

Legal Control of Water Pollution in India

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Introduction

This paper will deal with one of the greatest problems of our time—pollution of water. An endeavour is made to discuss some of the relevant legislations and to examine the operation of the common law as it affects the pollution of water. The human society is facing a great problem at the moment as to whether mankind is capable of controlling, through law, his modern technology which, bestowing great benefits on the one hand, degrades his environment and threatens his biology on the other. Like other disciplines, the legal profession has been helpless in attempting to halt the increasing degradation of our physical environment. It is becoming apparent that more or less uncontrolled rate of industrial and urban development has contributed to the pollution of the major rivers and lakes of our country. By-products of a gasoline operated motor car and of the generation of electricity, notably carbon and sulphur compounds are poisoning the air. Further, it is a matter of great concern that mercury and other industrial by-products are making fish unfit for human consumption. There is a clear manifestation that the use of DDT and other pesticides has to a great extent affected the ecology and the balance of plant and animal life in many parts of the world.

In India there is a growing concern in regard to environmental deterioration associated with urbanization, industrialization and modernization of agriculture, all of which have gathered momentum in the last two decades of planned economic development. The problems of environmental degradation caused by urbanization and population growth are staggering in magnitude—a challenge perhaps not faced by any developing country before. India has considerable know-how and technical capacity, but is severely limited financially in relation to the size of the problem, although in absolute terms it may be that more has been done here in the last 15 years than in any other developing country. Here, provision of resources is not enough to

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guarantee improvement or prevent further environmental deterioration. The situation may go beyond control unless some definite, planned measures are undertaken immediately¹.

Until the Fourth Five Year National Economic Plan (1969-70 to 1973-74), the significance of the quality of environment to the aim of bettering the quality of life was not considered. The Plan for the first time took cognizance of air and water pollution, soil erosion, waste of national resources etc. It states that each generation has the obligation to maintain the productive capacity of land, air, water and wildlife so as to leave successors some choice in the creation of a healthy environment.

India has an industrial base, technological skills, and manufactures domestically most of the equipment necessary for environmental pollution control, but industry and civic authorities are not sufficiently motivated with desire for betterment to produce action. The control of water resources is the most urgently needed environmental measure. A Water Authority has been established under the Water (Prevention and Control of Pollution), Act, 1974.² The questions of how clean the environment should be and to what extent degradation can be allowed for an optimum use of resources require careful study. Data collection and evaluation are a necessity in order to evolve quality criteria and public policy³.

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1. Planning for harmonious development recognises the Unity of nature and man and is only possible through comprehensive appraisal of economic and ecological environmental issues, long term considerations must prevail over short-term commercial considerations: social costs and benefits must be the yardstick rather than private gains and losses: centralized responsibility for environmental planning and adequate number of qualified specialists are lacking, these deficiencies must be overcome.
See the *Fourth Five Year Plan : 1969-74*.
 2. See ss. 3 and 4 of the Act of 1971 which provide for the setting up of both Central and State Boards.
 3. In India urban pollution is a greater problem than industrial pollution, although the latter is virtually uncontrolled. Of the 2431 towns in India, 176 are sewered; this covers 25 million people, 33% of the urban and 7% of the total population. No Municipality has the resources to bridge the gap in services due to population growth. Sewage treatment has been given the low priority because of financial limitations; methods borrowed in the past from western countries involved costs not keeping in pace with local conditions; maintenance has been poor, nearly 50% of existing plants are out of order. Current research seeks methods appropriate for local conditions with low capital and running costs....

These data have been obtained from the *Human Environment*, Vol. 11. Summaries of national reports, submitted in preparation for the United Nations Conference on the Human Environment.

Water pollution is steadily increasing both in quantity and noxious content. Nearly in all industrial centres such as Bombay, Calcutta, Asansol, Durgapur area have become foci of pollution. The implications of the pollution problem are frightening and comprehensive legislations are needed, seeking to cope with these problems. In addition, it is felt that while legislative action is essential for a comprehensive pollution control plan, the environment cannot wait for adverse interests to devise an enforceable scheme. While the Water (Prevention and Control of Pollution) Act, 1974 provides for the Boards to be set up both at the Central and State level to formulate workable criteria for pollution control, private remedies must still be utilized if the control is not so effective through administrative agencies. This brings us to the discussion on the extent to which the common law can be considered as a weapon in the armoury available against pollution of water.

Common law remedies

A few common law remedies are available to those aggrieved by the pollution of water. The common law controls can be classified into three : (a) liability for the escape of noxious objects; (b) the careless use of noxious articles or pollutants; and (c) the infringement of property rights in water.

a) *Liability for the escape of noxious objects* : The escape of dangerous things brought by a person on his land can be found in the rule in *Rylands v. Fletcher*⁴. Justice Blackburn delivering judgment on behalf of the Court of Exchequer chamber made the following well-known statement :

We think that the true rule of law is that the person who for his own purpose brings on his own land collects and keeps there anything to do mischief if it escapes, must keep it in at his own peril, and if he does not do so, is prima facie answerable for all the damage which is the natural consequence of its escape.

This is the rule of absolute liability. It means if any one collects a dangerous object on his land such as explosive chemicals and he allows it to escape, then he is liable for the consequences. He is liable in damages or for an injunction for the consequences proved, provided, of course, that these consequences are the direct consequence of the escape. In one case it was found that a local authority were using tar on their highway and the tar escaped from the highway on to the plaintiff's water-cress beds which caused undoubted harm to the water-cress. The Plaintiffs were able to recover damages. Thus it will appear that if there is abnormal use of land then

4. (1868) L.R. 3 H.L. 330.

there is the question of damages to be awarded against the defendant⁵. It would be pertinent to question here whether pesticide used by a farmer for the improvement of his crop would be tantamount to making an abnormal use of his land. The view is that the use of pesticide might be considered to be the natural use of the land as the case law would point out that what was abnormal in Victorian days is not necessarily abnormal today.

(b) *The careless use of noxious and pollutant articles* : In this section a reference will be made to the careless use of noxious objects, which are "dangerous things" and to examine as to whether such careless use will give rise to an action in "negligence". In the law of torts negligence has two aspects :

- (i) It may be an element in determining liability for many torts (e.g., a nuisance may be caused intentionally or negligently).
- (ii) It is in itself an independent tort.

The plaintiff in an action for the tort of negligence must prove that the defendant owed to him, the plaintiff, a legal duty of care and has been guilty of a breach of that duty and a damage has been caused to the plaintiff by that breach.

It will be relevant to question here what is a dangerous object? Probably it may be correct to say that anything is a dangerous object if it is used in a dangerous manner. By applying this test a view may be held that the pesticides that we use in our country are dangerous and if an assessable injury can be proved as a result of the careless use of pesticides, an action in negligence is very likely to lie.

(c) *The infringement of property rights in water* : Every riparian owner had a natural right to the natural flow of water in his stream, substantially unaffected in quality and undiminished in quantity⁶.

A riparian proprietor has a right to the natural stream of water flowing through the land in its natural state; and if the water be polluted by a proprietor higher up the stream, so as to occasion damage in law, though not in fact, to the first mentioned proprietor, it gives him a good cause of action against the upper proprietor unless the latter has gained a right by long enjoyment or grant⁷.

5. The theory of abnormal use has been criticized to this effect that there is no sufficient warrant for imposing the condition of extraordinary user on the operation of the rule. See R.P. Aiyer, *Law of Torts*, 476 (7th Edition).

6. *John Young & Co. v. Bankier Distillery Co.*, [1893] A.C. 691.

Thus the common law has set a standard in respect of water pollution which may appear to be higher than the Helsinki Rules⁸. The control of water pollution at common law is based upon the property rights of the owner of land adjoining a stream, thus, if a person does anything to pollute or affect the natural quality of a stream any riparian owner downstream has an action against him at common law for damages or loss suffered and may ask the court for an injunction to restrain the offender from committing further acts of pollution.

However, it must be admitted that the system of control as has been evolved by the common law may have been quite adequate in a non-industrial society where incidents of pollution are minimal and localized in their effects. But under modern conditions with vast concentrations of industry and population in urban areas and the development of water-borne sewerage systems and the difficulty of showing whose action it was and so forth, some form of statutory control is felt necessary. Although there is some form of statutory control in existence, it does not imply that the position under common law has no significance. Local sewerage authorities can still be held liable by riparian owners. An important case in point in recent years is *Pride of Derby and Derbyshire Angling Association v. British Cleanse*⁹ where riparian owners were awarded damages and a suspended injunction against Derby Corporation for the discharge from their sewage works.

Statutory control

The Central Parliament has recently enacted a legislation to prevent and

7. *Wood v. Wand*, (1849) 3 ex. 748. According to Salmond :

The Pollution of a natural stream is a wrong actionable at the suit of any riparian owner past whose land the water so polluted flows, and, as we have just seen, pollution even of underground water is also actionable. The term pollution is here used in a wide sense to include any alteration of the natural quality of the water whereby it is rendered less fit for any purpose for which in its natural state it is capable of being used. Thus it is actionable to raise the temperature of the stream by discharging into it hot water from a factory.. no less than to pollute the stream by pouring into it the sewage of a town or the chemical refuse of a factory.

Salmond on Torts 233 (13th ed.).

Then he states at 234 : "Pollution is actionable without proof of actual damage".

8. Art. 9 of the Helsinki Rules defines the term "Water Pollution" as referring to any detrimental change resulting from human conduct in the natural composition, content or quality of the waters of an international area"
9. (1953) 1 Ch. 149 (C.A.)

control pollution of water¹⁰. The Water (Prevention and Control of Pollution) Act 1974, (hereinafter called the Act of 1974), provides for the prevention and control of water pollution and the maintaining or restoring of wholesomeness of water. The Act has established Boards and has conferred on these Boards certain powers and assigned some functions to achieve the aforesaid objects.

The Act of 1974 extends virtually overall inland and coastal waters¹¹ and as well makes provision to avoid accidental pollution¹². The offence of polluting is extended to all relevant waters, *i.e.*, inland waters, specified underground water and coastal and tidal waters. The Act also empowers the State Government to restrict the application of the Act to areas to be specified by the State Government¹³. Under the same Act the State Boards have been empowered to obtain information and give directions to any person in respect of abstraction of water and discharging sewage or trade effluent into a stream or well. For the purpose of preventing or controlling pollution of water, the State Board may give directions to any person incharge of any establishment carrying on industry or trade to furnish information regarding construction, installation *etc.*, as well as disposal system¹⁴. The same provisions would apply even in the case of extension or addition of such establishments.

A State Board has been empowered to enter and inspect any place for the purpose of discharging its function¹⁵. Further, the Act of 1974 provides that the consent of a State Board is required for discharges of trade and sewage effluent and other matter into relevant waters. Details of the consent procedure, including provision for revocation, variation of conditions, appeals are contained in Sections 25-29. Applications for consent is to be made to a State Board, the authority which must keep public registers containing details of application consents and other particulars of conditions imposed by such State Board. The time-limit within which such consent may be given has been fixed, *i.e.*, within four months from the date of application. If the consent is not forthcoming within this period, it will be deemed to have been given by the State Board concerned¹⁶. Another important provision of this Act of 1974 relates to the prohibition on use of stream or well for disposal of polluting matter.

10. The Water (Prevention and Control of Pollution) Act, 1974 (Act 6 of 1974).

11. *Id.* s. 2 (f).

12. *Id.* s. 32.

13. *Id.* s. 19.

14. *Id.* s. 20 (3)

15. *Id.* s. 23.

16. *Id.* s. 25.

Thus the provisions of the 1974 Act as discussed above would show that the effluent from the sewers or from industry directed into the relevant waters are controlled by the State Boards set up under the same Act. Under section 33, a State Board has been empowered to prevent threatened pollution by making application to Courts in order to restrain a person from polluting water in streams or wells. Undoubtedly, the State Boards have a wide control over both new and existing discharges.

Two major problems arising out of the Act of 1974 may be highlighted here. One relates to the inspection provision which should be implemented properly in order that the purposes for which the Act has been passed, *i.e.*, prevention and pollution of water, may be effectively achieved. Further, it is made an offence when no person shall knowingly cause or permit to enter into any stream any poisonous, noxious or polluting matter determined in accordance with such standards as may be laid down by the State Board to enter (whether directly or indirectly) into any stream or well, no person shall knowingly cause or permit to enter into any stream any other matter which may tend, either directly or in combination with similar matters, to impede the proper flow of the water of the stream in a manner leading or likely to lead to a substantial aggravation of pollution due to other causes or of its consequences¹⁷. Thus, if it can be shown that someone has thrown some thing, *e.g.*, pesticide, which is a poisonous, obnoxious or polluting matter, it is likely to lead to pollution. Then, there is a criminal offence under section 24 read with section 43 of the Act. But the problem lies in the fact that the defendant might say that he did not know that this pollutant was going into the river or he did not know that it was noxious. This defence may not be tenable. However, he might say that he did not knowingly permit it to go into the stream, turning on the words in the relevant section "not knowingly"—"Causes or Permits". If this be the outcome of the provisions of the section, then certainly the law needs tightening up in relation to this key section. Perhaps it would be better to have an absolute provision. It should be a crime to commit any act which causes pollution in stream.

Under the various local authorities Acts in India, certain acts relating to the discharge of trade effluents which would prejudicially affect the sewage system and thereby would likely to create a nuisance have been prohibited. In this connection reference may be made to section 341 of the Calcutta Municipal Act (West Bengal Act XXXIII of 1951) which specifically prohibits certain acts which are likely to create a nuisance. Section 441 of the same Act prohibits fouling of water in carrying on trade or manufacture.

17. *Id.* s. 24 (f) (a) (b).

Despite these provisions, the municipal authorities in India have failed to cope with the pollution by industrial waste and sewage.

The Factories Act, 1948, also makes provisions for effective arrangements to be made in every factory for the disposal of wastes and effluents due to the manufacturing process carried on in the factory. The State Governments are authorised to make rules prescribing the arrangements required for the disposal of the wastes and the effluents¹⁸. Under the Indian Penal Code¹⁹ it is an offence if a person voluntarily corrupts or fouls the water of any public spring and reservoir so as to render it less fit for the purpose for which it is ordinarily used. By the relevant provisions of the Criminal Procedure Code, 1898²⁰, a magistrate may pass an order to prevent a discharge from a factory into a river of a noxious effluent which might be injurious to the health of the community which has right to the use of water in such river²¹.

Conclusion

The common law, as we have seen, is inadequate and too difficult to operate in modern conditions. It may not be an exaggeration to say that in a modern society riparian rights are not practicable and therefore need to be curbed. Perhaps some amount of control is necessary to limit pollution. Our criminal laws contain provisions which are not adequate to deal with environmental pollutions. We may examine the feasibility of using criminal sanction—in addition to damages and administrative sanctions—in an increasing manner to take action against massive pollution of land, water and air whether by industrial waste and effluents or by chemicals etc., but it must be admitted at the same time that if the object of criminal law is to prevent offences and not to inflict punishment on the offender, then the sanction of criminal law may not be the final answer to the problem of pollution. The primary object of criminal law is to prevent a crime being committed. Further, we have got too many authorities at the moment which deal with sewage and are concerned with prevention of pollution of water. Reference may be made in this connection to the setting up of authorities under the Act of 1974 and the local authorities under the various municipal statutes. It is essential that there should be effective cooperation between these authorities so that a better control can be evolved for the prevention and pollution of water.

18. S. 12 of the Factories Act, 1948.

19. S. 277 of the Indian Penal Code.

20. *Id.* s. 133.

21. A.I.R. 1926 Pat. 506 at 507.