

Water Justice, Judicial Underpinnings, and Vasudaiv Kutumbakam

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By Eeshan Chaturvedi - As water scarcity plagues the planet exponentially, it is imperative for countries to come to a global consensus and address the issues of international environmental leakage. A concerted effort towards homogenous legal frameworks and policies is the need of the hour to abate pollution of water from point sources and otherwise.



Vasudhaiva Kutumbakam (Sanskrit: वसुधैव कुटुम्बकम्) is an ancient Sanskrit phrase that means that the whole world is one single family. The concernment of this phrase has grown leaps and bounds over the years, especially in terms of water pollution, policy and awareness.

Globally, it is likely that over 80% of wastewater is released to the environment without adequate treatment. Some 3 in 10 people worldwide, or 2.1 billion, lack access to safe, readily available water at home, and 6 in 10, or 4.5 billion, lack safely managed sanitation. 844 million do not have even a basic drinking water service. Amidst this scarcity, demand for freshwater is increasing by 64 billion cubic meters a year.

Water justice, and the underpinnings of law and policy, thus become of great significance going forward. It is in this light that the recent judgment of the Supreme Court of the United States of America in the case of *County of Maui v. Hawaii Wildlife Fund* - where it was held that the Clean Water Act (CWA) forbids the 'addition' of any pollutant from a 'point source' to 'navigable waters' without the appropriate permit from the Environmental Protection Agency (EPA), and that, contrary to EPA practice, this restriction applies also to groundwater - comes as a welcome change in recognition, in particular, of

the strategic value of groundwater, especially in light of the earlier view of the Government that groundwater shall not be included in the clause 'waters of the United States', i.e., within the paradigm of the CWA. Such point source pollutant discharges, especially from medium to heavy industries, account for a substantial part of the water pollution, often risking the public health of communities living downstream from such point sources, or dependent on groundwater.

The decision of the US Supreme Court *supra* follows various legislative curbs that have been put in place around the globe to mitigate pollution from such sources. In the United Kingdom, the UK Rivers (Prevention of Pollution) Act of 1951 requires authorization for the discharge of sewage and other effluents into rivers, subject to their meeting quality standards. In Canada, the Ontario Environmental Protection Act operates a general prohibition on discharging "material of any kind into any well, lake, river, pond, stream,... in any place that may impair the quality of the water...". The Ontario Water Resources Act also operates a similar prohibition. In Australia and New Zealand, vide the New South Wales Environmental Offences and Penalties Act of 1989, and the New Zealand Resource Management Act of 1991, a similar approach is taken whereby it is illegal to discharge any contaminant into water or onto, or onto, land in such a way that it may enter water. In India, Section 24 of the Water (Prevention and Control of Pollution) Act, 1974 puts regulatory prohibitions towards point sources of pollution.

While such regulatory trends are being noticed globally, there are still pockets around the world where restrictions are either driven too much in favour of the industries or are conspicuous by their very absence. This heterogeneity in international regulatory frameworks often feed into the problem of *international environmental leakage* - broadly understood as unintended displacement of impacts caused by an environmental policy intervention – in other words, polluting industries/sources are simply displaced to areas with less stringent regulatory policies and mechanisms.

International pollution is a zero sum game, where each participant's gain or loss of utility (environmental benefits) is exactly balanced by the losses or gains of the utility of the other participants. And hence, the consequential environmental leakage, addressed above, eventually disperses and pollutes the global reserves of water.

It is thus imperative to put in place policy frameworks with a global consensus. Water policies must be equally, equitably and with equanimity applied world over. Organizations such as the IUCN thus have a significant role to play, to help the world come together to a global consensus, through awareness, education and information in controlling water pollution through similar standards on the fulcrum of intergenerational equity.

The world has to become one in our efforts to curb water pollution - for the world is one single family. *Vasudhaiva Kutumbakam*.

About the Author



WCEL Member Eeshan Chaturvedi received a Masters in Environment and Policy Law from Stanford Law School in 2015. Selected among the 20 rising environmental leaders by the Stanford Woods Institute for Environment, Eeshan worked with the UNECE and UNHQ in Geneva and New York respectively, currently practices in the Supreme Court of India, is the Founder-Director of Environmental and Public Policy Consultancy Firm 'EnviPol'. He is also a Faculty member at the O. P. Jindal Global University, India.