

ROLE OF JUDICIARY IN PREVENTING WATER POLLUTION

- Priyanka Mane*

Water is an important part of life and in the way, the people are using it and polluting the water by the waste material or by letting out the industrial waste in the water is not helping the water or nature. And soon there will be water crises as we won't be able to use water for any purposes. So to prevent this judiciary comes into the picture. To help in preventing water pollution through new ways so that the people and factories will follow the rules and regulations made by them. In this article, we will talk about the case laws which deal with the judiciary's role in preventing water pollution and how it has helped in reducing it.

In India, until the Water Act came into the picture, disputes relating to water, including pollution, came under the Indian Penal Code 1860 and the Criminal Procedure Code. The British had enacted these acts for better administration of their colony and to help them (the British) to better exploit the natural resources of India. These laws were applicable to uniformly all over the country. The types of cases that came under these laws related to public nuisance, mischief, theft, and so on. The Water Act was enacted in 1974.

In the case of *The Member-Secretary, Kerala vs The Gwalior Rayon Silk*, It is said that context that the object behind the levy of cess and the reason for a reward in the form of rebate to the deserving have to be understood. The Cess Act is not to be read in a vacuum or a manner dissociated with the Pollution Act. The learned single Judge felt that the Cess Act could be viewed in isolation and interpreted in isolation. That is evident from the following observations contained in the judgment: "*The purpose of the Pollution Act is to control water pollution; but the purpose of the Cess Act is only to levy and collect a cess, i.e., a tax for a special administrative purpose. You cannot make rules under the Cess Act to achieve the purposes of another Act*" However, due to pressure on the limited resources, the State Governments are not able to provide adequate funds to the State Boards for their effective functioning. It is, therefore, proposed to levy a cess." That is also indicated in the preamble to the Act reading: "An Act to provide for the levy and collection of a cess on water consumed by persons carrying on certain industries and by local authorities, to augment the resources of the Central Board and the State Boards for the prevention and control of water pollution constituted under the Water (Prevention and Control of Pollution) Act, 1974." The realization of the hazard of

unpotable water was keenly felt during the last few decades. When it is said that five liters of water have only a teaspoon of sweet water in it, we get an idea of the seriousness of the situation. Late President Kennedy described water pollution as a national disgrace. As H.B.N. Hynes, (of the Department of Zoology, University of Liverpool) observed in "A Survey of Water Pollution Problems": "Loss of amenity is bad enough, but much more serious, although less evident, is the loss of water in a usable form."The seriousness attached to the problem is evident from the fact in all advanced countries, scientists and administrators have given serious thought to such problems. The 1972 United Nations Conference on the Human Environment at Stockholm in June 1972 was an important landmark in such attempts. In England, attempts at the prevention of river pollution started early enough, presumably in the wake of the industrialization of that country. The Rivers Pollution Prevention Act 1876, and the Rivers Pollution Prevention Act, 1951 was some of the earlier enactments. The Control of Pollution Act, 1974, brought in comprehensive legislation and with that many earlier enactments stood virtually repealed. Enactments on water protection had been made in America even from 1948. Such legislative exercises were made in Germany and Japan in 1970. As observed in the article "Overlapping International and European Laws."¹

In the case of *Pravinbhai Jasbbhai Patel And vs State Of Gujarat And Ors*, the case explains various aspects of water pollution and how the judiciary has shaped the various pollution-related act. It is further alleged that representations have been filed before the Gujarat Pollution Control Board("G.P.C.B.") since about 1978 and other authorities, but no action has so far been taken. The petitioners contend that the provisions of the three Acts, dealing with Environment, have been infringed by the Industries, the three Acts being: The Water (Prevention and Control of Pollution) Act, 1974, The Air (Prevention and Control of Pollution) Act, 1981 and the Environment (Protection) Act, 1986. The main prayer in the writ petition is that action should be taken against the respondents, viz., the State of Gujarat, The G.P.CB., the Gujarat Industrial Development Corporation, for not taking steps to control and curb the water pollution of the Khari river, which is resulting in the violation of the petitioners' fundamental rights under Article 21 of the Constitution of India. The direction is also sought for taking steps to control the water and air pollution and there is also a claim made for payment of compensation due to the loss suffered due to air and water pollution. Another prayer is for directions to be issued for providing proper drainage/gutter facilities for letting out trade

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effluent/wastewater after treating them to arrest the pollution of water. Under the proclamation adopted by the United Nations Conference on the Human Environment, realizing the importance of the prevention and control of pollution of water, the Parliament passed The Water (Prevention and Control of Pollution) Act, 1974. The effect of this was that the matters concerning the prevention and control of water pollution and the maintaining or restoring of wholesomeness of water and for the establishment of Pollution Control Boards were to be regulated in the said States by the aforesaid Water Act. Apart from water pollution, these industrial units are also having very large amounts of solid wastes. Concerning these solid wastes, the Hazardous Wastes (Management and Handling) Rules, 1989 have been framed under Sections 6, 8 and 25 of the Environment Act. The authorization has to be granted for the handling of hazardous wastes. The hazardous waste has to be collected separately category-wise and stored in the factory premises and due care has to be taken that the waste is not released from the site into the environment, causing surface water or groundwater or soil pollution. It is further a term of the grant of authorization that the waste is not to be disposed of on land or sold or transported without prior approval of the Board. The aforesaid continued inaction of the Government can lead to only one conclusion, viz., that it has abetted or collaborated with the Industry in the breaking of the law resulting in large scale pollution of water, air, and land, which has adversely affected not only the vast multitude of people living in the villages but even the workers who are working in these industrial units are reported to be suffering from skin and other diseases. The little regard which the State Government has had for protecting the environment is also evident from the fact that no action had been taken by it in seeing to the extension of the Water Pollution Amendment Act of 1988, to the State of Gujarat. This amendment, made by the Parliament was intended to give more teeth to the Government to effectively implement the said Act and to take firm action against the polluting Industry. By not extending the said Amendment Act to the State of Gujarat, and its continued inaction in enforcing the existing law, the State Government has lent support to the submission that it has regarded the anti-pollution laws as a hindrance to the industrialization in the State. The figures given hereinafter clearly show that there has been a lot of misinformation in this regard. As already noticed, out of 6,122 industrial units in these four states, the pollution is being spread by only 756 industrial units. Be that as it may, the State Government cannot be a party, active or passive, to the

violation of the very law enacted by it thereby resulting in violation of the fundamental rights of thousands of other innocent citizens of the State.²

In conclusion, it is seen in two cases there has been an important role of the judiciary in preventing water pollution. And taking strict action against those who are violating this act. In the end, the judiciary has played a very important role in seeing that these acts have been enacted and used for the benefit of preventing water pollution also we and the industries have to see that we reduce the pollution too, so it will lessen the work of the judiciary.

² (1995) 2 GLR 1210