

V. Influence of International Law Directives
in Indian Domestic Legal Framework

A. The Constitutional Set-up.

5.10. The provisions of the Preamble of the Constitution ensuring social justice and laying the foundations of a welfare state, the provisions of the Fundamental Rights (contained in Part III) of the Constitution guaranteeing various Fundamental Rights including the right to life and various freedoms embracing freedom of conscience and cultural rights etc., irrespective of the distinction of race, colour, caste, sex, language or religion and the provisions of the Directive Principles of State Policy envisaging the right to an adequate means of livelihood all lead to and ensure the enforcement of the norms and standards prescribed in the international instruments such as the Charter of the United Nations, International Conventions on Human Rights, and the decisions and Resolutions of International Organisations and Conferences such as FAO, World Food Conference, General Assembly, U.N. Water Conference and Human Environment, Stockholm Conference etc.

5.11. The most recent development in this direction, which is worth mentioning, is the incorporation of Articles 48-A and 51-A in a new feature of the Constitution, designated as Fundamental Duties. These provisions are :-

"48-A- Protection and Improvement of Environment and Safeguarding of Forest and Wild Life

The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life in the country". ...

"51-A. Fundamental Duties:- It shall be the duty of every citizen of India

(g) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures".

5.12. These new Constitutional provisions will go a longway in protecting and improving in India, the quality of water, as a significant element of environment.

B. Legislative Measures :

5.20. It is not possible to mention here all the legislative measures, undertaken in India for the protection and improvement of water resources including the quality of water by way of implementation of international norms, standards and directives but some representative measures are being mentioned underneath :-

5.21. 1. Central Acts:

(a) Acts touching Water Pollution: (i) The Northern India Canal and Drainage Act, 1873; (ii) The Obstruction of Fairways Act, 1881; (iii) The Indian Fisheries Act, 1897; (iv) The Damodar Valley Corporation (Prevention of Pollution of Water) Regulation Act, 1948; (v) The River Boards Act, 1956; (vi) The Merchant Shipping Act, 1958; (vii) The Water (Prevention and Control of Pollution) Act, 1974; and (viii) The Water (Prevention and Control of Pollution) Cess Act, 1977.

5.22. (b) Acts touching Air Pollution:

(i) The Oriental Gas Company Act, 1867; (ii) The Explosives Act, 1884; (iii) The Explosive Substances Act, 1908; (iv) The Boiler Act, 1923; (v) The Motor Vehicles Act, 1938; (vi) The Factories Act, 1948; (vii) The Inflammable Substances Act, 1952; (viii) The Mines and Minerals (Regulation and Development) Act, 1957; and (ix) The Air (Prevention and Control of Pollution) Act, 1981.

5.23. (c) Acts touching Marine Pollution:

(i) The Indian Ports Act, 1908; (ii) The Indian Steam Vessels Act, 1917; (iii) The Merchant Shipping (Amendment) Act, 1970; (iv) The Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act, 1976; and (v) The Coast Guards Act, 1978.

and Control of Pollution) Rules, 1982; (v) The Environment Protection Rules; 1986 and (vi) The Environment Protection (Amendment) Rules 1987.

D. Responses to International Initiative and International Co-ordination

5.40. The Year 1972 can justifiably be claimed as a watershed in the history of environmental management in India as a participant in the International environment Protection Movement. India's commitment to participation in this movement is evident from the fact that after having participated in the United Nations Conference on Human Environment in Stockholm in June, 1972 it was expressly recorded in the Preamble of the Air (Prevention and Control of Pollution) Act, 1981 that "it was considered necessary to implement the decisions of the Stockholm Conference in so far as they related to the preservation of the quality of air and control of air pollution."

5.41. The Preamble of the Environment Protection Act, 1986 also expressly states that "whereas decisions were taken at the United Nations Conference on the Human Environment held at Stockholm in June 1972, in which India participated, to take appropriate steps for the protection and improvement of human environment"" and whereas it is considered necessary further to implement the decisions aforesaid in so far as they relate to the protection and improvement of environment"" Be it enacted

by Parliament in the Thirty Seventh Year of the Republic of India as follows:.....".

5.42. Environment includes Water: In Section 2 (a) of the Environment Protection Act, 1986, while defining various concepts, it is stated that "environment" includes "water, air, land, etc..."

E. Judicial Decisions

5.50. The Supreme Court in a trend setting case in 1985, in the Rural Litigation and Entitlement Kendra Dehra Dun and Others versus State of U.P. and Others and Devaki Nandan Pandey versus Union of India and Others,⁴⁷ delivered a judgement which has created history. The said case involved a social interest litigation praying for stopping the quarrying activities in order to protect the environment. The Supreme Court treated the right to protection of environment as a "human right".

F. Awards of Tribunals and the Implementation of Helsinki Rules

5.60. In their pronouncements while dealing with inter-State Water Disputes, various Tribunals have been invoking certain standardised norms of international law. This trend is conspicuous through express reference to Helsinki Rules.

5.61. Thus, it won't be an overstatement to say that the Helsinki Rules have found the application in the Indian State Practice. In order to substantiate this assertion it will be purposeful to refer to the concrete illustrative instances in this regard. The Krishna Water Disputes Tribunal, in its award referred to Article VIII of the Helsinki Rules in support of the protection or "the existing reasonable use" of water by a contestant state in an inter-State Water dispute.⁴⁸ Later, the Narmada Water Disputes Tribunal cited Articles IV and V of the Helsinki Rules while discussing the problem of apportionment of water between two disputant States. While referring to Article V of the Helsinki Rules the Tribunal remarked that "this Article provides flexible guidelines essential to insuring the protection of the "equal right" of all basin States to share the inter-State Waters"⁴⁹

5.62. Even the Godavari Water Disputes Tribunal referred to the Helsinki Rules while scrutinising the "law-applicable" in the inter-State Water disputes. The Tri-

48. For reference see "The Report of the Krishna Water Disputes Tribunal with-Decision", 1973, Vol.I, pp.99-100.

49. See "The Report of the Narmada Water Disputes Tribunal", 1978, Vol.I, pp.115, 116, at p.116 (para 8.95).

bunal pointed out that "Helsinki Rules" on the uses of the waters of International rivers emphasise that in case of a dispute between states as to their legal rights and other interests, they should seek solution by negotiation".⁵⁰

G. Implementation of the Conventions of the International Labour Organisation.

5.70. The Convention No.107 of the International Labour Organisation, which lays down norms for protection of the rights of the tribal and semi-tribal people recognises under Article 11 the right of individual and collective ownership to the lands which these populations traditionally occupy and Article 12 of the said Convention states that such populations shall not be removed without their free consent from their habitual territories except in accordance with national laws and regulations for reasons relating to national security and economic development or of health of such population. It also stipulates that in case of their removal they shall be paid due compensation for the resulting loss or injury and further that they shall be provided suitable land for rehabilitation and also be provided other amenities for facilitating the process of their resettlement.

50. "The Report of the Godavari Water Disputes Tribunal (With Decision)" 1979, Vol.I, P.19.

5.71. In compliance of the letter and spirit of these provisions the Narmada Water Disputes Tribunal ordered that Gujarat shall acquire and make available a year in advance of the submergence of land (for Projects on Narmada) irrigable land and house sites for rehabilitation of the oustee families from Madhya Pradesh and Maharashtra. Gujarat was also directed to pay Resettlement Grants to these families. In addition to that Gujarat was required to make arrangements for the rehabilitated families for civil amenities including primary school, Panchayat Ghar, dispensary, seed store, children's park, village pond, drinking water well, tree platform, approach roads or link roads, electrical distribution lines and place of worship.⁵¹ These provisions were made a part of Clause XI of the Final Order of the Tribunal.

5.72. If these provisions stipulating the said amenities are implemented in true spirit they can certainly take care of the above mentioned guidelines of the International Labour Organisation.⁵²

51. For reference see "Report of the Narmada Water Dispute Tribunal", 1978, Vol.II, pp.103, 104.

52. See Vol.IV (1978), p.76.

H. Responses to United Nations
Water Conference

5.80. The Northern India Canal and Drainage Act, 1873, provides that if a person causes water, supplied to him from some water-course, run waste he will be liable in respect of charges made in respect of the water so wasted and that if such a defaulter is not identifiable then all persons receiving supply from the said watercourse shall be liable for such charges.⁵³ Similar provisions are made in other irrigation Acts also.

5.81. The Krishna Water Disputes Tribunal directed that "needless waste of water should be prevented and efficient utilisation encouraged."⁵⁴

5.82. Similarly the Godavari Water Disputes Tribunal observed: "It is our earnest hope that while making its use they (the inhabitants of the Godavari basin) will take all possible steps to prevent wastage and pollution of this holy river".⁵⁵

5.83. All these provisions reflect the implementation measures in response to the principle of "optimum utilisation" of water resources, indicated in the "Declaration and Resolutions of the United Nations Water

53. See Section 34.

54. See Report, Vol.I, p.94.

55. See Further Report, 1980, p.24.

Conference, held at Mar del Plata, March, 1977" and similar other international instruments.

I. Responses to the Decisions of the International Law Commission.

5.90. The Indus Water Treaty of 19th September, 1960 between India and Pakistan; the Agreements between the Governments of India and Nepal, on the "Kosi Project", of 25th April, 1954, on the "Gandak Irrigation and Power Project" of the 4th December, 1959 (including the Exchange of Notes of 4th December, 1959) of 30th April, 1964 (Revising some provisions of the Agreement of 4th December, 1959), on "Kosi Project (revising the Agreement of 25th April 1954) of 19th December 1966 (Revised Agreement); "Summary Record of Discussions of the Meeting", of 19th February, 1976, and on "the Renovation and Extension of Chandra Canal, pumped Canal and Distribution System of the Western Kosi Canal in Nepal, of 7th April 1978; and the Agreements and Arrangements between India and Bangladesh on "Sharing of Ganga Waters at Farakka and on Augmenting its Flows" of 5th November, 1977 (renewed in 1982-83), Ad-hoc Accord of 20th July, 1983 (On Teesta Waters) and the Memorandum of Understanding of November 22, 1985,