

Critical Analysis of Water Prevention and Control of Pollution) Act, 1974



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Introduction

"Water" being a "state subject", the Parliament can exercise the power to legislate on "water" only under articles 249 and 252 of the Constitution of India. In pursuance of article 252(1) of the Constitution, resolutions were passed by all Houses of the Legislatures of the States of Assam, Bihar, Madhya Pradesh, Gujarat, Haryana, Himachal Pradesh, Jammu and Kashmir, Karnataka, Kerala, Rajasthan, Tripura and West-Bengal to the effect that the matters relating to prevention and control of water pollution should be regulated by the Parliament by law. Accordingly the Parliament enacted the Water (Prevention and Control of Pollution) Act, 1974. The Water Act represents one of India's first attempts to deal with an environmental issue comprehensively. The Water Act was first amended in 1978. It was again amended in 1988 to conform to the provisions of the Environment (Protection) Act, 1986.

The main aim and object of the Act of 1974 is 'to maintain or restore the wholesomeness of water and to prevent, control and abate water pollution'. To achieve these objectives, the Act has provided various chapters which are very comprehensive. In view of sub-section 2(e) read with Sections 17 and 18 of this Act, the fundamental objective of the statute is to provide clean water to citizens. The definition of water pollution in the act is a very comprehensive definition and covers all the changes in physical, chemical or biological properties of water. The definition also covers the rise in the temperature of water and discharge of radioactive substances in the water. The Act has used two terms in relation to water pollution- stream and well. The 'stream' here includes (a) river, (b) water courses (whether flowing or for the time being dry), (c) inland water (whether natural or artificial), (d) subterranean water (underground water), (e) Sea or tidal water.

Objectives

1. To study the importance of Water Act in controlling and preventing the Water Pollution at both the National level as well State level.
2. To critically analyze it and to gather information about its loop holes.
3. To study the negative and positive aspects of this act with the help of case laws.

Research Methodology

Nature of research work: This paper "Water (Pollution and Prevention Control) Act, 1974" is a Doctrinal research.

Source of research work:

The sources of this paper are both primary (legislation, statutes, bare acts etc) and secondary sources (books, journals, internet, etc).

Right To Water- Part of Right To Life

The Supreme Court pronounced a significant judgment in *Susetha v. State of Tamil Nadu*. The court has observed:

The water bodies are required to be retained. Such requirement is envisaged not only in view of the fact that the right to water as also quality of life are envisaged under Article 21 of the Constitution of India, but also in view of the fact that the same has been recognized in Articles 47 and 48 A of the Constitution of India. Article 51-A furthermore makes a fundamental duty fo every citizen to protect and improve the natural environment including forest, lakes, rivers and wildlife. It was also clarified that 'natural water storage resources are not only required to be protected but also steps are required to be taken for restoring the same if it has fallen to disuse.'

Action Under Law of Tort

The pollution of water is a tortious act. It is covered by the tort of nuisance as it causes injury to a person and property, comfort and health. In *Pakkle v. P.Aiyasami* 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. In *Fletcher v. Bealey* Parson J. stated the law as follows:

"There are at least two necessary ingredients for a quia timet action. There must, if no actual damage is proved, be proof that the apprehended danger will, if it comes, be substantial...I think it must be shown that if the damage does occur at any time, it will come on such a way and under such circumstances that it will be impossible for the plaintiff to protect himself against it if relief is denied to him in a quia timet action"
Measures to Prevent And Control Water Pollution

Chapter V of the Act, which runs from Section 19 to Section 33-A, consisting of 16 sections, provides the following measures to prevent, control and abate water pollution. These measures are as follows:

- (a) Power of the State Government to restrict the areas for the application of the Act.
- (b) Power to obtain information.
- (c) Power to take samples of effluents and the procedure to be followed.
- (d) Power of entry and inspection.
- (e) Prohibition of use of stream or well for disposal of polluting matter, etc.
- (f) Restriction on new outlets and new discharges.
- (g) Furnishing of information to the State Board and others.
- (h) Power to move the court for restraining apprehended pollution of water.
- (i) Power to give directions.

Criticisms

In *M.C.Mehta v. Union of India*, the tanneries were discharging effluent in Ganga and they were not setting up primary treatment plant in spite of being asked to do so for several years. They also did not put up their appearance in the Supreme Court to express their willingness to take appropriate steps to establish the pre-treatment plant. In view of these circumstances the Court directed them to stop working their tanneries. In *State of M.P. v. Kedia Leather and Liquor Ltd.*, the M.P. State Pollution Control Board was neither taking any action nor inspecting the various industries discharging pollutants in contravention of the provisions of the Water Act.

The Supreme Court deprecated the negligence shown by the State Pollution Control Board in discharging its statutory functions held that the Board is expected to discharge its functions without directions being issued by the court in that regard. The Court also observed that no purpose would be served in maintain such a Statutory Board. The Supreme Court issued directions to the Chief Secretary of M.P. and the chairman of the State Board to identify and take appropriate action against the Board officers who were responsible

for the failure.

There is power with the State government to Restrict the Application of the Act to certain Areas . However there is no power with the State to grant an exemption to any particular industry in a prohibited area for location of a polluting industry. In *Delhi Bottling Co. Pvt. Ltd. v. Central Board for the Prevention and Control of Pollution*, the board took a sample of the trade effluents from a bottling company's discharge stream. The Board got the trade effluent analyzed and found that it did not conform to the requirements of the consent order granted to the company. The Board files a suit under Section 33 of the Act and accordingly the court issued an injunction requiring the company to establish a treatment plant. The order of the Court was challenged on the sample by the Board, had requested that the sample be analyzed by the Delhi Administration laboratory. The court held that the sample was not taken in strict compliance, the case was decided in favor of company was violating its consent orders. The Supreme Court held that the appellate authority under the Water Act, in this case, erred in holding that the principle of "promissory estoppel" was applicable to this case.

Conclusion

The Water Act is a very useful act in the present scenario. This Act is successful in controlling the water pollution to a large extent at the Central and State level. Formation of CPSB and SPCB has made a vast difference in terms of checking the pollution and controlling it. There are still some lacunas that are present inside this act and which we can infer from the above stated case laws. The need is to make this Act more powerful and applicable. The Act gives the power to central and state government to take actions against those who pollute the water and use it unnecessary. There is also a procedure to prescribe for penalties and compensations. The Act has served a very useful in controlling the pollution of water and it has to be strengthened more, for its future implications.

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