



## THE MAPPING OF JUDICIAL SCRUTINY ON ACTIVITIES HAPPENING AROUND RIVERINE LAND IN INDIA

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### Abstract

Terms like 'river-bed' and 'river bank' have been in use for filing the cases before courts related to violation of rights of population residing near rivers in India. Through the research a new term 'Riverine Land' is found which includes both the above-mentioned terms. The present paper is written with a target to study 50 cases pertaining to activities happening around the river banks causing ecological damage to river life. The research is exploratory in nature written with an aim to find out the nature of illegal activities happening near rivers, principles of law involved, level of violation of legal norms and how the Indian courts and tribunals have dealt with the situation and passed direction from time to time for the protection of hard riverine lands. The research is done by analyzing the primary resources i.e. legislation and case laws. The paper forms a suggestion for the government to reframe the strategy to deal with the illegal activities affecting the ecology of rivers in India.

**Keywords - River-bed, river-bank, riverine land, judiciary, law**

Rivers are the backing of urban construction, and the construction of river ecological environment is closely related to the development of urban ecological environment. However, in recent years, with the rapid development of urban construction, urban construction lands fill lakes and plains, which compresses the land space of rivers, resulting in a significant decline in flood discharge capacity and pollutant capacity of urban rivers (Lin, Tang, and

Liu, 2019; Wang, Zhong, and Bo, 2018; Wei et al., 2019; Xia et al., 2017). A large number of industrial and domestic sewage are discharged into rivers, resulting in serious pollution of the river water environment, deterioration of water quality, and serious impact on urban production and life. In the process of urban construction, a large number of hard revetment riverbeds, such as concrete and masonry, have been constructed. The biodiversity has been lost due to damage caused to the ecosystem near riverine land. The illegal activities weakens the natural restoration function of river ecosystem (Kanda et al., 2016; Sui et al., 2017; Zhang et al., 2016).

The area of 'riparian land' along the banks of the river is included within the meaning of expression 'riverine land'. For the first time an Indian legislation titled "The Goa Port Rules, 1983 which was amended through Rules, 1994" had inserted the expression 'government riverine land'. This particular expression includes the portion of the bank within fifty yards of high water mark and also the land falling within the high water mark (*Delta Engineers v. State of Goa*, 2009). The other two names which are similar to riverine land are "riverbed" and "floodplain". Till date, no statute has attempted to define the expressions 'riverbed' and 'floodplain' but in geographical terms "riverbed" may be defined as the area over which the river flows (*D.D.A v. Rajendra Singh & Ors*, 2010). In the famous (*Thames Conservators Case*, 1897), it was held that the term 'riverbed' denotes a portion of the river which in the ordinary or regular course of nature is covered by the waters of the river. The Delhi High Court in the case of (*Bed Ram v. Union of India*, 2011) while defining both the above-mentioned terms stated that 'river bed' is defined as the area, over which the river water flows. It denotes the area which, in the ordinary or regular course of nature, is draped by the waters of the river. On the other hand, the term 'flood plain' can be defined as the land adjacent to a river, which because of its level topography, floods when the river overflows. defined both the terms. It is also been defined as 'a



low, flat area in either side of a river that can accommodate large amounts of water during a flood, lessening flood damage further downstream (Fredd Michaels, 2007).

Granting legal rights and protections to non-human entities such as animals, trees and rivers is essential if countries are to tackle climate breakdown and biodiversity loss (*Ghirrau Lal Mishra v. State of U.P.*, 2024). As far as river water is concerned, the water flowing through the rivers and water stored in the reservoir/dams is the property of the State. The doctrine of Public Trust will apply and therefore, the State is the trustee thereof. The public at large is beneficiary of the water. No citizen or entity is entitled to claim any preferential right to get supply of water in a particular manner or of a particular quantity except in accordance with the provisions of law (*Marathwada Janta Vikas Parishad v. State of Maharashtra*, 2016). As far as constitutional guarantee is concerned, the Constitution of India, 1950 obligates the State to protect river water, lakes etc., with a view to enhance environment and to avoid environmental degradation. While the Constitution does not specifically recognize a fundamental right to water, but court decisions deem such a right to be implied in Article 21. Also Article 39(b) mandates that the State shall, in particular, direct its policy towards securing that the ownership and control of the material resources of the community are so distributed as best to sub-serve the common good.

In (*Subhash Kumar v. State of Bihar & Others*, 1991) the Supreme Court of India has recognized that the expression “right to life” includes the “right of enjoyment of pollution free water and air for full enjoyment of life.” it is the obligation of the State to protect the water pollution and protect lakes, rivers, tank beds etc., in terms of Article 48A and 51A(g) of the Constitution of India.

The present paper is a research to find out the various issues pertaining to and actual reason behind unlawful activities happening around riverine land in

India. The paper inquires and compares the preventive measures taken on behalf of legislative and administrative bodies to prevent the river beds from getting polluted. Also, the rejuvenation efforts to revive the life subsisting in and around rivers of India.

### Activities around Riverine Land

Official data of Central Pollution Control Board shown that 351 river stretches in the country are polluted. It is well known causes of pollution of rivers and ponds are dumping of untreated sewage, industrial waste, garbage, plastic waste, e-waste, Bio-Medical Waste, Municipal Solid Waste, diversion of river water, encroachments of catchment area and flood plains, overdraw of ground water, river bank erosion on account of illegal sand mining. In spite of direction of instalment of Effluent Treatment Plants (ETPs), Common Effluent Treatment Plants (CETPs), Sewage Treatment Plants (STPs) and adopting other anti-pollution measures, satisfactory situation has not been achieved (*Nav Duniya v. Bhopal Municipal Corpn.*, 2023).

In last few years, courts in India have made their observations on several illegal activities happening around riverine land. Activities like illegal mining, over construction, encroachment and improper waste management has caused significant amount of damage to the quality of river affecting the right of access to clean drinking water ( N. Ferronato, V. Torretta, 2019). The judicial interventions on these above-mentioned issues are as follows –

#### 1. Illegal sand mining

Sand/mines is a public property and the State is the custodian of the said public property and therefore the State should be more sensitive to protect the environment and ecological balance and to protect the public property the State should always be in favour of taking very stern action against the violators who are creating serious ecological



imbalance and causing damages to the nature in any form (*Jayant v. The State of Madhya Pradesh*, 2020). In a recent case of Madhya Pradesh, a report was submitted by the party before the National Green Tribunal stating that Illegal sand miners are active in 28 districts of Madhya Pradesh. They use boats and pipeline to excavate sands from water, which is highly objectionable and an unscientific practice. The sand absorbs water and then recharges groundwater too. This practice is destroying the natural process of the river (*Kirtikumar Sadashiv Bhatt v. Narmada Water Resource*, 2023).

Over the years rivers in India have been affected by the alarming rate of unrestricted sand mining which is damaging the eco-system of the rivers and safety of bridges. It also weakens river beds, fish breeding and destroys the natural habitat of many organisms. If these illegal activities are not stopped by the State and the police authorities of the State, it will cause serious repercussions as mentioned herein-above. It will not only change the river hydrology but also will deplete the ground water levels (*State of NCT of Delhi v. Sanjay*, 2014). dishonestly removing sand, gravels and other minerals from the river, which is the property of the State, out of State's possession without the consent, constitute an offence of theft. It has been observed that sand mining transforms the riverbeds into large and deep pits, as a result, the groundwater table drops leaving the drinking water wells on the embankments of these rivers dry.

Illicit and haphazard sand mining has led to deepening of river beds, widening of the rivers, damage to civil structures, depletion of groundwater table, degradation of ground water quality, sea water intrusion in coastal areas, damages to river systems and reduction in bio-diversity, apart from causing health hazards and environmental degradation (*State of Tamil Nadu & Anr v. P. Krishnamurthy & Ors*, 2006).

With regard to the mining and transportation of sand, there are ample laws like the Mines and Minerals (Regulation and Development) Act, 1957 and Rules

made thereunder (*Promoters & Builders Association of Pune v. Pune Municipal Corporation & Ors*, 2007). Also, para 9.2 of the Enforcement & Monitoring Guidelines for Sand Mining, 2020 provides that the environmental damages incurred or resulting due to illegal mining shall be assessed by a committee constituted by District Administration having expertise from relevant fields, and also having independent representation of locals and State Pollution Control Board. But in the case of (*Bajri Lease Lol Holders Welfare Society v. The State of Rajasthan*, 2019) the apex court found that the Khatedaras have been exploiting the locational proximity to the river banks by excavating sand from the river bed, instead of restricting the mining to their leasehold areas, completely in violation of the above-mentioned guidelines. But time and again, Indian courts have highlighted the necessity to have an effective framework of mining plan which will take care of all environmental issues and also evolve a long term rational and sustainable use of natural resource base and also the bio-assessment protocol. Sand mining, it may be noted, may have an adverse effect on bio-diversity as loss of habitat caused by sand mining will effect various species, flora and fauna and it may also destabilize the soil structure of river banks and often leaves isolated islands (*Deepak Kumar Etc v. State of Haryana & Ors.*, 2012). Apart from this, many state legislations, in their preamble itself, discusses the purpose to protect river banks and river beds from large scale dredging of river sand and to protect their biophysical environment system and regulate the removal of river sand (*Faisal v. Assistant Sub Collector*, 2015).

The Supreme court in the case of (*Deepak Kumar v. State of Haryana*, 2009) had recorded its deep concern with regard to the quarrying, mining and removal of sand from in-stream and upstream of several rivers which led to serious environmental impact on the rivers and the rivers beds as well as on biodiversity. In various affidavits submitted before the court it has been found that the dealers and businessmen are trying to make huge profits by selling not only the sand from the Government but



also indulging in indiscriminate quarrying and transporting the same in the guise of a valid permit (*D.Sivakumar v. The Government of Tamil Nadu*, 2012).

Thus, the only solution to the above-mentioned issue is the project proponent (Public Works Department of the State in this case) should undertake adequate safeguard measures during extraction of river bed material and ensure that due to this activity, the hydro geological regime of the surrounding area is not affected (*Kollidam Aaru Pathukappu Nala Sangam v. The Union of India*, 2014).

## 2. Industrial waste/discharge of affluent

The discharge of untreated effluent and sewage is the principle cause of water pollution in the country (*Nav Duniya v. Bhopal Municipal Corporation*, 2023). Every day millions of gallons of trade wastes and effluents are discharged into the rivers, streams, lake and sea etc. Indiscriminate water pollution is a problem all over the world but is now acute in densely populated industrial cities. Our country is no exception to this (*T.N. Godavarman v. Union of India and Ors*, 2003). No industry causing serious water pollution should be permitted within one kilometer from the embankments of rivers, streams, dams etc. (*Vellore Citizens Welfare Forum v. Union of India & Ors.*, 1996). The Municipal bodies/Nagar Panchayats are required to dispose all the waste garbage in a scientific method to avoid contamination of all rivers and seepage of harmful chemicals in the underground water (*Shri Sai Nath Seva Mandal v. State of Uttarakhand and Ors.*, 2012).

In laying down various invariables, the Government and the Pollution Control Boards are hoped-for to take into intellect not only the state of the industry, but also the level to which pollution will be accepted by nature. For example, norms have been laid down under the Water Act, which necessitate various parameters to be achieved for the discharge of effluents. The admissible norms display as to what

extent water can be permitted to be polluted. For instance, according to the said norms, the total dissolved solids of the effluent into river should not be more than 2,100 mg/L. The significance of this is that the pollution which is caused by the industry would be permissible or tolerated up-to 2,100 mg/L and no more. Therefore, it is in this way that proportion is struck between industrialisation and ecology (*Pravinbhai Jashbhai Patel v. State of Gujarat and Ors.*, 1995).

Many a times, Delhi High Court has taken judicial notice of all time high pollution in river Yamuna. On October 07, 2024, the Times of India, a daily Newspaper has published an article “*Why Yamuna is Stinking Like Never Before*”. According to the said publication, which is based on a report prepared by Delhi Pollution Control Committee, the fecal coliform levels are 1,959 times the permissible limit, 9,800 times the desired limit where the river exits the city. In the said article, it is pointed out that the fecal level is at an all-time high in September, 2024 and one of the main reasons for the same is untreated sewage flowing from unauthorised colonies into river Yamuna (*Shabnam Burney v. Union of India*, 2024). The quality of water in Yamuna river in Delhi has deteriorated due to increased waste water discharge. rapid industrialization has resulted in industrial effluent being discharged into the river water. The eco-system supporting migratory avifauna and the ground water has continuously degraded, requiring immediate attention for conservation (*Delhi Jal Board v. The State of Haryana*, 2021).

## 3. Illegal construction/encroachment of river bed

Recently, on the date of October 24, 2024, the high court of rajasthan, through its order, asked for a report to be summoned from the Chief Secretary, State of Rajasthan and Secretary; the Secretary of Ministry of Jal Shakti about the effective steps taken by the Central as well as State Governments for preventing encroachment and illegal, unauthorized constructions over and near the lands of Rivers and



water bodies and the initiative taken for proper implementation of the Laws, Rules and Regulations made in this regard (*Delhi Jal Board v. The State of Haryana, 2021*). Along with this the state government was directed to launch satellite, drone and other aerial surveillance, online monitoring mechanism with dedicated control rooms and redressal mechanism for preventing and checking the illegal and unauthorized constructions and encroachments over the rivers, water bodies and catchment area.

Similarly, In the case of (*In Re : Directions in the matter of demolition of structures, 2024*) the Supreme Court of India has directed that there shall be no demolition anywhere across the country without seeking leave of this Court. But the court categorically clarified that, their order would not be applicable if there is an unauthorized structure in any public place such as road, street, footpath, abutting railway line or any river body or water bodies and also to cases where there is an order for demolition made by a Court of law (*Association for Protection of Civil Rights (APCR) v. State of U.P., 2024*).

Further, many courts in India have found that the building of Motels at river bed interfere with the natural flow of river and disturb the environment and ecology of the area (*M.C. Mehta v. Kamal Nath & Ors., 2000*). Various motels in Himalayan regions have been found encroaching part of the river basins. It has been directed by courts to separate the Motel building from the river basin. Also, the river bank and the river basin shall be left open for the public use and shall not discharge untreated effluent into the river. Hence, it is the responsibility of State Pollution Control Boards to inspect the pollution control devices/treatment plants set up by the Motels. If the effluent/waste discharged by the Motels is not conforming to the prescribed standards, action in accordance with law shall be taken against it (*M.C. Mehta v. Kamal Nath & Ors, 1996*).

So, likewise, it has been observed that in many cases, Indian courts have passed repeated directions in this

regard but even thereafter the order is not being complied with, it seems that the authorities are not caring the order passed by the courts in spite of repeated direction of restraint order not to make construction near catchment area of water reservoirs/river bed and not to allow anybody to use river as a dumping yard for waste material like plastic etc (*Khushboo Kataruka v. The State of Jharkhand and Ors, 2020*).

Also, the courts have suggested that if any builder is willing to do the construction then the applicant has to obtain certificates of clearance pertaining to construction made near to the water bodies from the Collector/Joint Collector/Tahsildar/Revenue Department and No Objection Certificates (NOCs) have to be furnished wherever required i.e., NOCs from the Inigation Department in case of lands which abut water bodies, water courses and nalas, wherever required, and NOCs from Revenue Department in case of lands abutting water bodies, water courses and nalas, wherever required (*L. Urmila Devi v. State of Telangana, 2024*).

#### 4. Pollution due to unmanaged religious activities

A suo moto cognizance was taken by the Chhattisgarh High Court on immersion of idols in the tank built on the banks of Kharun river, the remains were left there. The concern was raised and the direction was passed that in future, whenever festive seasons arrive, the State and its instrumentality would take all the necessary steps so that the immersion of idols are made in a safe and eco-friendly manner so that there may not be any ill effect to our water bodies and the said places may not turn into a hazardous place for the individuals also (*Suo Moto Public Interest Litigation v. State of Chhattisgarh, 2024*).

#### 5. Drawing Water Unlawfully

In a case where several persons were found drawing water unlawfully from Mullai-Periyar river, the



Public Works Department (PWD) and Electricity Department officials had launched an operation to confiscate the electric motor pumpsets and to cut the electricity service connection. An injunction order was also passed by the court in the case of (*Duraisamy Ramasamy v. Collector*, 2023) to remove the pipelines illegally laid by the party to extract and transport water from the river. These transgressions, if not stopped, may extend beyond merely discharging chemical waste into the river; arising a grave concern regarding their water source for the liquor factory, with a looming suspicion of illicitly drawing groundwater more than the authorized limit (*Kishan Lal v. M.P. Pollution Control Board*, 2023).

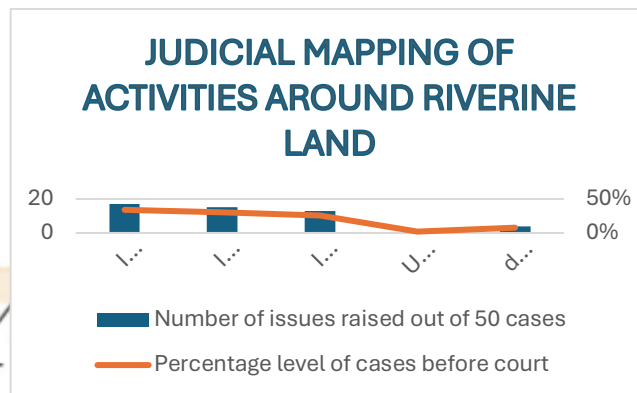
4.	drawing water from river unlawfully.	4/50	8%
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**Judicial Mapping**

**Table No. 1.1.** Tabular representation of nature of cases filed before number of courts on activities happening around riverine land

S. No.	Nature of Activities	Number of issues raised out of 50 cases	Percentage level of cases before court
1.	Illegal Sand Mining	17/50	34%
2.	Industrial waste/dischARGE of affluent	15/50	30%
3.	illegal construction and encroachment	13/50	26%
3.	Unmanaged religious activities	1/50	2%

**Figure 1.1.** Percentage of issues brought before the court



The judiciary has taken various proactive steps and reviewed the legislative works and administrative function in order to prevent the environmental damage around riverine lands in India. Not only courts but green tribunal of India have also viewed that if redevelopment of the any area takes place it shall result in proper management of the untreated sewage flowing into the water bodies and it shall be assured on the part of the government that it is only going to assist in the process of rejuvenation of the water body (*Nitin Saxena v. Urban Development & Housing Department*, 2024).

The research has found that out of total fifty cases filed into the State high courts, green tribunals plus Supreme Court of India, 17 i.e. the most number of cases are being filed on the issue of illegal sand mining near river beds; almost 15 cases out of 50 are related to the issue of causing pollution due to unregulated industrial waste or sewage effluents thrown into the river. Total 13 cases out of 50 are of illegal construction and encroachment near river beds have been filed in recent years and set of directions have been passed to mitigate the pollution in revers. As far as miscellaneous issues are concerned, 5 out of 50 cases are related to the issue



of pollution due to unmanaged religious activities and drawing water from river unlawfully. (Please refer Table 1.1. and Fig. 1.1.).

After reading several judgements of High Courts, Green Tribunals and Supreme Court, it can be observed that it is high-time for the authorities to immediately prepare and implement the specific riverine land restoration plan which shall include the development of river banks, following the directions given in the above-mentioned cases.

### Conclusion

The issues and challenges discussed herein has spotlighted the standard battle between those members of the public who would preserve our rivers, forests, parks and unfastened lands in their purity and those negatively charged with administrative responsibilities who, under the pressures of the changing needs of an increasingly complex society, find it essential to impinge to some extent upon open lands thus far considered uninjured to change. The resoluteness of this struggle in any given case is for the legislature and not the courts. If there is a law made by Parliament or the State Legislatures the courts can function as a tool for determining legislative design in the use of its powers of judicial review under the Constitution. But in the lack of any legislation, the executive acting under the doctrine of public trust cannot vacate the natural resources and change them into private ownership, or for commercial use. The enhance use and the pristine glory of the natural resources, the environment and the ecosystems of our country cannot be authorized to be eroded for private, commercial or any other use unless the courts find it necessary, in good faith, for the public good and in public interest to encroach upon the said resources (*M.C. Mehta v. Kamal Nath*, (1997) . So, it is the duty cast upon the State to rejuvenate the ecological instability and to stop damages being caused to the nature (*Jayant v. The State of Madhya Pradesh*, 2020). Also, The courts in India have been making sincere efforts to prevent the ecology around

rivers by passing several directions to local authorities i.e. Municipalities, Municipal Corporations and Panchayat Raj Institutions not to dump the garbage in the river streams/rivulets and forest areas forthwith. But, at the ground-level it is upto respective District Magistrates of each river side located districts in India to ensure the compliance of court's order or else, face the contempt proceeding.

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