Subject: Law

Environmental Law

Law Relating to Water Pollution
QUADRANT-I (A) – PERSONAL DETAILS

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QUADRANT-I (B) – DESCRIPTION OF MODULE

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<td>ENLAW/5</td>
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<td>Pre-requisites</td>
<td>Environmental studies in any discipline</td>
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<td>Objectives</td>
<td>To introduce the legal framework in India to prevent and control water pollution</td>
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<td>Keywords</td>
<td>Water Act, Environment (Protection) Act, CPCB, SPCB, Supreme Court</td>
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1. Introduction

Water pollution is said to have occurred when the pollution load exceeds the natural regenerative capacity of a water resource. It is a very serious problem in India where 70 per cent of the sources of surface water, such as rivers and lakes, are polluted and there is an alarming increase in groundwater pollution as well. In light of the fact that surface water and groundwater are the major sources of water supply for different uses, their pollution creates a situation where water may be available in sufficient quantity but there is water scarcity due to quality concerns.

The sources of water pollution can be divided into point sources and non-point (or diffuse) sources—the former include disposal of untreated or partly treated industrial effluents and domestic sewage while the latter include agricultural run-off. Water pollution can also result from encroachments, sand mining, religious activities, dumping of waste, etc.

2. Learning Outcome

This unit will provide the readers with an overview of the different components of the legal framework relating to water pollution in India, which includes constitutional provisions, legislation as well as judicial decisions.

3. Legal Framework

The legal framework for water pollution comprises of the Constitution of India, legally binding and enforceable laws and rules framed under the laws, as well as judicial decisions. There are also a number of non-binding administrative regulations and guidelines concerning water quality or water pollution at national, state and local levels. While some are concerned with public health, others apply to environmental quality. Similarly, while some of them focus exclusively on drinking water, others relate in general to the different uses of water.

This section highlights the salient features of the legal framework.

3.1. Constitution of India

The Constitution of India does not specifically mention water pollution. However, the Supreme Court of India has interpreted Article 21 of the Constitution, which guarantees the fundamental right to life, broadly to include the right of enjoyment of pollution-free water environment (see Subash Kumar v State of Bihar & Others, AIR 1991 SC 420) and the right to hygienic environment (see Virendra Gaur & Others v State of Haryana & Others, (1995) 2 SCC 577).

Two of the Directive Principles of State Policy, included in Part IV of the Constitution, which provide that the State shall endeavour (a) to improve public health (Article 47); and (b) to protect and improve the environment (Article 48-A), are also relevant. Further, protection and improvement of the natural environment, including lakes and rivers, has been identified as a fundamental duty of every citizen in the Constitution (Article 51-A(g)).

Under the Constitution, water, sanitation and public health are included in List II of the Seventh Schedule; in other words, state governments rather than the Central Government exercise powers in respect of these subjects. The 73rd and 74th Constitutional Amendment Acts in the year 1992 led to the introduction of Parts IX and X in the Constitution, which constitutionalised local level governing bodies, that is, municipal authorities in urban areas and Panchayati Raj Institutions (Gram Sabhas or panchayats) in rural areas. States have been
vested with the discretion to delegate any or all of the functions relating to water, sanitation and public health, among others, to these local bodies.

3.2. **Laws relating to local bodies**

Following constitutional amendments in the year 1992 (see section 3.1. above), the statutory framework concerning water pollution in India includes laws (as well as bye-laws, rules and regulations framed thereunder) relating to municipal and panchayat areas passed by State Government or local government as well as public health laws. While some of these laws include explicit provisions imposing an obligation on the local bodies to prevent and control water pollution, most of them require the local bodies to provide clean and wholesome drinking water to the residents. Laws enacted by State Governments to govern parastatal bodies, cantonments or development authorities, as the case may be, are also relevant for this purpose.

3.3 **Environmental laws**

The existing environmental laws adopt a command-and-control approach towards water pollution. In other words, they lay down limits or standards of discharge of effluents into water bodies and punish non-compliance with such limits or standards. This sub-section discusses two such laws.

3.3.1. **Water (Prevention and Control of Pollution) Act, 1974**

According to the Constitution, State Governments or Union Territory administrations (as the case may be) exercise control over water (including water pollution). The **Water (Prevention and Control of Pollution) Act, 1974** was enacted by the Central Government in exercise of the power vested in it by resolutions passed by two or more State Legislatures in accordance with Article 252 of the Constitution. The **Water (Prevention and Control of Pollution) Rules, 1975** complement the Water Act.

The two main objectives of the Water Act are:
   (i) to prevent and control water pollution; and
   (ii) to maintain or restore wholesomeness of water.

- contamination of water or alteration of the physical, chemical or biological properties of water or 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 a nuisance or render such water harmful or injurious to
- public health or safety, or
- domestic, commercial, industrial, agricultural or other legitimate uses, or
- the life and health of animals or plants or aquatic organisms.
However, the Act does not define the term 'wholesomeness'.

The Act applies to streams, which term includes rivers, flowing or dry watercourses, natural or artificial inland waters, subterranean waters and sea or tidal waters, as well as wells. It applies to industries, operations or processes and treatment and disposal systems; all persons—i.e., individuals, industries and municipal authorities; and to trade effluents as well as sewage effluents. The Act normally applies to the entire State but the State Government has the discretionary power to restrict its application to specific 'water pollution, prevention and control' area(s). Such action must be based on prior consultation with, or recommendation of, the State Pollution Control Board.

The Water Act establishes the Central Pollution Control Board (CPCB) (at the national level) and the State Pollution Control Board (SPCB) or the Pollution Control Committee (at the State/Union Territory level) to carry out its objectives.

The main function of the CPCB is to promote the cleanliness of streams and wells in different areas of the States and it can also lay down standards for them, in consultation with State Governments. It also plays an advisory role to the Central Government; it coordinates the activities of, resolves disputes among, and provides technical assistance and guidance to, the SPCBs, etc.

On the other hand, the SPCBs are required to perform several functions. These include:

- classifying waters of the State;
- laying down, modifying or annulling effluent standards for (a) sewage/trade effluents; and (ii) the quality of receiving waters resulting from discharge of effluents;
- laying down effluent standards to be complied with by persons while discharging sewage and/or sullage;
- laying down standards of treatment of sewage/trade effluents to be discharged into a stream;
- evolving economical and reliable methods of treatment of sewage/trade effluents, methods of utilization in agriculture, and efficient methods of disposal on land in certain cases;
- reviewing the disposal system of sewage effluents, works and plants for sewage treatment or in connection with the grant of any consent;
- making, varying or revoking any order (i) for prevention, control or abatement of discharge of waste into streams or wells; (ii) requiring any person concerned to construct new systems for the disposal of sewage/trade effluents or to modify, alter or extend existing system or to adopt necessary remedial measures to prevent, abate or control water pollution;
- advising the State Government with respect to the location of an industry whose operation is likely to result in water pollution.

The Water Act prohibits any person from knowingly causing or permitting the entry of

(i) any poisonous, noxious or polluting matter, directly or indirectly, into any stream or well or sewer or on land, or

(ii) any other matter into any stream 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 consequences.

The SPCB is responsible for determining whether the matter is poisonous, noxious or polluting or any other matter. However, these prohibitions may not apply in some situations.
The command-and-control approach towards water pollution is evident from the permit system envisaged under the Water Act. Previous consent of the SPCB is required to establish any industry, operation or process, or any treatment and disposal system etc., which is likely to discharge sewage/trade effluent into a stream or well or sewer or on land (known as sewage discharge), to use any new or altered outlet for, or to make any new, sewage discharge. Contravention of these two provisions is punishable with imprisonment for a term between 18 months and six years as well as fine.

The SPCB has been granted certain powers to prevent and control water pollution.

- It can undertake certain emergency measures to remove and dispose the polluting matter, or to remedy or mitigate pollution caused by the polluting matter or issue orders immediately restraining or prohibiting the polluting activity.
- It can apply to the courts to restrain apprehended water pollution in streams and wells. The court may direct a potential polluter to desist from causing pollution or direct an actual polluter to remove the polluting matter. In case of non-compliance with the latter direction, the SPCB may be authorized by the court to undertake the removal and disposal and recover the expenses from the polluter.
- It can direct closure, prohibit or regulation of any industry, operation or process, or to stop or regulate supply of water, electricity or any other service.

The person-in-charge of an industry, operation or process or any treatment or disposal system or any extension or addition thereto, or the local authority in charge of a sewerage system or sewage works, is required to report any actual or likely discharge of a poisonous, noxious or polluting matter into a stream or well or sewer or on land due to an accident or other unforeseen act or event, and the resulting or likely water pollution, to the SPCB or other prescribed authority.

In order to augment the financial resources of the CPCB and SPCBs, the Water (Prevention and Control of Pollution) Cess Act, 1977 levies a cess on the water consumed by persons carrying on certain industries and local authorities. A 25 per cent rebate is given to any person or local authority that installs a sewage treatment plant or trade effluent treatment plant. In a majority of cases, the water cess amount is either not assessed and levied by the SPCB, or if levied, remains unpaid by the consumers and/or its collection is not pursued by the SPCB.

3.3.2. Environment (Protection) Act, 1986

While the Water Act applies specifically to water pollution, the subsequently enacted Environment (Protection) Act, 1986 (the Environment Act), which provides for environmental protection and improvement, applies to different types of environmental pollution, including water pollution. It has been clarified that in case of conflict between the two laws, the provisions of the Environment Act will prevail.

Under the Environment Act, the Central Government (through the Ministry of Environment and Forests or MoEF) has been vested with the power to lay down standards for environmental quality in its various aspects and for emission or discharge of environmental pollutants from various sources having regard to their quality or composition. This has led to the notification of rules, which provide water quality standards for various areas and purposes and the maximum allowable limits of concentration of various water pollutants for different areas.

The Act prohibits a person carrying on any industry, operation or process from discharging or emitting water pollutants (or permitting their discharge or emission) in excess of the prescribed standards. Where a discharge of a water pollutant in excess of the prescribed standards occurs (or is apprehended) due to an accident or other unforeseen act or event, the person responsible for the discharge and the person in charge of the place where the discharge
occurs (or is apprehended) are required to prevent or mitigate the resulting water pollution and to inform the prescribed authority of such an apprehension or actual occurrence. The prescribed authority is also required to undertake the necessary remedial measures as early as practicable.

The Central Government has also issued a number of notifications, which are relevant for the prevention and control of water pollution. These include:

- Environment Impact Assessment Notification, 2006
- Different eco-Sensitive Zone notifications
- Coastal Regulation Zone Notification, 2011

3.3.3. Limitations of environmental laws

There are several reasons for the poor implementation or non-implementation of the provisions concerning water pollution in the Water Act and/or the Environment Act. These include:

- Inadequate infrastructure (monitoring stations) and frequency of monitoring
- Low rate of compliance
  - Poor implementation and monitoring by SPCB
    - Failure of the SPCB to act against defaulters/polluters due to resource constraints - financial, human and technical
    - Lack of will
    - Corruption
    - Multiple responsibilities of SPCBs (under the Water Act as well as the Air (Prevention and Control of Pollution) Act, 1981)
  - Very low quantum of penalty/fine, so cost of non-compliance < cost of compliance
- Inadequacy of standards, which does not rule out occurrence of water pollution regardless of compliance

In addition, the application of the Water Act is confined to point sources of water pollution. The absence of legal provisions governing non-point sources of water pollution undermines the implementation of the provisions of the Water Act.

3.4. Nuisance under criminal laws

Section 277 of the Indian Penal Code, 1860 penalizes voluntary corruption or fouling of the water of any public spring, reservoir so as to render it less fit for the purpose for which it is ordinarily used. However, this provision does not apply to river pollution and private wells. Further, the punishment, which is imprisonment of a maximum term of three months and/or a maximum fine of Rs500 does not have the required deterrent effect.

Under section 133 of the Code of Criminal Procedure, 1973, a speedy and summary remedy is available, among other situations, where "any unlawful obstruction or nuisance should be removed from any public place or from any way, river or channel which is or may be lawfully used by the public." However, the injunctive relief under section 133 must not interfere with an order of the SPCB under the Water Act (if any).

4. Judicial Decisions

The Supreme Court of India, High Courts as well as the National Green Tribunal have adjudicated a number of cases where the issue of water pollution was raised. Some of these cases have provided the courts with an opportunity to address situations resulting from poor implementation or non-implementation of the relevant provisions of existing laws (see the
MC Mehta cases below). In some other cases, courts have relied on principles of environmental law, such as the polluter pays principle and the precautionary principle, to impose liability on the polluter or the potential polluter who has then been directed to undertake the necessary remedial or preventative measures, as the case may be (see the Indian Council case & Vellore case below). There are several other cases where over the years, important aspects of the water pollution issue have been raised before the courts.

In MC Mehta v. Union of India (Kanpur Tanneries case), AIR 1988 SC 1037, a public interest litigation sought an order from the Supreme Court to restrain the tanneries near Kanpur city from discharging trade effluents into the river Ganga until they set up effluent treatment plants. The Court observed that the provisions of the Water Act were comprehensive but the SPCBs had not taken effective steps to prevent the discharge of effluents into the river Ganga. It also noted the failure of the Central Government to do much under the Environment Act to stop the grave public nuisance caused by the tanneries. Insofar as the tanneries are concerned, the Court observed that the fact that their effluents are first discharged into municipal sewers did not absolve the tanneries from being proceeded against under the provisions of the law in force, since ultimately the effluents reach the river Ganga. Among other directions, the Court ordered stoppage of work in the tanneries, which were discharging effluents into the river and which did not set up primary treatment plants. It considered the financial capacity of the tanneries to set up primary treatment plants to be irrelevant. According to the Court, the tanneries were not being taken by surprise as they were being asked to take necessary steps to prevent discharge of untreated wastewater into the river for several years.

In another important case, MC Mehta v. Union of India (Municipalities case), AIR 1988 SC 1115, a public interest litigation was filed seeking the enforcement of the statutory provisions which impose duties on municipal authorities and the SPCB constituted under the Water Act. The Supreme Court observed that the municipal authorities have the statutory duty to prevent public nuisance caused by pollution of the river Ganga and therefore, the municipal corporation of Kanpur has to bear the major responsibility for river pollution near the city. The Court also took note of the fact that many of the provisions of the Water Act and the municipal laws for prevention and control of water pollution have just remained on paper without any adequate action being taken pursuant thereto.

In Indian Council for Enviro-Legal Action v Union of India and Others, AIR 1996 SC 1446, among other claims, it was alleged that water in wells and streams in village Bichhri in Udaipur district in the State of Rajasthan had become unfit for consumption as a result of disposal of untreated toxic sludge from an industrial complex located within the limits of the village. The Supreme Court held that the respondents were absolutely liable to pay compensation for the harm caused by them to the villagers in the affected area and surrounding areas as well as to the environment. According to the Court, the power to levy costs required for carrying out remedial measures is implicit in the Environment Act.

In another case, Vellore Citizens Welfare Forum v Union of India and Others, AIR 1996 SC 2715, the petitioner organization was concerned about water pollution resulting from the discharge of untreated effluents by tanneries and other industries into river Palar in the State of Tamil Nadu, which was a source of drinking water supply. The Supreme Court directed the constitution of an authority under the Environment Act to deal with the situation created by the tanneries and other polluting industries in the State. The authority was also directed to frame and execute scheme(s) for reversing ecological/environmental damage caused by pollution in the State. It also imposed pollution fine on all the tanneries, and ordered the closure of tanneries that fail to pay the fine. However, it allowed suspension of closure orders where tanneries agree to set up common effluent treatment plants or individual pollution control devices and obtain consent to operate from the SPCB. Failure to obtain consent from the SPCB would however result in closure of tanneries.
5. Summary

Water pollution is a very serious problem in India. The right to a water pollution-free environment has been read into the fundamental right to life guaranteed under the Constitution of India. In addition to a specific law to prevent and control water pollution as well as the environment protection legislation, which follow a command-and-control approach, the statutory framework governing water pollution comprises provisions of municipal laws and public nuisance-related provisions in civil and criminal laws. While the first three laws have suffered from serious implementation failures, the provisions relating to public nuisance have also not been invoked. However, the issue of water pollution has been raised in a number of public interest litigations to varying effect.