# Water Pollution in India: An Overview of Existing Statutory Frameworks in Management of Ecosystems

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> ***There is one universal law . . . that law is justice. Justice forms the cornerstone of each nation's law.*** [2]

## I. Prologue

Across the globe there are rising concerns about the economic, social, and environmental aspects of the world-water-crisis and about the structural aspects of a lack of access to basic water resources. Related issues are inequities in access to water resources, the privatization of water in the context of neo-liberal policies, and a continued resistance to the recognition of economic and social rights. The increasing scarcity of water has resulted in efforts both internationally and domestically, in particular in developing nations, to advance a human rights-based approach to access to water. [3] This approach is gaining force, with India and South Africa foremost among those nations advocating a rights-based approach.

The Supreme Court of India has been actively engaged, in many respects, in the protection of environment. While conventionally the executive and the legislature play the major role in the governance process, the Indian experience, particularly in the context of environmental issues, is that the Court has begun to play a significant role in resolving environmental disputes. Although it is not unusual for Courts in the Western democracies to play an active role in the protection of environment, the way Indian Supreme Court has been engaged since 1980s in interpreting and introducing new changes in the environmental jurisprudence is unique in itself. Besides the assigned role of interpretation and adjudication[4] of environmental law the Court has laid down new principles to protect the environment, reinterpreted environmental laws, created new institutions and structures, and conferred

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[2] *Alexis de Tocqueville, 1835*

[3] "*What Price for the Priceless? Implementing the Justiciability of the Right to Water"*, 120 HARV. L. REV. 1067, 1068–69 (2007).

[4] Speaking constitutionally, the role of the Supreme Court as proclaimed under Article 141 of the constitution of India is to 'declare' the law that shall be binding on all courts in India. As such, it does not envisage interaction, much less a direct dialogue, with the executive government of the day.

additional powers on the existing ones through a series of illuminating directions and judgments. The Court's directions on environmental issues is involved not just in general questions of law as is usually expected from the Court of the land but also in the technical details of many environmental cases. Indeed, some critics of Supreme Court describe the Court as the 'Lords of Green Bench' or 'Garbage Supervisor'.[5] International legal experts have been unequivocal in terming the Indian Courts of law as pioneer, both in terms of laying down new principles of law and also in the application of innovative methods in the environmental justice delivery system.[6]

India offers a fascinating lens through which to view the issues raised by a rights-based approach to access to water. The Constitution of India is a remarkable document with an explicit transformatory agenda, drafted at a moment when the ideals and aspirations of human rights were compelling to the newly independent nation. Recognizing the role of law and the significance of rights in remedying the sharp inequities of colonial India— with its divisions of class, caste, gender, and religion—the Constitution incorporates notions of universal human rights. Taking its postcolonial constitutional mandate for social reform through judicial activism seriously, the Indian Supreme Court has been remarkably enthusiastic about interpreting the Constitution to reach decisions in favor of the justiciability of social and economic rights. Although the right to water is not a fundamental right, the Supreme Court has over the years creatively read in the right to water through the right to life.[7] The Court has also been receptive to incorporating international law in its analysis of socioeconomic rights.

However, despite this progressive jurisprudence, the State has done little to enforce judicial decisions, or to initiate domestic legislation to bring it into conformity with India's international law obligations. Notwithstanding constitutional mandates and judicial injunctions, millions of Indians, in particular women and children do not have adequate access to water. According to the World Water Development Report of 2003, "in terms of availability of water, India is at the 133rd position among 180 countries and as regards the quality of the water available, it is 120$^{th}$ among 122 countries."[8] Seventeen percent of India's population does not have

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5 S.S. Prakash and P.V.N. Sarma, *'Environment Protection vis-a-vis Judicial Activism'*, 2 Supreme Court Journal 56 (1998).

6 M.R. Anderson, *"Individual Rights to Environmental Protection in India", in* A. E. Boyle and M.R. Anderson eds., *"Human Rights Approaches to Environmental Protection"*, 1 (United Kingdom: Oxford University Press, 1998).

7 *Supra Note 2, at 1080.*

8 S. Muralidhar, *"The Right to Water: An Overview of the Indian Legal Regime", in* Eibe Riedel & Peter Rothen eds, *"The Human Right To Water"*, 2006, Pg. 65, website- http://www.ielrc.org/content/a0604.pdf.

access to potable water, 80% of children suffer from waterborne diseases, and a total of 44 million people have illnesses related to poor water quality.[9]

Water is cradle of life. It is a basic human need and a finite life support system. To protect this precious resource, one needs a stringent enforcement system meant for its conservation, sanitation and supply. Environmental laws are meant to set standards for what people and institutions must to do control or prevent environmental pollution including water. After enactment it becomes the job of the central and state governments to make sure that those who are subject to these environmental protection laws knows what they must so to comply. In this case, we have designated central and state institutions called the Central and State Pollution Control Boards respectively, their primary role is the enforcement of the Environmental Protection Act (EPA) and its constituent statutory frameworks dating back to the Post Stockholm environmental laws such as the Water (Prevention and Control of Pollution) Act of 1974.

The difficulties in translating the rights articulated at the Supreme Court level to the material context of ensuring that governance structures are in place to actually enforce these rights. I acknowledge the need to recognize the specific context of group rights to water based on customary law and tradition. In fact, customary law in India supports the notion of the right to water, and there is a recognition of the broad social right to access to water.[10] Currently, the debate in India on water rights is focused on in whom the rights should be vested—individuals or the state in trust.[11] The government asserts that the right should vest in the state, whereas NGOs and academics argue for rights to be vested at various levels, rather than all lying with the state.[12] This latter position calls for a system of correlative rights vested in cooperatives together, with some rights vested in the state through the public trust doctrine.[13] Arguably, as suggested by some experts, a structure whereby individual use rights and market forces are mediated by governance structures would be a pragmatic response to the increasing scarcity of water resources.[14]

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9 Ruchi Pant, *"From Communities' Hands To MNCS' Boots: A Case Study From India On Right To Water, Rights And Humanity"*, UK 16 (2003), website-www.righttowater.info/wp-content/uploads/india_cs.pdf.

10 Marcus Moench, "*Allocating the Common Heritage: Debates over Water Rights and Governance Structures in India"*, Economic & Political Weekly, June 27, 1998, Pg. A-46, A-48.

11 *Ibid, Pg. A-50.*

12 *Ibid.*

13 *Ibid Pg. A-48.*

14 *Ibid, Pg. A-53.*

## II. Water Pollution

### *II.I. What is water pollution?*

Water is good solvent .Therefore it is rarely found, except in chemical laboratory, free from 'impurities'. Even rain water has dissolved some gases in it. The practical and rational definition of water can thus be following-

> *"The presence of deleterious matter in such quantities to make the water unsuitable for its designated use."*

In Scientific sense, "water pollution is a distortion of the aquatic ecosystem. Hence, water pollution is such a change which 'adversely affect the aquatic ecosystem in terms of the living organism, Oxygen content, the presence of toxins and so on.[15]

In legal sense, Strictly Speaking, pollution of water means a departure from normal state (rather than a pure water, for ideally unpolluted water is misconception) of water by human activities in such a manner to prevent it from being used for the purposes thought as normal. Normal areas of use include domestic, agricultural, Industrial, Fish, and other aquatic life and wild life including recreation and aesthetics.[16]

The water (Prevention and control of pollution) act 1974 makes a legal definition of water pollution as –

> *"Such contamination of water or such alteration of the physical, chemical, or biological properties of water or such discharge of any sewage or trade effluent or any other liquid ,gaseous or solid substance into water as may, or is likely to create a nuisance or render such water harmful or injurious to public health or safety or to domestic, commercial, industrial ,agricultural or other legitimate uses or to the life and health of animals or aquatic organism."*[17]

### *II.II. Types of Water Pollution*

Pollutants of water come in many forms, including:

a) Deoxygenating materials, for example, sewage and other organic wastes, such as silage, farm wastes from a number of heavily polluting

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[15] Kailash Thakur, "*Environmental Protection Law and Policy in India*", Deep & Deep Publication, (2005), Pg. 26-27.

[16] *Ibid.*

[17] R.C.Das & D.K.Behra, "*Environmental Science –Principles and Practices*", Prentice Hall of India pvt. ltd. New Delhi (2008), Pg. 20.

industrial processes (e.g. food processing and the production of smokeless fuel, textiles, paper and dairy products);

b) Nutrient enrichment by such things as fertilizers, which may give rise to eutrophication, causing an accelerated growth of plants and algae and leading to a decline in water quality.

c) Solids, which may impede flows or block out light for growth;

d) Toxic materials: some materials, such as heavy metals, pesticides or nitrate, are toxic to humans, animals, plants, or all three, often depending on the level of the dose received;

e) Materials which cause an impact on amenity, such as car tyres or shopping trolleys, or old boots in canals;

f) Disease –carrying agents, such as bacteria;

g) Heat, which may affect biological conditions and also deoxygenates water. The effect of any potential pollutant will vary according to the size, temperature, rate of flow and oxy gen content of the receiving waters, as well as the local geology and the presence of other pollutants and any resulting synergistic effects. The use made of a stream is also an enormous importance in deciding whether it can be said to be polluted, and third factor has a large impact on the attitude of the regulatory bodies towards the setting of standards and their enforcement. It is not sufficient to look only at pollution of surface waters, since 30 percent of public water supply is taken from ground waters. As a result the control of water pollution encompasses the control of liquid discharges to land.[18]

## III. International Law: Transboundary Water Resources

The complexity of regulating water resources is accentuated when inland waters are divided by international boundaries. Rivers may constitute the border between two countries, traverse the frontier, or even combine the two characteristics, as with the Danube, the Rhine and the Rio Grande. Water regulation thus must adapt itself to multiple situations, resulting in a variety of regulatory schemes, both at the national and international levels, often influenced by economic and political factors.[19]

Early international cooperation concerning rivers and lakes mainly concerned utilization of the watercourses for specific purposes, such as navigation or irrigation, or management of certain risks such as flood. At

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[18] Stuart Bell & Donald McGillivray, *"Environmental Law"*, Oxford University Press, (2004), pp.552-553

[19] France, Tribunal administratif de Strasbourg, July 27, 1983, *La province de la Hollande septentrionale v. Etat français*, R.J.E., 1983/4, 343.

first, particular water pollution problems were addressed when harmful activities originated in neighboring countries, applying general precedents and norms of transfrontier pollution. Later, the development of international environmental law led to the adoption of rules and principles to govern the conduct of states in respect to the conservation and harmonious utilization of natural resources shared by two or more states.[20]

The 1997 *UN Convention on the Law of the Non-Navigational Uses of International Watercourses* – which has not entered into force -- made an important contribution in this regard by defining a watercourse as a *system of surface waters and ground waters constituting by virtue of their physical relationship a unitary whole and normally flowing into a common terminus.*

The Council of Europe, an intergovernmental organization of which 45 European states are members, adopted on October 17, 2001 a *European Charter on Water Resources* stating the main principles that should govern the use and management of such resources. The principles are based on existing and generally accepted norms of diverse origin: international instruments like Chapter 18 of *Agenda 21,* adopted by the 1992 Rio Conference on Environment and Development, and rules and principles included in different international conventions and agreements. The European Water Charter also reflects basic principles expressed in the legislation of different countries. It can be considered as the synthesis of norms governing the use of water resources and the rights and duties of individuals and public authorities in this field. The European Charter on Water Resources, Recommendation REC (2001) 14 of the Committee of Ministers had adopted recommendations by different international bodies.[21]

Under the Charter, freshwater resources are to be utilized in keeping with the objectives of sustainable development, with due regard for the needs of present and future generations. Water use must be equitable and reasonable in the public interest. Water policy and law must protect the aquatic ecosystems and wetlands. The Charter contemplates a universal right to a sufficient quantity of water to meet basic needs and a universal obligation to conserve water resources and use them prudently. Public and private partners must manage surface water, groundwater and related water in an integrated manner that respects the environment as a whole, takes regional planning into account, and is socially equitable and economically rational. Integrated management must aim to ensure the protection, conservation and, if necessary, rehabilitation of water resources. Under the

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[20] Dinah Shelton and Alexandre Kiss, Introduction by Hon. Judge Christopher G. Weeramantry, *"Judicial handbook on Environmental Law"*, Published by United Nations Environment Programme, 2005, Pg.68-69.

[21] France, Tribunal administratif de Strasbourg, June 11, 1987, *Land de Sarre et autres v. Ministre de l'Industrie,* R.J.E., 1987/4, p.491.

Charter, any new deterioration and exhaustion of these resources must be avoided, the recycling of wastewater encouraged and, where appropriate, limitations placed on certain uses.[22]

## IV. Laws under International Arena

National water law in some jurisdictions includes a right to water; in others, it contemplates a sophisticated regulatory system for water management.

### *IV.I. Water regulation*

In most jurisdictions, water regulatory regimes are based on prevention, precaution and remediation at source as well as the "polluter pays" principle. To this end, states use regulatory instruments such as water quality objectives, discharge standards, the best available technologies and economic instruments compatible with meeting the population's basic needs. Water concessions may be granted for a limited duration and made subject to periodic review.

Underground water resources are typically the subject of special protection, and their use for human consumption is given priority. Pollution of groundwater can be caused by direct discharge, or by indirect percolation of pollutants through the ground or subsoil. Agricultural activities, including the use of fertilizers or pesticides, and dumping of garbage or other wastes containing polluting substances play an important role in this regard. Groundwater can also be polluted by accident, through breakage of pipes, leaking reservoirs or cisterns, or traffic accidents involving vehicles carrying polluting substances. Laws to protect groundwater, whose deterioration is difficult to reverse, often take into account these factors.

Laws and policies may require careful assessment and monitoring of large-scale consumption of water in agricultural or industrial processes to avoid unsustainable utilisation. At each state level central, regional and local authorities adopt and implement water management plans often based on the catchment basin. Decisions on water also take into account the particular conditions at regional or local level. Specific watercourses or lakes can be protected by prohibiting construction or works in their proximity or submitting such activities to prior authorization. Rivers and lakes situated in zones of ecological protection benefit from the general protection accorded these zones.

National water law frequently uses the techniques of environmental impact assessment, licensing, and prohibitions. The German water

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[22] *Supra Note 15.*

legislation provides an example. The Federal Water Act of July 27, 1957, as amended, incorporates provisions on environmental impact assessment, requires that preventable damage be avoided and inputs of waste water kept to a minimum and stipulates that the use of water bodies requires an official permit or license. The introduction and discharge of substances into surface or groundwater constitutes a use of water. A license for wastewater discharges may only be issued if the hazardous load of the waste water is kept at the levels set forth in the Act and as low as best available technology allows. The Waste Water Charges Act of September 13, 1976, as amended, applies the polluter pays principle to increase progressively the charge rate for discharges into water. Further protection is afforded by a Drinking Water Ordinance that lays down special requirements on the quality of drinking water; it includes provisions on the nature of drinking water, the duties of the water-works operators and monitoring by health authorities. It also specifies limits on the amount of water borne harmful substances. The limit values are set so that detrimental effects on health are not to be expected after a lifelong intake. Finally an Environmental Compatibility of Washing and Cleansing Agents of March 5, 1987 provides that washing and cleansing agents shall be put into circulation only in such a form that their use will not have any detrimental effects on the quality of waters.[23]

The procedural approach adopted by the French legislation can also serve as an example. An industrial plant that produces dangerous substances and discharges polluting material into water or air must prepare an impact statement covering all the consequences of its activities on the environment, including the effects on water. The impact statement is submitted to public inquiry before a permit to construct or authorization to function is obtained. The license can be granted on conditions. Particular measures of security can be prescribed if an installation carries with it risk of major accidents. Regular monitoring must be exercised over the functioning of the plant.[24]

### *IV.II. Water as a public resource or a commodity*

The legal status of water as a commodity privately owned by individuals varies between jurisdictions. Some states are increasingly experimenting with privatization of water management functions previously held in the public domain, with some success in attracting investment to improve water infrastructure; etc. In other states (Spain, Greece) waters above and under the ground are placed in the public domain. This means that the government retains authority to grant water–use rights subject to terms and conditions, including modification or revocation of the rights by the government under given circumstances, subject in some jurisdictions to

[23] *Ibid Pg. 66-67.*
[24] *Ibid.*

compensation if the modification is not due to the fault of the right-holder.[25] When there existed with vested water rights, both actual and potential, the government may seek to assert its role as owner or guardian of the resource and regulate its uses on behalf of the public. While any legislature may change the rules of water use, it is widely held that any changes should not cause undue hardship to "existing" users. As is the case with all environmental regulation, retroactive application of the rules may give rise to a claim of compensation for expropriation.

Particularly relevant, in this regard, are the experience of the United Kingdom in switching from a private property system of surface and underground-water rights to an administrative permit system, and the experience of Spain in reclassifying all water resources as public domain subject to administrative grant of water rights. Spain's Water Act of 1985 protected vested rights in groundwater by offering relevant holders the option of either recording their rights with the government and preserving them free from government interference for fifty years, or not recording their rights and risking loss of them for competing users. The option was made available only for a limited transition period. The law was challenged in court by vested rights holders who claimed that they have been substantially deprived of constitutionally protected property rights. The challenge was rejected by Spain's Constitutional Court in a November 1988 judgment, which held that the special regime of vested water rights is a legitimate interference with constitutionally protected property rights, on the grounds of the subordination of rights in natural resources to the general interest enshrined in the Constitution and the reasonableness of the restrictions in light of the general interest.[26]

The transfer of water rights, i.e., their exchanging hands and use through government agency of market mechanisms, is practiced subject to considerable restrictions. The general trend is to allow some flexibility in this domain, subject to prior government approval of a transfer. Far less flexibility exists in the domain of irrigation-water rights, which tend to attach to the land they serve. The issue of water-rights mobility is particularly relevant in arid countries.

### *IV.III. Water resource management*

The management of water resources is more and more generally recognized as a necessity. Generally, effective water management requires legislative action and the use of legal mechanisms as well the existence of

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[25] *Supra note 15, Pg. 67.*

[26] Dinah Shelton and Alexandre Kiss, Introduction by Hon. Judge Christopher G. Weeramantry, *"Judicial handbook on Environmental Law"*, Published by United Nations Environment Programme, 2005, Pg.68.

adequate administrative and judicial structures for sound short-term and long-term decision making and for ensuring compliance with such decisions.

In Spain, water-resources planning have a central role in the overall legal framework for the management of the country's water resources. The legislation provides a river-basin plan and national hydrological plan, the contents of the plans, the process of forming, approving and revising the plans and the effects of the approved plans. Water resources planning is to be coordinated with other sectorial planning exercises, most notably in the fields of agriculture, energy and land-use, and such coordination is to be effected at the level of the national hydrological plan. The participation of the general public is expressly provided. In Germany two different kinds of planning instruments, at the river basin or regional level is to guide and orient all governmental decision-making with regard to water-resources management. Co-ordination of water planning with land-use planning and regional-development objectives is mandatory. In the Netherlands, comprehensive legislation for water-resources management provides for the formation of different interrelated water-planning instruments at state, provincial and local levels, covering surface water- resources management in regard to quantity and quality. Groundwater management plans are provided for by separate legislation. In Italy a river-basin approach provides for river-basin plans, spanning conservation to development, from water allocation to water pollution control, from the control of harmful effects of water to forestry, fisheries and mining development, from coastal zone management to the control of soil contamination. River basin plans must be coordinated with other general development plans and with land-use plans, and have a binding effect. Water pollution control legislation includes mandates for specific plans.[27]

### *IV.IV. Access to water resources*

For distribution of water, some countries adopt private rights models. Private rights models may vary depending on the jurisdiction; for example, one scheme may give precedence to the party that first exploits the water resource (first-in-time, first-in-right); others allocate water rights based on geographic location, seeking to balance between the interests of upstream and downstream riparian. Disputes between interests with competing claims to a water resource frequently lead to litigation.

[27] *Ibid.*

## V. LEGAL CHALLENGES FOR WATER POLLUTION CONTROL BOARDS (PCBs)

In India purity of water has been always emphasized from time immemorial. In the Rig-Veda, and the Yajur Veda, we find many verses in praise of lord varun (God of Water) and Lord Indra. In the Yajur Ved water was regarded as a source of life and grain. The pollution of water is tortuous act. It is covered by the tort of nuisance as it causes injury to person and property, comfort of health. In ***Pakkle v. P. Aiyasami***[28] it was declared by the madras High Court that altering the natural quality of water whereby it is rendered less fit for any purpose for which in its natural state it is capable of being used gives cause of action in nuisance. Action can also be brought against statutory authority for nuisance by Private Individual for water pollution. Legal control for water pollution was available in British India also, the first act concerning water pollution in India is the *Shore Nuisance (Bombay and Kolaba) Act of 1853.* It authorized the Collector to issue notice to party concerned requiring it to remove nuisance anywhere below high water mark or get it abated or removed himself.

In general, water law is largely state based. This is due to the constitutional scheme, which since the Government of India Act, 1935 has in principle given power to the states to legislate in this area. Thus, states have the exclusive power to regulate water supplies, irrigation and canals, drainage and embankments, water storage, hydropower and fisheries.vi Thus, with regard to water pollution, Parliament did adopt an act in 1974, **The Water Act of 1974 (Amendment, 1988).**[29] This is the first law passed in India whose objective was to ensure that the domestic and industrial pollutants are not discharged into rivers, and lakes without adequate treatment. The reason is that such a discharge renders the water unsuitable as a source of drinking water, for the purposes of irrigation and to support marine life.[30] This Act paved the way for the creation of Central Pollution Control Board (CPCB) and State Pollution Control Boards (SPCBs).

The main function of the CPCB 'shall be to promote cleanliness of streams and wells in different areas of the states'. The term stream includes river, watercourse, inland water, subterranean waters, and sea or tidal waters to such extent or such point a state government may specify in this behalf. The Board may perform functions such as

a) Lay down, modify or annul in consultation with the state government concerned, the standards for a stream or well;

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[28] *AIR 1969 Mad 351.*

[29] River Boards Act, 1956, website- http://www.ielrc.org/content/e5602.pdf, visited on 29.01.15.

[30] M Prasad, *"Environmental Protection: The Role of Regulatory System in India"* website-http://www.ecoinsee.org, visited on 29.01.15.

b) Plan and cause to the executed a nationwide programme for the prevention, control and abatement of water pollution;

c) collect, compile and publish technical and statistical data relating to water pollution and the measures devised for its effective prevention and control and prepare manuals, codes or guides relating to treatment and disposal of sewage and trade effluents and disseminate information connected therewith;

d) Advise the central government on any matter concerning the prevention and control of water pollution;

e) Coordinate the activities of the SPCBs and provide technical assistance and guidance to the SPCBs; and

f) Carry out and sponsor investigation and research relating to problems of water pollution and prevention, control or abatement of water pollution.[31]

In order to achieve its objective Pollution Control Boards at Central and State levels were created to establish and enforce standards for factories discharging pollutants into bodies of water. The State Boards are empowered to issue Consent for Establishment (CFE) whenever a firm wanted to establish a new factory and also issue Consent for Operation (CFO) for existing factories. They were also given the authority to close factories or, in the case of disconnecting power and water supply, issue directions to the concerned Departments for enforcement of Boards standards.[32]

Any environmental legislation is based on resources and tools for enforcement. Any pollution control authority must require instruments for such regulatory approach. These include a variety of economic incentives; fair, efficient, relevant and updated regulation with accompanying environmental standards and norms. Many polluters have disregarded the directions of pollution control boards and violating the conditions of consent with impunity. Pollution Control Boards (PCBs) have not been fully empowered to exercise coercive powers of their own; and most part of this comes from the clash of jurisdiction of powers. The core contention is the fact that PCBs face hostile legal provision for penal action against polluters.

## VI. The National Legislative Framework Contributing to the Development and Realisation of the Rights for Water Pollution

In India, the Constitution does not recognize a fundamental right to water. However, the right to water has been derived from the fundamental

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[31] G. Bhaskaran, Pollution Control Acts, (1998), C. Sitaraman & Co., Chennai.
[32] Ibid.

right to life under Article 21 of the Constitution.[33] In addition, the Constitution recognizes economic, social, and cultural rights under the Directive Principles of State Policy. Although non-justiciable, they are fundamental to the formulation of public policy, governance, and the interpretation of constitutional rights.[34] Article 39 (b) provides: "The State shall, in particular, direct its policy towards securing...that the ownership and control of the material resources of the community are so distributed as best to subserve the common good.."[35] The Constitution obliges the State and all citizens to protect the environment.[36] It also emphasizes India's obligation to respect international law.[37]

The fundamental right to water has evolved in India, not through legislative action but through judicial interpretation. Indian Supreme Court decisions deem such a right to be implied in Article 21, the right to life, interpreted to include all facets of life and to also include the right to a clean environment to sustain life.[38] While upholding the Indian government's decision to construct over 3,000 dams on the river Narmada, the Supreme Court stated in ***Narmada Bachao Andolan,*** that "water is the basic need for the survival of the human beings and is part of right of life and human rights as enshrined in Article 21 of the Constitution of India . . . ."[39]

Understanding the right to water as implied in the recognition of the right to a clean environment, the Supreme Court has repeatedly reaffirmed the connection between public access to natural resources, including water, the right to a healthy environment, and the right to life under Article 21 of the Constitution.[40]

The Supreme Court has been proactive in the context of the State's duty to not pollute—ordering polluters to clean up water sources and coastlines, and restitution of the soil and ground water. The Court has also applied the "precautionary principle" to prevent the potential pollution of drinking water sources during industrial development.[41] In ***M.C. Mehta v. Union of India***, which concerned the pollution of the river Ganga, the Supreme Court reaffirmed the duty of the government, under Article 21, to ensure a better quality of environment and ordered the government to

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[33] Indian Constitution art. 21 ("Protection of life and personal liberty.—No person shall be deprived of his life or personal liberty except according to procedure established by law.")

[34] *Ibid. at art. 37.*

[35] *Ibid at art. 39(b).*

[36] *Ibid at art. 51A(g).*

[37] *Ibid at art. 51(c).*

[38] *Francis Coralie Mullin v. Adm'r, Union Territory of Delhi, (1981) 2 S.C.R. 516.*

[39] *Narmada Bachao Andolan v. Union of India, A.I.R. 2000 S.C. 375.*

[40] *Hinch Lal Tiwari v. Kamala Devi, A.I.R. 2001 S.C. 3215*.

[41] *M.C. Mehta v. Union of India, (1998) 2 S.C.R. 530.*

improve its sewage system.[42] In ***A.P. Pollution Control Board v. Prof. M.V. Nayadu,*** the Court held that the right to access to drinking water is fundamental to life and that the state has a duty under Article 21 to provide clean drinking water to its citizens.[43] In ***M. C. Mehta v. Union of India,*** the Supreme Court of India recognized that groundwater is a public asset, and that citizens have the right to the use of air, water, and earth as protected under Article 21 of the Constitution.[44]

A landmark decision is ***Vellore Citizens' Welfare Forum v. Union of India,*** which dealt with compensation to victims of water pollution caused by tanneries.[45] The Supreme Court incorporated principles of customary international law—The Polluter Pays Principle and The Precautionary Principle—as an integral part of domestic environmental law, linking them with the fundamental right to life in Indian constitutional law.[46] Emphasizing the duty of the government to prevent and control pollution, the Supreme Court held that "the Constitutional and statutory provision 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."[47]

Significantly, the Supreme Court has recognized that water is a community resource to be held by the State in public trust in recognition of its duty to respect the principle of inter-generational equity.[48] In ***M.C. Mehta v. Kamal Nath*** the Court declared that:

Our legal system based on English common law includes the public trust doctrine as part of its jurisprudence. The State is the trustee of all natural resources which are by nature meant for public use and enjoyment. Public at large is the beneficiary of the seashore, running waters, airs, forests and ecologically fragile lands. The State as a trustee is under a legal duty to protect the natural resources. These resources meant for public use cannot be converted into private ownership.[49]

## VII. CONCLUSION

Water pollution has the capabilities to disrupt life on our planet to a great extent. Government had passed laws to try to combat water pollution thus acknowledging the fact that water pollution is, indeed, a serious issue.

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[42] *M.C. Mehta v. Union of India, (1998) 2 S.C.R. 530.*
[43] *A .P. Pollution Control Bd. v. Prof. M.V. Nayudu, 2000 S.C.A.L.E. 354.*
[44] *M.C. Mehta v. Union of India, (2004) 3 S.C.R. 128.*
[45] *Vellore Citizens' Welfare Forum v. Union of India, (1996) 5 S.C.C. 647.*
[46] *Ibid.*
[47] *Ibid.*
[48] *M.C. Mehta v. Kamal Nath, (1997) 1 S.C.C. 388.*
[49] *Ibid.*

But unfortunate that, the government alone cannot solve the entire problem of this water pollution. It is ultimately up to us, to be informed, responsible and involved when it comes to the problems we face with our water. We must become familiar with our local water resources and learn about ways for disposing harmful household wastes so they don't end up in sewage treatment plants that can't handle them or landfills not designed to receive hazardous materials. In our yards, we must determine whether additional nutrients are needed before fertilizers are applied, and look for alternatives where fertilizers might run off into surface waters. We have to preserve existing trees and plant new trees and shrubs to help prevent soil erosion and promote infiltration of water into soil. Around our houses, we must keep litter, pet waste, leaves, and grass clippings out of gutters and storm drains.