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**NAMAMI GANGE PROJECT: A Legal Analysis**

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# NAMAMI GANGE PROJECT: A Legal Analysis

Aayush Raj\*

*[Abstract: River Ganga has been negatively affected by various factors. The Government has been taking steps to rejuvenate the river and improve its health. In the year 2014, the Government of India launched a project: Namami Gange (hereinafter referred to as 'the Project'), for the holistic development of river Ganga and its riverfronts across the country.*

*This paper assesses the implementation of the Project by studying the available data. The second part of the paper explains the genesis of and the overall framework of implementation of various programmes for the protection of river Ganga. The third part analyses the international principles for the protection of environment in general followed by an analysis of implementation of these principles in the Indian context and development of law and legal principles by the courts of law in the fourth part. The fifth part assesses the overall framework of the Project in the light of the principles discussed.]*

## I

### River Ganga: Geographical and Cultural Significance

In India, rivers are closely linked with every aspect of human life. It would not be an exaggeration to say that the flow of the rivers has for long determined the country's political and economic dynamics. This development coupled with the religious significance of rivers, in India, has played a crucial role in painting the social canvas of the nation. The fact that rivers in India are considered *God-like* and *Mother*, signify their importance, status, and relationship with the Indian citizenry.

With the passage of time and the advancement of the concept of 'development' (determined and highly influenced by the West), major industries have come up near riverfronts.<sup>1</sup> Urbanisation and development of cities have also seen an exponential surge. These changes have negatively affected the course of rivers and other wetlands.<sup>2</sup> The rise in levels of pollution and shrinking size of the catchment area of rivers demonstrate the negative impact, albeit partially. In turn, these phenomena have consequences for rivers and other water resources.

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<sup>1</sup> NCERT, OUR PASTS – III (TEXTBOOK ON HISTORY FOR CLASS VIII) 91 (2018).

<sup>2</sup> A.K. Misra, *Impact of Urbanization on the Hydrology of Ganga Basin (India)*, WATER RESOURCE MANAGEMENT 25, 705 (2011).

The river Ganga rises in the Himalayas and flows through the mainland India. The Ganga and its tributaries flow through Uttarakhand, Delhi, Uttar Pradesh, Madhya Pradesh, Bihar, and West Bengal to finally meet the ocean in the Bay of Bengal.<sup>3</sup> The sediment load of river Ganga is high. Towards its meeting point with the Indian Ocean in the Bay of Bengal, the river forms a delta which is home to innumerable species.<sup>4</sup> This sight is called the *Sunderbans* and has been included in the list of Heritage Sites co-ordinated by the United Nations Education, Scientific, and Cultural Organisation.

Historically the Gangetic Plain has constituted the heartland of Hindustan and its successive civilisations. The centre of the Mauryan empire of Ashoka was Patna (ancient Pataliputra), on the banks of Ganga in Bihar. The centres of the great Mughal Empire were at Delhi and Agra, in the western Ganga basin. Kannauj on the Ganga, in central Uttar Pradesh north of Kanpur, was the capital of the feudal empire of Harsha, which covered most of northern India in the mid-seventh century. During the Muslim era, which began in the twelfth century, Muslim rule extended not only over the plains but all over Bengal. Dhaka and Murshidabad in the delta region were centres of Muslim power. The British, having founded Calcutta (Kolkata) on the banks of the Hugli River in the late seventeenth century, gradually expanded their dominion up the valley of the Ganga, reaching Delhi in the mid-nineteenth century.

River Ganga is one of the most important rivers of the nation. The capital of one of the oldest dynasties, the *Maurya dynasty* in the second Century BCE lay by the side of River Ganga.<sup>5</sup> It is one of the longest rivers in the country and covers approximately twenty-six per cent of its total land area.

The river has been negatively affected by various factors. The Central and state governments have been taking steps to rejuvenate the river and improve its health. In the year 2014, the Government of India launched a project: *Namami Gange* (hereinafter referred to as 'the Project'), for the holistic development of river Ganga and its riverfronts across the country.

This paper assesses the implementation of the project by studying the available data. The second part explains the genesis of and the overall framework of implementation of various programmes for the protection of river Ganga. The third part analyses the international principles for the protection of environment in general followed by an analysis of implementation of these principles in the Indian context and development of law and legal principles by the courts of law in the fourth part. The fifth part assesses the overall framework of the project in the light of the principles discussed.

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<sup>3</sup> Deryck O. Lodrick, *Ganges River*, BRITANNICA, available at: <https://www.britannica.com/place/Ganges-River>. (last visited Nov. 30, 2018).

<sup>4</sup> World Heritage List, *The Sundarbans*, UNESCO WORLD HERITAGE CENTRE, available at: <https://whc.unesco.org/en/list/798/>. (last visited Dec. 15, 2018).

<sup>5</sup> NCERT, OUR PASTS – I: TEXTBOOK ON HISTORY FOR CLASS VI 3 (2018).

## II

### Protection of River Ganga: Institutional Framework

#### National Mission for Clean Ganga

The efforts to clean river Ganga started in the year 1981, followed by an institutionalised arrangement called the 'Ganga Action Plan' (GAP), which commenced in the year 1986. The GAP was implemented in two phases GAP-I (1986-1993) & GAP-II (1996-2011). In the meanwhile, in 2009 the 'National Ganga River Basin Authority' (NGRBA), was established to look after the implementation of the activities for maintaining cleanliness of river Ganga.<sup>6</sup> The efforts to clean the river needed concerted cooperation from the States and taking this into account, the institutionalised mechanism for implementing the activities to clean the river had to be reworked. Thus, the National Council was established with, primarily, of the following objectives:<sup>7</sup>

'And whereas the State Governments concerned, being equally responsible for Ganga rejuvenation, are required to coordinate and implement the river conservation activities at the State level, and to take steps for comprehensive management of the River Ganga in their States; And whereas the State Governments concerned, being equally responsible for Ganga rejuvenation, are required to coordinate and implement the river conservation activities at the State level, and to take steps for comprehensive management of the River Ganga in their States; And whereas the State Governments concerned, being equally responsible for Ganga rejuvenation, are required to coordinate and implement the river conservation activities at the State level, and to take steps for comprehensive management of the River Ganga in their States;

And whereas it is required to have planning, financing, monitoring and coordinating authorities for strengthening the collective efforts of the Central Government and the State Governments and authorities under this Order for effective abatement of pollution and rejuvenation, protection and management of the River Ganga; And whereas it is required to have planning, financing, monitoring and coordinating authorities for strengthening the collective efforts of the Central Government and the State Governments and authorities under this Order for effective abatement of pollution and rejuvenation, protection and management of the River Ganga'.

The 'National Mission for Clean Ganga' (NMCG), was registered as a society on August 12, 2011, under the Societies Registration Act 1860. It acted as implementation arm of NGRBA which was constituted under the provisions of the Environment (Protection) Act (EPA), 1986. NGRBA has since been dissolved with effect from the October 7, 2016, consequent to constitution of

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<sup>6</sup> National Ganga River Basin Authority, *Function and Power of NGRBA*, NATIONAL MISSION FOR CLEAN GANGA, available at: <https://nmcg.nic.in/ngrbaread.aspx> (last visited Dec. 15, 2018).

<sup>7</sup> River Ganga (Rejuvenation, Protection and Management) Authorities Order, 2016 (S.O. 3187(E) of 2016).

'National Council for Rejuvenation, Protection and Management of River Ganga' (referred as 'National Ganga Council'), under Environment Protection Act, 1986.<sup>8</sup>

The Act envisages five tier structure originating at the national level and percolating through the states and districts to take measures for prevention, control and abatement of environmental pollution in river Ganga and to ensure continuous adequate flow of water to rejuvenate the river Ganga, as specified below:

- National Ganga Council under chairmanship of Hon'ble Prime Minister of India;
- Empowered Task Force (ETF) on river Ganga under chairmanship of Hon'ble Union Minister of Water Resources, River Development and Ganga Rejuvenation;
- National Mission for Clean Ganga (NMCG);
- State Ganga Committees; and
- District Ganga Committees in every specified district abutting river Ganga and its tributaries in the states.

NMCG has a two-tier management structure and comprises of a Governing Council and an Executive Committee. Both are headed by Director General, NMCG. Executive Committee has been authorised to accord approval for all projects up to INR 1000 crore. Like the structure at national level, State Programme Management Groups (SPMGs) acts as implementing arm of State Ganga Committees. Thus, the newly created structure attempts to bring all stakeholders on one platform to take a holistic approach towards the task of Ganga cleaning and rejuvenation. For effective implementation of the projects under the overall supervision of NMCG, the State Level Program Management Groups (SPMGs) are, also headed by senior officers of the concerned States.

Its implementation has been divided into Entry-Level Activities (for immediate visible impact), Medium-Term Activities (to be implemented within 5 years of time frame) and Long-Term Activities (to be implemented within 10 years). The key achievements of the project include establishment of new sewerage treatment plants across the 5 States through which the river flows, development of the riverfront in few locations, along-side allocation funds in this regard, development of bio-diversity centres across the river in different States for bio-diversity conservation, afforestation across river coast, installation of Real Time Effluent Monitoring Stations (EMS) in 572 out of 760 Grossly Polluting Industries (GPIs), identification of 1674 Gram Panchayats situated on the bank of River Ganga in 5 States for development as Ganga Grams where organic farming practices are proposed to be promoted.

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<sup>8</sup> *Id.*

National Mission for Clean Ganga, endeavours to deploy best available knowledge and resources across the world for rejuvenation of the river. Clean Ganga has been a perennial attraction for many international countries that have expertise in river rejuvenation. Countries such as Australia, United Kingdom, Germany, Finland, Israel etc. have shown interest in collaborating with India for Ganga rejuvenation. Memorandums of Understanding (MoUs) were signed with various Central Ministries viz. - Ministry of Human Resource Development, Ministry of Rural Development, Ministry of Railways, Ministry of Shipping, Ministry of Tourism, Ministry of Ayush, Ministry of Petroleum, Ministry of Youth Affairs and Sports, Ministry of Drinking Water & Sanitation and Ministry of Agriculture for synergizing the Government schemes.

Role and responsibilities of SPMG :

- To undertake overall state level planning and management of river Ganga basin.
- To liaison with the NMCG, State Ganga Committees and District Ganga Committees for effective implementation of various State level activities and interventions.
- To ensure timely release of funds to executing agencies and monitoring of physical & financial progress of projects.
- To ensure the capacity building of Executing Agencies.
- To ensure community participation and outreach activities.
- To ensure compliance with the quality assurance of capital investment projects.

### III

#### River Protection and the Legal Principles

River cleanliness and water pollution, in the form of environmental issues, have existed for over centuries. Across the globe efforts have been taken by countries to deal with this issue. These efforts remained within the territorial boundaries until international cooperation and globalisation emerged as a phenomenon cutting across international relations.<sup>9</sup> With the advent of international cooperation, perspective about river cleanliness, water management, and water pollution control has changed significantly. Industrial activities have emerged as one of the primary causes of water pollution across the globe.<sup>10</sup> This is true in the Indian context as well. In the upper valleys of the flow of the river Ganga, especially through Uttarakhand and Uttar Pradesh,

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<sup>9</sup> CONVENTION ON THE PROTECTION AND USE OF TRANSBOUNDARY WATERCOURSES AND INTERNATIONAL LAKES, Mar. 17, 1992, 1936 U.N.T.S. 269.

<sup>10</sup> Melissa Denchak, *Water Pollution: Everything You Need to Know*, NATURAL RESOURCES DEFENCE COUNCIL, INC., available at: <https://www.nrdc.org/stories/water-pollution-everything-you-need-know> (last visited Jan. 10, 2019).

factories and the wastes they generate form the major component of river pollution, apart from household waste.<sup>11</sup> However, in the lower fringes, the major source of pollution of the river is organic waste from households. A differential point, therefore, is that the conventional modes of establishing STPs shall not provide for solution to cleaning the ailing river throughout its course.

### Principles of Water Pollution Prevention

Today, across the globe, the understanding with respect to conservation of water and minimising river pollution has evolved drastically. International organisations have been thorough in this regard and few principles have developed for minimising environmental degradation.<sup>12</sup> These principles are applicable to the preservation of rivers as well. India being a party to these international institutions is under an obligation to conform with these principles.

Internationally agreed and conventionally practiced principles that have developed over the years are summarised below –<sup>13</sup>

**Principle of Prevention:** This principle states that policy statements should be formulated in a manner that prevents the occurrence of pollution instead of treating the after-effects of pollution. This principle finds its genesis from two frames of remedying the menace of water pollution. On the one hand experience and studies reveal that the cost of treating river pollution is higher.<sup>14</sup> On the other hand, the installation of effluent treatment plants over the years become ineffective and therefore overburdening for the exchequer. Therefore, it becomes only logical to use the principle of prevention for reducing water pollution.

The issue of water pollution becomes a problem that requires concerted efforts so that the causes of water pollution are plugged at the source and not plugged when the source has already been generated as is the case with industrial effluents.

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<sup>11</sup> Shyam Divan, *Cleaning the Ganga*, 30(26) EPW 1557 (1995).

<sup>12</sup> Patricia Birnie, *The Development of International Environmental Law*, 3(2) BRITISH JOURNAL OF INTERNATIONAL STUDIES 169 (1977). See also, Christopher F. Tamasang, et al., *Principles of Environmental Management in Cameroon* in ENVIRONMENTAL LAW AND POLICY IN CAMEROON - TOWARDS MAKING AFRICA THE TREE OF LIFE 242 (Oliver C. Ruppel and Emmanuel D. Kam Yogo, eds. 2011).

<sup>13</sup> See generally, H. Larsen, N.H. Ipsen and L. Ulmgren, *Policy and Principles in WATER POLLUTION CONTROL - A GUIDE TO THE USE OF WATER QUALITY MANAGEMENT PRINCIPLES 1* (Richard Helmer & Ivánildo Hespanhol, eds. 1997).

<sup>14</sup> Guy Hutton & Laurence Haller, EVALUATION OF THE COSTS AND BENEFITS OF WATER AND SANITATION IMPROVEMENTS AT THE GLOBAL (2004), available at: [https://apps.who.int/iris/bitstream/handle/10665/68568/WHO\\_SDE\\_WSH\\_04.04.pdf?sequence=1](https://apps.who.int/iris/bitstream/handle/10665/68568/WHO_SDE_WSH_04.04.pdf?sequence=1) (last visited Dec. 15, 2018).



**Precautionary Principle:** This principle relies on the fact that even if there doesn't exist evidentiary value to prove the side-effects of certain hazardous chemicals on the components of the environment, its use must be regulated and minimised to the extent possible as a precaution against the possibility of damage it may cause to the environment.

When an activity raises threats of harm to human health or the environment, precautionary measures should be taken even if some cause and effect relationships are not fully established scientifically.<sup>15</sup>

This principle has been very well-accepted in the international parlance and has time and again been reiterated with reference to environmental protection. The Rio Declaration on Environment and Development, 1992, Convention on Biological Diversity, 1992, and the Decision II/10 on conservation and sustainable use of marine and coastal biological diversity, 1995 use precautionary principle. A reading of the Preamble to the Convention on Biodiversity along with the Principles therein clearly reflect the international acceptance for the precautionary principle as a part of environmental protection.<sup>16</sup>

### **Implementation of Precautionary Principle in the Indian Context**

The precautionary principle in the Indian context stands exhaustively discussed. The court has over the years in various judgements reiterated how the principle finds relevance in the Indian context. In 1996, in a landmark judgement, the apex court observed that the principle was enshrined in the laws pertaining to environmental protection.<sup>17</sup> The court categorically put forth the extent of applicability of precautionary principle:

- The state agencies must take measures to forecast the possibility of environmental degradation and make necessary arrangements to reduce such impacts.
- In conformity with the international practice the State shall not wait for scientific evidence to be put forth before applying the principle.
- In such cases where environmental degradation takes place, it would be upon the State to prove that precaution was taken adequately and that the action taken is environment-pro.

The Supreme Court further viewed that conjoint reading of Articles 21, 47, 48 A and 51 A (g) of the Indian Constitution, bring to fore the fact that the precautionary principle is law of the land.

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<sup>15</sup> *Introduction to PROTECTING PUBLIC HEALTH AND THE ENVIRONMENT: IMPLEMENTING THE PRECAUTIONARY PRINCIPLE* 8 (Carolyn Raffensperger, et. al. eds. 1999).

<sup>16</sup> UNITED NATIONS CONVENTION ON BIOLOGICAL DIVERSITY, Jun. 5, 1992, 1760 U.N.T.S. 79.

<sup>17</sup> *Vellore Citizens Welfare Forum v. Union of India* (1996) 5 S.C.C. 647.

**Polluter-pays Principle:** The ‘polluter pays’ is one of the oldest recognised principles of imposing liability and making the machinery effective for reducing environmental degradation.<sup>18</sup> The polluter-pays principle has changed its form over the years with special reference to developing countries where poverty is rampant, and welfare of the population drives decisions of the State.<sup>19</sup> The transformed version of the polluter-pays principle is called the government-pays.<sup>20</sup> In this frame the pollution causing entity is obviously held liable but if there is any shortfall in making good the suffering of the victims of pollution, the Government is also held liable for paying compensation. The Supreme Court made this stand clear in the case of Bhopal Gas Tragedy Case.<sup>21</sup>

Thus, the polluter-pays principle has developed in India as a pragmatic tool to human welfare as much as it tries to protect the environment. Researchers studying the effectiveness of the principle have concluded that this scheme is suited for countries which are developing and where poverty is widespread. This scheme is more compensation centric, in that it streamlines the process of paying compensation to the victim than minimising the pollution caused.<sup>22</sup>

**Participatory Principle:** This principle relies on participation of the stakeholders in the prevention of water pollution.<sup>23</sup> The principle requires that the policies formulated for prevention of water pollution should involve stakeholder consultation. Stakeholders in this context must not limit to the decision-makers at the highest level, viz. the ministers and bureaucrats. Rather stakeholder should percolate to the lowest echelon possible and must include the community members, especially those who would be affected by the

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<sup>18</sup> Organisation for Economic Co—Operation and Development: Council Recommendation on the Application of the Polluter—Pays Principle to Accidental Pollution, 28(5) INTERNATIONAL LEGAL MATERIALS 1320 (1989).

<sup>19</sup> Barbara Luppi, et. al., *The rise and fall of the polluter-pays principle in developing countries*, 32 INT. REV. OF LAW & ECO. 135 (2012).

<sup>20</sup> *Id.*

<sup>21</sup> *Union Carbide Corporation v. Union of India*, (1991) 4 S.C.C. 584:

“98. After a careful thought, it appears to us that while it may not be wise or proper to deprive the victims of the benefit of the settlement, it is, however, necessary to ensure that in the-perhaps unlikely-event of the settlement-fund being found inadequate to meet the compensation determined in respect of all the present claimants, those persons who may have their claims determined after the fund is exhausted are not left to fend themselves. But such a contingency may not arise having regard to the size of the settlement-fund. If it should arise, the reasonable way to protect the interests of the victims is to hold that the Union of India, as a welfare State and in the circumstances in which the settlement was made, should not be found wanting in making good the deficiency, if any. We hold and declare accordingly.”

<sup>22</sup> Barbara Luppi, et. al., *The Rise and Fall of The Polluter-Pays Principle in Developing Countries*, International Review of Law and Economics, 135-144 (2011).

<sup>23</sup> Karl Raustiala, *The “Participatory Revolution” in the International Environmental Law*, 21 HRAV. ENVTL. L. REV. 537 (1997).

proposed intervention or the policies.<sup>24</sup> The stakeholders must be kept in the loop of policy formulation and should be continuously informed about the decision(s) proposed to be taken by the government. The decisions should be based on feedback from the stakeholders and not otherwise.

The principle entails that the government should take adequate steps to ensure that stakeholder engagement is undertaken continuously. Moreover, the participatory principle begins with stakeholder engagement during the policy formulation stage and should continue during the implementation of the policy. This is necessary because the implementation of any policy brings to fore challenges not otherwise foreseen during policy formulation.

***Principle of Cross-sectoral Integration:***<sup>25</sup> Since the factors that influence water/river pollution do not impact in isolation. Thus, the efforts to deal with the issue cannot be thought of in an isolated manner. This fundamental logic forms the basis of the principle of cross-sectoral integration. Industrial effluents where cause water pollution, the policy formulated for minimising the same should include information and knowledge-sharing between regulators functioning in the two domains. In the Indian context this might be understood as the exchange of regulatory frameworks between the ministries for water and industry. Similarly, other departments and agencies can be integrated in influencing and formulating the policy for dealing with the issue in hand.

Cross-sectional integration also helps in dealing with issues that might crop-up eventually when the policy is implemented. The following steps may be included for cross-sectional integration:

- Allowing the decision-makers from different sectors to influence the policy.
- Integrating ideas from separate sectoral plans to formulate the policy.
- Cross-comments on ideas and plans laid by separate sectors.

In order to influence the water policy from such cross-sectional integration, a decision-making body may be established that provides a platform for exchange of ideas and information.

***Principle of Cooperation:***<sup>26</sup> This principle is largely applicable to international rivers that flow across-countries. In case of national rivers and with special reference to India, where the inter-State rivers (Ganga being one) have been listed in the Union list, the need for inter-state cooperation increases. This principle finds its application to such situations. Therefore, the policy-statement must include element(s) of cooperation between nation states or the

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<sup>24</sup> Ilan Kapoor, *Towards Participatory Environmental Management*, 63(3) JOURNAL OF ENVIRONMENTAL MANAGEMENT, 269 (2001).

<sup>25</sup> Matthew Murphy & Daniel Arenas, *Through Indigenous Lenses: Cross-Sector Collaborations with Fringe Stakeholders*, 94(1) JOURNAL OF BUSINESS ETHICS 103 (2010).

<sup>26</sup> Dante A. Caponera, *Patterns of Cooperation in International Water Law: Principles and Institutions*, 25(3) NAT. RESOURCES J. 563 (1985).

territorial administrative setup across which the river flows, by whatever name called.

Constitution is the legislative powerhouse wherefrom the Parliament gets its authority to frame legislations. However, environmental laws and jurisprudence have prevailed before the adoption of Constitution. Eventually after the Constitution came into being, it became obligatory for the Parliament to frame laws for environmental protection. It is worth noting here that in the mythological scriptures of India, environmental protection as a principle is found.<sup>27</sup> Researchers have exhaustively traced the origin and development of environmental laws and jurisprudence in India.<sup>28</sup>

## IV

### Legal Developments in India: Water Resource Protection

In India, different policies of the state to protect the water resources have been in place since the colonial period. In this section, the history of development of environmental laws with special reference to the laws formulated to curb the menace of water pollution in India is outlined.

#### Colonial Era

Section 277<sup>29</sup> of the Indian Penal Code, 1860, provides for the punishment in case any person polluted the water of public reservoirs or springs. Rivers and other sources of water were also controlled for various purposes especially irrigation, fisheries, tourism (inn-keepers) etc. This led to promulgation of specific statutes to deal with the pollution of water bodies caused by various activities. Two-fold legal measures were adopted for the upkeep of water bodies. On one-hand strict legal penalties were to be imposed in case of violation of prescribed standards under the statutes. On the other hand, revenue was to be collected by concerned authorities for maintaining the water bodies.<sup>30</sup>

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<sup>27</sup> Furqan Ahmed, *Origin and Growth of Environmental Law in India*, 43(3) JILI 358 (2001).

<sup>28</sup> See generally, C. M. Abraham and Sushila Abraham, *The Bhopal Case and the Development of Environmental Law in India*, 40(2) INTERNATIONAL AND COMPARATIVE LAW QUARTERLY 334 (1991), Ayesha Dias, *Judicial Activism in the Development and Enforcement of Environmental Law: Some Comparative Insights from the Indian Experience*, 6 J. Env'tl. L. 243 (1994).

<sup>29</sup> Indian Penal Code, 1860 (Act No. 45 of 1860).

<sup>30</sup> See generally, United Nations, *Report of the United Nations Convention on the Human Environment*, Stockholm, 1972.

### Constitutional Provisions and Expanding Jurisprudence

In this section we begin with the provisions of the Constitution that regulate the use of environment either directly or broadly delineate the kind of relationship between citizens, State, and ecology of the nation followed by a discussion about the jurisprudence developed by the Supreme Court for protection of environment and its various components.

The important Constitutional provisions that deal with the protection of environment are:

- Article 21 – Right to Life and its expanded interpretation.
- Article 48A – Protection and improvement of environment and safeguarding of forests and wildlife
- Article 51A(g) – to protect and improve the natural environment including forests, lakes, rivers, and wildlife, and to have compassion for living creatures.

Under the Constitution, legislative competence is decided on the basis of the scheme provided in Schedule VII to the Constitution. In the scheme of the Constitution environmental pollution is not separately listed as one of the items but the items of the lists need to be read and interpreted broadly to provide the legislature the powers to enunciate laws for the protection of environment.<sup>31</sup>

Under Entries 13 and 14 of the Union List read with Articles 253, 254, 246, and 248 the legislative competence to make enabling provisions for implementation of international treaties and conventions is vested in the Central Legislature.<sup>32</sup> National legislative developments with respect to environmental laws are generally guided by international conventions and treaties. Therefore, the Central legislature has the competence to legislate in this regard. Protection of environment and interrelated facets thus, are crucial elements of the Constitution.<sup>33</sup> In a similar spirit over the years, the Courts have dwelt on environmental jurisprudence and have developed environmental concerns as a part of the country's constitutionalism.

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<sup>31</sup> *Environmental Policy and Constitutional Provisions, Indian Institute of Ecology and Environment, available at: <https://ecology.edu/environmental-policy.html>* (last visited - Jan. 20, 2019).

<sup>32</sup> *S. Jagannath v. Union of India* (1997) 2 S.C.C. 87, para 48:  
 “The preamble to the Act clearly states that it was enacted to implement the decisions taken at the United Nations Conference on the Human Environment held at Stockholm in June, 1972. The Parliament has enacted the Act under Entry 13 of List 1 Schedule, VII read with Article 253 of the Constitution of India, the CRZ notification having been issued under the Act shall have overriding effect and shall prevail over the law made by the legislatures of the States.”

<sup>33</sup> *Supra*, note 32.

The decision in the case of *Municipal Council of Ratlam v. Vardhichand* marks the vantage point of responsibility of State towards protection of the human environment.<sup>34</sup>

The expansion of Article 21 to include multifarious forms of human rights has been the cornerstone of Constitutional jurisprudence in India.<sup>35</sup> Regularly the court has iterated an expansive reading of Article 21. The discourse around Right to Life as enshrined in Article 21 and the avenues available for recourse in case of violation of this right has also been read in its broadest sense with public interest litigation being one of the modes of recourse to justice.<sup>36</sup>

The court has clearly enunciated the reading the UDHR Principles in the context of Article 21 and its expanded scope.<sup>37</sup> Environmental, ecological, air, water pollution, etc. amount to violation of Article 21. Hygienic environment is thus an integral fact of the right to healthy life as it is not possible to live with human dignity without a humane and healthy environment. There is, therefore, a constitutional imperative on the government, not only to ensure and safeguard proper environment but also to take adequate measures to promote, protect, and improve both the man-made and the natural environment.<sup>38</sup> In addition to this the court has recognised the important principle of trusteeship with respect to natural resources in general and the environment at large.<sup>39</sup>

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<sup>34</sup> *Municipal Council, Ratlam v. Vardhichand*, (1980) 4 S.C.C. 162, para 14-15:

“...providing drainage systems-not pompous and attractive, but in working condition and sufficient to meet the needs of the people-cannot be evaded if the municipality is to justify its existence. A bare study of the statutory provisions makes this position clear.”

<sup>35</sup> *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*, (1981) 1 S.C.C. 608, para 8:

“...right to life includes the right to live with human dignity. Hon. Supreme Court has now settled in number of cases that right of livelihood is a right to live and let all other live with human dignity and all that goes along-with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter over the head and facilities for reading, writing and expressing oneself in diverse forms freely moving about and mixing and commingling with fellow human beings. Of course, the magnitude and content of the components of this right would depend upon the extent of the economic development of the country, but it must, in any view of the matter, include the right to the basic necessities of life and also the right to carry on such functions and activities as constitute the bare minimum expression of the human-self.”

<sup>36</sup> *Subhash Kumar v. State of Bihar*, (1991) 1 S.C.C. 598.

<sup>37</sup> *Chameli Singh v. State of Uttar Pradesh*, (1996) 2 S.C.C. 549.

<sup>38</sup> M.P. Jain, *INDIAN CONSTITUTIONAL LAW* 1175 (2014).

<sup>39</sup> *T.N. Godavarma Thirumulpad v. Union of India*, (2006) 1 S.C.C. 1, para 1:

“Natural resources are the assets of entire nation. It is the obligation of all concerned including Union Government and State Governments to conserve and not waste these resources. Article 48A of the Constitution of India requires the State shall endeavour to protect and improve the environment and to safeguard the forest and wild life of the

As we have discussed earlier the applicability of precautionary and polluter-pays principles in the Indian context. It is trite mentioning here that with the expanded scope of Article 21 and inclusion of pollution-free environment within its ambit, the remedies to deal with the menace of environmental pollution has also expanded. Subsequently, these principles find relevance in the context of expanded scope of Article 21.<sup>40</sup>

In this milieu, the apex court has gone to the extent of expanding the scope of pollution-free environment to include noise-pollution. It has regulated the use of loud-speakers and such noise-causing artificial equipment.<sup>41</sup>

### Legislative Developments

The first legislation, after independence, enacted for the protection of environment was for the prevention of pollution of water, viz. the Water (Prevention and Control of Pollution) Act, 1974. The Act aims at preventing water pollution. Some features of the Act are –

- Establishment of Central and State level authorities for controlling water pollution.
- Penal provisions for violation of the statutory obligations.
- Establishment of water testing laboratories to assess the extent of pollution and formulate standards for compliance by industries.

The Central and State Pollution Control Boards have been established under the Act of 1974.<sup>42</sup>

The enactment of Water Act was the beginning of the legislative developments with respect to environmental protection in India and retinue of other legislations followed. In 1986, the Environmental Protection Act, 1986 was enacted. The legislation was comprehensive in the sense, it encompassed all

*country. Under Article 51A, it is the duty of every citizen to protect and improve the natural environment including forest, lakes, rivers and wild-life and to have compassion for living creatures."*

<sup>40</sup> *M.C. Mehta v. Kamal Nath* (2000) 6 S.C.C.213, para 4:

*"In addition to damages aforesaid, the person guilty of causing pollution can also be held liable to pay exemplary damages so that it may act as a deterrent for others not to cause pollution in any manner."*

<sup>41</sup> *In Re: Noise Pollution - Implementation of the Laws for restricting use of loudspeakers and high-volume producing sound systems*, (2005) 5 S.C.C. 733, para 11:

*"Undoubtedly, the freedom of speech and right to expression are fundamental rights but the rights are not absolute. Nobody can claim a fundamental right to create noise by amplifying the sound of his speech with the help of loudspeakers..."*

<sup>42</sup> Introduction to CPCB, Available at – <http://cpcb.nic.in/Introduction/>

*"The Central Pollution Control Board (CPCB), statutory organisation, was constituted in September, 1974 under the Water (Prevention and Control of Pollution) Act, 1974. Further, CPCB was entrusted with the powers and functions under the Air (Prevention and Control of Pollution) Act, 1981.*

the aspects of environment comprehensively. The legislation aimed at providing holistic solution to the problems plaguing the environment.<sup>43</sup> The Project and its implementing authority have been constituted under the EPA, 1986.

Developments on the legislative front coupled with the interpretation by judiciary has comprehensively evolved the legal scenario with respect to environment in India. In a similar manner, the executive has also come up with new tools to deal with the menace of environmental pollution. These developments include the promotion of sustainable agricultural practices, establishment of boards to assess the level of pollution and develop mitigating measures, implementation of schemes for protection of environment and those aimed at cleanliness, etc.

### **Rivers as Living Entities**

One of the most important developments with respect to river protection and which may have long-term bearing upon how the rivers are protected (and treated) in India is the decision of the Uttarakhand High Court wherein the rivers Ganga and Yamuna along with the glaciers Gangotri and Yamunotri (the glaciers respectively giving life to the two rivers) were declared as living entities.<sup>44</sup> However, this decision has been stayed by the Supreme court and the special leave petition is still pending. Research in this respect, shows mixed opinion towards treating the river Ganga as living entity. On the one extreme, are the environmentalists who argue that giving rights to these rivers like the living entities is crucial for their conservation. On the other extreme those who revere the river, feel that neither the powers that be are capable of conferring living entity status to the river nor are they capable of protecting the rivers from pollution.<sup>45</sup>

It is therefore, discernible that a lot of legal developments have taken place since the independence and much water has flown under the bridge towards the protection of the rivers in India. These developments are in conformity with the international standards and principles for the protection of water resources. The above discussion also brings to fore the fact that Indian judiciary has remained vociferous about protection of environment. However, on the flipside much remains to be done. An analysis of the status of implementation of the Project programme speaks volumes about the gaps that need to be filled and plug in the systemic issues so that rivers can be protected before they are depleted forever.

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<sup>43</sup> See, Preamble, Environment Protection Act, 1986 (Act No. 29 of 1986)

<sup>44</sup> *Lalit Miglani v. State of Uttarakhand* MANU/UC/0202/2016, para 77.

<sup>45</sup> Kelly D. Alley, *River Goddesses, Personhood and Rights of Nature: Implications for Spiritual Ecology*, 10 RELIGIONS 502 (2019).



## V

**Namami Gange Project: Principle-based Analysis****Slow Progress and Stalling of Funds**

The CAG report provides ample information about the financial (mis)management in the Project. The problem with the implementation of the Project runs deeper than the issues related to fund allocation, disbursement, and utilisation. It further encompasses lack of a robust audit mechanism, non-conformity with the procedures for procurement envisaged by the Central Vigilance Commission, irregularities pertaining to preparation of budget documents, etc.<sup>46</sup>

As far as the funds are concerned, there is slow progress and approximately only twenty percent of funds have been released by the Government till August 2018.<sup>47</sup> Needless to mention this burden of slow progress continues and the problems of the river has increased over the years with an increase in pollution. The project has not confirmed with the plans and milestones provided therein. The meetings of respective committees have not been organised in a timely manner.<sup>48</sup>

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<sup>46</sup> Comptroller and Auditor General of India, *Report of the Comptroller and Sutor General of India on Rejuvenation of River Ganga (NamamiGange)*, 19 (Report No. 39 of 2017), Available at: <https://cag.gov.in/content/report-no39-2017-performance-audit-rejuvenation-river-ganganamami-gange> (last visited Nov., 20, 2019).

*“There were deficiencies in preparation of budget estimates as only eight to 63 per cent of the funds were utilised during 2014-15 to 2016-17, as compared to Revised Estimates. There were deficiencies in preparation of Annual Action Plans by both NMCG and SPMGs. Budget Review Committees for proper monitoring were also not constituted by NMCG and SPMGs. NMCG could not ensure timely submission of UCs by SPMGs and also did not account for the interest earned by SPMGs in Central Share. Internal Audit were not carried out as per prescribed frequency. Huge unspent balances were lying with NMCG, SPMGs, EAs and State Governments and the entire amount of Clean Ganga fund was lying idle.”*

<sup>47</sup> This data was elicited on the basis of RTI filed with the NMCG.

<sup>48</sup> S. Sengupta, *Union Budget 2018: Merely increasing funds for Clean Ganga will not ensure results*, January 2019, available at: <https://www.downtoearth.org.in/news/water/merely-increasing-funds-for-clean-ganga-will-not-ensure-results-59507> (last visited Nov., 20, 2019).

*The latest CAG report explained that only 46 per cent of the Detailed Project Reports between 2014-15 and 2016-17 were approved.*

*...There was a delay in execution as land was not available or clearances could not be procured or contractors were slow. Collectively, only 56 per cent of the total amount released by NMCG for construction of individual household latrines, information, education and communication activities and management of solid and liquid waste were utilised by Bihar, Jharkhand, Uttarakhand, Uttar Pradesh and West Bengal.*

### **Lack of Integration of Panchayati Raj Institutions in the Institutionalised Framework**

The NMCG framework percolates from the Central level to the District level. However, this does not include the Panchayati Raj Institutions (PRIs) within the institutionalised framework. The PRIs are used as the implementing arm of the Project only. The financial management framework of the NMCG does not include or reflect upon the integration of PRIs. The plans are made by the respective districts and sent for approval to the State or Central Committee. The Execution of the approved activities are carried out by the executing agencies or the SPMG in collaboration with the district committees. It is to be further borne in mind that approximately more than 4500 villages are present along the bank of the river Ganga and therefore inclusion of all PRIs is a difficult proposition. But this must not preclude the government from integrating PRIs into the framework of a scheme of this enormity. The ESMF provides for stakeholder feedback, communication, and information disclosure throughout the project implementation. But as has been pointed earlier, the implementation of these stakeholder communication is skewed and ineffective.

### **Namami Gange *vis-a-vis* Principles for Water Pollution Prevention**

In this section the Project is gauged against the principles for protection of river water. Some of the important features of the institutionalised framework for the project that needs reiteration are –

- The implementation of the project is undertaken by a Special Purpose Vehicle with its sub-components that reach the grass-roots level.
- The NMCG has separate executive body called the Empowered Task Force (ETF) to oversee the implementation of the projects.
- It has eight pillars that consider various aspects of river cleanliness and aims at integrating these factors for dealing with the problem river pollution.
- Funds have been allocated from the budget and other means such as CSR, individual contribution, corporate contribution, etc.
- There is a proposal for legislation to this effect to curb the menace.

The NMCG confirms with these principles. Some of the principles find the right fit in this frame of work such participatory principle, cross-sectional integration principle, principle of cooperation etc.

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*For conservation of flora and fauna and maintenance of ecological flow, no concrete steps have been taken adds the report. The programme suffers from overall shortage of manpower. The monitoring meeting did not happen on the prescribed frequency. The implementation of Bhuvan Ganga, a web portal conceptualised to enable execution and monitoring of projects was slow. Even the role of Central Pollution Control Board (CPCB) in monitoring and evaluation was ambiguous as only 7.44 per cent of the sanctioned amount has been utilised.*

### **Participatory Principle**

The consultations for NMCG included inputs from various stakeholders and meetings were organised in this regard. Community awareness is one of the pillars for the implementation of the project. The project uses various modes of capacity building such as webinars, workshops, seminars, TV programmes, social media outreach, etc. for dissemination of information and collecting citizens' views on the implementation and improvisation of the project. The participatory principle is also reflected under the project in the way various community members are trained and Ganga Praharis have been appointed (refer text box – Selection of Ganga Praharis – The Participatory Principle).

In addition to the selection of Ganga Praharis, a dedicated website has been launched. This website provides for interaction between stakeholders, solicits feedback from community members, updates the citizens about minutes of meetings under the NMCG at the State & Central level, etc. Ganga Vichar Manch is a platform created with the aim of initiating an interactive dialogue among the various stakeholders of River Ganga. Be it an individual, academician, NGO, voluntary organization or a corporation - this platform offers a unique opportunity to people from all walks of life to suggest tangible solutions, debate in the discussion forum, participate as a volunteer in the conservation of the river Ganga and also to contribute funds towards the national efforts of bringing the river back to life.

### **Cooperation Principle**

The project considers the fact that since the river flows across States, there is need for cooperation among States. Further, the Constitution envisages inter-state river water disputes to be settled by a Central legislation. Therefore, the policy for implementing NMCG coordinates the efforts of various states for achieving the goals prescribed therein.

### **Principle of Cross-sectional Integration**

The project extensively uses the principle of cross-sectional integration, in that it has signed memorandums of understandings with various Central Ministries viz.- Ministry of Human Resource Development, Ministry of Rural Development, Ministry of Railways, Ministry of Shipping, Ministry of Tourism, Ministry of Ayush, Ministry of Petroleum, Ministry of Youth Affairs and Sports, Ministry of Drinking Water & Sanitation and Ministry of Agriculture. These Memorandums aim at converging the schemes implemented by these Ministries towards the fulfilment of the goals envisaged under the Project. It is important to note that the memorandums enlist specific roles the Ministries shall have in consultation with the MoWRRD & GR. E.g. – Ministry of Youth Affairs & Sports has the responsibility of capacity building of the youth across the country whereas Ministry of Water Supply & Sanitation is responsible for making the Ganga Grams open defecation free. This approach shall ensure that unnecessary redundancy and overlaps do not

hinder the progress of the project and alternatively the efforts of ministries converge to achieve the overall project objectives.

## VI

### Conclusion

The Project is in the sixth year of its implementation. The Government had claimed that by October 2019 70-80% of the river would be clean. But contradistinctively, there is hardly any concrete evidence to suggest positive developments on this front. The Project is trying to converge other projects and emphasis on organic farming is an exemplary step in this regard. The Project fares well on various internationally accepted principles on environmental pollution and uses a cooperative approach. Signing of MoUs with various Ministries reflect the coordinated approach the Government is using.<sup>49</sup> The Government is also using a cross-sectoral approach to clean the river. In addition to this, realising the role of the community the government is promoting community participation and the selection of Ganga Praharis reflect efforts towards fostering community participation.

However, with all its positive aspects the developments under the project remain slow and funds remain largely under or unutilised. The public at large and specifically those living closest to the bank are not aware about the ongoing project and the participation of the community is minimalistic. The fund flow is limited and detailed project reports (DPRs) are stalled and take longer than its due to be approved.<sup>50</sup> The meetings of the various committees have not been conducted as per the specified timeline and neither has there been any consistent effort to garner stakeholder views.<sup>51</sup> Though the Project makes extensive use of ICT but the ground-realities in terms of implementation are starkly different.<sup>52</sup> The fact that organic pollutants (from households) cause pollution (though industrial pollution is not to be lost sight of) and that there is a need for behavioural change has been conceded to but lack of efforts in bringing an attitudinal difference has not borne concrete

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<sup>49</sup> National Mission for Clean Ganga, MoUs with Ministry/ Department, available at: [https://nmcg.nic.in/mouwith\\_mindep.aspx](https://nmcg.nic.in/mouwith_mindep.aspx) (last visited: Nov. 15, 2018).

<sup>50</sup> Parliament of India, Release of Funds under Namami Gange Mission, Unstarred question in the Lok Sabha No. 2959, Jan. 04, 2018, available at: [https://eparlib.nic.in/bitstream/123456789/766985/1/AU2959\\_13\\_16.pdf#search=namami%20gange](https://eparlib.nic.in/bitstream/123456789/766985/1/AU2959_13_16.pdf#search=namami%20gange) (last visited: Nov. 15, 2018).

<sup>51</sup> The information regarding meetings has not been updated over the website.

<sup>52</sup> Shreya Jai, *NamamiGange moves slow: Of Rs. 2300 cr allotted, only Rs 700 crore used*, BUSINESS STANDARD (Feb. 3, 2019), [https://www.business-standard.com/article/economy-policy/namami-gange-moves-slow-of-rs-2-300-cr-allotted-only-rs-700-cr-used-119020200986\\_1.html](https://www.business-standard.com/article/economy-policy/namami-gange-moves-slow-of-rs-2-300-cr-allotted-only-rs-700-cr-used-119020200986_1.html) (last visited - Feb. 15, 2019).

impact(s). In addition to this the proposal for criminalising Ganga pollution is an overzealous demeanour which might have bubble effect but is no solution to the problem in the long-term. The scheme of the project includes the PRI in the implementation phase. The project plan is to be made and shared by the central and state level agencies instituted for the purpose.

The success of the Project does not lie in the infrastructural development and beautification of the Ghats, or the convergence of various schemes of the Government, or in effectively mitigating the social impact of the Project implementation. The success would be gauged if the question, '*Do we leave a river about which the Hindu community is unanimously vociferous in a state where the generations to come would feel alike?*' is answered by the future generations in the affirmative.