Chapter – III

Water Pollution and Nuisance Law
Groundwater is a valuable resource and an important environmental asset necessary for human activities. The quality of water is almost equal in importance of quantity in any water resource planning. The problem is, however, nor is just one of quantitative availability, quality also an issue. Excessive groundwater extraction coupled with haphazard disposal of untreated urban and industrial wastes and over application of fertilizers, pesticides in agricultural field have resulted in groundwater depletion and pollution. The problem is specially serious in coastal areas where saline water intrusion is endangering the fresh groundwater. In India the most convenient means of disposal of wastes is to put it under the soil. But there is serious danger in it. The land-fill site which is filled by industrial waste will in no time contaminate the groundwater as the chemicals will leak and go underground. Most of the countries including India, however, remain firmly committed to land-fill despite the danger of underground pollution.

A study conducted by the UNICEF in 49 districts of state has shown that the contamination is so high that it needs immediate intervention. In the Bulletin of WHO, Allen H. Smith, Professor of Epidemiology at the University of California at Berkeley, USA had reported that Bangladesh was sitting on a volcano of a naturally occurring arsenic, resulting in fatal diseases like cancer.

If the UNICEF report is to be believed, U.P. is fast heading the Bangladesh way. Since the major rivers are highly polluted, groundwater pollution related to seepage from the river is probably extensive.

In overall, limited availability of freshwater as well as new concern for water quality and sustainability reinforce the need for a new regulatory paradigm. Early recognition of problem and proper management will save this natural resource. But there is no miracles about to happen in the near future. Solution have to be identified that will address not only the decreasing of the groundwater table but also increasing contamination.

The First National Committee, to consider the issues relating to environmental legislation, enlisted about 200 odd laws, pertaining to environment protection before and after independence in India. However, the pre-independence laws have not dealt with environmental protection exclusively.

Thus without hampering development, the legal mechanism shall strive to achieve these objectives. The legal mechanism in India reveals four categories viz., Penal liability, tortuous liability, statutory regulations and fundamental rights to protect the environment.

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5. Ibid.
7. Report of Committee for Recommending Legislative measure and Administrative Machinery for Ensuring Environmental Protection, Department of Science and Technology, Government of India, New Delhi, 1981.
9. Ibid.
A. Pre-Independence Laws to Control Water Pollution

At the dawn of the British Raj in India, some initiatives were taken to control water pollution. But these laws, however, had a narrow purpose and limited territorial reach.

One of the first attempts included:

- The Shore Nuisance (Bombay and Colaba) Act 1853, authorized the Collector of Land Revenue in Bombay to order the removal of any nuisance below the high water in Bombay harbour. Similarly another oldest statute was framed to regulate the pollution produced by the Oriental Gas Company by imposing fines on the Company and giving a right of compensation to anyone whose water was “fouled” by the company’s discharges.

This Act was expected to satisfy those who were agitating against the establishment of the gas company which might pollute the holy or pure water.

- The East India Irrigation and Canal Act, 1859 was one of the other attempt where the legislature provided for free supply of wholesome water for the irrigation purposes.

It may be noted in the old statutes regarding the pollution, no systematic efforts were made to define the pollution of water.

Further, there were no statutes in the past to control the pollution of underground water which is essential requirement for the purpose of safe

10. Section 1.
drinking water. Under initial statutes, no systematic approaches were made to define either nuisance or fouling of water. Miscellaneous Acts contain no provision for groundwater which requires attention from water resource bodies or government.

The above Act is scanty and weak which has not covered many aspects of water pollution. There is a wide range of scope of improvement of Act to cover all sorts of water pollution such as groundwater.

Few Acts were also passed in British India to control the water pollution. Some of them are given below:

(a) The Sarai Act 1867 made it mandatory for a keeper of a sarai or an inn to keep it thoroughly clean. The water resources in a sarai or an inn, were supposed to be kept in a clean and orderly manner. A penalty of rupees 20 was imposed for failure to maintain the standard of water.

(b) Obstruction in Fairways Act, 1881 was one of the earliest statute which dealt with prevention of fairways leading to port.

(c) The Indian Fisheries Act, 1897, prohibited an individual from polluting water by poisoning it with lime or noxious materials, failing which one would be punishable with imprisonment that might be extended to two month or with fine which might be extended two hundred rupees.

(d) Water pollution by oil has been regulated by the Indian Ports Act, 1908. Any violation of the above provisions entailed a fine extending to rupees five hundred and reasonable expenses which may be incurred in removing the same.

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12. Section 7.
13. Section 7.
14. Section 6(2).
Two early post-independence laws touched on water pollution. The Factories Act 1948 required all factories to make "effective arrangements" for waste disposal.\(^\text{15}\) The Act further provides the imprisonment and fine for non-compliance of the above section.\(^\text{16}\) Secondly, the Damodar Valley Corporation Act, 1948 authorises the Corporation to frame regulations for prevention of Water pollution with the previous sanctions of Central Government.\(^\text{17}\) The Corporation has framed the Damodar Valley Corporation (Prevention of Pollution of Water) Regulations, 1957, for the prevention of water pollution. The regulation provides for the imposition of a fine up to one thousand rupees and rupees one hundred per day for continuing offence, after the conviction for the first breach.\(^\text{18}\) In both these laws, prevention of water pollution was only incidental to the principal objective of the enactment.\(^\text{19}\)

**Water Pollution and Law of Nuisance**

The year 1860 was a landmark in the history of water pollution law when a systematic approach was adopted to control water pollution. That enactment was Indian Penal Code where problem of water pollution has been dealt with within the chapter on Public health and safety. Sections 268, 269, 277, 284, 290 and 425 of Indian Penal Code, Civil Procedure Code and section 133-134 of the CrPC, 1973 focus an effective, speedy and preventive remedies for public nuisance cases.

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\(^{15}\) Section 12.  
\(^{16}\) Section 92  
\(^{17}\) Section 16.  
\(^{18}\) Thakur, Kailash: Environmental Protection Law and Policy in India, 2003, p. 215.  
Nuisance is of two kinds (i) public nuisance, (ii) private nuisance. Private nuisance is interference with the use of land whereas public nuisance denotes an interference with a right common to the general public. Although both categories have substantial nexus with environmental management, the law of public nuisance has predominant position. Section 268 of I.P.C. deals with public nuisance. Public nuisance or common nuisance is an offence against the public either by doing a thing which tends to be annoyance of the whole community in general or by neglecting to do any thing which the common good requires. It is an act affecting the public at large, or some considerable portion of them; and it must interfere with rights which members of the community might otherwise enjoy. Acts which seriously interfere with the health, safety, comfort, or convenience of the public generally, or which tend to degrade public morals have always been considered public nuisance.

Public nuisance can only be the subject of one indictment, otherwise a party might be ruined by a million suits. An indictment will fail if the nuisance complained of, only affects one individual or a few individuals.

Section 277 defines fouling of water of public spring and reservoir. The water of a public spring and reservoir belongs to every member of the public in common, and if a person voluntarily fouls it, he commits a public nuisance.

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22. Section 268 says, "A person is guilty of a public nuisance, who does any act, or is guilty of an illegal omission, which causes any common injury, danger, or annoyance to the public or to the people in general who dwell or occupy property in the vicinity or which must necessarily cause injury obstruction, danger or annoyance to person who may have occasion to use any public right".
24. Section 277 - "Whoever voluntarily corrupts or fouls the water of any public spring or reservoir, so as to render it less fit for the purpose for which it is ordinarily used, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both".
nuisance. In order to attract the provision of this section it is necessary that the act is voluntary which means that the act is committed with intention and knowledge to foul the water. Thus the act committed involuntarily will not attract section 277 whatever the consequence might be. This section is applicable to the water of public spring or reservoir only and it will not cover water in other types of courses. The word ‘corrupt’ and ‘foul’ takes care of purity of water but the pollution in the modern technological sense would go beyond these words. The legislature simply prescribed a minimum punishment for the fouling of water. At that time it did not foresee the seriousness of water pollution. It is surprising that since then even none of the state legislatures in India made any amendment to section 277. Keeping in view the seriousness of problem of water pollution, the sanctions do not seem to have much force in recent times.

The other provision which provides punishment against water pollution is section 269. This section is framed in order to prevent people from doing acts which are likely to spread infectious diseases. Section 284 of the code is also enacted in such wide terms as to include any handling of poisonous substances as to endanger human life or likely to cause hurt or injury to any person by poisoning wells and rivers as well.

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25. Section 269 - “Whoever unlawfully or negligently does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to six months or with fine, or with both”.

26. Section 284 – “Whoever does, with any poisonous substance, any act in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any person, or knowingly or negligently omits to take such order with any poisonous substance in his possession as is sufficient to guard against any probable danger to human life from such poisonous substance, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupee, or with both”.
Section 290 covers the pollution of water other than springs and reservoirs.\(^\text{27}\) This section provides the punishment of a nuisance falling within the four corners of the definition given in section 268 but not punishable under any other section. A water polluter could also be prosecuted and punished under section 425 of the code for mischief if his act causes wrongful loss or damage to public or to any person or if his act causes destruction of any property or diminishes its value or utility.\(^\text{28}\) Hence causing diminution of water supply may be treated as mischief and the possible direct cause may also be pollution. The penalty for such an offence is meagre which seems to be meaningless for the people to herald persecution under section 268.

**Remedying Public Nuisance**

It would be better option to use alternative remedies given in the procedural Act. When harm is of such a nature that it may affect a lot of people, it attains the character of public nuisance. The extent of harm may not be ascertainable, or it will be easy for the court to quantify damages and apportion them. The court may also find the problem as a hurdle. To overcome such crisis, there are techniques, tailored into our legal system.\(^\text{29}\) For this remedies are available in both criminal law as well as in tort. They are:

(a) a criminal prosecution for the offence of causing a public nuisance;

(b) a criminal proceeding before a magistrate for removing a public nuisance;

and

\(^{27}\) Section 290 - “Whoever commits a public nuisance in any case not otherwise punishable by this code, shall be punished with fine which may extend to two hundred rupees”.

\(^{28}\) Section 425 of I.P.C. – “Whoever with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public or to any person, causes the destruction of any property, or any such change in any property or in the situation thereof as destroys or diminishes its value or utility, or affects it injuriously, commits “mischief”.

\(^{29}\) Leela Krishnan P2 op.cit. p. 33.
(c) a civil action by Advocate General or by two or more members of the public with permission of the court, for a declaration, or injunction, or both. \(^{30}\) Hence it is submitted that even an injunction to prevent public nuisance is permissible. It further explains that a common nuisance is not excusable on the ground that it causes some convenience or advantage.

The remedies are quite old but during the recent years the higher judiciary has imparted new dimensions to these remedies. \(^{31}\) The old Indian laws, which have bearing on the environment, have hardly been used in past. Therefore, the courts could have been blamed for the lack of awareness and the initiative of the people. However, the judiciary responds and acts in consonance with the demands of the people and the society. \(^{32}\)

The law of public nuisance contained in sec. 133 \(^{33}\) of the Criminal Procedure Code was used in a few cases in the past. The scope of the provision is an instrument of pollution control. Only since 1979, the Supreme Court of

\(^{30}\) Section 91 of CPC provides for filing of a suit in the case of public nuisance or other wrongful acts affecting the public at large. It states that such a suit can be instituted for declaration, injunction or such other relief which may be appropriate in the circumstances of the case.

\(^{31}\) Thakur Kailash Lal, op.cit., p. 305.

\(^{32}\) Leela Krishnan P, op.cit., p. 35.

\(^{33}\) Section 133 - “When a District Magistrate, a Sub-divisional Magistrate, or any other Executive Magistrate, specially empowered in this behalf by the State Government, considers on receiving a report of a police officer or other information, and on taking necessary evidence, that –

(1) any obstruction or nuisance should be removed from any public place or from any way, river, or channel.

(2) any trade or the keeping of goods is injurious to the health or comfort of the community;

(3) any building or substance is likely to cause conflagration or explosion;

(4) any building, tent, or structure, or a tree is likely to fall and cause injury;

(5) any tank, well, or excavation should be fenced to prevent danger to the public; or

(6) any dangerous animal should be destroyed or confined,

he may make a conditional order requiring the person causing the nuisance to do the necessary acts to remove, prevent or stop it, or, if he objects, to appear before himself or some other Executive Magistrate subordinate to him to show cause. Such an order is not called in question in a Civil Court.
India has captured potentiality of the law of nuisance in the code of Criminal Procedure Code and has examined emerging parameters of public nuisance.\(^34\)

The judicial activism of the 80s, played an important role in the field of environmental protection than in any other field. Greening the law of public nuisance, in *Ratlam Municipality v. Vardhi Chandra*\(^35\), is a milestone in the field of environmental protection. The Supreme Court in this case identified the responsibilities of local bodies towards the protection of the law of public nuisance in the code of Criminal Procedure as a potent instrument for enforcement of their duties.

Justice Krishna Iyer further observed "public nuisance because of the pollutant being discharged by big factories to the detriment of the poorer sections, is a challenge to the social justice component of the rule of law".\(^36\)

The guns of section 133 of Cr.P.C. have gone into action whenever there has been a public nuisance which affect the health, comfort, safety and inconvenience of the public at large. In *M.C. Mehta v. Union of India*\(^37\), the Court observed that the nuisance caused by the pollution of the river Ganga is a public nuisance, which is wide spread in range and indiscriminate in its effect and it would not be reasonable to expect any particular person to take proceedings to stop it as distinct from the community at large. Moreover, the memorable decision of the Supreme Court in Ratlam Municipality Case has given flesh and blood to skeleton provisions in section 133 of the Cr.P.C.\(^38\)

35. AIR 1980 SC 1633.
36. AIR 1980 SC 1633.
37. AIR 1988 SC 1115.
Judicial enthusiasm in Ratlam case finds in rejuvenating the rarely used provisions of Cr.P.C. for the control of water pollution. It appears that enthusiasm slips in few cases where judiciary had to deal with the pollution of water. Decision of the Court in Tata Tea Company Ltd. shows that the Court at the times tended to limit the application of the concept of public nuisance only to those areas not covered by new legislation. It clearly shows the conflict of jurisdiction. The provision contains the inherent characteristic of preventive and remedial jurisdiction widening the scope of the law of nuisance under Cr.P.C. would strengthen the hands of the executive in taking up measures to meet water pollution maladies.

The above criminal law aspect of pollution attracted only a few prosecutions. The reason may be that the people still followed their dharmsastras which did not encourage activities causing pollution or that the ignorance of the consequences of pollution did not allow the people to avail of the cumbersome criminal procedure to initiate prosecution. Thus in view of lack of peoples' initiatives, the landmark start in the legal control environmental pollution remained a mere paper work. Further law specially dealt only with limited pollutants.

**Tortuous Liability**

Action brought under tort law, are among the oldest of the legal remedies to abate the pollution. Most pollution cases in tort law fall under the categories of nuisance, negligence and strict liability. To these traditional

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39 1984 KLT 645.
40 Leela Krishnan P.: op.cit. p. 42.
41 Id., p. 4.
categories, the Supreme Court has added a new class based on the principle of 'absolute' liability. The norm was developed by the court in the post Bhopal period in response to the spread of hazardous industries and was later adopted by the legislature.42

The rules of tort law were introduced into India under British rule. But Indian courts may adopt an English principle, if the same is in consonance with the concept of justice, equity and good conscience in India.43 Consequently, in suits for damages for torts, court followed the English common law in so far as it was consonant with these principles. Common law based tort rules continue to operate under Art. 372 of the Indian Constitution which ensured the continuance of existing laws.44

The law relating to environmental pollution is deprived of two principal sources, namely common law developed by court and statute law with the regulations and bye laws made there under.

In Vellore Citizens Welfare Forum v. Union of India45 quoting from Blackstone’s commentaries on the English law of nuisance published in 1876, the court held that since the Indian legal system was founded on English common law, the right to pollution free environment was a part of the basic jurisprudence of the land.46

Under the law of tort to abate environmental pollution is the oldest legal remedy. Majority of pollution cases in tort fall under the following four categories:

44. Shayam Diwan & Rozencranz, op.cit., p.
45. AIR 1996 SC 2715.
46. Id. p. 2722.
(a) Private Nuisance
(b) Negligence
(c) Strict liability
(d) Absolute liability

(a) *Private Nuisance*

Private Nuisance means an unlawful interference with a person's use or enjoyment of land, or some right over, or in connection with it.\(^{47}\) Reasonableness of the defendant is the central question in nuisance cases. To determine the 'reasonableness', courts will be guided by ordinary standard of comfort prevailing in the neighbourhood. The tort emphasizes the harm to the plaintiff rather than the conduct of the defendant.\(^{48}\)

An action for private nuisance may seek injunctive relief as well as damages, both. A private party which suffers from an unreasonable interference in the enjoyment of his or her property, may bring a common law action to restrain the polluter. The following case, considers whether section 58 of the Water Act bars the jurisdiction of the civil courts to entertain private nuisance suits?

In *Sreenivasa Distilleries v. Thyagarajan*\(^{49}\), the section 58 is intended to preserve the statutory protection given to the Board untouched by civil actions. Now the present action is only preventing the defendant from polluting water. Hence, section 58 does not expressly prohibit the jurisdiction of the civil court to entertain any suit or proceeding restraining the defendant to cause pollution.

\(^{48}\) Gersten v. Municipality of Toronto (1973) 41.
\(^{49}\) AIR 1986 AP 328.
In *Nagarjuna Paper mills Ltd. v. S.D.M.*, the A.P. High court held that section 133 injunctive relief was available as long as it did not interfere with an order of a state pollution control board issued under the Water Act. The court noted that the magistrate's decision to issue an order for injunctive's relief was based on a report submitted by the superintendent engineer of Pollution Control Board itself, which stated that water pollution from the paper mills was harming to the people and cattle. The view was adopted by a division bench of the Kerala High Court in *Krishna Panicker v. Appukuttan Nair* overruling the contrary opinion expressed earlier in *Tata Tea Ltd. v. State of Kerala*.

The 1905 judgement of the Calcutta High Court in *J.C. Galstaun v. Dunia Lal Seal*, may be earliest reported pollution control case in India. Apart from its historical significance, the case is important because it shows how the common law regulatory system can check polluters in a pre-industrialised society. The court awarded the Rs. 1000 in damages – a very large amount at that time.

(b) Negligence

In the law of torts, negligence has two meanings:

(i) A mode of committing certain other torts – e.g. trespass, nuisance and defamation. In this sense negligence is carelessness.

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50. 1987 Cri.L.J. 2071.
53. (1905) 9 CWN 612.
(ii) An independent tort; A common law action for negligence may be brought to prevent environmental pollution. In an action for negligence, the plaintiff has to prove that (a) the defendant owed a duty of care to the plaintiff, (b) there was a breach of that duty, (c) plaintiff suffered damages as a consequence thereof.

An act of negligence may also constitute a nuisance if it unlawfully interferes with the enjoyment of another’s right inland. Similarly it may also amount to a breach of the rule of strict liability in *Rylands v. Fletcher* if the negligent act allows the escape of anything dangerous which the defendant has brought on the land.\(^55\)

The causal connection between the negligent act and the plaintiff’s injury is often the most problematic link in pollution cases.\(^56\) The *Mukesh Textile Mills (P) Ltd. v. H.R. Subramanya Shastry*\(^57\), the Mukhesh Textile Mills, had a sugar factory in Harige village, Shimoga district. Some 8000 tonnes of molasses were stored in the earthen tank. A large quantity of molasses in the tank overflowed and damaged the standing crops and sugar cane.

Respondents brought the suit for damages of Rs. 35000. The Court held that the consequent damage suffered by the respondents were attributable to actionable negligence of the appellant. The court further held that Rs. 10500 for quantum of damages (for loss of crops) and Rs. 4200 for damages of sugarcane respectively, had to be awarded to the plaintiff in total sum of Rs.

\(^{55}\) Shyam Diwan & Rozencranz: op.cit., p. 100.
\(^{56}\) Ibid.
\(^{57}\) AIR 1987 Kar 87.
The above claimed amount for damages by the respondents was somewhat exaggerated.

(c) Strict Liability

The well established common law principle, developed by the 19th century judiciary closely related to the law of nuisance. This doctrine known as the rule in *Rylands v. Fletchers*, is probably the best known example of strict liability recognized by our law. Because of its exceptions it reduces its operation. Exceptions to the rule have been recognized in *Rylands v. Fletcher*, are as follows: (i) an Act of God, (ii) Act of third party, (iii) plaintiff's own fault, (iv) Consent of the plaintiff, (v) statutory authority.

(d) Absolute Liability

The rule of absolute liability was formulated by the Supreme Court in *M.C. Mehta v. Union of India*, the genesis of absolute liability was the Shriram Gas Leak Case in which court expressly stated that such liability will not be subject to such exceptions as have been recognized under *Ryland v. Fletcher*. The rule of absolute liability was applied in *Indian Council for Enviro-Legal Action Group v. Union of India*. The facts of the case were that Hindustan Chemical Ltd., Silver Chemicals and Jyoti Chemicals were situated in the same complex and controlled by the same groups of individuals. The complex was situated within the limits of Bichari village in Udaipur District of India.

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59. (1868) LR 3 H.L. 330.
60. AIR 1987 SC 1086 at p. 1099.
62. Supranote 59.
63. AIR 1996 SC 1446.
Rajasthan. The sludge of the chemical industries posed grave threat to earth, to underground water, to human beings, to cattle and to village economy.

A Public Interest Litigation (PIL) was filed in 1989 for the appropriate remedial action. The court held that the above respondents are absolutely liable to compensate for the harm caused by them to the villagers of affected area, to the soil and to the underground water and hence, and they are bound to take all necessary measures to remove the sludge and other pollutants lying in the affected area, and also to defray the cost of the remedial measures required to restore the soil and the underground water sources. First of all, this principle was also applied by the M.P. High Court for the compensation of Bhopal victims.\(^{64}\)

The rule of absolute liability is applied by the Supreme Court in the Vellore case\(^{65}\) where the pollution caused by the discharge of untreated effluents by industries in Tamil Nadu.

The law of tort is largely uncodified and also based on accepted principles. Michel Anderson has analysed this area with decided cases and remarked\(^{66}\):

"The sustainable law of tort in India offers advantage similar to those in the United Kingdom and the U.S.A. There is a starting paucity of tort litigation in general, and non environmental issues in particular. Several systematic features may account for this trend; first, there remains the legacy of colonial regime which preferred to resolve disputes through criminal law, or

\(^{64}\) Union Corbide Corporation v. Union of India Civil Revision NO. 326 of 1988, 4 April 1988.


\(^{66}\) See, Shyam Diwan & Armin Rozencranz: op.cit., p. 201.
administrative dictate rather than civil litigation; secondly, tort litigation is subject to extreme delay, typically requiring in excess of 15 years to secure a final judgement; thirdly, the law of tort is largely uncodified, and it is not popular among lawyers in a system where both legal training and written commentaries focus upon interpreting comprehensive statutes”.

Thus the common law principles including nuisance, negligence, strict liability govern this particular field. The Supreme Court has traced the source of constitutional and statutory provisions to protect the environment to the inalienable common law right of every person to a clean environment.67

Right to Riparian Owner under Easement Act, 1882 and Water Pollution

The post Penal Code did not see any major change in the regulation of water pollution. The provisions of Easement Act, specially dealing with water pollution. The act has, in fact, codified the common law doctrine of riparian rights to unpolluted water.68 The illustration (f) and (h) of section 7 of the Act in particular, refers to water pollution. Illustration (f) says, “the right of every owner of land, within his own limits, the water which naturally passes or percolates by, over or through his land, shall not, before so passing or percolating, be unreasonably polluted by other persons”.

The rule incorporated in this illustration is even wider in scope than the common law doctrine of riparian owners rights in that it extends not only to natural stream but also to percolating water and water flowing in undefined channel and stagnant water such as sea ponds or lakes. Pollution, though not

67. Supra note 65.
68. Thakur Kailash Lal: op.cit., p. 211.
specifically defined in the Act but must refer to any alteration of natural quality of water whereby it is rendered less fit for any purpose for which in its natural state it is capable of being used. The illustration uses the words unreasonable pollution which means an appreciable and not temporary or trifling pollution. In determining so, regard must be had to all the consequences which flow from it.\footnote{69}

Illustration (h) among others, protects the right of every riparian owner to get water of a natural stream, a natural lake or pond into or out of which a natural stream flows from any material alteration in temperature of water. There seems to have been an overlapping in illustrations (f) and (h) in regard to alteration in temperature as this aspect is covered under unreasonable pollution as used in illustration (f). In cases of material alteration or injury as amounting to reasonable pollution the person affected has right to relief by way of injunction and can also claim damages from the polluter.\footnote{70}

In an American case, the plaintiff and defendant were adjoining landowners. Plaintiff’s land was at a low level. Defendant turned sewage from his house into his well, and thus polluted water that percolated underground from defendant’s to plaintiff’s land. The result of that water, which came into plaintiff’s well from such percolating water when he used his well by pumping, got adulterated with the swage from defendant’s well. It was held that plaintiff had a right of action against defendant for so polluting the source of supply.\footnote{71}

\footnote{69} Ibid.\footnote{70} Id., p. 211.\footnote{71} Chicago, R.I. & g. Ry Co. v. Toronto Country Water Control & Improvement Dist. No. 173, S.W. 2d 55 123 Tex 432.
A riparian proprietor has a right to the water flowing through his land in its natural state in a natural stream. If the water is polluted by a proprietor high up in the stream and that causes damage to a riparian owner then it gives the riparian owner a valid cause of action against the proprietor who has polluted the water. The damage should be in law and may not have occurred in fact. The above principle of law would apply to a natural stream of water not to a artificial water course.\textsuperscript{72}

This common law right is rarely invoked in contemporary litigation concerning water pollution. The Supreme court, however, revived this doctrine in \textit{M.C. Mehta v. Union of India}\textsuperscript{73} by stating:

"In common law the Municipal Corporation can be restrained by an injunction in an action brought by a riparian owner who has suffered on account of the pollution of the water in a river caused by Corporation by discharging insufficient treated sewage into the river".

The Act recognizes the prescriptive right to pollute water where the right has been peacefully enjoyed without interruption for 20 years.\textsuperscript{74} The prescriptive right to pollute water whether natural, artificial sea, or underground, however, cannot be acquired against the government which has sovereign rights in water.\textsuperscript{75} The recognition of prescriptive right to pollute water is a drawback of Indian Easement Act.

\textsuperscript{72} Wood v. Waud, 1849 (3) Exch. 748.
\textsuperscript{73} AIR 1988 SC 1115.
\textsuperscript{74} India Easement Act, 1882, Section 15(d).
\textsuperscript{75} Indian Easement Act, Section 2.
B. Post-Independence Laws and Water Pollution

The post-independence laws of Central Government paid attention mainly on industrial pollution. The Explosive Substance Act 1952, Petroleum Act 1948, Atomic Energy Act 1962, Insecticides Act 1962, etc. indirectly regulated pollution of water. Basically these laws were passed to regulate these industries. Parliament also passed River Board Act, 1956 to prevent the pollution of water of the valley and the inter state rivers respectively.

Constitution and Water Pollution

The Constituent Assembly did not give pollution as such place in the Constitution of India. Thus the problem of water pollution could not get Constitutional recognition.\(^6\) Despite this allegation, the Indian Constitution is first in the world which made provision for protection of Environment. But at the Constitutional level – India stands first to provide a constitutional protection to the environment.

Article 47 directs the state to raise the level of nutrition and standard of living of its people and to improve public health\(^7\). State is required to take steps to provide pollution free environment 'to improve the public health. Article 48-A\(^8\) is one of the Directive Principles of State Policy, which provides that state shall endeavour to protect and improve the environment to safeguard the forests and wild life of the country.

Article 51-A(g)\(^9\) provides one of the fundamental duties of citizens to protect and improve the natural environment including forest, lakes, rivers, and

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76 . Dr. Musharraf: op.cit., p. 147.
77 . Constitution of India; part IV Directive Principles of State Policy.
78 . 42nd Amendment added new Article 48-A in 1976 under chapter iv.
79 . Chapter IVA added by 42nd Amendment in 1976 as a Fundamental Duties.
wild life and to have compassion for living creatures. Having regard to the grave consequences of the pollution of water, there is an urgent need for preventing and improving the natural environment which is considered to be one of the fundamental duties.

Although fundamental duties provided by part IV A of the Constitution are not enforceable like fundamental right, yet the Parliament is competent to enforce these duties by making laws.80

There are certain important cases decided by the Supreme Court regarding part IV-A of the Constitution where it has made harmonious interpretation of part IV and part IV-A, thus signifying the importance of fundamental duties.

In Rural Litigation Entitlement Kendra v. State of U.P.81, in this case the Supreme Court has issued direction to the state, having regard to Art. 51A(g). The court also reminded that preservation of the environment and keeping of ecological balance unaffected is a task to be undertaken both by the government and every citizens. It is a social obligation as well as fundamental duty of every Indian citizen to discharge this fundamental duty as enshrined in Article 51A(g) of the Constitution. Again in Sachidanand Pandey v. State of West Bengal82, the court took recourse to Article 51A(g) while dealing with a matter concerning ecological imbalance and pollution of environment, and held that whenever a problem of ecology is brought before the Court, the court is bound to bear in mind Articles 48-A and 51A(g) of the Constitution. While in

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81. AIR 1987 SC 359.
82. AIR 1987 SC 1109.
M.C. Mehta v. Union of India\textsuperscript{83}, the Supreme Court, in order to implement the duty as to improvement of environment has directed the Central Government and all State Pollution Control Board and the District Maistrate to monitor the enforcement of its orders. Assignment of such a watch dog function to the authorities was unprecedented. It gave them more awareness and strength for taking up antipollution measures.\textsuperscript{84}

There is, in practice, gross violations of this duty. Similarly clause (g) of Article 51A says that it is the duty to protect and improve the environment. But, we are causing irreparable damage to the environment and the creatures living therein in the name of development. Thus what has been commanded by Article 51Ag) has been followed more in breach than in observance. Therefore, these fundamental duties have not been successful in attaining the objects for which they have been incorporated in the Constitution. There is a lot more to be done in this regard.

**Municipal Laws**

The Panchayat, Municipalities and Municipal Corporation owe a duty to the citizens to provide clean environment.\textsuperscript{85} To fulfill its duty the Municipalities, Municipal Corporation and Panchayat were authorized to regulate the discharge, into water, any substance prejudicially affecting the purity and quality of water. UP Panchayati Raj Act, 1947 provides for water and watershed management. These Panchayats have power to prevent water pollution of water resources and to improve sanitation. Further the

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\textsuperscript{83} AIR 1988 SC 1115.
\textsuperscript{84} Id, pp. 1045, 1046.
\textsuperscript{85} Sunil Ambawani (J); "Environmental Justice : Scope and Access", AIR 2007 April, p. 53.
Municipalities of states like Uttar Pradesh, Punjab, Bihar, Tamil Nadu, West Bengal are governed by statute passed in 1916, 1911, 1920, 1922, 1932 respectively which provide construction of drains, saving water resources from bathing and washing. There was penalty also for polluting water. By 73rd amendment Act, 1992, in the Constitution of India, the Panchayats and Municipalities have become part of the Constitution of India. The powers, authorities and responsibilities of Panchayats and Municipalities have been expanded to provide social justice and to implement schemes given in XI and XII schedule respectively. These schedules enumerate subject which are closely related to environmental issues.

Despite these measures, if the problem of water pollution handled properly and effectively at grass root level, it could go long way to curb this evil at the national level. But the unfortunate part was and is that these Municipalities and Panchayats have inactive machinery to curb water pollution. This phenomenon continues till today, inspite of repeated strictures and directions from the judiciary.

Thus the first two decades of free India did not see any systematic approach to regulate water pollution, it made rather piece meal attempts in this area. Parliament, state legislatures, and municipalities all tried to regulate some

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87. This Amendment has added a new part XI to the Constitution consisting 16 Articles and new Schedule “Schedule Eleven”. The Eleventh Schedule contains 29 subjects on which the Panchayats shall have administrative control, one of the such subject is minor irrigation, water management and watershed development.
Twelfth Schedule (Article 243W) inserted by Constitution (74th Amendment) Act, 1992. Few subjects are given below:
(1) Urban Planning including town planning.
(2) Water supply for domestic, industrial and, commercial purposes.
(3) Public health, sanitation conservancy and Solid Waste Management.
88. Dr. Musharaf: op.cit., p. 102.
of the water pollutant, but the whole attention was on the industrial development. Minor penalty under the respective laws made them ineffective. All these reflect a capitalistic attitude in handling the problem.

**State Laws Relating to Water Pollution**

Few states felt the necessity to protect their resources from pollution by passing special laws. The era of special laws on water pollution began with passing of Orissa River Pollution Prevention Act 1953, it covered the river pollution only. Maharashtra, in 1970 came out with much more comprehensive statute. The Maharashtra Prevention of Water Pollution Act, 1970 for the first time defined pollution in elaborated terms. The violation of above Act provides the penalty upto three months imprisonment and fine of one hundred rupees or both. The Gujarat followed the same attempt in 1971 which was materialized in 1977. Though the Maharashtra Act took the lead yet, it confined its area to the two pollutant, industrial waste and domestic sewage; and secondly, the water pollution was given a second grade treatment because of minimum punishment which were prescribed under the Indian Penal Code for non serious offences. The Goa Groundwater Regulation Act 2002, provides the punishment for polluting and contaminating groundwater for the first offence fine upto five thousand and for the second and subsequent offence, imprisonment upto six month and fine upto ten thousand, every time.

The Himachal Pradesh Groundwater Act speaks about the grant or permit to extract and use the groundwater and imposes the restriction on

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89. Id., pp. 135-136.
90. Sec. 17, clause (b).
concerned authority to consider the quality of groundwater to be drawn with reference to proposed usage while granting or refusing the permit.\textsuperscript{91}

In addition to the above provisions, the Act further talks about the registration of existing users of groundwater and imposes an allegation on the concerned authority to consider the quality of groundwater with reference to its usage while granting or refusing a certificate of registration to the existing users of groundwater.\textsuperscript{92} Moreover, it is merit of the Act\textsuperscript{93} that it imposes an obligation to the users of the groundwater in terms of royalty to be paid to the state government for the use of the same.

The Kerala Groundwater (Control of Regulation) Act, 2002, provides that authority shall consider the following points in granting or refusing the permit (i) the quality of groundwater, (ii) chances of groundwater pollution.\textsuperscript{94} The person who contravenes any of the provisions and rules, shall be punishable with fine of rupees five hundred for first offence; and for second and subsequent offence, one thousand rupees.\textsuperscript{95} Similar provisions have also been incorporated in Karnataka Groundwater Act.

The Tamil Nadu Groundwater (Development and Management) Act 2003, is grossly inadequate in addressing the issues of groundwater pollution. The Act says nothing about polluters and penalties for such offences.

The Andhra Pradesh Ground Act 2002, provides the prohibition of water contamination by means of punishment upto six month or with fine

\textsuperscript{91} Sec. 7(5)(d)
\textsuperscript{92} Section 8, Sub-sec. (2)(d).
\textsuperscript{93} Section 12(1).
\textsuperscript{94} Section 7(7).
\textsuperscript{95} Section 21.
which shall not be less than two thousand rupees and may extend up to fifty thousand rupees or both.\footnote{96} 

The West Bengal Groundwater Resources (Management Control and Regulation) Act 2005, have the state level Authority shall consider the qualities of groundwater and implement the pragmatic strategies.\footnote{97} The punishment for such offence shall be fine which may extend five thousand rupees and for second offence with fine which may extend to ten thousand rupees.\footnote{98} 

To curb this hazards, more recently, state of U.P. has issued an order to all Development Authorities and State Pollution Control Board that before grant the permission to the applicant, it is necessary to see whether certain arrangement has been made, i.e. Rainwater Harvesting, Solid Waste Management and Sewage Treatment Plants. This rule is applicable to all buildings, complexes and Malls within the area of 20 thousand square metres.\footnote{99} 

It is well known fact that whatever rules and regulations are made for any purposes are generally not complied within the present scenario.

The Coastal Regulation Zone Notification, 1991, prohibits the discharge of untreated wastes and effluent from industries, cities and towns, mining of sand, rocks and other substrata materials, storage and disposal of hazardous substances, which damage the wholesomeness of water in general and groundwater in particular. These prohibited activities were indicated in \textit{Indian Council for Enviro-legal Action Group v. Union of India.}\footnote{100} It has been

\footnote{96}{Section 35.}
\footnote{97}{Section 6(1)(f).}
\footnote{98}{Section 16.}
\footnote{99}{Dainik Jagran, June 4, 2008, p. 1.}
\footnote{100}{(1996) 5 SCC 281.}
found that no follow up action has been taken either by the Coastal States, or Union Territories or by the Central Government. The provisions of the main notification were found to have been ignored and violated with impunity. Even though, laws have been passed for the protection of environment, the enforcement of the same has been tardy. These coastal areas have dynamic ecosystems and any development in the areas is likely to disturb this. Waste and Wastewater should be properly addressed and relevant laws strictly enforced. Little attention has so far been given to the most appropriate responses to pollution. Any efforts face many obstacles so that strict enforcement of groundwater laws have to be implemented before any further drilling or discharge of industrial effluents in water bodies.\footnote{101}

The Habitat Conference, Vancouver, British Columbia, 1976, and the World Water Conference at Argentine in 1977 recorded a detail discussion as regards water pollution. This discussion is not confined to a particular country, but it has crossed transnational frontiers.\footnote{102} In view of Global maturity with regard to this problem, few states have come forward and have enacted special laws to control and prevent the water pollution. But in recent past less attention has been paid to control and misuse of groundwater pollution. The earlier statutes failed to keep pace with the expanding needs of industrialization and urbanization.

C. Special Laws Relating to Water Pollution

The feeling began to strengthen that water pollution has become a national problem which should be tackled at the national level. Keeping this in

\footnote{101}{Ibid.}
\footnote{102}{Doabia T.S. (J.): op.cit., pp. 514-515.}
view it was though expedient not to depend on the efforts of individual states but to centralize the whole scheme of environment pollution control. The consequent result was enactment of recent legislations dealing with water pollution.

Water is a gift of nature. Human hand cannot be permitted to convert this bounty into a curse or an oppression. It is with a view to protect and preserve and save it for a future generations and to ensure good quality of life, the Parliament of India enacted the anti-pollution laws, namely the Water (Prevention & Control of Pollution) Act 1974 and Environment (Protection) Act, 1986.

The Water (Prevention & Control of Pollution) Act 1974 and Judicial Responses

The object of the Act is to ‘prevent and control’ water pollution and also maintain and restore the wholesomeness of water.\(^\text{103}\) It defines the term pollution in quite elaborate manner. Pollution means “such contamination of water or such alteration in the physical, chemical or biological properties of water or such discharge of any sewage or trade effluent or of any other liquid, gaseous or solid substance into water whether directly or indirectly as may or is likely to create nuisance, or endanger such water which may be harmful or injurious to public health or safety or to domestic, commercial, industrial, agricultural or other legitimate uses or to the life and health of animal or plants or of aquatic organism”.\(^\text{104}\) Thus modification of water by human efforts which

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\(^{103}\) Thakur Kailash Lal: op.cit., p. 218.

\(^{104}\) The Water (Prevention and Control) Pollution Act, 1974, Section 2(e).
renders it unsuitable for its particular use to which it could have been put had it been in its original state would amount to water pollution.105

There are other conspicuous definitions. Surface water pollution means “contamination of streams, rivers, lakes and reservoirs”.106 The term “stream” includes river, water course (whether flowing or for time being dry); inland water (whether natural or artificial); subterranean waters and sea or tidal waters.107 The original definition of “stream” including only any river, water course or inland water (whether natural or artificial) was discarded in favour of the present enlarged definition as the reach of pollution is quite wide. Sewage effluent means “effluent from any sewage system or sewage disposal works and includes sludge from open drains”.108 ‘Trade effluent’ finds an illustrative definition as including “any liquid, gaseous or solid substance which is discharged any premises used for carrying on any industry, operation or process or treatment or disposal system other than domestic sewage”.109

The above definition of pollution is quite wide and exhaustive. But pollution to tolerable or under permissible limits is not frowned upon. In other words, the standards of water quality or standards of sewage or trade effluents to be discharged in water bodies can be fixed.110

The Central Water Pollution Board and various State Boards are the agencies envisaged under the ‘law or having the primary responsibilities of controlling water pollution’. The Act provides for a permit system or ‘consent’

106. Section 2(e).
107. Section 2(j).
108. Section 2(g)
109. Section 2(k)
110. Dr. Musharraf: op.,cit., p. 146.
procedure to prevent and control of water pollution. Standard for discharge of effluent or the quality of the receiving water are not specified in the Act itself. Instead, Act enables State Boards to prescribed these standards. A person must obtain consent from the State Board before taking steps to establish any industry, oppression or process any treatment or disposal system or any extention or addition to such a system which might result in the discharge of sewage or trade effluent into a stream, well or sewer or on to land. The State Board may condition its consent by orders that specify the location, construction and use of the outlet as well as the nature and composition of new discharges.

The State Board must maintain and make a public register containing the particulars of the consent orders. The act empowers a State Board, upon thirty days notice to a polluter to execute any work required under a consent order which has not been executed. The Board may recover the expenses for such work from the polluters. However, Board has power to withdraw the consent if the condition are not complied with. It may from time to time review and make reasonable variation of condition. The most significant power of the State Board is the one to make, vary or revoke an order for the prevention or control of discharge. In exercise of this power, the State Board can require any person concerned to construct new, modify existing systems for disposal and to adopt remedial measures necessary for the control of water pollution. An appellate authority constituted by State Government can test the ‘reasonableness’ of the conditions imposed by State Board.

111. Shayam Diwan & Armin Rozencranz & Other: op.cit., p. 177.
113. Section 28 : Appellate authority shall consist of a single person or three persons as the government thinks fit.
The amendment Act of 1988 has introduced some provisions in the Water Act so as to remove some of the shortcomings in the functioning of the Boards by giving them additional powers. The new section 33A which empowers State Boards to issue directions to any person, officer or authority and such person, officer or authority shall be bound to comply with such direction. Prior to adoption of 33A, a State Board, could issue direct orders to polluters under section 32 of the Act. A State Board, however, could not exercise this power if the pollution arose from 'any accident or other unforeseen act or event. Moreover, a State Boards authority to issue order under section 32 was limited to orders directed to the polluter, not to government officials or other parties. The State Boards can also apply to courts for injunctions to prevent water pollution under section 33 of the Act. Under section 41, the penalty for failure to comply with a court order under section 33 or direction from the Board under section 3A is punishable by fines and imprisonment.

The amendments also increased the power of the Central Board relative to the State Boards. Under section 18 of the Act, the Central Government may determine that a State Board has failed to comply with Central Board directions and that because of this failure an emergency has arisen. The Central Government may then direct the Central Board to perform the functions of the State Board.

A significant and remarkable achievement of the 1988 amendment has been the incorporation of a provision for citizen’s suit in section 49 of the Act.

116. Ibid.
The addition of such a provision was much awaited. Now a State Board must make relevant reports available to complaining citizen, unless the board determines that the disclosure would harm ‘public interest’. Previously, the Act allowed courts to recognize only those actions which were brought by a Board, or with a previous written sanction of a Board. The citizen’s suit provision as enshrined in section 49 would result in a more diligent and effective enforcement of the Act. Moreover, it would also forestall the delays caused in the enforcement of the Act due to inaction on the part of Board’s official and end the total monopoly of water boards in initiating proceeding against the polluters.117

Despite the adoption of amendment to the Act in 1978 and later revision in 1988, the Water Act still suffers from some shortcomings which put a question mark on its efficacy to check and prevent the water pollution. Such as definitions of some important terms like ‘pollutant discharge of pollutant’; ‘toxic pollutant’; etc. are not provided in the Act. The Act provides a comprehensive definition of ‘streams’ but it does not include an ‘estuary’. It is not certain whether this is covered under the ‘river’, or ‘sea’ or ‘tide’ waters. In order to remove doubts it may be safe to write ‘estuary’ in the definition of “stream”.

An elaborate definition of pollution is envisaged in section 2(e) of the Act. If we closely see, it seems that a great deal of emphasis has been laid down on control of pollution of water from point sources only. There is a lack of meaningful control of non-point sources of pollution. Hence, the use of

117 Thakur Kailash Lal: op.cit., p. 221.
strong fertilizers, pesticides and insecticides etc. though covered under the term pollution indirectly and even the point sources of pollution such as emission of radio-active substances in air around the factories which get deposited in nearby water resources, the exposure water to temperature changes, still lie outside the perview of the legislation. Storage on land such as deposit of solid refuse of a mine or quarry on land which may eventually be carried into a stream and pollute it, is also not covered under the Act.¹¹⁸

However, the conglomeration of too many powers in the Board seems to reduce the significance of the consent granting and consent withdrawing powers. A deeper scrutiny of the provisions of the statute will show that most of the functions of the Board are of a deliberative, advisory, investigating and research oriented character. Except to limited extent in a case of emergency, a Board does not exercise any coercive powers of its own so as to bring the delinquent to obedience. In normal cases, an order of the court is to be sought for directing a person to desist from the polluting act. Nor the Board has power to impose prosecution in a court against the delinquent. The absence of penal powers by the Board appears to be a lacuna in the law and takes the winds out of the sail of the board which has to act as a powerful instrument of pollution control instead of confining itself to the level of prosecuting agency.

The act does not give a person who is directly affected by an action or inaction of a polluter, the right to institute a private prosecution. He has to get sanction from the board. This is likely to make the board weaker when it finds itself in a difficult position to take and implement independent decisions.¹¹⁹

¹¹⁸. Ibid.
Manifestly, there is an overdose of official representation in the composition of the Board. Public sector companies or corporations may themselves be polluters or potential polluters. There is no reason why their representatives should have a birth on the Board. It is glaring defect in the Act when the department heads with heavy responsibilities and problems of their own department will hardly have time or patience for an active participation in the deliberations of the Board. A modern administrative state is not only a regulator and good a Samaritan; it also steps into the shoe of a big industrial entrepreneur. In short, instead of the authority and interest representation more expert membership coupled with popular representation is needed.

The procedure laid down in water pollution control law is fraught with danger. It laid down that an application for consent should be deemed to have been granted unconditionally, if nothing is heard from the board within a period of four months of making it.

Finally it has to be noted that the water Act does not provide for public participation and impact study, before a decision to grant consent is taken. This is an obvious lacuna in the law.

Section 24 imposes a prohibition on use of stream or well for the disposal of polluting matter etc. It says that no person shall “knowingly cause to permit” any poisonous, noxious or polluting matter determined in accordance with such a standards as may be laid down by the state board to

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120. Leela Krishnan P., “Statutory Control of Environmental Pollution”, Cochin University Law Review, p. 158.
121. Id., p. 159.
enter (whether directly or indirectly into any stream or well). The penalty for contravention of section 24 is imprisonment for a maximum period six month (extendable upto six year) and fine. A person can be booked under section 24, if the prosecution succeeds in proving that the polluter had the actual knowledge of causing or permitting the pollution in water. It may be understood that how difficult it becomes to prove the fact of prior knowledge in such cases when a penal provision is involved. It also does not cover the cases of negligence. Section 24, being a penal provision, will always be construed strictly. To save the people from the negligent industrialists, the section 24 will need drastic changes. This brings us to the provisions under sections 25 and 26. These two provisions prohibit passing of trade effluent or sewage into a water course without a previous consent of State Board. It has been analysed that there is an overlapping between section 24, 25 and 26 on other side. It is submitted that the scheme under section 24, 25 and 26 needs restructuring. Keeping in the gravity of water pollution through city sewage, the issue is to taken and given a firm legal basis.

Though the Water Act, 1974 is a comprehensive legislation. Yet its loopholes and shortcomings are glaring and evident of the fact that a sound policy of environmental protection is not a basis of law. Certain doubts were raised relating to the role of the Water Act over the control of pollution of ground water. The Water Act does not refer to ground water pollution. Unlike the British law the Water Act does not provide for the control of dumping of waste into the land which eventually pollute groundwater. First, question has

122. Section 24 covers out certain exceptions also in which cases the person is not considered to be guilty of an offence.
123. Leela Krishnan P.: op.cit., p. 87.
to be examined in the light of definition of "streams" in the Water Act. Streams include subterranean waters. The plain meaning of subterranean water is nothing but "underground" water. Thus the control of pollution of subterranean water, streams include the control of pollution of groundwater. However, scant attention is paid by the Pollution Control Board in taking up measures of control over groundwater. It is true that dumping waste or any matter into the land that may pollute the groundwater streams is not specifically dealt with the Water Act. Dumping of polluting matter on the land, which may eventually pollute groundwater came to be regulated after the introduction of the 1978 Amendment. Such a liberal interpretation may be viewed as conferring on the Pollution Control Board powers to take up appropriate measures for control of groundwater pollution. However, nothing bars the Board from incorporating objective standards of maintaining ground water safety when the authorization is issued.\(^{124}\)

Hence, it is desirable to look at the problem of groundwater from a wider perspective. Inevitably, the question reaches larger dimensions of strategies for effectively managing land and water resources in the country. A definite and specific legislation with a comprehensive mechanism of control and management is necessarily to be enacted for sustainable use of groundwater.

The judgement given in *M.C. Mehta v. Union of India*\(^{125}\) is being reproduced below:

\(^{124}\) Id., p. 88.
\(^{125}\) AIR 1988 SC 1037.
"Water is most important of the element of nature. Sewage of the towns and cities on the banks of river and trade effluents of the factories and other industries are continuously being discharged into the river". The court was left with no option but to direct the tanneries to stop their operation.

The Supreme Court of India in *M.C. Mehta v. Union of India*\(^1\) again held that Calcutta tanneries were discharging untreated noxious and poisonous effluent into Ganga River polluting land and river and fund that those tanneries were operating in violation of mandatory provisions of Water Act 1974 and EPA 1986.

Again in *M.C. Mehta v. Union of India*\(^2\), Supreme Court directed that mining of operations in these areas be stopped within 2 Km radius of the tourist resort. Apart from this, mining leases within the area of 2 Km to 5 Km radius should not be renewed without obtaining prior "no objection" certificate from Haryana Pollution Control Board and Central Pollution Control Board.

Further, in *Vellore Citizen Forum v. Union of India*\(^3\), the Supreme Court held that tanneries cannot be permitted or even continue with the present production unless it tackles by itself the problem of pollution created by industries.

Again Supreme Court of India in *Ajay Singh Rawat v. Union of India*\(^4\) held that sewage water has to be prevented at any cost from entering the lake.

\(^{126}\) (1997) 2 SCC 411.
\(^{127}\) AIR 1996 SC 2115.
\(^{128}\) AIR 1997 SC 2115.
\(^{129}\) (1995) 3 SCC 266.
In *S. Jagannath v. Union of India*\textsuperscript{130}, the Supreme Court of India held that groundwater had got contaminated due to seepage of impounded water from the aquaculture forms. High polluted effluents were being discharged by shrimp forming into the sea and on the sea coast.

In *Writ Law Reporter*\textsuperscript{131}, case a biscuit manufacturing industry was using milk powder agricultural products and hydro-generated vegetable oils. The unit is discharging trade effluent from the washing of the vessels and cooling water plants. It was observed that consent under section 25(1) of the Water (Prevention and Control of Pollution) Act 1974 was required. Thus the importance of water and environment protection was accorded priority over the development.

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

The Water Cess Act, in fact, does not provide the mechanism for the control and prevention of water pollution but has been adopted as a part of economic incentive for controlling pollution. The Cess Act empowers the Central Government to levy a Cess on Water Consumed by persons carrying on certain industries and by local authorities.\textsuperscript{132} Section 7 of the Act gave incentive to the extent of 70\% of Cess payable for installation of a treatment plant from such date as may be prescribed. The cess money is first to be credited into the Consolidated Fund of India and then be disbursed by the Central Government to State Board.\textsuperscript{133} The violation of the Cess Act 1977 or submitting false statement provide penalty of imprisonment extending to six

\textsuperscript{130} (1997) 2 SCC 87.
\textsuperscript{131} In Writ Law Reporter 1997, p. 456.
\textsuperscript{132} Thakur Kailash Lal; op.cit., p. 227.
\textsuperscript{133} The Water (Prevention and Control of Pollution) Cess Act, 1977, Section 8.
months or and fine extending rupees one thousand or both.\textsuperscript{134} In 1991 the Cess Act was amended; it provided that a person or local authorities shall not be entitled for rebate, if he or she. (i) Consumes water in access of the maximum quantities or be prescribed. (ii) fails to comply with any of the provisions of the section 25 of Water Act.\textsuperscript{135}

It is true that limited freshwater is a renewable resource, in principle it can be recycled and reused. But contamination beyond repair diminishes even what is available in limited quantities.\textsuperscript{136}

Once the groundwater becomes polluted it takes years to remove or even to dilute pollutants because natural dilution is slow. Artificial flushing is expensive and treatment is impracticable. Ozone holes can be sewn; global warming controlled, but damage to groundwater can never be rectified. In view of severity of the problem, the existing laws need a fresh look. It is essential to develop a new approach towards groundwater abstraction taking into account the environmental aspects.\textsuperscript{137}

In short, apart from some of the shortcomings the Water Act is a social welfare legislation. Therefore the Act has to be strictly enforced and every effort should be made to carry out true intent of the legislation.\textsuperscript{138}

D. The Environment (Protection) Act, 1986

In the centuries of human progress, with the development of technology and scientific knowledge and with the growth of population, came

\textsuperscript{134} Section 14.
\textsuperscript{135} Amendment in Cess Act 1991.
\textsuperscript{136} The Hindu, May 28, 2000, p. 11.
\textsuperscript{138} Shyam Diwan, Armin Rozencranz and Marther Noble: op.cit., p. 185.
the tremendous changes in the human environment. The new changes upset the
eco-laws, shook the balance between human life and the environment and
brought a host of baffling environmental pollution problems. Yet we have not
started thinking seriously as how to solve these problems.

The earth’s atmosphere is a common heritage. It is a global issue. The
Stockholm Declaration recognizes that man is the part of nature and life
depends on it. The nations of world decided to take appropriate steps to protect
and improve human environment. The sequel to this in India was an
amendment to the Constitution introducing Art 48A and 51A(g). Today, the
state and the citizens are under a fundamental obligation to protect and improve
the environment including forests’ lakes, rivers, wildlife and to have
compassion for living creatures. By this 42nd amendment the Constitution of
India has become one of very few constitution in the world which have
enshrined a commitment for the protection and improvement of
environment.139

But there is no Entry on ‘environmental protection in the legislative
Lists in the Constitution of India.140 At present, by way of the seventy four
amendment, a state legislature can enact a legislation on protection of the
environment and promotion of ecological aspects.141 This is only in relation to
powers and function of municipalities. No provisions of this kind has been
provided to the Panchayat subjects having relationship with environmental

139. Chakarwarti Bhashkar Kumar; “Environmentalism: Indian Constitution and Judiciary”, ILI
140. Leela Krishnan P.: op.cit., p. 95.
protection falling under the three categories of law making power as well as under the power of states in relation to panchayats and municipalities.

The Environment Protection Act 1986 was enacted under the provisions of Article 253 of the Constitution with a view to implement the decisions of the UNO on Human Environment which was held in Stockholm in June 1972. It took almost 14 years for the Government of India to enact a law namely, the Environment (Protection) Act 1986 which came into force on 19 Nov. 1986.

The Environment (Protection) Act, 1986 with all the fanfare preceding was expected to fill the lacuna and provide a blue print for a progressive policy for protecting the ecosystem.

It clearly extends to water quality and control of water pollution. Pollution is equated with environment. In fact, pollution is one of the aspects of environment and the expression “environment” has to be viewed with all its components and considered in its totality.

The Act defines the “environment” to include “water and the interrelationships which exists among and between water and human beings, living creatures plants, micro-organisms, and property”. The exhaustive definition of environment may buttress such an impression. A deeper scrutiny discloses that the law has several missing links. Such as, Act defines environmental pollutant to mean, “any solid, liquid, or gaseous substance

142. Seventh Schedule.
145. The Environment (Protection) Act, 1986, Section 2(a).
present in such a concentration as may be, or tend to be, injurious to environment.\textsuperscript{146} Further Act defines environmental pollution to means “the presence in the environment of any environmental pollutant”.\textsuperscript{147} The major problems of groundwater pollution are not addressed absent in the Act and no provisions have been made for their control.

Section 3 is a reproduction of Article 48A of the Constitution in a different words and in great detail. This section is related to Constitution of authorities and appointment of officials. This part however holds the key to the workability of the Act. As per EPA, authorities have been empowered to adopt toughest measures to ensure the optimum environment quality of the nearby places to safeguard the overall interest of the people.\textsuperscript{148}

The Act authorizes the Central Government to establish general standards for the quality of environment and for emission or discharge of environmental pollutants from any source.\textsuperscript{149} The Environment Protection Rules of 1986 also allows the State or Central authorities to establish more stringent emission or discharge standards based on the quality of the recipient system, than the current uniform standards prescribed under these rules.\textsuperscript{150} However, there is no uniformity in the penal provisions.

One of the most controversial provision of the Act is enshrined in section 24.\textsuperscript{151} The section takes the cake for completely destroying the Environment (Protection) Act 1986. This section postulates that where an

\begin{itemize}
\item \textsuperscript{146} The Environment (Protection) Act, 1986, Section 2(b)
\item \textsuperscript{147} Section 2(c).
\item \textsuperscript{148} Leela Krishnan P.; \textit{op.cit.}, p. 236.
\item \textsuperscript{149} The Environment (Protection) Rules, 1986, Sections 7 & 8.
\item \textsuperscript{150} Sections 7 & 8
\item \textsuperscript{151} Thakur Kailash Lal; \textit{op.cit.}, p. 245.
\end{itemize}
offence under this Act is also an offence under any other Act, the offender shall be punished only under the other Act. Therefore section 24 will have the effect of obliterating the Act itself for all intents and purposes. Thus as the Act stands, it is as a toothless tiger with even its claws pulled out.¹⁵²

While the Act is meticulous about ousting the jurisdiction of the civil courts and protecting action taken in good faith, one is surprised that there is no provision regarding the prosecution of offenders and forum for prosecution.¹⁵³ Deterrent fine is remarkable feature of the new Act. This is first time that very heavy penalties like imprisonment of a period upto five years and fine upto Rs. one lakh have been prescribed for environmental violation. The section was put in perhaps to appease the environmental activist. But curiously enough, no minimum punishment is prescribed.¹⁵⁴ It would have been in the fitness of things if a maximum of 2 years rigorous imprisonment have been made mandatory provided for offences of environmental pollution, considering that the attempt is to save mankind from the brink of disaster and annihilation. The loopholes provided in section 16 and 17 to get off the hook on proof of lack of knowledge or the due diligence also dilute the effect of the penal provisions. Uncertainty arises, in case where for a particular pollutant different higher standard is provided for in the Water Act, while the Environment (Protection) Act provides a lower standard. Under which provision it shall be punishable? Such a legislation scheme instead of promoting uniformity brings in unpredictability in the application of legal provisions.¹⁵⁵

¹⁵² Leela Krishnan P.: op.cit., p. 238
¹⁵³ Ibid.
¹⁵⁴ Id, p. 237.
There are only few cases where courts have had to examine the scope of the Environment (Protection) Act, 1986. *Goa Foundation v. Kokan Railway Corporation*\(^\text{156}\), the Court held that "No development is possible without some adverse affect on the ecology and environment but the project of public utility cannot be abandoned and it is necessary to adjust the interest of the people as well as the necessity to maintain the environment".

Further in *Villore Citizen forum v. Union of India*\(^\text{157}\) the Supreme Court held that the main purpose of the EPA was to create authorities under 3(3) with adequate powers to control pollution and protect the environment. It is matter of grave concern that even after years of the enactment of the EPA, an effective mechanism still remains to be evolved.

In *S. Jagannath v. Union of India*\(^\text{158}\) the Supreme Court directed that under section 3(3) of the EPA an equa culture authority had to be established with all powers necessary to protect the ecologically fragile coastal areas. According to Court, the EPA, being a central legislation, enacted under the external affairs clause of the Constitution, would have over-riding effect over the state laws.

Again *Indian Council for Enviro-Legal Action Group v. Union of India*\(^\text{159}\), the Court held that the EPA is an excellent example of generating cooperative federalism where both the Centre and States have to work together for the protection and improvement of the quality of environment.

\(^{156}\) AIR 1992 Bom 471.
\(^{157}\) AIR 1996 SC 2715 at 2724.
\(^{158}\) (1997) SCC 87 at p. 147.
\(^{159}\) (1996) 5 SCC 281 at pp. 301-303.
Again *Narula Dyeing and Printing v. Union of India*\(^{160}\) illustrates how the Environment (Protection) Act, 1986 (EPA) can act as catalyst for efficient control under Water Act. The Central Government to issue directions was already delegated to the State and the State Government had formed an opinion that an emergency situation existed and the petitioners should be prevented from polluting water and land. The emergency direction in this regard without issuing notice was endorsed by the Court.

Judicial decisions under the EPA substantially strengthened the hands of the Boards at this level and endowed them with sufficient powers to take up effective coercive action against environmental violations.

In addition to the prevailing act certain others mechanism namely such as Environment (Protection) Rule 1986, Environmental Audit, Ecomark may also play crucial role to control water pollution:

**Environment (Protection) Rule 1986**

The Environment Protection Rule 1986 came into force on 19\(^{th}\) November, 1986. The rules seek to carry out the provisions of the EPA and to meet various specific problems\(^{161}\) in relation to the protection of environment.

The rules specify the standards for emission or discharge of environmental pollutants from industries, operations or process.\(^{162}\) However, Central Board or State Boards can stipulate more specific standards for any specific industry operation or process.\(^{163}\) This provision takes into account emergency situations when quick action is needed.\(^{164}\)

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161. The Environment (Protection) Rules, Section 6(2)(a)(i) air, water and soil quality, (ii) maximum allowable limits of pollutants (iii) restriction on location, and (iv) procedure.
162. Rule 3(i)
163. Rule 3(2).
Environmental Audit and Ecomark

Environmental Audit was added by the amendment notification in 1992. Though originally stipulated to be filed on or before 15 May of every year, the audit report, subsequently worded as audit statement, is to be filed on or before September every year to the State Pollution Control Board. Every person carrying on an industry, operation or process requiring consent under Water Act or Air Act or authorization under the Hazardous Waste (Management and Handling) Rule 1989 has to submit this report for the financial year, ending 31st March, to the Board. The benefit of audit can never be denied. It makes industrial undertaking more environment conscious.165

The government has decided to institute a scheme on labeling of environment friendly products. The scheme will operate on a national basis and provide accreditation and labeling for household and other consumer products which meet certain environmental criteria along with quality requirements of the Indian Standards for that product. This label shall be known as the Ecomark and will be of design to be notified.166

In short, a close look on legislation would go to show that Environment (Protection) Act, 1986 is wider than that of previous legislation. The Act is skeleton legislation, though it did not repeal any prior law on environment or control of pollution. It acts as a veritable supplement which provides more support to control the water pollution. There are many areas where the arm of law under the Environment Protection Act has still to reach

165. Ibid.
for achieving this objective. The Act does not exhibit any conceptual improvement over previous Acts. The enforcement of environment pollution control laws in India has thus evidently remained sporadic and uncertain. In this respect the structural difficulties, and the loopholes hampering the different value of the statute need to be taken care of. However the strategic approach and coordination in the enforcement machinery also need to be reviewed with the long term perspectives.

To face this mammoth challenge, the legal, institutional and policy problem being faced within the enforcement of environmental legislation in India must be resolved. The masses as a whole have to be more environmental friendly. Implementation at grassroots level can not be without their active cooperation and assistance. Only then the urgency of enforcement of legal actions can be clearly appreciated. There has to be perceptible shift.

168. Id., p. 257.