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# Navigating India's Waters: Evolving Legal Landscapes and Judicial Stewardship for Sustainable Resource Management

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## ABSTRACT

*This research paper provides a comprehensive analysis of the evolving judicial trends in water law in India, shedding light on the dynamic legal framework, recent court rulings, and regulatory measures that underscore the pursuit of sustainable and equitable water resource management. It navigates through India's intricate relationship with water resources, encompassing its historical context, legal foundations, and contemporary challenges. The paper also delves into the recognition of the right to water as a fundamental right under Article 21 of the Indian Constitution and its profound implications for water governance.*

*In a nation where water holds unparalleled significance, its scarcity and mismanagement present intricate challenges. Against this backdrop, the judiciary has emerged as a key player in shaping water policy through landmark judgments that address pressing issues.*

*This paper emphasizes the need for a holistic approach to water management, recognizing water as a finite and critical resource that intersects with various sectors, from agriculture to environment, society, and beyond. While the judiciary's interventions have been instrumental, addressing India's multifaceted water challenges requires a collaborative effort. The paper underscores the importance of robust infrastructure, efficient water use practices, and transparent governance mechanisms to bridge the gap between legal pronouncements and on-the-ground impact.*

*Moreover, the paper explores the intricacies of the Public Trust Doctrine (PTD) as applied to water resources, highlighting its significance in guiding sustainable management practices. The paper underscores the judiciary's role in establishing the right to water as an inherent part of citizens' well-being.*

**Keywords:** *Water Law Trends, Sustainable Water Management, Public Trust Doctrine, Right to Water, Judicial Stewardship.*

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## **I. INTRODUCTION**

Water, an indispensable resource for human and economic development, holds unparalleled significance. In the context of India, water assumes a central role, intricately woven into the fabric of the nation's economy, society, and culture. Despite being home to 17% of the global population, India possesses only 4% of the world's freshwater resources, magnifying the importance of judicious water management, utilization, and conservation.

Over time, India's evolving water laws have been instrumental in addressing the challenges associated with the management, use, and safeguarding of water resources. The legal framework governing water in India encompasses a comprehensive array of legal frameworks, policies, and regulations. Anchored in the bedrock of common law principles, including the riparian rights doctrine, public trust doctrine, and doctrine of prior appropriation, these principles find expression in an assortment of laws and regulations.

Notably, laws such as the Water (Prevention and Control of Pollution) Act, 1974<sup>3</sup>, the Water (Cess) Act, 1977, and the National Water Policy, 2012<sup>4</sup>, serve as pillars of India's water law landscape. Collectively, they endeavor to ensure the effective prevention of water pollution, regulate the imposition of water cess, and establish a comprehensive national policy to guide water resource management.

In essence, India's water law framework represents a dynamic and evolving system that acknowledges the criticality of water resources, addressing the pressing challenges and charting a path towards sustainable and equitable water utilization for present and future generations.

## **II. THE CURRENT STATE OF WATER RESOURCES IN INDIA**

India's water resources exhibit remarkable diversity, characterized by substantial variations in availability across different regions of the country. The nation's major rivers, including the Ganges, Indus, Brahmaputra, and Godavari, form the lifeline of its water supply. However, these rivers display pronounced seasonality, leading to significant fluctuations in flow throughout the year. In tandem, groundwater resources have gained increasing prominence, particularly in areas where surface water is scarce or unreliable. Regrettably, the unsustainable exploitation of groundwater has resulted in severe depletion, triggering far-reaching environmental, social, and economic consequences.

India confronts a multitude of challenges in effectively managing its water resources. These

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<sup>3</sup> Water (Prevention and Control of Pollution) Act, 1974

<sup>4</sup> Water (Cess) Act, 1977, and The National Water Policy, 2012

encompass burgeoning water demand attributable to population growth and economic development, the influence of changing climatic patterns manifesting in more frequent and intense weather events, inefficient water use practices, inadequate infrastructure, and compromised water quality. Moreover, the uneven distribution of water resources across the nation has exacerbated inter-state disputes concerning water allocation and sharing.

In shaping the trajectory of water law in India, the judiciary has played a pivotal role. The judiciary's contributions encompass the interpretation of constitutional provisions pertinent to water, notably the public trust doctrine, as well as ensuring the enforcement of various water laws and policies. Judicial intervention has been instrumental in resolving disputes among diverse stakeholders over water resources, including inter-state conflicts over water sharing.

Recognizing the complexity and significance of water management, India's evolving water laws and regulations strive to strike a delicate balance between conservation, equitable distribution, and sustainable utilization. These efforts encompass statutory frameworks, such as the Water (Prevention and Control of Pollution) Act, 1974, the Water (Cess) Act, 1977, and the National Water Policy, 2012<sup>5</sup>, which collectively aim to safeguard water resources, address pollution concerns, and outline a comprehensive national vision for water resource governance.

While challenges persist, India's commitment to sustainable water management remains steadfast. Strengthening institutional mechanisms, enhancing infrastructure, promoting efficient water use practices, and prioritizing equitable water sharing agreements are key pillars of the nation's efforts to ensure water security and foster sustainable development for its growing population.

### **III. HISTORICAL BACKGROUND OF WATER LAW IN INDIA**

Water has always held immense significance throughout India's history, impacting the lives of its people in profound ways. Traditional Indian societies developed a multitude of water management practices rooted in indigenous knowledge. Ingenious constructions such as stepwells and tanks enabled the efficient utilization of water, while the cultivation of water-efficient crops and the creation of intricate irrigation systems showcased the astute understanding of water resources.

During the British colonial period, India's irrigation and water management systems underwent significant transformations. The British administration introduced a centralized approach to water management, treating water resources as public property and vesting the government with

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<sup>5</sup> National Water Policy, 2012

authority over their regulation and distribution. The Bengal Irrigation Act of 1854<sup>6</sup> was a seminal legislation that formalized this system, delineating water rights and governing the construction, maintenance, and management of irrigation infrastructure.

With India's independence, the country embarked on formulating laws and policies to effectively manage its water resources. Among these, the Water (Prevention and Control of Pollution) Act of 1974 emerged as a critical piece of legislation. This act aimed to prevent and control water pollution, empowering regulatory bodies to monitor and enforce pollution control measures. In 1977, the Water (Prevention and Control of Pollution) Cess Act was enacted, enabling the imposition of cess on water consumption to generate funds for pollution control initiatives.

In 1987, the National Water Policy was introduced, acknowledging water as a scarce resource and providing a comprehensive framework for water resource management. This policy recognized the need for river basin management and advocated for the establishment of River Basin Authorities. Emphasizing community participation, the policy aimed to integrate local knowledge and stakeholders in decision-making processes. Subsequently, the 1991 National Water Supply and Sanitation Policy aimed to ensure access to safe drinking water and sanitation for all Indians by 2025. It emphasized the importance of community involvement and called for the establishment of State Water Supply and Sanitation Boards to facilitate effective management.

The Water (Prevention and Control of Pollution) Act underwent amendments in 2002, introducing significant changes to enhance pollution control efforts. These amendments led to the establishment of the Central Pollution Control Board and State Pollution Control Boards, reinforcing regulatory mechanisms. Additionally, in 2011, the National Water Policy was revised, focusing on critical aspects such as groundwater management, rainwater harvesting, and water conservation. The policy emphasized the need for a comprehensive National Water Framework Law to address emerging challenges in water resource management.

To tackle the multifaceted issues surrounding water management, the Indian government launched several programs and initiatives. The National River Conservation Plan aimed to clean and rejuvenate polluted rivers across the country, while the Accelerated Irrigation Benefit Program sought to enhance irrigation infrastructure and agricultural productivity. The National Rural Drinking Water Program aimed to provide safe drinking water to rural communities, emphasizing decentralized management and community participation.

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<sup>6</sup> The Bengal Irrigation Act of 1854

Despite these efforts, challenges persist. Water scarcity, inefficient infrastructure, and governance issues pose ongoing hurdles to effective water resource management. Addressing these challenges requires a collective commitment from the government, communities, and stakeholders to improve water management practices, promote sustainable water use, and ensure equitable distribution of water resources.

India's rich history of water management practices has provided a foundation for the development of a legal framework to govern and protect its water resources. While laws and policies have been enacted, the successful implementation of these measures remains an ongoing endeavor. By continually enhancing water management practices, fostering conservation efforts, and strengthening governance structures, India can navigate the complex landscape of water resource management and secure a sustainable future for its people.

#### **IV. ANALYSIS OF THE LEGAL FRAMEWORK GOVERNING WATER RESOURCES IN INDIA**

Water resources in India are governed by a comprehensive legal framework that encompasses various Acts, rules, and regulations at both the national and state levels. Given that over half of India's population relies on agriculture and the nation faces growing water scarcity due to increased demand and dwindling availability, effective management of water resources is crucial.

While the Constitution of India does not explicitly address water resources, it confers powers to the central and state governments to enact laws for their management and conservation. The Water (Prevention and Control of Pollution) Act of 1974 serves as the primary legislation for preventing and controlling water pollution. It empowers central and state pollution control boards to take measures to combat pollution, enforce penalties for non-compliance, and establish standards for the quality of water bodies.

The National Water Policy, first formulated in 1987 and revised in 2002 and 2012, provides a comprehensive framework for water resource management. It emphasizes the principles of integrated water resources management, equitable distribution of water, and stakeholder participation in decision-making processes. The policy recognizes river basins as the fundamental unit for planning and managing water resources, promoting their sustainable development and inter-state coordination.

The River Boards Act of 1956<sup>7</sup> enables the creation of river boards for inter-state river basins

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<sup>7</sup> The River Boards Act, 1956

or river valleys. These boards, established by the central government, are tasked with regulating water flow, managing water resources, and resolving disputes among states sharing the river basin. They play a crucial role in facilitating cooperation and coordinated management of water resources across state boundaries.

In addition to the aforementioned Acts, several other laws and regulations govern water resources in India. The Water (Prevention and Control of Pollution) Cess Act of 1977 authorizes the collection of cess on water consumption to fund pollution control measures. The Ground Water (Control and Regulation) Act of 2002 regulates the extraction and use of groundwater to prevent its overexploitation. The Indian Fisheries Act<sup>8</sup> of 1897 addresses the protection and conservation of fish and aquatic life in water bodies. The Environmental Impact Assessment Notification of 2006 mandates the assessment of potential environmental impacts before undertaking projects that may affect water resources.

The judiciary, particularly the Supreme Court of India, plays a pivotal role in interpreting and enforcing water laws. The court has been proactive in addressing issues related to water resources and pollution. In the landmark case of *M.C. Mehta v. Union of India*<sup>9</sup>, the court ordered the closure of industries polluting the Ganga river and established the Ganga River Basin Authority to restore and preserve the river. Similarly, in the Cauvery river water-sharing dispute between Karnataka, Tamil Nadu, and Kerala, the Supreme Court formed a high-powered committee and a Cauvery Management Board to assess the dispute and implement water-sharing decisions.

India's legal framework for water resources aims to ensure sustainable management, conservation, and equitable distribution of this vital resource. However, challenges persist in the effective implementation of these laws. Adequate infrastructure, efficient governance mechanisms, and awareness among stakeholders are essential for addressing issues of water scarcity, pollution, and inter-state water disputes. Continued efforts and collaborative action across sectors are imperative to secure the sustainable use of water resources for present and future generations.

## **V. THE PRINCIPLE OF PUBLIC TRUST DOCTRINE AND ITS APPLICATION IN THE CONTEXT OF WATER RESOURCES IN INDIA**

The Public Trust Doctrine (PTD) is a fundamental legal principle that recognizes certain natural resources, such as air, water, and wildlife, as being held in trust by the government for the

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<sup>8</sup> The Indian Fisheries Act, 1897

<sup>9</sup> *M.C. Mehta v. Union of India*, (2007) 1 SCC 136

benefit of the public. It is based on the premise that these resources are of paramount importance and must be preserved and protected for both present and future generations. In the context of water resources, the PTD plays a significant role in shaping water management practices in India.

**Application of PTD in Water Resources Management:** The application of the PTD in water resources management in India is essential due to the scarcity of water and its crucial role in sustaining ecosystems and human well-being. The doctrine emphasizes the government's responsibility to safeguard and manage water resources in a manner that ensures their sustainable use and equitable distribution among all stakeholders. This includes protecting water bodies from pollution, maintaining adequate water flows, and ensuring access to clean and healthy water for the public.

**Landmark Cases establishing PTD in India: M.C. Mehta v. Kamal Nath:** The case of *M.C. Mehta v. Kamal Nath*<sup>10</sup> is a landmark legal case that played a pivotal role in establishing the PTD principle in water resources management in India. In this case, the Supreme Court of India recognized that the government acts as a trustee of all natural resources, including water, and is obligated to protect and preserve them for the benefit of the public. The court emphasized the public's right to clean and healthy water and held the government accountable for ensuring its preservation.

The case originated from a petition filed by M.C. Mehta, an environmental lawyer, against the illegal mining of sand from the riverbeds of the Chambal River in Madhya Pradesh. The court observed that the mining activities were causing significant ecological damage to the river and adversely affecting the lives of communities residing along its banks. As a result, the court imposed a complete ban on sand mining in the riverbeds and directed the state government to undertake measures for the restoration of the river's ecosystem.

**Narmada Bachao Andolan v. Union**<sup>11</sup> of India: The case of *Narmada Bachao Andolan (NBA) v. Union of India* is another seminal case that reinforced the application of the PTD principle in water resources management in India. The case arose from a petition filed by the NBA, an environmental organization, challenging the construction of the Sardar Sarovar Dam on the Narmada River.

In its judgment, the Supreme Court recognized the PTD and acknowledged the government's role as a trustee of the river and its resources. The court stressed the importance of sustainable

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<sup>10</sup> *M.C. Mehta v. Kamal Nath*, (2002) 3 SCC 653

<sup>11</sup> *State of M.P. v. Narmada Bachao Andolan*, (2011) 7 SCC 639

and equitable water management and directed the government to ensure that the dam's construction did not cause harm to the environment or adversely impact the affected communities.

The PTD principle serves as a critical tool in guiding the management of natural resources, particularly water, in a sustainable and equitable manner. The landmark cases of *M.C. Mehta v. Kamal Nath* and *Narmada Bachao Andolan v. Union of India* have underscored the government's responsibility as a trustee of natural resources and highlighted the need for sustainable and inclusive water resource management practices. As India continues to face challenges related to water scarcity and pollution, the application of the PTD remains significant in shaping policies and actions aimed at ensuring the conservation and equitable use of water resources.

## **VI. THE RECOGNITION OF THE RIGHT TO WATER AS A FUNDAMENTAL RIGHT UNDER ARTICLE 21 OF THE CONSTITUTION OF INDIA**

The recognition of the right to water as a fundamental right under Article 21 of the Constitution of India has been a significant development in ensuring access to clean and safe water for all citizens. While the Constitution does not explicitly mention the right to water, it is considered to be an inherent part of the right to life, which is protected under Article 21. The judiciary has played a crucial role in interpreting and upholding this right, leading to landmark cases that have established the right to water as a fundamental right in India.

*Chameli Singh v. State of U.P.*<sup>12</sup>: The *Chameli Singh v. State of U.P.* case (1996) stands as a landmark judgment that recognized the right to water as an integral component of the right to life. The case emerged from the severe water scarcity faced by the residents of a village in Uttar Pradesh. The Supreme Court held that the government has a constitutional duty to provide clean and safe drinking water to all citizens, as the denial of this essential resource would violate their fundamental right to life. The Court emphasized that the right to water is not an absolute right and must be balanced with other competing rights. It further emphasized that the government should take necessary measures to ensure that the villagers have access to clean and safe water, thus acknowledging the significance of the right to water in upholding human dignity and well-being.

*Ganga Pollution Control Case*: The *Ganga Pollution Control Case* (1987) is another notable case that recognized the right to water as a fundamental right. The case arose from concerns

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<sup>12</sup> *Chameli Singh v. State of U.P.*, (1996) 2 SCC 549

raised by environmental activists regarding the pollution of the river Ganga. The Supreme Court held that the right to life, as guaranteed under Article 21, encompasses the right to live in a pollution-free environment and have access to clean and safe water. The Court stressed the government's duty to control pollution in the river and maintain its cleanliness for the benefit of all citizens. It further acknowledged that the right to water is an intrinsic part of the right to life and directed the government to ensure the provision of clean and safe drinking water to the population.

The recognition of the right to water as a fundamental right under Article 21 of the Constitution represents a significant step forward in Indian jurisprudence. It underscores the government's obligation to protect and fulfill this right for all citizens, highlighting the importance of access to clean and safe water for sustaining life and preserving human dignity. The judgments in cases such as *Chameli Singh v. State of U.P.* and the *Ganga Pollution Control Case* have set important precedents, firmly establishing the right to water as an inherent aspect of the right to life. This recognition places an obligation on the government to prioritize the management and distribution of water resources, taking necessary actions to address issues such as water scarcity, contamination, and inadequate access. Ultimately, the recognition of the right to water serves as a crucial step toward achieving the broader goals of social justice, equitable development, and the overall well-being of all individuals in Indian society.

## **VII. AN ANALYSIS OF THE RECENT JUDICIAL TRENDS IN WATER LAW IN INDIA**

An extensive analysis of recent judicial trends in water law in India highlights the proactive role played by the judiciary in regulating water resources and ensuring their sustainable and equitable use. Through landmark cases such as *State of Uttarakhand v. Kumaon Stone Crusher*<sup>13</sup>, *M.C. Mehta v. Union of India*, and *Narmada Bachao Andolan v. Union of India*, the courts have made significant contributions to shaping water policy, resolving disputes, and establishing regulatory measures.

**Judicial Trends in Water Law in India:** The Indian judiciary has taken an active stance in interpreting constitutional provisions related to water resources, thereby establishing key principles that form the foundation of water law in the country. By embracing a holistic approach, the courts have recognized the vital role of water resources in society and emphasized the need for their sustainable management, conservation, and equitable distribution. This approach has led to the evolution of water policy and the development of legal frameworks

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<sup>13</sup> *State of Uttaranchal v. Kumaon Stone Crusher*, 2016 SCC OnLine SC 1743

aimed at ensuring the long-term viability of water resources.

**Regulatory Measures Imposed by the Courts:** In pursuit of sustainable and equitable utilization of water resources, the courts have implemented a range of regulatory measures to address pressing concerns and protect the interests of both present and future generations. Noteworthy examples of such measures include:

**State of Uttarakhand v. Kumaon Stone Crusher<sup>14</sup>:** In this case, the Supreme Court of India intervened to regulate the extraction of minor minerals, particularly groundwater. Recognizing the significance of groundwater as a vital resource, the court emphasized the need for sustainable extraction practices. It directed state governments to prepare comprehensive plans outlining scientifically sound groundwater extraction techniques while ensuring that extraction rates do not exceed the rate of aquifer recharge. By doing so, the court aimed to strike a balance between resource utilization and preservation, safeguarding water availability for future generations.

**M.C. Mehta v. Union of India:** This landmark case addressed the pressing issue of industrial pollution, particularly the discharge of effluents into water bodies. The Supreme Court imposed stringent guidelines on industries, mandating the treatment of effluents before their release into water bodies. Moreover, the court directed state governments to establish effluent treatment plants and closely monitor the quality of water in rivers and other water bodies. These measures sought to mitigate pollution and protect the integrity of water resources, preserving their ecological balance and ensuring the well-being of communities reliant on these resources.

**Narmada Bachao Andolan v. Union of India<sup>15</sup>:** In this case, the Supreme Court laid down crucial guidelines for the construction of dams on the Narmada River. Recognizing the potential environmental and social impact of large-scale dam projects, the court emphasized the importance of conducting comprehensive environmental impact assessments before initiating such projects. Additionally, the court highlighted the need for the rehabilitation of individuals displaced by dam construction, ensuring their rights and welfare are safeguarded. These measures aimed to strike a balance between development and conservation, considering both the interests of affected communities and the protection of water resources.

**The Role of the Judiciary:** The judiciary's proactive approach in water resource management has been instrumental in shaping water policy and providing legal clarity on complex water-related issues. By interpreting constitutional provisions and promulgating guidelines, the courts

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<sup>14</sup> Supra note 12

<sup>15</sup> Supra note 10

have effectively addressed pressing challenges, resolved conflicts, and ensured the sustainable and equitable utilization of water resources. Their interventions have not only protected the environment but also safeguarded the rights of communities dependent on these resources, thereby promoting social justice and sustainable development.

However, effective implementation of these regulatory measures remains a critical challenge. Stakeholder collaboration, adequate enforcement mechanisms, and public awareness are essential to translate judicial directives into tangible action on the ground. Furthermore, continuous judicial oversight and monitoring are necessary to assess the effectiveness of these measures and adapt them to changing circumstances.

The Indian judiciary has demonstrated its commitment to water resource management by implementing regulatory measures, resolving disputes, and establishing precedents that guide the sustainable and equitable use of water resources. Through landmark cases and proactive interventions, the courts have played a vital role in shaping water policy, addressing environmental concerns, and protecting the rights of communities dependent on water resources. While these judicial trends have provided crucial guidance, their successful implementation requires collaborative efforts among stakeholders, robust enforcement mechanisms, and ongoing judicial monitoring. By embracing sustainable practices and ensuring equitable access to water, India can effectively manage its water resources and ensure their availability for future generations.

## **VIII. CONCLUSION**

India's water resources face multiple challenges, including uneven distribution, water scarcity, flooding, inadequate infrastructure, poor management practices, and governance issues. The Indian judiciary has emerged as a critical force in tackling these challenges by interpreting and enforcing laws related to water resources. Landmark judgments by the Supreme Court of India have addressed crucial water-related issues, leading to the establishment of regulatory bodies, the implementation of conservation measures, and the monitoring of water quality.

While the judiciary's interventions have been significant, further efforts are required to ensure sustainable and equitable use of water resources in India. One pressing challenge is the lack of adequate infrastructure for water storage, transportation, and distribution. Insufficient storage facilities exacerbate water scarcity in dry periods and contribute to flooding during heavy rainfall. Addressing this infrastructure gap is essential to improve water management across the country.

Agriculture, being the largest consumer of water in India, needs attention to enhance water use

efficiency. Promoting the adoption of efficient irrigation techniques, such as drip irrigation and precision farming, can significantly reduce water wastage and ensure optimal utilization. Encouraging sustainable agricultural practices and the adoption of water-saving technologies are vital steps toward achieving long-term water security.

Groundwater depletion poses another major concern. Excessive extraction without proper regulation and recharge mechanisms has led to declining water tables and the deterioration of groundwater quality. Implementing policies to regulate groundwater extraction, promote recharge techniques, and encourage water-efficient practices are essential to address this pressing issue and safeguard future water availability.

To address these challenges comprehensively, the government of India should adopt an integrated approach to water management. This approach entails investing in resilient and sustainable water infrastructure, promoting water conservation measures at all levels, and fostering greater coordination among government agencies, stakeholders, and communities. Collaboration is vital to ensure the effective implementation of water management strategies, including robust governance mechanisms, active public participation, and transparent decision-making processes.

In conclusion, while India faces significant challenges in managing its water resources, the judiciary has played a pivotal role in addressing these issues. However, achieving sustainable and equitable use of water resources necessitates a comprehensive approach that encompasses infrastructure development, efficient agricultural practices, groundwater regulation, and effective governance. By adopting such an approach and fostering collaboration among stakeholders, India can secure its water resources for future generations and ensure water security for all.

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