

Legal Remedies Against A Water Polluter in India

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Introduction

One of the undesirable off-springs of modern civilisation and industrialisation is the problem of 'Pollution'. Modern science and technology have not yet been able to gauge the extent of pollution while we look to them for means of controlling pollution. Mediaeval theorists in the Law of Nature considered air and water as the gifts of God to man and it is our duty to keep both of them free from pollution to the best possible extent.

The problem of environmental pollution was tackled at the global level by the Stockholm Conference on Human Environment (June 1972) organised by the United Nations. The Conference expressed deep concern for the preservation of human environment and tried to evolve schemes for controlling and regulating human environment. The Conference called upon States to co-operate with each other in tackling the problem of environmental pollution.

The Constitution (Fortysecond Amendment) Act, 1977 has made it a fundamental constitutional duty to protect and improve the natural environment. Apart from this, a major enactment of considerable significance is the Water (Prevention and Control of Pollution) Act, 1974. Several enactments like the Indian Penal Code, The Indian Easements Act and the Factories Act have contemplated remedies against the water-polluter in India.

Indian Penal Code, 1860

The problem of water pollution has been dealt with in the chapter on Public Health and Safety. section 277 of the Indian Penal Code provides :

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

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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.

The water of a public spring or reservoir belongs to every member of the public in common and if any person voluntarily fouls it, he commits public nuisance. It is indeed very unfortunate that the courts in India have given a very restrictive interpretation for the terms "public spring" and "reservoir" so as to defeat the very purpose of the enactment. The terms are interpreted as not to include flowing waters of rivers, canals and streams (Refer. *Susai v. Director of fisheries*.¹ and *Emperor v. Nama Ram*². It is indeed very

1. (1966) M.L.J. 35 Petitions relate to chank fishery in the territorial waters along Sivaganga Coast in Ramanathapuram District. These waters extend from Sundarapandianpatnam to Karungadu. The Director of Fisheries who is the first respondent called for tenders for the lease of chank fishery for a period of 3 years from 1-6-1962. State government directed the grant of lease to IIInd respondent. Tenderor (II respondent) was at liberty to collect chanks caught in nets and by means of diving as well within the limits.

The Indian Fisheries Act 1897 contains seven sections. Sections 4 & 5 of this Act prohibit destruction of fish by explosives in inland waters and on coasts and by poisoning waters. The phrase 'private water' means 'water which is the exclusive property of any person or in which any person has for the time being an exclusive right of fishery whether as owner, lessee or in any other capacity. There is an explanation to this definition which states: "The water does not cease to be 'private water' by reason only that other persons may have by custom a right to fishery therein."

If the rules as to non-pollution had to be extended to 'private water' consent of owner was essential. Even though part of territorial water is taken on lease, it becomes the 'private water' of the lessee. This indeed is an undesirable interpretation.

2. (1904) 6 Bom. L.R. 52. "Fouling of the water of river running in a continuous stream is not an offence under s. 277 of the Indian Penal Code. But yet it may be an offence under s. 290, of the evidence shows that the act was such as to cause common injury or danger to the public."

Facts are that the accused and 9 others were charged under s. 277 of the Indian Penal Code with the offence of fouling water of the river and rendering it unfit for drinking purposes by steeping therein aloe plants with a view to extracting fibres therefrom. They were convicted and sentenced to pay a fine of eight annas each. District Magistrate of Poona held that the conviction was bad in law and referred it to High Court. In its judgment, the Court referred to earlier decisions. In *Queen v. Vittichakkan*, I.L.R. 4., Mad. 229 it was held—that the public spring contemplated in s. 277 of the Indian Penal Code did not include continuous stream of water running along the bed of a river. That decision was followed by '*Empress v. Anthony*', (Weir pp. 139, 140) where it was held that the section did not apply to a public river or to the water flowing in a continuous stream in a river bed. (Same principle in *Reg v. Patka*, Cr. R. 1869, *Imperatrix v. Hari Babu*, Cr. R. 1885, *Imperatrix v. Neelappa Dargappa*, Cr. R. 17 of 1898. The Calcutta High Court followed the same principle in *Empress v. Halodhar Pooroo*, I.L.R. Cal. 383.

So in *Nawa Rama* case—the court held that though the accused might not have committed an offence under s. 277, yet from the description given it might be a nuisance under s. 290 of the Indian Penal Code (act causing common injury or danger to the public).

unfortunate that the courts failed in suppressing the mischief and advancing the remedy. A more beneficial construction ought to have been given for the terms "public springs" and "reservoirs" so as to include waters in running streams, canals and rivers. Case-law on pollution is very meagre. It is indeed desirable to make it a statutory offence to pollute waters, ruling out in entirety issues of *mens rea*. The punishments imposed on the water polluter are as old as the Indian Penal Code and a thorough revision by way of enhancement of fines and the period of imprisonment is very essential.

Section 269 of the Indian Penal Code also could be invoked against a water polluter. The section provides :

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.

Section 290 provides punishment for public nuisance (which naturally includes cases of pollution) in cases not otherwise provided for. Even though the polluter of the river, canal or stream could be dealt with under this section, it is submitted that he could be dealt with under Section 277 also. The water-polluter could also be punished under section 425 of the Indian Penal Code for mischief if his act causes wrongful loss or damage to the public or to any person or if his act causes the destruction of any property or diminishes its value or utility. Attempts to commit acts of water-pollution could be brought under section 511 of the Code.

Indian Easements Act, 1882

Illustration (f) to section 7 deals with "the right of every owner of land that, 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 illustration necessarily contemplates the rights of riparian owners. But the illustration seems to accept by implication "reasonable pollution". What is "reasonable pollution" has not been clarified and it is more a matter of interpretation under the particular circumstances.

Illustration (h) of the same section deals with "the right of every owner of land that the water of every natural stream which passes by, through or over his land in a defined natural channel shall be allowed by other persons to flow within such owner's limits, without interruption and *without material alteration* in quantity, direction, force or *temperature*; the right of every

owner of land abutting on a natural lake or pond into or out of which a natural stream flows that the water of such lake or pond shall be allowed by other persons to remain within such owner's limits without *material alteration* in quantity or *temperature*".

Illustration (j) deals with the "right of every owner of land abutting on a natural stream, lake or pond—to use and consume the water for irrigating such land and for the purpose of any manufactory situate thereon; provided that he does not thereby cause *material injury* to other like owners."

In cases of "material alteration" or "material injury" the person affected has the right to relief by way of injunctions and can also proceed against the polluter for damages.

Section 15 of the Easements Act deals with acquisitive prescription. Explanation IV to section 15 provides : "In the case of an easement to pollute water, the said period of twenty years begins when the pollution first prejudices perceptibly the servient heritage." As against property owned by Government the period is sixty years. Section 2 deals with the right of the Government "to regulate the collection, retention and distribution of water of rivers and streams flowing in natural channels and of natural lakes and ponds...."

Section 28 (d) deals with the prescriptive right to pollute air or water. It provides "the extent of the prescriptive right to pollute air or water is the extent of the pollution at the commencement of the period of user on completion of which the right arose...."

It is submitted that these provisions of the Easements Act should be viewed in the light of the limited drinking water resources of the world. Particular mention should be made of section 28(d). There should not be a statutory recognition of the right to pollute and this section, it is suggested, be duly amended so as to deny any such right to pollute. If the interests of the community demand that such pollution should not be continued any longer, such acts of pollution should be prevented. It would be desirable to enact specifically that "no right to pollute air or water can be acquired by prescription".

Factories Act, 1948

Factories Act of 1948 is a social welfare legislation intended to secure health, safety and welfare of the workers employed in factories. Some of the provisions of this Act are concerned with prevention of water pollution.

Section 12 of the Act deals with the disposal of trade wastes and effluents. The section provides :

- (1) Effective arrangements shall be made in every factory for the disposal of wastes and effluents due to the manufacturing process carried on therein.
- (2) The State Government may make rules prescribing the arrangements to be made under sub-section (1)...

Section 92 provides for the general penalty for non-observance or non-compliance with the requirements of section 12. It provides that "the occupier and manager of the factory shall each be guilty of an offence and punishable with imprisonment for a term which may extend to five hundred rupees or with both and if the contravention is continued after conviction, with a further fine which may extend to seventyfive rupees for each day on which the contravention is so continued." This provision as to general penalty applies even for the violation of rules made under this Act. Section 105 of the Act provides :

- (1) No Court shall take cognisance of any offence under this Act except on a complaint by or with the previous sanction of an inspector.

The Factories Rules in accordance with this act were framed by Maharashtra (1963), Mysore (1969), Tamilnadu (1950) and West Bengal (1958).

Rule 22 of the Maharashtra Factotries Rules provides regarding disposal of trade-wastes and effluents thus : "(1) In the case of factory where the drainage system is proposed to be connected to the public sewerage system, prior approval of the arrangements made shall be obtained from the local authority;

- (2) In the case of factories other than those mentioned in sub-rule (1), prior approval of the arrangements made for the disposal of trade-wastes and effluents shall be obtained from the Health Officer."

This is a measure that proposes to prevent pollution of streams, rivers or canals by the trade-wastes and effluents.

Rule 74 of the Maharashtra Factory Rules provides for washing facilities to the employees and says : "...the facilities shall be conveniently accessible and shall be kept in clean and orderly conditions and shall not be located in the vicinity of latrines and urinals." The purpose is to protect such washing

facilities from pollution and thereby protect the health of employees. Rule 9 of Schedule VI of Maharashtra Factories Rules relating to manufacture and treatment of lead and certain compounds of lead prohibits any food or drink being brought into a work-room in order to prevent such food or drink from getting polluted. Similar rule is made with regard to factories for the manufacture of bangles and other articles from cinematograph film (Rule 17 Schedule XIII).

Now, we will consider the relevant provisions of the Mysore Factories Rules. Rule 18 of the Mysore Factories Rules is analogous to rule 22 of Maharashtra Factories Rules regarding trade-wastes and effluents. Rule 52 deals with the construction and maintenance of drains carrying trade-wastes and sullage water. The rule states that they "shall be constructed in masonry or other impermeable material and shall be regularly flushed and the effluent disposed of by connecting such drains with a suitable drainage line." The purpose of this provision is to prevent pollution of underground streams from becoming polluted by the effluents or trade-wastes permeating to the ground. Further rule 52 says: "provided that, where there is no such drainage line, the effluent shall be deodorised and rendered innocuous and then disposed of in a suitable manner to the satisfaction of the Health Officer." It must be observed here that the process of deodorising the effluents must be economically feasible and the assistance of science and technology in this area is the urgent need of the hour. Otherwise entrepreneurs may not come forward to establish industries and that may hamper industrial progress which is the vital need of the hour. A compromise has to be made between the industrial needs of the state and social requirements for the maintenance of public health, by providing a margin for minimum pollution, since total prevention is an impossibility.

Rule 17 (1) and (2) of the Tamilnadu Factories Rules is identical with, rule 18 of Mysore Factories rules. But rule 17 (3) is very significant. It provides : "In the case of a factory where there are rivers or fisheries at any other water sources in the vicinity, INCLUDING TERRITORIAL WATERS OF THE SEA and these water sources are likely to be affected by the arrangements made for the disposal of tradewastes and effluents, prior approval shall be obtained from the Director of Fisheries or such authority as the State Government may appoint in this behalf." It may be noted that this provision protects pisciculture in territorial waters from pollution by trade wastes and effluents. One may recall here a tragic news item of thousands of dead fishes being washed ashore at Panaji, Goa because of trade-wastes being let out into the sea. It is high time that scrupulous care must be taken before according licences to industries. Rule 37 prescribed under sub-section (4) section 18 of the Factories Act, provides :

- (1) Drinking water shall not be supplied from any open well or

reservoir unless it is so constructed, situated, protected and maintained as to be free FROM THE POSSIBILITY OF POLLUTION by chemical or bacterial and extraneous impurities" (Tamil Nadu Factories Rules).

Rule 19 of Chapter III (Health) of West Bengal Factories Rules, 1958 is identical with rule 22 of Maharashtra Factories Rules relating to disposal of trade-wastes and effluents. Rule 34 (3) of West Bengal Factories Rules states : "Any open well or reservoir from which drinking water is derived shall be so situated and protected as not to be liable to pollution by organic matter or other impurities." Rule 17 (4) says that "the area around any place where drinking water is supplied to the workers shall be maintained in a clean and drained condition." Regarding construction and maintenance of drains rule 43 of W.B. Factories Rules is identical with rule 52 of Mysore Factories Rules.

The Water (Prevention and Control of Pollution) Act, 1974 : some comments

This is the most comprehensive enactment at the national level. Entry 17 List II of the VII schedule to the Constitution of India declares 'Water' as a State subject. The Act is passed under Art. 252 of the Constitution. It applies to a limited number of States and the union territories. All streams and water courses, whether with water or temporarily dry, tidal waters, underground waters and inland waters come within the purview of the Act. The most significant thing is the establishment of 'Central Board For Prevention and Control of Water Pollution' and the Boards of identical nature and purpose are to be constituted in the concerned States also. The Central Board is charged with the duty of co-ordinating the activities of the State Boards and settle disputes, if any, in this regard. The State Boards are required to specifically lay down the standards of pollution. It has power also to accord consent by way of order, to discharge trade-wastes and effluents into the streams. State Boards are to act as per the instructions of the Central Board and the concerned State Government. Where there is a clash between the directions of the Central Board and the State Government, the matter is to be referred to the decision of the Central Government. It must be mentioned that the Central Board acts as per the directions of the Central Government. The Act provides for appeal to the appropriate authority as against the consent orders of the State Government. State Governments are also empowered to revise such orders.

The Act has provided rigorous penalties for the deviation from the standards laid down by State Boards. State Boards can approach the courts for restraining possible pollution of waters. The Act contemplates the establishment of Central and State water laboratories respectively to investigate

cases and extent of pollution. The penalties against a water polluter vary from six months to six years rigorous imprisonment and it is a welcome feature. The Act is just three years old and it is too early to judge its efficacy or utility. However, it could be observed that the Act was a long-felt need and it is desirable that all the States take the benefit of it. Successful implementation of the provisions of the Act relating to inspection, investigation and setting of standards require an army of men who are expert technologists and the standards set must not be so rigorous as to stifle industrial growth or affect the green revolution.