WATER POLLUTION IN INDIA: INTRICACIES TO AMELIORATION



By – Sanjeet Purohit

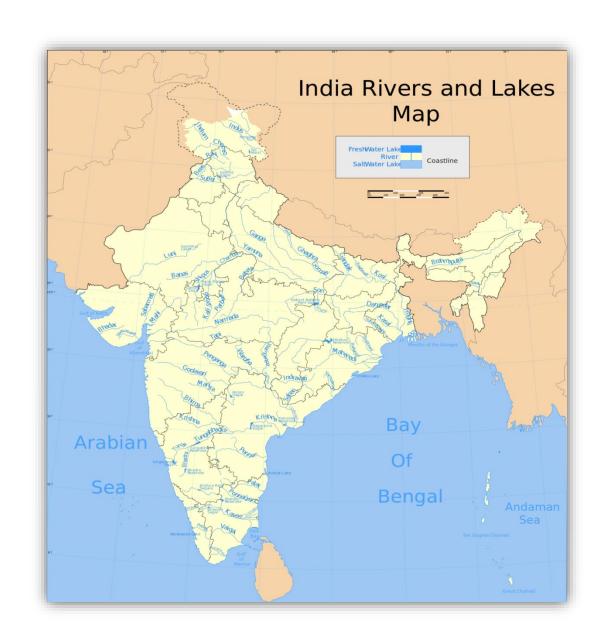
Environmental Lawyer Jodhpur - India

WATER IS CRADLE OF LIFE

WATER IS SACRED



WATER CHANNEL IN INDIA



SOURCES OF WATER POLLUTION

Point source

- Industrial effluents
- Domestic sewage
- Oil, Gasoline and Additives
- Plastics
- Heat and Noise

Non-point source

- Agricultural run off
- Pesticides
- Fertilizers / nutrient pollution
- Mining
- Sediment

Status of Water Pollution in India

THE TIMES OF INDIA

80% of India's surface water may be polluted, report by international body says

TNN | Jun 28, 2015, 04.35 AM IST



An alarming 80% of India's surface water is polluted, a latest assessment by WaterAid, an internati... Read More

NEW DELHI: Even as India is making headlines with its rising air pollution levels, the water in the country may not be any better. An alarming 80% of India's surface water is polluted, a latest assessment by WaterAid, an international organization working for water sanitation and hygiene, shows.

The report, based on latest data from the ministry of urban development (2013), census 2011 and Central Pollution Control Board, estimates that 75-80% of water pollution by volume is from domestic sewerage, while untreated sewerage flowing into water bodies including rivers have almost doubled in recent years.

This in turn is leading to increasing burden of vector borne diseases, cholera, dysentery, jaundice and diarrhea etc. Water pollution is found to

be a major cause for poor nutritional standards and development in children also.

Between 1991 and 2008, the latest period for which data is available, flow of untreated sewerage has doubled from around 12,000 million litres per day to 24,000 million litres per day in Class I and II towns.

The database defines Class I towns as those with a population of more than 1 lakh, whereas towns with population ranging between 50,000 to 1 lakh are classified as Class II.

DOMESTIC SEWAGE POISONING WATER

75-80% of water pollution by volume is from domestic sewage

Estimated sewage generation from class-I cities and Class-II towns |

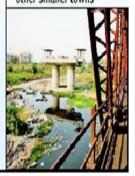
38,254.82 MLD

Of this, only 30% or 11,787.38 MLD is being treated

➤ The remaining is disposed directly into water bodies, polluting three-fourth of our surface water resources

MLD=Million litres per day Source: Report by WaterAid India

- ➤ Untreated sewage flowing into water bodies has doubled from around 12,000 MLD to 24,000 MLD in class I and II towns between 1991 and 2008
- ➤ There were 269 sewage treatment plants with 211 in class I cities, 31 in class II towns, and 27 in other smaller towns



LAW RELATED TO WATER POLLUTION IN INDIA

Constitution of India

Article 21, Article 39D, Article 48, Article 51A

Criminal Laws

- Section 425, Section 430, Section 432 Indian Penal Code
- Section 133, Section 134 Criminal Procedure Code

Civil Laws

- Law of Injunction
- Law of Damages

Environmental Laws

- The Water (Prevention & Control of Pollution) Act, 1974
- The Water (Prevention & Control of Pollution) Cess Act, 1977
- The Environment Protection Act, 1986

ADJUDICATORY MECHANISM IN INDIA

Pre-National Green Tribunal Era



Public Interest Litigation under Article 32 and Article 226 of the Constitution of India

Milestones Establishing Safe Water as Right to Life

Narmada Bachao Andolan v. Union of India

"Water is the basic need for the survival of human beings and is part of the right to life and human rights as enshrined in Article 21 of the Constitution of India....and The right to healthy environment and to sustainable development are fundamental human rights implicit in the right to "life".

• A.P. Pollution Control Board II v. Prof. M.V. Nayudu

"Environment Protection Act and The Water (Prevention and Control of Pollution) Act 1974 did not enable to the State to grant exemption to a particular industry within the area prohibited for location of polluting industries. Exercise of such a power in favour of a particular industry must be treated as arbitrary and contrary to public interest and in violation of the right to clean water under article 21 of the constitution on India....The Government could not pass such orders of exemption having dangerous potential, unmindful of the fate of lakhs of citizens of the twin cities to whom drinking water is supplied from these lakes. Such an order of exemption carelessly passed, ignoring the 'precautionary principle' could be catastrophic."

Vellore Citizens' Welfare Forum v. Union of India (Tamil Nadu Leather Tannery case)

The constitutional and statutory provisions protect a person's right to fresh air, clean water and pollution-free environment, but the source of the right is the inalienable common law right of clean environment.

ENVIRONMENTAL COURT IN INDIA



NATIONAL GREEN TRIBUNAL ACT, 2010

Jurisdiction of National Green Tribunal

Original Jurisdiction

- Section 14

Compensatory Jurisdiction - Section 15 & 17

Appellate Jurisdiction

- Section 16

Aggrieved Person Defined

• Section 2(j) - "person includes an individual, a Hindu Undivided Family, a company, a firm, an association of persons or body of individuals whether incorporated or not, trustee of a trust, a local authority and every artificial juridical person, not falling within any of the preceding subclauses;



Aggrieved Persons Explained

Vimal Bhai vs. Ministry of Environment & Forest & Others

"From the above it is clear that the State shall endeavor and safeguard the environment and wild life and it is the fundamental duty of the citizen to improve the natural environment including forests, lakes, rivers, and wildlife and also to have compassion for living creatures. Once, the protection and improving the natural environment is the fundamental duty of a citizen, any person can approach this Tribunal and agitate his grievance as to protection and improvement of the natural environment. The statutory provisions are subservient to the constitutional mandates. The person as defined or person aggrieved as occurs in Section 2(j) 16 and 18 (2) of the NGT Act cannot be placed above "every citizen" as appears in Article 51(A) of the Constitution of India. Once the mandate is of every citizen, any person can approach this Tribunal complaining environmental threat in the activities of the State or any organization or individual.

• Therefore, we are of the view that the appellants are interested persons in the environment and ecology of the area, though they are not directly affected/ injured at this point of time. But, they can be definitely called aggrieved persons since they apprehend some danger, if the project is launched without taking proper precautions. The person aggrieved in environmental matters must be given aliberal construction and needs to be flexible. Therefore, we are of the considered opinion that persons like the appellants are also entitled to approach this Tribunal and the appeal is maintainable."

POWER OF TRIBUNAL

- Section 20 Tribunal to apply certain principles
 - Polluter Pays Principle
 - Precautionary Principle
 - Sustainable Development
- Section 23 Cost
- Section 25 Execution of Awards or Order or Decision of Tribunal
- Section 26 Penalty for failure to comply orders of the tribunal
- Section 30 Cognizance of offences

Case Study (I) - The Ganga River Pollution Case Title of the Case - Indian Council for Enviro-Legal Action Vs. National Ganga River Basin Authority & Ors. and M.C. Mehta Vs. Union of India

- The Ganga flows nearly 2525 km. in five different States i.e. Uttrakhand, Uttar Pradesh, Jharkhand, Bihar and West Bengal.
- Pollution due to increase in pollutants industrial waste, human waste, religious events, city sewage and decrease in natural flow.
- **Principle applied** "Precautionary Principle", "Public Trust Doctrine", "Polluter Pays Principle"

Directions:

- In relation to selection and disposal of sewage.
- In relation to industries.
- In relation to Hotels, Dharmshalas and Aashrams
- In relation to municipal solid waste
- In relation to flood plains
- In relation to mining on the river bank.
- In relation to bio-medical waste

Case Study (2) - The Yamuna River Pollution Case Title of the Case - Manoj Mishra Vs. Union of India & Ors.

Part-I

- The Yamuna River is one of the most sacred river of the country and aquatic lifeline of millions.
- The water of the river was critically threatened by encroachment on flood plain, dumping of construction waste, discharge of industrial effluent, domestic diffuse and agricultural run off.
- The major issue highlighted in the said case was the indiscriminate dumping of construction and other solid waste at the banks of the river Yamuna as well as covering of the strong water drains providing the interlinkage of the river system.
- The Commissioner appointed by Tribunal submitted report disclosing accumulation of 37000 cubic meter debris at the eastern part of the Yamuna and 53000 cubic meter debris at the western part of the river Yamuna.
- Report further disclosed dumping of 400-500 tons of debris per day.
- On 22.07.2013, the Tribunal directed the local authority to ensure cleaning of banks of river Yamuna and to prevent any further dumping of construction or other solid waste in the river. Tribunal further directed for charging compensation upon the persons undertaking the dumping activity under the Polluter Pays Principle.

PUBLIC NOTICE

General public is hereby informed that the Hon'ble National Green Tribunal on 22nd July 2013 in OA no. 6 of 2012 ----- Manoj Mishra Vs. Union of India and others was pleased to pass the following order, in respect of dumping of debris along the Yamuna River Bank in NCT of Delhi:-

"Since there has been persistent pollution and obstruction on the river bank by dumping of debris, we hereby direct to invoke the principle of "Polluter Pays" and direct that any person who is found dumping debris on the river bank in the Geeta Colony site and for that matter in any site shall be liable to pay a sum of Rs. 5 lakhs for causing pollution as well as for removal fo the debris from the site in question."

The Hon'ble Tribunal was further pleased to order as under :-

"The fine so imposed shall be recovered form the person who is responsible for dumping of debris i.e. truck owner as well as person to whom the debris belong i.e. by whose property demolition the debris have been created. Even the contractor who is carrying on the business of bringing the dumping of debris shall be equally responsible."

Action will be taken by the concerned land owning agencies for violation of the aforesaid directions.

By Order: DM (East)

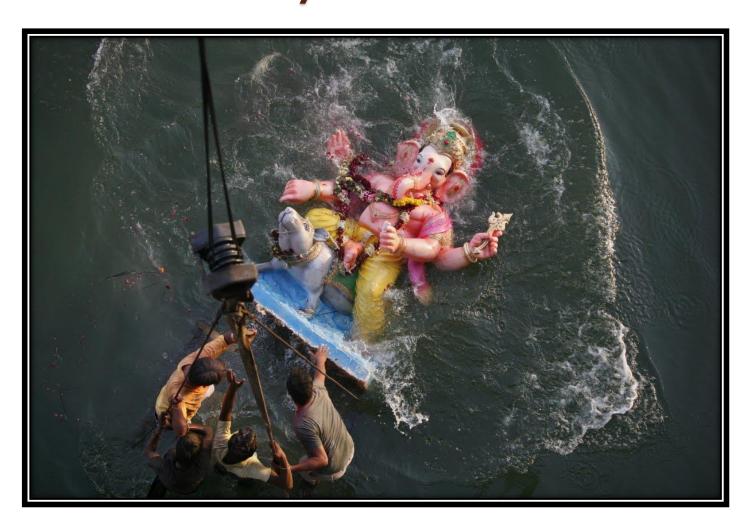
Part-2

- Decided on 13th of January, 2015.
- The Yamuna Action Plan is being implemented by the Government with assistance from Japan International Cooperation Agency.

Directions:

- Implementation of dirty to pristine Yamuna Revitalization Project, 2017.
- Installation of 32 Sewage Treatment Plant
- Establishment of Common Effluent Treatment Plants (CETP) near industrial cluster.
- Mapping of the flood-plain
- Removal of construction debris lying near the river bank
- Estimation of Rs.4000 Crores to be used as a planned budget for ensuring pollution free Yamuna under Polluter Pays Principle.
- Imposition of penalty on the persons found dumping construction and heavy debris.

Case Study (3) - The Idol Immersion Case Day of Festival



After Effects



Title of the case – R. Janakiraman Vs. Principal Secretary to the Government, Department of Environment & Forest, Chennai. Decided on – 05th August, 2016

• The case was with regard to seeking of direction against the respondents to ban immersion of idols containing Plaster of Paris and other chemicals in the Hoganekkal falls and river bank of Cauvery in Dharmpuri District Tamil Nadu.

Directions:

Immersion of Lord Ganesh idols made of PoP, baked clay which are insoluble in water and painted with toxic dyes is to be completely banned in the District. Idols should be made from natural materials as described in the holy scripts. Use of traditional clay, starch etc. which are soluble in water may be allowed. An undertaking in this regard may be obtained from the Pooja Committee applying permission to install idols.

Worship materials such as flowers, vastras (cloths) decorating materials (made up of paper and plastic) should be removed before immersion of idols. Local body shall dispose these items safely.

Case Study (4) - The Oil Spill Case



Title of the case – Samir Mehta Vs. Union of India & Ors. Decided on – 23rd August, 2016

• Issue - A ship was carrying more than 60054 MT coal, 290 tonnes of fuel oil and 50 tonnes of diesel. Its voyage was from Indonesia to Dahej. On its voyage to destination, the ship sank approximately 20 Nautical Miles from the coast of South Mumbai. There was an oil spill in August, 2011 which occurred in the Arabian Sea, off the coast of Mumbai due to the sinking of the ship. The spilled oil from the ship spread beyond Mumbai to Raigad District. Traces were noticed particularly between Uttan in Bhayandar and Gorai beach.

• Directions:

- Respondents no. 5, 7 and 11 are held liable to pay environmental compensation of Rs.100 Crores to the Ministry of Shipping, Government of India.
- The above Rs. 100 Crores shall include the expenses incurred by the Coast Guard and other forces for the prevention and control of pollution in different ways, as stated above, caused by the oil spill and saving the crew etc. Out of this amount, a sum of Rs.6,91,84,405 shall be adjusted and paid to the respective agencies.



- Indian ships of 400 GT and above on foreign voyages must have the International Ballast Water Management Certificate.
- Indian ships below this level plying within territorial waters of India will be issued an Indian Ballast Water Management Certificate as per provisions of the Act.
- Those which cannot carry ballast water, or are war ships or naval auxiliary or government owned non commercial ships are exempted.
- Indian as well as foreign ships of 400 GT and above should also carry a Ballast Water Management Plan.
- Ships of 400 GT or above must also be surveyed and inspected.
- Ship complies with convention following testing of ballast water, and is still detained, it is eligible for compensation.
- Act provides for penalty for not complying with provisions.

Case Study (5) - Jodhpur Textile Units Case Title of the Case - Laxmi Suitings Vs. State of Rajasthan & Ors. Decided on 01.05.2014



Background of the case-

 State of Rajasthan is known for its printing and dyeing of low cost and low weight fabric. Jodhpur, Pali, Balotra, Jasol are major cluster of Small Scale Industries.

Nature of industrial activity –

 The textile processing industries are undertaking process of desizing, scouring, mercerizing, bleaching, dyeing, printing and finishing of textiles.

Pollutants involved –

 Textiles industries generate liquid, acid effluents, solid waste, air emissions, bio-chemical oxygen demand (BOD), chemical oxygen demand (COD), toxic heavy metal, residual chlorine refractory material.

Issue involved –

- Pollution caused by the industries having no approval and waste management system.
- Laconic functioning of Common Effluent Treatment Plant.
- Pollution caused by industries situated in non-conforming area.

Tribunal's observation:

- Deemed approval only in case the mandatory pre-requirements were duly fulfilled and applications filed are complete in legal sense.
- Pollution cannot be permitted under the shield of principles of natural justice.

Tribunal's Directons:

- Tribunal directed State Government to establish new industrial area to shift industries of non-conforming area.
- Tribunal directed the CETP to be operated to its optimum capacity of
 20 MLD to achieve zero discharge and no malfunctioning in its process.
- Pollution Control Board to inspect the CETP periodically.
- No industry should operate without approval to establish and approval to operate.
- Each unit to pay compensation under Polluter Pays Principle @ Rs.5
 Lac.

Tribunal's Directions:

- Committee constituted to formulate and implement the scheme for removal of sludge from River Jojari.
- Directions to CETP Trust to have proper monitoring system to assess the intake and outflow of water from the plant and to ensure the transportation of waste water through closed conduit pipe.
- Directions to have mechanism for disposal of sludge as per the Hazardous Waste Handling and Management Rules, 1989.
- Installation of electronic flow meter and reverse osmosis system and individual ETP to the industries which will be shifted in conforming area in future.

Implementation of Tribunal's direction





Increase of litigation and Court's monitoring will be proved to be inversely proportionate to Water Pollution in the country.

THANK YOU