ENVIRONMENTAL LAW

The Water (Prevention and Control of Pollution) Act 1974

(Part-1)

E-content for the students of LL.B 3rd year
(6th semester)

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Content:

- Introduction
- Salient features
- Aims & Objectives
- Mechanism to control water pollution
- 1988 amendment Act
- Sanctions
- Cases
Introduction of water law in India

- **Historic Evolution**: The history of water law in India can be traced back to Indus Valley civilization. Over the last 5,000 years, society has evolved under multiple kingdoms. This part provides a brief history of water law in pre-colonial and post-colonial period in the country.
  - **The Pre-colonial History of Water Law**
    - The pre-colonial history of water law in India can be divided into an analysis of ancient India, medieval India with the arrival of the Muslims through the Mughals. Water law in ancient India evolved slowly through custom, religion and written codes.
Introduction of water law in India

- The Laws of Manu (c.200–100 BCE): indicates existence of water law at that time. Water was considered indivisible. Kings were obligated to develop water works for the benefit of others (ch. IV, §§226, 229).

- Kings were to protect public waters and collect fees for crossing waters (ch. VIII, §§61, 69; ch. IX, §§264–266, 281). Diversion or obstruction of waters was discouraged (ch. III, §151) and the laws imposed a system of social reprimands and punishments for those who polluted the water or who stole or diverted (ch. IV, §§46, 48, 56; ch. XI, §174; ch. VIII, §309; ch. IX, §281).
Destruction of embankments was illegal. The law encouraged the use of water bodies as boundaries between villages to ensure that as many villages as possible had access to water (ch. VII, §§4–7). Water bodies of enemies, however, could be destroyed in times of war (ch. IX, §28). System of social reprimands and punishments for those who polluted the water or who stole or diverted (ch. IV, §§46, 48, 56; ch. XI, §174; ch. VIII, §309; ch. IX, §281).
Introduction of water law in India

- The Arthashastra discusses the use of water for the development of water works, irrigation, and transport, specifying that all water belonged to the king and that users were to pay a water tax to withdraw water from irrigation systems installed by the king (Kautilya c.300 BCE–300 CE: 73–74).

The Post-colonial History of Water Law

- From the sixteenth century onwards, European colonialism began in India. It accelerated during the industrial revolution in England. The British introduced the concept of government control over surface waters.
Introduction of water law in India

British colonial water law had two main strands. First, control over water and rights to water were regulated through the progressive introduction of common law principles, emphasizing the rights of landowners to access water.

Second, a series of regulatory statutes were enacted, including laws to protect and maintain embankments, to acquire land for embankments, and to entrust the Controller for implementing such laws (e.g., Embankment Regulation 1829; Bengal Embankment Act 1855; Siddiqui 1992).
Introduction of water law in India

- Other laws regulated canals for navigation purposes and levying taxes on the users, river conservation, and rules on ferries and fisheries (e.g., Northern India Ferries Act 1878; Indian Fisheries Act 1897). Regulations recognizing local practices and rules in villages were also enacted.

- The Constitution and Union Legislation The Constitution provides for the continuation of all laws in force at the time of the adoption of the Constitution. It generally follows the scheme introduced in the Government of India Act (1935) where water is a state subject.
Introduction of water law in India

- States have the exclusive power to regulate water supplies, irrigation and canals, drainage and embankments, water storage, water power and fisheries.

- By the 1980s, it became evident that while water was largely a state subject, the lack of a national policy on water was a major impediment to the development of coherent water policies. This led to the development of the National Water Policy (1987) that was reformulated in 2002.
National Water Policy 2002

• Water is a prime natural resource, a basic human need and a precious national asset. Planning, development and management of water resources need to be governed by national perspectives.

• A well developed information system for water related data at national/ state level should be established.

• Water resources available to the country should be brought within the category of utilizable resources to the max. possible extent.
In the allocation of water, first priority should be given to drinking water, followed by irrigation, hydro-power, ecology, agro-industries and non-agricultural industries, navigation and other uses, in that order.

- Both surface water and ground water should be regularly monitored for quality.
In 1972, United Nations Conference on Human Environment was held at Stockholm, Sweden to take appropriate steps for the preservation of natural resources of the earth. India was one of the most active participants and therefore it urged and took concrete measures to bring uniform law all over the country for broad environment problems endangering the health and safety of our lives and for the preservation of flora and fauna which among other things, include the preservation of the quality of air and control of air pollution.
Based on the concluding guidelines of this conference, the Water Act was formulated by the govt. of India in 1974 and was enacted in the same year by the Parliament.

It was first specific and comprehensive legislation institutionalizing simultaneously the regulatory agencies for controlling water pollution.

The Water Act has 64 sections. It was first amended in 1978 and then again in 1988.

It is comprehensive in its coverage, applying to streams, inland waters, subterranean waters and sea or tidal waters.
Aims & objectives:

- Water Act has been enacted with the aim of prevention and control of water pollution in India.
- Specifically, it aims at maintaining or restoring the wholesomeness nature of water.
- This Act aims at establishment of Central and State Pollution Control Boards at central and also at state level for each state and further it gives power to the members so as to enable them to carry out the purpose of the Act.
Aims & objectives:

- The fundamental objective of the Water Act is to provide clean drinking water to the citizens. (A.P. Pollution control board v. M.V. Nayudu (2001).)
Laws regulating water pollution

• In order to achieve the aims and objectives of the Act, the central govt. under sec 63 of the Act enacted following:
  • The Water (Prevention and Control of Pollution) Rules, 1975
  • The Central Board for the Prevention and Control of Water Pollution (Procedure for Transaction of Business) Rules 1975
  • The Water (Prevention and Control of Pollution) Cess Act, 1977
  • The Water (Prevention and Control of Pollution) Cess Rules, 1978
Salient features of the Water Act

- The Act has defined certain important terms for the purpose of this Act i.e. stream, outlet, sewer, trade effluent etc.
- Establishment of Central and State Pollution Control Boards.
- The qualification, terms and conditions of service of the Board members has also been specified.
- Powers of the board has been clearly mentioned in the Act.
- Act also specifies stringent penalties for certain acts which have been declared offences under the Act.
Pollution Control Boards

- Sec 3 and 4 of the Water Act provides for the constitution of central and state boards.
  - **Constitution of Central Board:**
    - According to sec 3, the central board is constituted by the central govt. and is called Central Control Board.
    - It shall consist of the following members:
      - One full-time chairman-nominated by central govt.-should have special knowledge or practical experience relating to environment problem.
      - Not more than 5 officials to be nominated by central govt. to represent the central govt.
Constitution of Central Board:

- Not more than 5 persons to be nominated by central govt. from amongst the members of the state Boards of whom not more than two shall be from local authorities functioning within the state.
- Not more than 3 non-officials to be nominated by the central govt. to represent the interests of agriculture, fishery or industry or trade etc.
- 2 persons to be nominated to represent the companies or corporation owned, controlled or managed by central govt.
Constitution of Central Board:

- 1 full time member secretary to be nominated by the central govt. He should possess qualifications, knowledge and experience of scientific and engineering or management aspects of pollution control.
Constitution of State Board:

- According to sec 4, the State Board shall be constituted by the state govt. and is called as State Pollution Control Board.
- The State Board shall consist of the following members:
  - One full time chairman - nominated by state govt. - should have special knowledge or practical experience relating to environment problem.
  - Not more than 5 officials to be nominated by state govt. to represent the state govt.
Constitution of State Board:

- Not more than 5 person to be nominated by state govt. from amongst the members of local authorities functioning within the state.
- Not more than 3 non-officials to be nominated by the state govt. to represent the interests of agriculture, fishery or industry or trade etc.
- 2 persons to be nominated to represent the companies or corporation owned, controlled or managed by state govt.
Constitution of State Board:

1 full time member secretary to be nominated by the state govt. he should possess qualifications, knowledge and experience of scientific and engineering or management aspects of pollution control.
Terms And Service Conditions Of The Members Of The Board

• Terms and service conditions of the Member Secretary and Chairman shall be as prescribed by the Government.

• Section 5 of the Water Act provides that a member of board other than member-secretary shall hold office for a term of 3 years from the date of his nomination.

• A member shall be eligible for re-nomination.

• Central or State Government may remove a member of the Central or State Board at any time by giving him reasonable notice and opportunity.

• The Chairman may resign by addressing his resignation to the government and a member may resign by addressing his resignation to the Chairman.
Terms And Service Conditions Of The Members Of The Board

• In the case of insolvency, unsound mind, conviction for the offence under this Act, conviction for the offence involving moral turpitude, inability to attend three consecutive meetings, abusing position as member of the Board, Partnership with anybody dealing with sewage or trade effluent etc., are some conditions for disqualification of the member. Seat of the disqualified member shall fall vacant and a person nominated to fill such a vacancy shall hold office for the remaining term.
...to be continued

Thank you