relief and rehabilitation plan.

In Society for protection of Silent Valley v. Union of India and Others\textsuperscript{169} petitions were filed seeking a writ forbidding the state of Kerala from proceeding to construct a hydroelectric project at silent valley.\textsuperscript{170} The court while expressing its reluctance to interfere in the policy matters stated that we are not satisfied that the assessment of these considerations made by the government and the policy decisions taken thereafter are liable to be reviewed by this court in these proceedings. It was not for us to evaluate these considerations again against the evaluation already done by the government decided to launch the project. \textsuperscript{171}

Again in Tehri Bandh Virodhi Sangharsh Samiti v. State of Uttar Pradesh\textsuperscript{172} the petitioners have prayed that the Union of India, State of Uttar Pradesh and the Tehri Hydro Development Corporation to stop constructing and implementing the Tehri Hydro Power Project and the Tehri Dam. The main grievance of the petitioners is that in preparing the plan for the Tehri Dam Project the safety aspects has been disregarded. It was also contended that if the dam be constructed it would lead to severe threat to life, ecology and the environment of the northern India as the site of the dam is prone to earthquake. The Central Government after placing all the relevant evidence before the court showing that through its various ministries and departments has considered all relevant data and fully applied its mind to the safety and various other aspects of the project.

\textsuperscript{167} Ibid.
\textsuperscript{168} Ibid.
\textsuperscript{170} The Silent Valley is a remote and secluded forest tucked away in the Western Ghats in Palakkadu district of northern Kerala. The name Silent Valley was probably given by the colonial British officers.
\textsuperscript{171} Supra note 140 at 133.
\textsuperscript{172} 1992 Supp (1) SCR 44.
6.8. Rehabilitation and Resettlement

One of the major issues relating to large scale dam construction in the country is the rehabilitation and resettlement of the outsiders. The plight of the effected people receives a lot of attention from the social workers; NGOS which in turn leads to the intervention of the judiciary in many cases. Right to be rehabilitated is logical corollary of the right to life enshrined under Article 21 of the Constitution.

In Karjan Jalasay Yojana Assagrasht SahkerAne Sangharsh Samiti v. State of Gujarat\(^{173}\) The Supreme Court monetary compensation for the acquisition of land was quite meaningless in the hands of marginal farmers and tribes. The court directed the state to provide alternative land or alternative employment so that members of the affected families were not deprived of subsistence.

In B. D. Sharma v. Union of India\(^{174}\) it was observed by the court that overall benefits from the dam should not be considered as an alibi to violate the fundamental rights of the ouster. They should be resettled and rehabilitated as soon they are evacuated. The court provided a time limit for completing the process of rehabilitation. It was before six months from submergence.

Such a time limit fixed by the court was reiterated in Narmada’s case. In Narmada Bachao Andolan v. Union of India\(^{175}\) the court observed that rehabilitation is not only about providing just food, cloth or shelter. It is also about extending support to rebuild livelihood by ensuring necessary amenities of life. The ousters ought to be in a better position to lead a decent life and earn a livelihood in the new location.

In Narmada’s case the construction was challenged on various issues including rehabilitation, the opinion of the court was to demarcate a line of distinction between policy matter and the permissible areas of judicial interference.

In N. D. Jayal & another vs. Union of India & Others\(^{176}\) The petitioners N.D. Jayal and Shekhar Singh, argued that villages affected due to landslide caused because of raise in water level in the reservoir, are required to rehabilitated as per the Tehri dam project rehabilitation policy, and not according to “Collateral damage policy”. The court held that the right to development encompasses in its definition the guarantee of fundamental human rights.

\(^{173}\) AIR 1987 SC 532.
\(^{174}\) 1992 Supp (3) SCC 93.
\(^{175}\) AIR 2000 SC 3751.
According to a writ petition filed five years ago in the HC by Tehri Bandh Prabhavit Sangharsh Samiti, an organization representing those affected by the construction of the dam, about 100 villages of Pratap Nagar in Tehri district and about 20 villages of Dunda in the Gajra region of Garhwal had been affected by the construction of Tehri dam.

Commenting on the case, the single bench of Justice Rajiv Sharma said in its order, "Rehabilitation is a serious matter. The representations (of the petitioners) have been rejected without taking into consideration the recommendation made by the district magistrate as well as the various agreements entered into between the parties. The respondents should have taken a humane approach while considering the case of the petitioners who have not been paid adequate compensation and their connectivity has also been affected. The judge added that "the petitioners have a fundamental right to get adequate compensation for loss of basic amenities including roads etc." and directed the chief secretary to decide the case of the petitioners "within three months from today by taking into consideration the recommendations made by the district magistrate, Tehri Garhwal.

6.9. Legal status of a river

The Uttarakhand High Court gave a unique judgment on the River Ganga declaring it to be a living entity. A division bench of Uttarakhand High Court declared the rivers Ganga and Yamuna, all their tributaries, streams, every natural water flowing with flow continuously or intermittently of these rivers as juristic person or legal person or legal entities having the status of legal person with all the rights of such entity or with all those corresponding duties. This is the first time in India and second time in the world that rivers were given the legal status of a legal/juristic person and have been recognized as a living entity with its own rights and values. Whanganui River, which is situated in the north island of New Zealand was the first ever who got this distinction.

In Mohd. Salim v. State of Uttarakhand and Others the court opined that there is utmost expediency to confer a legal status to rivers Ganga and Yamuna as a living person/legal entity r/w Articles 48-A and 51A (g) of the Constitution.

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177 Tehri Bandh Prabhavit Sangharsh Samiti & another v. Union of India & others, Writ Petition No. 2269 of 2012.
The Court opined that “All the Hindus have deep Astha in rivers Ganga and Yamuna and they collectively connect with these rivers. Rivers Ganga and Yamuna are central to the existence of half of Indian population and their health and well-being. The rivers have provided both physical and spiritual sustenance to all of us from time immemorial. Rivers Ganga and Yamuna have spiritual and physical sustenance. They support and assist both the life and natural resources and health and well-being of the entire community. Rivers Ganga and Yamuna are breathing, living and sustaining the communities from mountain to sea.”

To conserve, protect and preserve the river Ganga and its tributaries, the Chief Secretary of the State of Uttarakhand, the Director of Namami Ganga and the Advocate General of the State of Uttarakhand was declared as persons in loco parentis as the human face.

It also stated that these officers were responsible to maintain the status of rivers Ganges and Yamuna, and also to promote the health and well-being of these rivers. The Advocate General was instructed by the Bench to represent at all legal proceedings to protect the interest of rivers Ganges and Yamuna.

However the Supreme Court stayed this order given by the Uttarakhand High Court announcing river Ganga and Yamuna as living entities. The order came during the hearing of a PIL related to the division of properties between Uttar Pradesh and Uttarakhand.

The state government has urged the apex court to consider "substantial questions of law" arising from the verdict. The petition questions whether in case of human casualties in a flood, the affected people can file suit for damages against the chief secretary of the state and whether state government would be liable to bear such financial burden.

The petition also questions whether the high court had not exceeded its writ jurisdiction in passing the order as granting the status of living entities to the rivers was neither pleaded nor prayed in the writ petition.

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180 Id., at 11.
particular states. The stay order was passed on a plea by the state of Uttarakhand, which challenged the directive granting the rivers rights enjoyed by people of the nation.\textsuperscript{184}

6.10. Inter State River water Disputes

Interstate water disputes are different from other interstate disputes. The Constitution, under Article 262, bars the jurisdiction of the Supreme Court or any other court over interstate water disputes. The Interstate (River) Water Disputes Act 1956 provides for the resolution of disputes. Under its provisions, the disputes are to be adjudicated by ad-hoc, temporary and exclusive tribunals. When states approach the Supreme Court in such instances, the bar on its jurisdiction puts restrictions on the court. The apex court has had to limit its role to providing clarifications.

Several inter-State river water disputes have come up before the Supreme Court, over the years, with regard to various issues. These include the competence of the Tribunal to deal with a request for an interim distribution (Cauvery), the non-implementation of an Order of the Tribunal (Cauvery), failures on the environmental and rehabilitation fronts (Narmada), the constitutionality of an Act of a State Legislature terminating all past water accords (Punjab) etc. It is noteworthy here that Supreme Court did not adjudicate on the water sharing issue which had been decided or was under adjudication by a Tribunal. The issue that went before the Supreme Court was some other connected legal or constitutional issue.

6.10.1. Cauvery River Water Dispute

The river Cauvery originates in Karnataka and flows through Tamil Nadu and Puducherry before emptying into Bay of Bengal. The total catchment of the Cauvery basin is 81,155 sq.km. It is about 34,273 sq. km in Karnataka, about 2,866 sq. km in Kerala and about 44,016 sq. km in Tamil Nadu and Puduchery.\textsuperscript{185}The water sharing dispute of river Cauvery between the states of Tamil Nadu and Karnataka has reached the Supreme Court more than once. The water dispute primarily between these two states dates back to the two agreements of 1892 and 1924 between the then Madras Presidency and Princely State of Mysore. These agreements put restrictions on Mysore to construct new irrigation projects. Karnataka alleged that the agreements were not fair and it did not get its due share of water. Tamil Nadu contends that it has

\textsuperscript{184} The stay order was passed on a plea by the state of Uttarakhand, which challenged the directive granting the rivers rights enjoyed by people of the nation.

\textsuperscript{185} http://wrmin.nic.in/writereaddata/PR-CauveryAward.pdf (Visited on 10 May 2016).
developed a large area in the Cauvery basin because of which it is dependent on the existing pattern of usage. The agreement of 1924 expired after 50 years and opened a possibility for both to get the things done in their favour.\textsuperscript{186} The reorganization of States resulted in creation of the present States of Karnataka and Tamil Nadu in 1956.

In 1970 Tamil Nadu requested the Union Government to constitute a Tribunal under the Inter State Water Disputes Act for solving the long standing dispute on sharing of the waters of Cauvery river with Karnataka. In 1971 a suit was filed in the Supreme Court by the state of Tamil Nadu alleging the infringement of its rights to Cauvery waters by Karnataka. Similar suits were also filed by the organizations of agriculturists. In 1975 Emergency was declared and the fundamental rights were suspended. The agriculturists had based their suits on violation of their fundamental rights. The suits filed by them were withdrawn. The state of Tamil Nadu anticipating a political settlement also withdrew the suit.\textsuperscript{187}

Once the Emergency was lifted the agriculturists of Tamil Nadu again filed a petition alleging the violation of their fundamental rights.\textsuperscript{188} The state of Karnataka contended that the agriculturists of Tamil Nadu could not file a petition in the Supreme Court because only a Tribunal constituted under Inter State Water Disputes Act was competent to address and settle the inter-state river dispute. This plea was rejected by the Supreme Court. It was held that:

“\textit{In view of the fact that the State of Tamil Nadu has now supported the petitioner entirely and without any reservation and the Court has kept the matter before it for about 7 years, now to throw out the petition at this stage by accepting the objection raised on behalf of the State of Karnataka that a petition of a society like the petitioner for the relief indicated is not maintainable would be ignoring the actual state of affairs, would be too technical an approach and in our view would be wholly unfair and unjust. Accordingly, we treat this petition as one in which the State of Tamil Nadu is indeed the petitioner though we have not made a formal order of transposition in the absence of a specific request.}”\textsuperscript{189}

The Inter State Water Disputes Act empowers the Union to constitute a Tribunal to adjudicate water disputes if such disputes cannot be settled through negotiations. The Supreme Court noted that:

\begin{itemize}
\item \textsuperscript{186} Ramaswamy R Iyer (ed.), \textit{Water and the Laws in India} 67 ( Sage Publications, Delhi, 2\textsuperscript{nd} Edition,2002).
\item \textsuperscript{187} \textit{Ibid.}
\item \textsuperscript{188} \textit{Tamil Nadu Cauvery Neerppasanavilaiporulgal Vivasayigal Nalav. Union of India and Ors.,AIR 1990 SC 1316.}
\item \textsuperscript{189} \textit{Id., at 1318}
\end{itemize}
“Attempts within a period of four to five years and several more adjournments by this Court to accommodate these attempts for negotiation were certainly sufficient opportunity and time to these two States at the behest of the Centre or otherwise to negotiate the settlement. Since these attempts have failed, it would be reasonable undoubtedly to hold that the dispute cannot be settled by negotiations.”  

The court gave extra time to the Union executive to decide as per the provisions of Inter State Water Disputes Act. However the Central Government submitted that it did not want to undertake any further negotiation and left the matter for disposal by the court. The court directed the Union to constitute a Tribunal under Inter State Water Disputes Act within one month to resolve the water dispute.

The Cauvery Water Dispute Tribunal headed by Justice N.P. Singh with N.S. Rao and Sudhir Narain as members, was constituted by the Union on 2 June 1990 to adjudicate the water dispute among the States of Tamil Nadu, Karnataka, Kerala and Puducherry regarding sharing of the waters of the inter-state river Cauvery. The state of Tamil Nadu applied for interim relief for the release of water. The Cauvery Water Dispute Tribunal declined to hear the petition stating that the terms of reference did not specify that it had powers to grant interim relief. The state of Tamil Nadu took the matter to the Supreme Court.

The court held that:

“Tribunal wrongly refused to exercise the jurisdiction, this court is competent to set it right and direct the Tribunal to entertain such application and decide the same on merits. The Tribunal was thus clearly wrong in holding that the Central Government had not made any reference for granting any interim relief.”

The Cauvery Water Dispute Tribunal heard the application and passed an Interim order on 25 June, 1991 directing the state of Karnataka to release water to Tamil Nadu till final allocation. The Cauvery Water Disputes Tribunal The state of Karnataka was directed to release 205 thousand million cubic feet of water to Tamil Nadu in a span of twelve months starting from July 1991. This figure was calculated on the basis of the average flow in the Mettur

190 Id., at 1319
191 Id., at 1320
192 Supra note 86.
194 Id., at 503.
195 Id., at 504.
196 Supra note 86.
reservoir situated in the state of Tamil Nadu. Abnormally good or bad years were excluded while calculating the average flow.

The state of Karnataka was unhappy with the order. It wanted to protect the amount of Cauvery water that it had been using. Therefore Karnataka invoked its jurisdiction over water as provided in the constitution, passed an emergency ordinance- Karnataka Cauvery Basin Irrigation Protection Ordinance, 1991 and thus nullified the interim order of the Cauvery Water Dispute Tribunal. At the same time the State of Tamil Nadu was repeatedly requesting the Union Government to publish the interim order in the Official Gazette.

In order to resolve this stalemate the President of India on 27th July, 1991 sought the opinion of the Supreme Court under clause (1) of Article 143 of the Constitution of India among others on (i) Whether the Order of the Tribunal constitutes a Report and a Decision within the meaning of Section 5 (2) of the Act; and

(ii) Whether the Order of the Tribunal is required to be published by the Central Government in order to make it effective;\(^{197}\)

The court expressed its opinion on 22nd November, 1991\(^{198}\) that

“The Karnataka Cauvery Basin Irrigation Protection Ordinance was beyond the legislative competence of the State and is, therefore, ultra vires the Constitution. The Order of the Tribunal constitutes report and decision. the said Order is, therefore, required to be published by the Central Government in the official Gazette under Section 6 of the Act in order to make it effective.”\(^{199}\)

The interim order was published by the Union Government in the Official Gazette in 10 December, 1991.\(^{200}\) Once the interim award was notified by the Union anti-Tamil riots broke out in Karnataka. Public interest litigation was filed before the Supreme Court on behalf of the riot victims.\(^{201}\) The Supreme Court set up Cauvery Riots Relief Authority and formulated a scheme to provide relief to the victims of anti –Tamil riots. This scheme was to be administered by the government of Karnataka under the supervision of Supreme Court.

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\(^{197}\) Re: Cauvery Water Disputes Tribunal, AIR 1992 SC 522.

\(^{198}\) Supra note 86.

\(^{199}\) Supra note 98 at 565.

\(^{200}\) T. S. Doabia, Environmental Law and Pollutions in India (Vol.1)1003 (Lexis Nexis, Nagpur, 2010).

\(^{201}\) Ranganatham and another v. Union of India and others, AIR 1999 SC 1086.
A suit was filed by the Government of Tamil Nadu filed in the Supreme Court praying for issuing directions to the Union of India to frame such a scheme that would be able to give effect to the decisions of the Cauvery Water Dispute Tribunal and notify the same in official gazette. On 9th April, a constitution bench of Supreme Court heard the matter and directed the Union to formulate the desired scheme. The Union notified a Scheme -Cauvery Water (implementation of the Interim Order of 1991 and all subsequent Related Orders of the Tribunal) Scheme, 1998. The Cauvery River Authority and Monitoring Committee were constituted. The Cauvery River Authority consists of Prime Minister as Chairperson, Chief Ministers of the basin States as Members and Secretary, Ministry of Water Resource as Secretary to the Authority. The Monitoring Committee consists of Secretary, Ministry of Water Resource as Chairperson, Chief Secretaries and Chief Engineers of the basin States as Members and Chairman, Central Water Commission as Member. Chief Engineer Central Water Commission is Member Secretary of the Monitoring Committee. The Cauvery River Authority is responsible for effective implementation of the Interim Order of the Cauvery Water Dispute Tribunal and subsequent related orders.

On 5 February 2007, The Cauvery Water Disputes Tribunal announced its verdict. The final verdict allots 419 billion ft³ water of Cauvery river to Tamil Nadu ,192 billion ft³ water to the state of Karnataka, 30 billion ft³ water to Kerala and 7 billion ft³ water to Puducherry.

On 7 May 2007 Union Government as well as the States filed application for clarification. The States also filed Special Leave Petitions against the decision of the Tribunal in the Supreme Court. While taking up the applications for consideration, the Cauvery Water Disputes Tribunal noted that since the Supreme Court has granted Special Leave Petition the applications should be listed for orders after the disposal of appeal by Supreme Court. After this the Union filed an application under Special Leave Petitions stating that according to Section 11 of the Inter State River Water Dispute Act, the courts have no jurisdiction in water dispute referred to the Tribunal under the said Act.

The Union Government notified the final award of the Cauvery Water Disputes Tribunal after being directed by the Supreme Court on sharing the Cauvery waters among the States of Karnataka, Tamil Nadu, and Kerala and Union territory of Puducherry. The “extraordinary”

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notification in the gazette dated February 19, 2013 states that the final award shall be effective from the date of publication.

However, the state government of Karnataka has not accepted the order and refused to release the water to Tamil Nadu. In 2013, Contempt of Court was issued against Karnataka. In 2016, a petition was filed in Supreme Court to seeking the release of water by Karnataka as per the guidelines of the tribunal. When Supreme Court ordered Karnataka to release water, Kannada people protested the decision saying they do not have enough water.

The Supreme Court delivered its verdict on the long awaited and decades-old dispute on February 16, 2018. It allocated more water to the state of Karnataka. The Supreme Court ordered the Karnataka government to release 177.25 tmcft of Cauvery water to Tamil Nadu from its inter state Biligundlu dam. The judgment clarified that Karnataka will have an enhanced share of 14.75 tmcft water per year while Tamil Nadu will get 404.25 tmcft, which will be 14.75 tmcft less than what was allotted by the Tribunal in 2007.

6.10.2. Narmada Dispute

Narmada stands at number five among the rivers in India. It originates in Amarkantak in Shadol district of State of Madhya Pradesh. It is the largest west-flowing river flowing for about 1,312 km, before flowing into the Gulf of Cambay in the Arabian Sea. It flows for 1,077 km in Madhya Pradesh. It flows for 35 km between the States of Madhya Pradesh and Maharashtra and forms boundary between the two states. For the next 39 km it forms the boundary between the states of Maharashtra and Gujarat. It flows for 161 km in Gujarat. The basin area of Narmada is about 1 lakh km². Despite the fact that the river had huge potential, most of its water was lost to the sea.

In 1946, a request was made to request the Central Waterways, Irrigation and Navigation Commission by the then Governments of Central Provinces and Berar and Bombay to explore possibilities for the development of Narmada Basin so that the river water could be utilized for irrigation, power generation, controlling flood and providing better navigation. An ad-hoc committee was appointed in 1948 by the Central Ministry of Works, Mines & Power. This committee was headed by the Chairman of Central Waterways, Irrigation and Navigation Commission, Shri A.N. Khosla. The committee was assigned two distinct tasks- first to study the
projects and second to suggest the priorities. The committee recommended detailed investigations for Bargi Project, Broach Project, Tawa Projects and Punasa Project.

On the basis of the recommendations of this committee, the estimates were sanctioned by the Government of India in March 1949 for investigations of abovementioned projects.

In 1955 hydroelectric potential of the Narmada basin was studied by the Central Water & Power Commission. It was decided after consultations with the then Government of Bombay that a dam would be constructed at Navagam. This recommendation was forwarded to the Government of Bombay by the Central Water & Power Commission. Initially as per the recommendations of the Central Water & Power Commission, project was to be implemented in two stages. In 1960 a panel of consultants appointed by the Ministry of Irrigation and Power after reviewing the project recommended that the two stages of the Navagam dam should be combined into one. The panel was of the view that the irrigation could be extended towards the Rann of Kachh from the high-level canal.

On 1 May 1960 the State of Gujarat was formed and the Narmada Project was transferred to that it. In February 1961, the Government of Gujarat gave an approval to Stage-I of the Narmada Project. On 5 April 1961 the project was then inaugurated by the Prime Minister of India, Pandit Jawaharlal Nehru. The initial works like approach roads & bridges, staff buildings and remaining investigations for dam foundations etc. commenced.

The Gujarat Government conducted surveys for the high level canal. It was concluded that if the height of the Navagam reservoir was raised, it would be possible to extend irrigation to an additional area of over 20 lakh acres.

In November 1963, a meeting was held at Bhopal between the Union Minister of Irrigation and Power and the Chief Ministers of Gujarat and Madhya Pradesh. Bhopal Agreement was arrived. The main features of this agreement were:

a) The Government of Gujarat to build the Navagam Dam to FRL 425. All the benefits of this dam were to be enjoyed by the State of Gujarat.
b) Punasa Dam to be built to FRL 850. All the costs and benefits of Punasa Power Project to be shared between the Governments of Gujarat and Madhya Pradesh in the ratio 1:2. The state of Madhya Pradesh to give half of the total available to it to the State of Maharashtra for 25 years. The State of Maharashtra to give one third of the cost of Punasa Dam as loan to the State of Madhya Pradesh. The State of Maharashtra to return the loan within a period of 25 years.

c) The Bargi Project to be undertaken by the State of Madhya Pradesh and the Government of Gujarat to give Rs 10 crores as loan assistance for it.

The Government of Gujarat prepared a project report and submitted it to the Central Water and Power Commission. But Madhya Pradesh did not ratify the Bhopal Agreement. In order to resolve stalemate a committee of eminent engineers headed by Dr A.N. Khosla, was constituted by the Government of India on 5 September 1964. In September 1965 the Khosla Committee submitted its report to the Government of India. It recommended a Master Plan envisaging 13 major projects to be taken up in Madhya Pradesh and Gujarat. Twelve projects were to come up in Madhya Pradesh and one in Gujarat.

The recommendations of the Khosla Committee were not acceptable to the States. On 6 July 1968 a complaint was made to the Government of India by the State of Gujarat made under Section 3 of the Inter-State Water Disputes Act, 1956. The complaint states that since a water dispute had arisen between the States of Madhya Pradesh and Maharashtra and State of Gujarat over the sharing of the waters of the inter-state river Narmada.

The Government of India constituted Narmada Waters Dispute Tribunal headed by Justice V Ramaswamy referred the Narmada water dispute to the Tribunal. Another reference was made to the Tribunal by the Government of India on 16 October 1969 of certain issues raised by the State of Rajasthan.

A Demurrer was filed by the State of Madhya Pradesh before the Tribunal stating that the constitution of the Tribunal and reference to it were ultra vires of the Act.

While upholding the constitution of the Tribunal, the Notification of the Central Government that referred the matters raised by Rajasthan was declared as ultra vires of the Inter
State Water Dispute Act. Further, the Tribunal held that it had jurisdiction to decide the interstate river water dispute referred to it by the Central Government on the complaint of State of Gujarat. The proposed construction of Navagam project involving submergence of some territories of Maharashtra and Madhya Pradesh was held to form the subject matter of a water dispute under Section 2(c) of the abovementioned Act. The Tribunal clarified that it had the jurisdiction to direct the State of Madhya Pradesh and Maharashtra to enable the State of Gujarat to complete the Navagam Project. Directions could also be given by the Tribunal to Gujarat and other States for giving compensation, share in beneficial use of Navagam dam and rehabilitation of displaced persons to Maharashtra and Madhya Pradesh.

This judgment of the Tribunal was challenged by the States of Madhya Pradesh and Rajasthan in the Supreme Court. The court granted a limited stay\textsuperscript{203} of the proceedings before the Tribunal.

The Chief Ministers of all the affected states namely: Madhya Pradesh, Maharashtra, Gujarat and Rajasthan agreed to resolve the dispute with the assistance of the Prime Minister of India. Consequently the Chief Ministers of the states of Madhya Pradesh, Maharashtra and Rajasthan and the Advisor of the Governor of Gujarat entered into an agreement on 12 July 1974 on a number of issues which would otherwise had to be decided by the Tribunal. The main features of the Agreement were:

1. The quantity of water available for 75 percent of the year in Narmada was to be assessed at 28 MAF. All disputes were to be determined by the Tribunal on the basis of this assessment.
2. 27.25 MAF was the net available water for use in Madhya Pradesh and Gujarat. This quantity was to be allocated between these two States.
3. The Tribunal was given the responsibility to fix the height of the Navagam Dam

The States of Madhya Pradesh and Rajasthan withdrew the appeals and the Tribunal proceeded with remaining issues. Award was declared by the Tribunal on 16 August 1978. It was revised on 7 December 1979 and was published in the extraordinary Gazette on 12 December 1979 by the Government of India. The salient features of the award of the Tribunal included:

a) Determination of the height of Sardar Sarovar Dam at FRL 455 ft.

\textsuperscript{203} All proceedings except discovery, inspection and other miscellaneous proceedings were stayed.
b) It had directions on submergence, land acquisition and rehabilitation of the displaced persons, payment of cost to Pradesh and Maharashtra by the Gujarat Government was to pay to Madhya, providing civic amenities to the oustees. A provision was made for the resettlement of the displaced persons in their home state in case of failure of the State of Gujarat to resettle the oustees or if the oustees were unwilling to occupy area being provided by the it. No submergence could take place unless the oustees were rehabilitated.

c) Allocation of the Narmada waters among party states. Madhya Pradesh was to get 18.25 MAF, 9.00 MAF for Gujarat, 0.50 MAF for Rajasthan and 0.25 MAF for Maharashtra.

d) The Award could be reviewed after a period of 45 years from the date of its publication in the official gazette. However the clause relating to determination of 75 percent dependable flow as 28 MAF was non-reviewable.

The Narmada Control Authority, Sardar Sarovar Construction Advisory Committee and Review Committee were established as per the instruction of the tribunal. Narmada Control Authority was formed for to ensure the execution of the decision of the Tribunal. This Authority is a committee headed by Secretary, Ministry of Water Resources, and Government of India. It has Secretaries in the Ministry of Power, Ministry of Environment and Forests, Ministry of Welfare and Chief Secretaries of Maharashtra, Madhya Pradesh, Gujarat and Rajasthan and technical persons like Chief Engineers are its Members. The Narmada Control Authority is empowered to constitute sub-committees. It is empowered to assign such functions to them and delegate such powers as it thinks fit. The sub-groups were formed for resettlement and rehabilitation, rehabilitation, environment, hydro met, power and Narmada main canal.

The Review Committee was to be headed by the Union Minister for Irrigation (now substituted by Union Minister for Water Resources). Its members would include the Chief Ministers of Gujarat, Madhya Pradesh, Rajasthan and Maharashtra. The function of this committee was to review the decisions of the Sardar Sarovar Construction Advisory Committee and Narmada Control Authority.

The Sardar Sarovar Construction Advisory Committee headed by the Secretary, Ministry of Water Resources would ensure proper, cost effective and early execution of the project. The
consultations with the World Bank began in 1978 and amount for Narmada Water Delivery and Drainage Project was sanctioned in 1985.

After a lot of deliberations at different between the Ministry of Water Resources and the Ministry of Environment, environmental clearance was given by the Ministry of Environment and Forests, Government of India on 24 June 1987 subject to the fulfillment of some conditions. Following this the Planning Commission approved Rs 6,406 crores for the said project and the construction of the dam began.

In November 1990, Dr. B. D. Sharma, Commissioner of Scheduled Castes and Scheduled Tribes wrote a letter to the Supreme Court and expressed concern over the rights of the Scheduled Castes and Scheduled Tribes who were displaced without adequate rehabilitation due to the construction of Sardar Sarovar Dam. The letter stated that Scheduled Castes and Scheduled Tribes Commission had made several reports from time to time to the state governments as well as the central government but they were ignored. The letter prayed for ordering the setting up of National Commission for Scheduled Castes and Scheduled Tribes and ensuring proper rehabilitation of oustees of Sardar Sarovar Dam. This letter was treated as a writ petition under Article 32 of the Constitution.

The court did not decide about the accountability of the Union to the Scheduled Castes and Scheduled Tribes Commission. While observing that:

“Sardar Sarovar Dam is financed by the World Bank and assistance is forthcoming from some of the foreign countries. As it is, completion is behind schedule. Hence it is difficult to look for enforcement of what had been considered either in the agreement or in the Award. It may be difficult and may not be beneficial for the ultimate purpose to rehabilitate in a methodical and meticulous way, to enforce terms and conditions stipulated in the agreement such as eighteen months’ notice before evacuation.”

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204 B. D. Sharma v. Union of India, 1992Supp (3) 93.
205 Id., at 94.
A Sub-Committee under Narmada Control Authority headed by the Secretary was directed by the court on September 20, 1991 to get active, move in those areas where rehabilitation is to be undertaken and ensure proper rehabilitation.

The court took note of the delays in rehabilitation and suggested that:

“Rehabilitation should be so done that at least six months before area is likely to be submerged. It should be complete and should be in respect of homestead substitution of agricultural properly and all other arrangements as mentioned under the rehabilitation scheme. A report should be submitted (by Secretary, Social Welfare) to the court based on the developments and progress made in the matter of rehabilitation once in every month.”\textsuperscript{206}

The Sardar Sarovar Project again reached the Supreme Court when a petition was filed for reduction in the height of the dam so as to mitigate the effects of submergence of land on the people.\textsuperscript{207} The court expressed doubt at the intentions of the petitioners. It stated:

“As far as the petitioner is concerned, it is an anti-dam organization and is opposed to the construction of the high dam. It has been in existence since 1986 but has chosen to challenge the clearance given in 1987 by filing a writ petition in 1994. The project, in principle, was cleared more than 25 years ago when the foundation stone was laid by the late Pandit Jawahar Lal Nehru. When such projects are undertaken and hundreds of crores of public money is spent, individual or organizations in the garb of Public Interest Litigation (PIL) cannot be permitted to challenge the policy decision taken after a lapse of time.”\textsuperscript{208}

The Supreme Court refuted the allegation that the said project was not in the national or public interest and observed that:

“Dams play a vital role in providing irrigation for food security, domestic and industrial water supply, hydroelectric power and keeping flood waters back.\textsuperscript{209} The SSP would be making positive contribution for preservation of environment in several ways. Ecological degradation

\textsuperscript{206} Ibid.
\textsuperscript{207} Narmada Bachao Andolan v. Union of India, AIR 2000 SC 3751.
\textsuperscript{208} Id., at 3782.
\textsuperscript{209} Id., at 3786.
which was returning to make certain areas of Gujarat and Rajasthan inhabitable due to salinity ingress, advancement of desert, ground water depletion, fluoride and nitrite affected water and vanishing green cover would effectively be arrested by the project of taking water to drought-prone and arid parts of the states of Gujarat and Rajasthan. Transfer of Narmada water to water scarcity areas will be the only solution to promote sustainable agriculture and spread of green cover. The improvement of fodder availability will reduce pressure on biodiversity and vegetation. The SSP by generating clean eco-friendly hydropower will save the air pollution which would otherwise take place by thermal generation power of similar capacity.”

After analyzing the documents and the letters the court rejected the allegation of the petitioner that the environmental clearance of the project was given without application of mind and concluded that the Government of India was deeply concerned with the impact of the Narmada Sagar and Sardar Sarovar Project on environment.

While granting approval the ministry of Environment and Forests had laid down a condition that “for every hectare of forest land submerged or diverted for construction of the project, there should be compensatory afforestation on one hectare of non-forest land plus reforestation on two hectares of degraded forest”. The petitioners contended that if afforestation took place on wasteland or less quality land, that the forests would be of lesser quality or quantity.

Reference was also made to the ‘precautionary principle’ and the corresponding burden of proof that lies on the person who wants to change the status quo. It was observed that:

“The polluting industry which is being established is not of our concern in the current case. The large dam which is being constructed is neither a nuclear establishment nor a polluting industry. Though the construction of a dam would result in the change of environment it will not be correct to presume that the construction of a large dam like the Sardar Sarovar will result in ecological disaster. India’s experience of over 40 years in the construction of dams does not show that construction of a large dam is not cost effective or leads to ecological or environmental

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210 Id., at 3787.
211 Id., at 3795.
212 Id., at 3799.
213 Ibid.
degradation. On the contrary there has been ecological progression with the construction of large dams.\textsuperscript{214} The petitioner has not been able to point out a single instance where the construction of a dam has, on the whole, had an adverse environmental impact. On the contrary the environment has improved."\textsuperscript{215}

It was contented that different relief and rehabilitation packages existing in different states restrict the choice of the oustees. The court stated that:

“Resettlement and rehabilitation packages in the three States were different due to different geographical, local and economic conditions and availability of land in the States. The liberal packages available to the Sardar Sarovar Project oustees in Gujarat are not even available to the project affected people of other projects in Gujarat. Each State has its own package and oustees have an option to select the one which was most attractive to them.”\textsuperscript{216}

It was also observed that “A dam serves a number of purposes. It helps in storing water, generate electricity and releases water throughout the year for various purposes and even at times of scarcity. Its storage capacity aids in controlling floods and the canal system which emanates is meant to convey and provide water for drinking, agriculture and industry. In addition thereto, it can also be a source of generating hydro-power. Dam has, therefore, necessarily to be regarded as an infrastructural project.”\textsuperscript{217}

Water is one element without which life cannot sustain. Therefore, it is to be regarded as one of the primary duties of the government to ensure availability of water to the people. The court observed:

“The court, no doubt, has a duty to see that in the undertaking of a decision, no law is violated and people’s fundamental rights are not transgressed upon except to the extent permissible under the Constitution. In respect of public projects and policies which are initiated by the government, the courts should not become an approval authority. Normally such decisions are taken by the government after due care and consideration. In a democracy welfare of the

\textsuperscript{214} Id., at 3803.
\textsuperscript{215} Id., at 2829.
\textsuperscript{216} Id., at 3813.
\textsuperscript{217} Id., at 3826.
people at large, and not merely of a small section of the society, has to be the concern of a responsible government. If a considered policy decision has been taken, which is not in conflict with any law or is not mala fide, it will not be in the public interest to require the Court to go into and investigate those areas which are the function of the executive. For any project which is approved after due deliberation the Court should refrain from being asked to review the decision just because a petitioner, in filing a PIL, alleges that such a decision should not have been taken because an opposite view against the undertaking of the project, which view may have been considered by the government, is possible. When two or more options or views are possible and after considering them the Government takes a policy decision, it is then not the function of the Court to go into matter afresh and, in a way sit, in appeal over such a policy decision.”

It was also observed that “one of the indicators of the living standard of people is the per capita consumption of electricity. There is, however, perennial shortage of power in India, and, therefore, it is necessary that the generation increases. The world over, countries having rich water and river systems have effectively exploited these for hydel power generation.”

While disposing the matter, the court said that early completion of the project, compliance with conditions imposed by the Ministry of Environment and completion of relief and rehabilitation work well in time should be accorded top priority. The court issued the following directions:

1. Construction of the dam shall continue according to provisions given in the Award of the Tribunal.

2. The dam can be constructed upto 90 meters, as this has been cleared by the Relief and Rehabilitation Sub-group. The height of the dam may be raised further only after completion of relief and rehabilitation and on getting clearance from the Relief and Rehabilitation Sub-group. The Relief and Rehabilitation Sub-group shall consult the three Grievances Redressal Authorities before giving clearance of further construction.

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218 *Id.*, at 3827.
219 *Id.*, at 3839.
220 *Id.*, at 3839.
3. The Environment Sub-group shall give environment clearance at each stage of the construction of the dam before construction beyond 90 meters can be undertaken.

4. Once the clearance is obtained from Relief and Rehabilitation Subgroup and Environment Sub-group, the Narmada Control Authority shall grant permission to raise the dam height beyond 90 meters.

5. The States of Madhya Pradesh, Maharashtra and Gujarat are directed to give relief and rehabilitation to the oustees. These three States shall comply with any direction given by anyone among the following -the Narmada Control Authority, the Review Committee, and the Grievances Redressal Authorities.

6. The Narmada Control Authority and the Environment Sub-group will continue to monitor the project. They will ensure that necessary steps are taken to protect, restore and improve the environment.

7. The Narmada Control Authority shall make a time bound action plan for further construction and the relief and rehabilitation. This action plan shall be implemented by each State. The disputes, if any shall be decided by the Review Committee. Further each State shall follow the directions of the Narmada Control Authority so far as the acquisition of land is concerned for relief and rehabilitation.

8. The Review Committee shall meet whenever required to do so in the event of there being any unresolved dispute on an issue which is before the NCA. In any event the Review Committee shall meet at least once in three months so as to oversee the progress of construction of the dam and implementation of the R&R programmes. If for any reason serious differences in implementation of the Award arise and the same cannot be resolved in the Review Committee, the Committee may refer the same to the Prime Minister whose decision, in respect thereof, shall be final and binding on all concerned.

9. Grievances Redressal Authorities may issue directions to the respective States for proper implementation of the relief and rehabilitation programmes. In case of non-compliance with its directions, the grievances redressal authorities may approach the Review Committee.
10. Early completion of the project.

The leaders of Narmada Bachao Andolan were unhappy with the decision of the court. They held a demonstration outside the Supreme Court. A contempt petition was filed against two Narmada Bachao Andolan activists namely Medha Patkar and Arundati Roy and Prashant Bhushan, a senior counsel for the Narmada Bachao Andolan.\textsuperscript{221} It was alleged in the petition that on 30th December, 2000 leaders of Narmada Bachao Andolan gathered a huge crowd outside the Supreme Court and held a dharna. It was alleged that they shouted slogans against the Apex Court. These slogans were abusive and alleged that the court lacked integrity and dishonesty. It was alleged in the petition that when the petitioners protested they were attacked by the respondents. The petitioners were attacked again in the evening. On the next day the petitioners filed a complaint in the Police Station.

Notices were issued to the three respondents. In response to the notices separate affidavits were filed by all the respondents. During the hearing it was discovered that the contempt motion was defective. The court observed that:

Had our attention been drawn to the procedural defects, we would have had no hesitation in rejecting the application in lamina on this ground alone… The procedural flaws in the petition, as noted earlier are not mere technicalities.\textsuperscript{222}

The defective nature of the petition, the reluctance of the petitioners to verify the facts contained in the petition by giving an affidavit, the failure to get the consent of the Solicitor General and the refusal of the police to record an FIR on the basis of the complaint lodged by the petitioners resulted in the acquittal of Medha Patkar and Prashant Bhushan.

However the court held that prima facie Ms. Arundati Roy had committed contempt by imputing motives to specific courts for entertaining litigation and passing orders against her. The court issued a suo moto contempt notice to Ms. Arundati Roy for the statements made by her in the affidavit submitted in the court. Ms. Arundati Roy had stated amongst other averments as under:

\textsuperscript{221} J. R. Parashar, Advocate and Ors. v. Prasant Bhushan, Advocate and Ors., AIR 2001 SC 3395.

\textsuperscript{222} Id., at 3402.
“On the grounds the judges of the Supreme Court were too busy, the Chief Justice of India refused to allow a sitting judge to head the judicial enquiry into the Tehelka scandal, even though it involves matters of national security and corruption in the highest places. Yet when it comes to an absurd, despicable, entirely unsubstantiated petition in which all the three respondents happen to be people who have publicly -though in markedly different ways -questioned the policies of the government and severely criticized a recent judgment of the Supreme Court, the Court displays a disturbing willingness to issue notice. It indicates a disquieting inclination on the part of the court to silence criticism and muzzle dissent, to harass and intimidate those who disagree with it. By entertaining a petition based on an FIR that even a local police station does not see fit to act upon, the Supreme Court is doing its own reputation and credibility considerable harm.”223

She reiterated what she had stated earlier in her reply affidavit. The court observed:

As the respondent has not shown any repentance or regret or remorse, no lenient view should be taken in the matter. However, showing the magnanimity of law by keeping in mind that the respondent is a woman, and hoping that better sense and wisdom shall dawn upon the respondent in the future to serve the cause of art and literature by her creative skill and imagination, we feel that the ends of justice would be met if she is sentenced to symbolic imprisonment (for one day) besides paying a fine of Rs. 2000/-. 224

Even after 13 years after B.D. Sharma case, many people did not get adequate relief and rehabilitation. They were left with no option but to knock at the door of the Supreme Court.225 The case revolved around the eligibility criteria for rehabilitation and were there any people who had not been rehabilitated? Although the grievance redressal Authority had been set up in Gujarat Madhya Pradesh and Maharashtra, the court found that there were people who had not been rehabilitated. It was also held that the eligibility criterion for rehabilitation was flawed.226

223 Id., at 3398-3399.
224 In Re :Arundhati Roy , AIR 2002 SC 1375 at 1396.
225 Narmada Bachao Andolan v. Union of India , AIR 2005 SC 2994.
226 Ramaswamy R Iyer (ed), Water and The Laws in India 75 (Sage Publications, New Delhi , 2012).
6.10.3. Krishna Dispute

Krishna is the second largest river of the peninsular India. It originates in the Western Ghats near Mahabaleshwar and flows through the states of Maharashtra, Karnataka and Andhra Pradesh. The 870 miles long river has the basin area of about one lakh sq. miles. The disputes have been rising since many centuries regarding sharing of the waters of this river among the riparian states. In 1855 Krishna delta Canal System was formed to regulate the use of water of this river. After the reorganization of the states in 1956, the Central Water and Power Commission reallocated the water of the river among the riparian states. This new scheme was not acceptable to the states. An Inter-State Conference was held in 1960 among the states but nothing concrete came out of it.

The Government of India set up the first Krishna Water Disputes Tribunal also known as Bachawat Tribunal under Inter-State River Water Disputes Act, 1956 on 10th April, 1969 to adjudicate upon the water dispute that had arisen among the sharing of the water of river Krishna and its river valley. The Tribunal formulated two schemes – Scheme “A” and Scheme “B”. But in its final order only Scheme “A” was included. The availability of water in Krishna Basin was found at 2060TMC on 75% dependability. The Scheme “A” allocated water in favour of three riparian states. The State of Maharashtra was allocated 560 TMC, State of Karnataka was allocated 700 TMC and State of Andhra Pradesh was allocated 800TMC. The State of Andhra Pradesh being the last riparian owner was given the liberty to use the remaining water that may be flowing in the river but it would not acquire any right over the excess quantity. Scheme “B” could be implemented only after the constitution of Krishna Valley Authority. State of Andhra Pradesh objected to the creation of Krishna Valley Authority. Therefore the Tribunal did not make it a part of the final order.

The first Krishna Water Disputes Tribunal gave its Report with decision in December 1973. A Further Report along with decision was given in May 1976. The decision of the first tribunal was published on 31 May, 1976. It allocated water to the three riparian States,
Maharashtra, Karnataka and Andhra Pradesh. The order of the first Krishna Water Disputes Tribunal could be reviewed only after the 31st May, 2000.227

When Karnataka wished to increase the height of Almatti Dam, Andhra Pradesh protested. The Union Government tried to resolve the dispute by arbitration and set up a Committee of Chief Ministers outside the basin. The Committee appointed an Expert Committee to look into the matter. It tried to involve the Planning Commission as well as Central Water Commission but both refused to participate in the proceedings. The matter landed up before the Supreme Court.228

State of Karnataka was of the opinion that since the Tribunal discussed Scheme “B” at length, it formed a part of the final order. This scheme should also have been notified by the Central Government and hence made binding on the parties. State of Karnataka filed a suit making State of Andhra Pradesh, State of Maharashtra and the Union of India a party.229The Supreme Court held that Scheme “B” evolved by the Tribunal was not a decision of the Tribunal under section 5(2) of Inter State River Dispute Act.230

The petitioner had also challenged the increase in the height of the Almatti Dam. Upholding the construction of dam at Almatti, the court observed that:

We are of the considered opinion that there should not be any bar against the State of Karnataka to construct the dam at Almatti upto the height of 519.6 meters and the question of further raising its height to 524.256 meters should be gone into by the tribunal…Though it may be fully desirable for all the States to know about the developments of the other States but neither the law on the subject require that a State even for utilization of its own water resources would take the consent of other riparian States in case of an Inter-State river.231

While examining the plaint the court cited lack of material which could form the basis for drawing the conclusion that the construction of Almatti Dam in the State of Karnataka had

229 Id., at 1585.
230 Id., at 1599.
231 Id., at 1634.
adverse effect or was likely to have adverse effect on the State of Andhra Pradesh. The court thus observed:

The complaint and grievance of the plaintiff State is rather imaginary than real and on the records of this proceedings no materials have been put forth to enable the Court to come to a conclusion on the question of so-called adverse effect on the State of Andhra Pradesh on account of the construction of Dam at Almatti.\textsuperscript{232}

Refusing to grant permanent injunction as sought by the petitioner state, the court held that:

“It is not possible for the Court to grant the relief of permanent mandatory injunction, so far as construction of the Dam at Almatti is concerned … we make it clear that there is no bar for raising the height of the Dam at Almatti upto 519.6 meters subject to getting clearance from the Appropriate Authority of the Central Government and any other Statutory Authority, required under law. The question of raising the height upto 524.256 meters at Almatti could be appropriately gone into by a Tribunal, to be appointed by the Central Government, on being approached by any of the three riparian.”\textsuperscript{233}

Thus the tribunal was directed to look into the matter as and when the occasion arose regarding the allocation of water in River Krishna Basin without being influenced by the views of the earlier Tribunal by reason of long lapse of time and availability of modern technology.\textsuperscript{234} The Supreme Court commented on the scheme of constitutional arrangements for water and observed:

Notwithstanding the allocation of water in river Krishna no State can construct any project for use of water within the State unless such project is approved by the Planning Commission, the Central Water Commission and all other Competent Authorities who might have different roles to play under different specific statutes. Under the federal structure, like ours, the Central Government possesses enormous power and authority and no State can on its own carry on the affairs within its territory, particularly when such projects may have adverse

\textsuperscript{232} \textit{Id.}, at 1632.
\textsuperscript{233} \textit{Id.}, at 1634.
\textsuperscript{234} \textit{Id.}, at 1655.
effect on other States, particularly in respect of an inter State river where each riparian State and its inhabitants through which the river flows has its right.\textsuperscript{235}

State of Karnataka wrote a letter of complaint on September 25, 2002 to the Secretary, Government of India with the main grievance that the State of Andhra Pradesh has been not only using the surplus waters but also refusing to share the surplus waters. State of Karnataka was aggrieved by construction of permanent large scale projects.\textsuperscript{236} Another grievance was that States of Andhra Pradesh and Maharashtra did not have any right to object to the raising of height of dam at Almatti. It was also alleged that the State of Maharashtra failed to maintain adequate summer flows into Bhima River in Krishna Valley.

On November 27, 2002, the Government of Maharashtra wrote a complaint to the Government of India stating that the State of Andhra Pradesh had been utilizing water in excess of its share. The use of surplus water was permitted by the Tribunal temporarily but the State of Andhra Pradesh had constructed large scale projects for the use of surplus water. The grievance against the State of Karnataka was that the raising of the height of Almatti Dam would result in submergence of more land in the State of Maharashtra. Further State of Karnataka had constructed Hippargi Barrage and Bhima Barrage without its consent.\textsuperscript{237}

On the requests of Governments of Maharashtra, Karnataka and Andhra Pradesh Central Government set up second Krishna Water Disputes Tribunal on 2\textsuperscript{nd} April, 2004, under the chairmanship of Justice Brijesh Kumar with Justice S.P. Srivastava and Justice D.K. Seth as Members. The Tribunal noted:

“Before we deal with the issues, framed for decision in these proceedings, we would like to highlight one of the factors relevant in settlement of such disputes, namely the feeling of cooperation and good faith amongst the concerned riparian States.”\textsuperscript{238}

\textsuperscript{235} Id., at1623.
\textsuperscript{236} The Report Of The Krishna Water Disputes Tribunal With The Decision 136 Volume I (New Delhi, 2010 ) available at http://wrmin.nic.in/writereaddata/Inter-StateWaterDisputes/KWDTReport9718468760.pdf (visited on 12 May 2016)
\textsuperscript{237} Id., at 138-139.
\textsuperscript{238} Id., at 160.
The second Krishna Water Disputes Tribunal passed order on 9th June, 2006 turning down the request of States of Maharashtra, Karnataka and Andhra Pradesh to give Interim Relief. After examining 29 issues the second Krishna Water Disputes Tribunal gave its report 30th December, 2010. The State of Andhra Pradesh filed a suit before the Supreme Court. Apart from this it submitted references along with the States of Maharashtra and Karnataka before second Krishna Water Disputes Tribunal. The Supreme Court directed that decisions taken by the second Krishna Water Disputes Tribunal on the reference petitions filed by the three States and the Central Government shall not be published in the official Gazette until further directions from the Apex Court.

The second Krishna Water Disputes Tribunal examined the references and submitted a report on 29th November, 2013. The Tribunal has modified its earlier decision. The share of water of Karnataka was reduced and the same was added to the share of State of Andhra Pradesh.

The main decisions of the Tribunal are:

1. The water of Krishna river shall be distributed amongst the three States of Maharashtra, Karnataka and Andhra Pradesh on 65% dependability of the new series of 47 years i.e. 2293 TMC.
2. The surplus flows shall be also distributed amongst the three States.
3. The party States were directed to utilize the water strictly in accordance with the allocations.
4. All the three States were directed to release 16 TMC of water for maintaining minimum in stream flow and for environment and ecology.
5. The tribunal permitted Karnataka to raise the storage level in the Almatti dam to 524.256 metres from 519.6 metres. The State of Karnataka was directed to make regulated releases of 8 to 10 TMC of water in the months of June and July to the State of Andhra Pradesh from 808 Almatti Reservoir.
6. The ‘Krishna Water Decision – Implementation Board’ shall be constituted. Its members shall be nominated by the Central Government and the State Government. The administrative control over Tungabhadra Dam and Rajolibunda Diversion Scheme shall vest in the Board.
7. The order may be reviewed at only after 31st May, 2050 by a Competent Authority or Tribunal

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239 Id., at 800.
8. This decision and order shall be enforced on the date of publication in the official gazette.

9. The decision and directions given by the first Krishna Water Dispute Tribunal which have not been amended, modified or reviewed by this order shall continue to be operative.

Dissatisfied with the modified award of the Tribunal, the State of Andhra Pradesh filed another special leave petition on 16th January, 2014 in Supreme Court.

Recently the state of Telangana was carved out. It is the fourth riparian state in the Krishna river basin. The term of the second Krishna Water Disputes Tribunal was extended for two years w.e.f. 1st August 2014 for making project-wise specific allocation and to adjudicate on fresh terms of references as stated in Andhra Pradesh Reorganization Bill, 2014.

As Telangana was not a party to the earlier two Krishna water dispute tribunals, it wants the tribunal proceedings to start afresh. This demand is being opposed by the States of Karnataka and Maharashtra on the ground that the extension of the tribunal period is only for resolving the water disputes between Andhra Pradesh and Telangana states. In fact the Government of Maharashtra has sought direction from the Supreme Court to the Government of India to notify the decision delivered on 30th December, 2010 and the further report of 29th November, 2013 of the second Krishna Water Disputes Tribunal.

In the meantime the implementation of the award of the Tribunal has been stayed by the Supreme Court. The Central Government has constituted the Krishna River Management Board for the administration, regulation, maintenance and operation of projects on rivers Krishna. An Apex Council for supervision of Krishna River Management Boards has also been constituted.

**6.10.4. Ravi- Beas Dispute**

The seeds of the dispute on the sharing of waters of the two rivers of north India Ravi and Beas finds were at the time of partition of the country. After partition the sharing of waters of rivers Indus, Jhelum, Chenab, Ravi, Beas, and Sutlej was a bone of contention between India and Pakistan. The Indus Water Treaty was signed in 1960. This treaty allowed unrestricted use of

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three rivers each. While India was allocated the eastern rivers – Sutlej, Beas, and Ravi, the western rivers were allocated to Pakistan.

The water of these three eastern rivers was to be shared between Punjab, Delhi, and Jammu and Kashmir. Punjab was re-organized in 1966. The newly created state of Haryana was eligible to receive a share of Punjab’s river waters. The sharing of river waters created a rift between Punjab and Haryana.

In 1969 the State of Haryana approached the Government of India to solve the dispute. The Central Government appointed a Committee which recommended that Haryana would be entitled to 3.78 MAF, Punjab would get 3.26 MAF, and Delhi would get 0.20 MAF. On 24 March 1976, a notification allocating the surplus Ravi-Beas waters between the states of Punjab and Haryana was issued. The notification specified that 3.5 MAF had been allotted to the Haryana. Since Haryana is not a riparian State, it was proposed that Sutlej Yamuna Link Canal be constructed so that the water allocated to it could be utilized. The length of the proposed canal was 214 kilometers: 122 kilometers in Punjab and 92 kilometers in Haryana.

On 23rd April, 1976, a letter was written by the Chief Minister of Haryana requesting the Prime Minister of India that the Sutlej Yamuna Link Canal be completed by June, 1978. Notifications were issued by the State of Punjab for the acquiring the land for the construction of canal. Meanwhile by June 1980, the State of Haryana constructed the canal in its territory. However, the State of Punjab delayed the construction of the canal. Aggrieved by the dilatory tactics of the state of Punjab, the State of Haryana in 1979, filed a suit in the Supreme Court.

The State of Punjab also filed a suit challenging the validity of the Orders of Government of India issued on 24th of March, 1976. While the suits were pending in the Supreme Court, the states of Haryana, Punjab and Rajasthan entered into an agreement on 31st of December, 1981 in the presence of the Prime Minister of India. The agreement allocated the net surplus 17.17 MAF Ravi Beas waters as follows: 4.22 MAF to Punjab, 3.50 MAF for Haryana, 8.60 M AF Rajasthan, 0.20 MAF for Delhi Water Supply and 0.65 MAF for Jammu and Kashmir. The suits were withdrawn by both the states in 1982. Though Punjab started construction of canal, the pace of the work was rather slow. On 23rd of April, 1982 Punjab released a white paper, appreciating agreement of December 1981.

On November 5, 1985, the same agreement was repudiated by the Punjab Legislative Assembly. On 24th of July, 1985, a settlement was arrived at between the then Prime Minister of
India and the then President of Akali Dal. The agreement also known as "Punjab Settlement", expressly provides for the continuance of the construction of Sutlej Yamuna Link Canal. This canal was scheduled to be completed by 15th of August, 1986. The agreement provided that all issues regarding the usage, share and allocation of the Ravi- Beas waters would be adjudicated by a Water Tribunal. Accordingly a Notification was issued on 2nd April, 1986, water tribunal - The Eradi tribunal headed by Supreme Court Justice V Balakrishna Eradi was constituted and matter was referred to it. The Report of the tribunal was submitted to the Central Government on 30th of January, 1987. It was recommended to increase the share of Punjab to 5 MAF and the share of Haryana to 3.83 MAF. The tribunal opined that in the remaining portion of the canal should be completed Punjab as soon as possible. As Punjab was under the clouds of militancy and many Akali leaders were opposed to the decision of the Tribunal, it could not be notified.

In 1985, the elected government assumed office after about two years of President’s rule, the work on the construction of canal was started again. By 1990, 90 per cent of the canal work was completed amidst opposition and periodic incidents of violence. The killing of thirty laborers working at project site and subsequent killing of a chief engineer and his assistant the by militants who wanted to register their protest against the construction of the canal compelled the government of Punjab to stop work.

Due to the non-completion of the canal by the State of Punjab on its territory, the State of Haryana has not been able to utilize the water allocated to it. It could not irrigate around three lack hectares of the agricultural lands resulting in the lower agricultural production to the tune of around eight lack tones annually.

This compelled the State of Haryana to seek the intervention of the Union of India. A meeting was convened by the Prime Minister of India on 20 February, 1991 in which directions were given to the Border Roads Organization to take- over the work and construct the remaining portion of the canal at the earliest. During this time Presidents Rule was imposed on Punjab.

In July 1995, the State of Punjab expressed in unequivocal terms its intention not to complete the construction of the Canal and advised that water to should be delivered through the


242 Ibid.
Bhakra Canal System. Since this alternative measure was completely unworkable which is an absolute impossibility; the State of Haryana filed a suit before the Supreme Court praying among other things for the grant of mandatory injunction compelling State of Punjab to discharge its obligations and restart and complete the remaining portion of the Sutlej-Yamuna Link Canal in its territory.\textsuperscript{243}  
The Court observed:

“\textquotedblleft The State Governments having entered into agreements among themselves on the intervention of the Prime Minister of the country, resulting in withdrawal of the pending suits in the Court, cannot be permitted to take a stand contrary to the agreements arrived at between themselves. We are also of the considered opinion that it was the solemn duty of the Central Government to see that the terms of the agreement are complied with in. That apart, more than Rs.700 crores of public revenue cannot be allowed to be washed down the drain, when the entire portion of the canal within the territory of Haryana has already been completed and majorportion of the said canal within the territory of Punjab also has been dug, leaving only minor patches within the said territory of Punjab.\textsuperscript{244}"

Rejecting the apprehension of the State of Punjab that if the canal is completed, the State of Haryana would water in excess of what has been allocated to it, the court held thus:

“\textquotedblleft We, therefore, by way of a mandatory injunction, direct the defendant-State of Punjab to continue the digging of Sutlej Yamuna Link Canal, portion of which has not been completed as yet and make the canal functional within one year from today. We also direct the Government of India defendant No. 2 to discharge its constitutional obligation in implementation of the aforesaid direction in relation to the digging of canal and if within a period of one year the SYL Canal is not completed by the defendant-State of Punjab, then the Union Government should get it done through its own agencies as expeditiously as possible, so that the huge amount of money that has already been spent and that would yet to be spent, will not be wasted and the plaintiff-State of Haryana would be able to draw the full quantity of water that has already been allotted to its share.\textsuperscript{245}"

The court gave a word of caution to the State of Haryana and observed that:

\begin{itemize}
  \item \textsuperscript{243} \textit{State of Haryana v. State of Punjab}, AIR 2002 SC 685.
  \item \textsuperscript{244} \textit{Id.}, at 707.
  \item \textsuperscript{245} \textit{Id.}, at 707-708.
\end{itemize}
“Needless to mention, the direction to dig SYL Canal should not be construed by the State of Haryana as a license to permit them to draw water in excess of the water that has already been allotted and in the event the tribunal, which is still considering the case of re-allotment of the water, grants any excess water to the State of Haryana, then it may also consider issuing appropriate directions as to how much of the water could be drawn through the SYL Canal.”

The State of Punjab did not comply with the Court's decree and instead filed a review application on 8th January 2002, which was dismissed by the Supreme Court on 5th March 2002. A writ petition filed on 22nd March 2002 by Bharatiya Kisan Union, an organization of agriculturists from Punjab alleging violation of human rights was dismissed by the Court on 10th February 2004. The issue of availability of water of rivers Ravi and Beas for allocation to the State of Haryana was also raised in this writ petition.

On 18th December 2002, State of Haryana filed an application for implementation of the decree of 15th January 2002. On 13th January 2003, the State of Punjab filed a suit praying the court among other things to discharge it from the obligation to construct SYL Canal and declare that the decree of 15.01.2002 as not binding or enforceable stating that the issues raised in the earlier suit could only have been decided by a Constitution Bench.

This was followed by the State of Haryana filing an application for rejection of the plaint and opposition by Punjab of this application.

Haryana sought to amend the application for enforcement of the decree. The State of Punjab filed a counter affidavit. Thereafter, the State of Haryana filed a second application seeking a direction to the Central government to carry out its obligation under the decree and highlighting that the period of one year fixed by the decree had expired. On 17 December 2003 this application of Haryana resulted in the dismissal of the earlier applications on the ground that they were infructuous.

The court observed that The period specified in the decree for completion of the canal by Punjab is long since over. The Union of India has said that it had worked out a contingent action plan during this period. The contingency, in the form of expiry of the one year period in January

246 Id., at 708.
247 W.P. No. 94 of 2004.
2003 has occurred. We have not been told whether the contingency plan has been put into operation.

Although it appears that the Cabinet Committee on Project Appraisals had approved the proposal for completion of the SYL canal by the BRO and at a meeting convened as early as on 20th February 1991, the then Prime Minister directed that the BRO take over the work for completion of the SYL Canal in the minimum time possible, the BRO is not now available for the purpose.\(^\text{249}\)

The Union of India was directed to carry out the proposed action plan within the specified time frame:

(1) The Union of India is to deploy a Central agency to take over the canal works from Punjab within a month from the date of judgment.

(2) The State of Punjab has to hand over the canal works to the Central Agency within 2 (Two) weeks thereafter.

(3) A committee having the representatives from the States of Haryana and Punjab should be set up to coordinate for the early implementation of the decree within 4 (four) weeks from the date of decree.

(4) This committee shall specify the time within which the Central Agency shall complete the construction of the remaining portion of the canal.

(5) The Central Government and the Government of Punjab were directed to provide adequate security for the staff of the Central Agency.

\(^{249}\) Available at https://indiankanoon.org/doc/291736/ (Visited on 14 May 2016).
The court reminded the State of Punjab that

“Great states have a temper superior to that of private litigants, and it is to be hoped that enough has been decided for patriotism, the fraternity of the Union, and mutual consideration to bring it to an end.”

In July 2004, Punjab Assembly passed Punjab Termination of Agreements Act scrapping water sharing agreements with other states and thus jeopardising the construction of the canal. Ruling in this regard was given by a five-judge SC Constitution Bench led by Justice Anil R. Dave and including other Justices Pinaki Chandra Ghose, Shiva Kirti Singh, Adarsh Kumar Goel and Amitava Roy held that Punjab Act cannot be said to be in accordance with the provisions of the Constitution of India and by virtue of the said Act the State of Punjab cannot nullify the judgment and decree and terminate the Agreement dated 31st December, 1981. Accordingly this Act has been declared unconstitutional by the Supreme Court in 2016 under President Advice. In response, Punjab Assembly passed the Act according to which the land acquired for the canal would be denotified and returned to the original owners. The Act states that “no lawsuit can be filed against the state or any person for any act committed in good faith. The state government has also barred the civil courts from hearing any case related to this act. The act is kept outside of the jurisdiction of Civil Courts.

Supreme Court has directed both Punjab and Haryana to maintain status quo in the Sutlej Yamuna Link canal controversy. In the recent hearing, Centre has offered as a mediator to both Punjab and Haryana.

6.10.5. Godavari Dispute

River Godavari river, the largest river of Peninsular India originates in the Sahayadri hill near Triambakeshwar in Nasik District of Maharashtra. It flows for a length of about 1465 Km

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250 Ibid.
252 Article 143, the Constitution of India.
254 Section 6, Punjab Sutlej Yamuna Link Canal Land (Transfer of Property Right) Act, 2016.
255 Section 7, Punjab Sutlej Yamuna Link Canal Land (Transfer of Property Right) Act, 2016.
256 Ibid.
the states of through Maharashtra, Chattisgarh, Odisha, Madhya Pradesh, Karnataka, Andhra Pradesh and Telangana before emptying into the Bay of Bengal.

On 10 April 1969 the Union Government constituted Godavari Water Disputes Tribunal to adjudicate the disputes related to the utilization of the waters of Godavari River. This Tribunal was also headed by Shri RS Bachaw at as its chairman. Sri DM Bhandari and Shri DM Sen were its members. The composition of the Krishna Water Dispute Tribunal was also the same. As the irrigation projects were at stake, the states of Krishna river basin pressed for a quicker verdict. This caused a delay in the proceedings of the Godavari Water Disputes Tribunal which could be started only after the Krishna Water Dispute Tribunal delivered a final verdict on 27 May 1976.

While the proceedings in Godavari Water Disputes Tribunal were being carried on, several Inter-State agreements were signed between the party States in the year 1975. Bilateral and tripartite agreements relating to the number of irrigation projects were signed during 1978-79. The Tribunal took cognizance of all these agreements. These agreements were included in the final award by the Tribunal at the request of the parties.

The main features of the award are as under:

1. An agreement was reached on Polavaram Project. According to this agreement 80 TMC of Godavari Water will be diverted from Polavaram Project to Krishna River. The water to be diverted in Krishna will be shared. Andhra Pradesh would divert 45 TMC and Karnataka & Maharashtra would divert 35 TMC of water.
2. The states of Madhya Pradesh, Maharashtra and Andhra Pradesh shall jointly proceed with the Inchampalli Multipurpose Project. These states shall share the cost of storage, power and benefits. This project shall be carried out under the directions Inter-State Control Board having the representatives of states of Madhya Pradesh, Maharashtra and Andhra Pradesh.
3. The award may be altered, amended or modified by agreement between the party States or by legislation of Parliament.257

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The award was given by the Tribunal on 27.11.1979. On 25.02.1980, the central government sought clarification on a few aspects. The further award was delivered by the Tribunal on 07.07.1980.

State of Andhra Pradesh filed a suit in the Supreme Court of India claiming that the State of Maharashtra is illegally constructing Babhali barrage within the reservoir bridge of Pochampad dam contrary to the award. It was also alleged that the State of Maharashtra wants to utilize the water of Pochampad dam by invading the reservoir thus depriving the State of Andhra Pradesh of water for drinking and irrigation purposes.258

The State of Maharashtra stated that an agreement entered into on 06.10.1975 between the states of Maharashtra and Andhra Pradesh allowed it to utilize 60 TMC waters not for new projects Maharashtra contended that there is no restriction on any projects or their sites in Maharashtra. It could set up a project anywhere in the Godavari basin between Paithan dam site, Siddheswar dam site, Nizamsagar dam site and Pochampad dam site.

The Tribunal formed to settle the water sharing dispute of river Godavari divided the waters of on the basis of the agreements already entered into between the party states. The award of the Tribunal approved the agreement of 06.10.1975 reached between the states of Maharashtra and Andhra Pradesh. The agreement between the states of Karnataka, Maharashtra, Madhya Pradesh, Orissa and Andhra Pradesh signed on 19.12.1975 was also endorsed in the award.

After going through the agreements between the states and the Award of the Tribunal, the Supreme Court concluded that:

(i) The utilization of 60 TMC water by Maharashtra for the new projects on the Godavari is not confined only to the waters flowing within the State of Maharashtra.
(ii) Neither the agreements nor the award specify that the use of less than 60 TMC water for new projects by Maharashtra shall be from the water that is flowing in the catchment area.

(iii) The assertion of Maharashtra that the Babhali barrage project requires only 2.74 TMC of water for new projects was accepted. The court rejected the contention that Babhali barrage would enable Maharashtra to draw and utilize 65 TMC of water from the storage of Pochampad project.

The court constituted a three member supervisory committee. The committee shall have a representative from the Central Water Commission who shall also be the chairman of the committee and one representative each from the states of Andhra Pradesh and Maharashtra. The court also stipulated the powers and functions of this committee.259

Recently the Chief Ministers of Telangana and Maharashtra signed a memorandum of understanding on setting up an inter-state water board on Godavari projects. This water board will help the two States to amicably utilize the waters of the river Godavari and its tributaries.260

6.10.6. Tungbhadra River Dispute

Tungbhadra is a tributary of the river Krishna. It is formed by the union of two rivers-Tunga and Bhadra in the Western Ghats. Tungabahdra joins Krishna beyond Kurnool. Flowing through Karnataka and Andhra Pradesh, it has the drainage area of 27,574 sq. miles. The governments of the then states of Hyderabad and Madras signed an agreement on 7 November 1938 regarding the sharing of the waters of Tungbhadra River. Another agreement was signed in June 1944. This agreement superseded the agreement of 1938.261

Another agreement was signed between the Governments of Hyderabad, Mysore and Madras and the Government of India in December 1945 to supplement the agreement of 1944. The sharing of water went on smoothly until 1956 when the trouble started. The complications arose because of the following two reasons:262

1. Since Tungbhadra was a tributary of River Krishna could it be taken as a ‘unit’ for the purpose of inter State water dispute;
2. The boundaries of the states were changed drastically after the reorganization of states.

259 Ibid.
261 B. R. Chauhan, Settlement of International and Inter-State Water Disputes in India 310 (Indian Law Institute, N. M. Tripathi, Bombay, 1992).
262 Id., at 311.
The validity of the agreements signed on sharing of the waters of Tungbhadra before Independence and the impact of Indian Independence Act, 1947 on these agreements were raised before the Krishna Waters Dispute Tribunal. The states of Mysore and Andhra Pradesh requested the Tribunal to decide on the utilization and distribution of the entire Krishna River including its tributary- Tungbhadra. The Tribunal acceded to this request.

6.10.7. Palar River Water Dispute

Palar River originates in Kolar district of Karnataka. It flows through Andhra Pradesh and falls into the Bay of Bengal. On 18 February 1892, an agreement was signed between the states of Mysore and Madras stating that no new irrigation reservoir that would result in the diversion of water of any river could be constructed by Mysore without the previous consent of Madras. In 1902, Mysore sought consent of Madras to increase the capacity of Bethamangalam tank on the assurance that the water of the tank would be used for domestic purposes and manufacture of Kolar goldfields. It also undertook not to increase the yearly draw off without reference to Madras. The waters of Palar River fell drastically in 1927 in Madras. The latter suspected that Mysore had constructed additional irrigation reservoir. The refusal by Mysore to provide any data increased the mistrust. The state of Madras approached the Central Government with a request to form a council under Article 263 of the Constitution. Joint Investigations were conducted and it was concluded that Mysore had not breached any agreement.

6.10.8. Musakhand Dam Project

Karamanasa river rises in Bihar and runs through Uttar Pradesh. The total catchment area of this river is 1474 sq. km. out of which about 425 sq. km. is in Bihar. When the state of Uttar Pradesh wanted to construct Musakhand dam, the Central Water and Power Commission directed Uttar Pradesh to obtain consent of Bihar. Disagreement arose on the sharing of water and cost of construction of the dam. Since the states were unable to solve the dispute, Union Ministry of Irrigation and Power was approached in 1965. This resulted in an agreement acceptable to both the states.

263 Id., at 134.
264 Id., at 313.
265 Id., at 313.
6.10.9. Bajaj Sagar Dam Project

Mahi river rises in Madhya Pradesh, passes through Rajasthan and Gujarat and falls into Gulf of Cambay. Three projects were planned on this river. However there was disagreement between the parties regarding the sharing of cost and water. The Union Ministry of Irrigation and Power negotiated with the states and agreement was reached between Gujarat and Rajasthan on 10 January 1966. Later, a supplemental Agreement was also concluded between these states on 29 May 1975 for smooth acquisition of land, rehabilitation of the displaced person and awarding proper compensation.

Undoubtedly, the Indian judiciary has traditionally played a significant role in the development and shaping of water laws and jurisprudence in India. The decisions in recent years must be perceived in the background of the changes affecting the water sector, as well as the substantial policy changes occurred in the country. The judgements of the courts with regard to pollution of water under the Water Act led to the creation of a fundamental right to clean water under Article 21 of the Constitution. The Supreme Court as well as the different High Courts have defined and demarcated the contours of the right further under different settings. While adjudicating different matters the Courts have also considered significant principles of environmental law such as ‘Sustainable Development’ as well as the landmark ‘doctrine of public trust’. The extensive domain of various judgments relating to environmental protection, water pollution control, its availability and access for all and determination of rights of different users including resolution of inter-state conflicts, itself suggests that the Courts have been aware of the appropriate development paradigm while forming judicial attitude in particular circumstances.

266 Id., at 314.
267 Id., at 315.
268 Philippe Cullet “Water Sector Reforms And Courts In India Lessons From The Evolving Case Law” available at http://www.ielrc.org/content/a1006.pdf (Visited on 4 May 2016).