

DISTANT ENFORCEMENT OF WEALTHY ENVIRONMENTAL LAWS

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ABSTRACT

No doubt the rapid industrial revolution has been resulted in the infrastructural and economic development of the capitalists in the country. Most of the industrial and human activities in the country are resulting in the enormous environmental pollution. Environmental pollution is a serious problem we are facing globally. There are various types of pollution and each have a devastating effect on the global climate. The same can be harmful to the health of the every living organism, plants and property on the earth. Therefore most of the countries in the world are trying to control this crisis by passing the regulatory legal framework. This article is reviewing the causes and effects of variety of the pollution. Also it has been analyzed existing legislations, schemes, policies prepared by the authorized authorities. However there is no lack of legislations and policies on environmental safety in India but their enforcement has been too distant from satisfactory. That will be the reason why the environmental pollution is persisting in spite of enormous legislation in the country.

Keywords: Contamination, Control board, Degradation, Legislation, Pollution

Introduction

Although every being and nature has a deep connection but only a human being who used to become selfish. He is exploiting the natural resources to enormous extent leading dangerous zone to the others too. The environmental care had been taken by the ancient Indians. They believed that ecological balance is dependent upon good or bad, actions of individuals and society. It was mandated that every village must be surrounded with a small jungle, where various species of trees were protected and this obligation can be compared with the modern concept of social forestry. It is obvious from many Buddhist scriptures that Buddha preached that people can enhance their merits every day by gardening and planting trees.¹ It was insisted on compassionate living and also taught his followers to think about future generations. It is evident from Asoka's 5th pillar edict, that the Buddhism expected from an ideal king that to protect not only his people but also forests and animals.²

In the present age, the environmental degradation has exploded into the forefront of international political arena. Even the Indian government has taking a serious note of the present danger of the environmental danger. The Constitution of India has empowered many legal institutions Central and state government, Supreme Court and High Court to look after environmental issues. Accordingly, every legal institution played their role relating to legislations, policies, judicial activism and constitutional writs etc. In India presently there are hundreds of environmental laws. Nevertheless, our environmental pollution graph is in upward direction and increasing every year since 5-6 decades. In environmental performance

¹ *Buddha's Vanaropa Sutra*

² *Kariyametts Sutra of Buddha*

results, 2018 out of 180 countries, India is at a level 177. This unbecoming performance of environmentalism shows that in spite of majority of the laws, the country is helpless to control the environmental pollution. The research and environmental pollution observations prove that it is due to the pitiable implementation of these laws. The ruling and opposing political parties, implementing authorities and the bureaucracy are working impassibly without any hesitation towards the serious environmental pollution.

Environmental Legislation

The environmental survey leads to the law making bodies to make the mandates and policies so as to mitigate the present environmental issues. The central environmental laws in India are:

1. The Constitution of India

According to Article 48 (A) and 51(A) (g) of the Constitution India, which imposes a similar responsibility on every citizen to protect and improve the natural environment. This involves forests, lakes, rivers and wildlife and having compassion for living creatures.³ The protection of the environmental concern should be read with fundamental law of the land in India. It has been provided in the Constitution of India for the protection of basic human rights of every individual to live in pollution-free environment. The protection of life and personal liberty of every individual provided under Article 21, and Article 47 of the Constitution of India imposes the primary duty on the State to afford public with improved health and good nutrition which leads to an improved standard of living.

2. **Wild Life (Protection) Act, 1972** this Act is intended at rational and modern wildlife management.

3. **Water (Prevention and Control of Pollution) Act, 1974**

The 'Water Act' primarily recognizes the powers, functions as well as hierarchy of various authorities like the environmental agencies, the CPCB and the SPCBs.

4. **Forest (Conservation) Act, 1980** enacted to check deforestation, change of forest land for non-forestry to promote social forestry purpose.

5. **Air (Prevention and Control of Pollution) Act, 1981**

This Act is known as 'Air Act'. The Act embodies the provisions similar to Water Act for protection of air and related aspects.

6. **Environment (Protection) Act, 1986**

This is a comprehensive legislation of environmental law. It empowers the central government to undertake measures to protect and improve the environment, to control, prevent and abate pollution of the environment. With this regard issued wide range of rules and notifications.

- a) E-Waste (Management) Rules, 2016, also amended in 2018 (E-Waste Rules)
- b) Batteries (Management & Handling) Rules 2001 (and the proposed draft Battery Waste Management Rules, 2020)
- c) Bio-Medical Waste Management Rules, 2016
- d) Plastic Waste Management Rules, 2016 (proposed amendment draft 2021)
- e) Solid Waste Management Rules, 2016
- f) Construction & Demolition Waste Management Rules, 2016
- g) Hazardous & Other Waste (Management & Trans Boundary Movement) Rules, 2016, amended in 2019 (HW Rules)
- h) Manufacture, Storage and Import of Hazardous Chemicals Rules, 1989

³ The Constitution of India 1949, Indian Kanoon

- i) Coastal Regulation Zone Notification, 2019 (Procedure for violation of the CRZ Notification, 2021)
- j) Environment Impact Assessment Notification, 2006
7. **The Biological Diversity Act, 2002**- a major legislation intervening for the protection of biodiversity and ecology.
8. **National Environmental Policy, 2006**- the objective of the policy is to conserve the critical environmental resources, intra-generational equity, livelihood security for the poor environmental governance etc.
9. **National Green Tribunal Act, 2010**- the purpose to set the Tribunal is to dispose the environmental cases effectively and speedily disposal of cases relating environment protection and conservation of forests as soon as possible.

Regulatory Authorities

It is a need to create and restructure regulatory bodies for better environmental governance. The independent environmental regulator could contribute towards effective environmental governance. This could support to stop the overuse as well as misuse of the existing natural resources. Also it helps to protect the rights of the marginal communities. It could guide in the appraisal and monitoring the project for their ineffectiveness. The organized reform in environmental governance will also contribute towards the goals of sustainable development. The key regulatory authorities in India are-

- The Ministry of Environment, Forests and Climate Change
- The Central Pollution Control Board
- The State Pollution Control Boards
- The District Level Authorities (Municipal Corporations)

The government of India created a new Apex Committee for implementation of the Paris Agreement on December 2, 2020⁴.

Environmental NGOs

NGOs in India and local citizen groups are very active stakeholders in the country. They could voluntarily use the media, the courts and the NGTs to raise the grievances relating to the environment. This is rather more effective because generally the judiciary is sympathetic to environmental concerns raised in the public interest. Even these matters will be suo motu taken up by the Judges of the High Court and the Supreme Court relating to environmental cases.

Problems with implementation

In India there is plenty of the environmental legislation for its protection. However, it is increasingly evident that in spite of all these laws, we have dramatically altered the ecosystem, ongoing the exhaust the already limited natural resources, and polluting the environment. This would be difficult for every living organism to live a quality life in their ecosystem. This is why implementing these laws properly is a laborious task than enacting them. So the only difficulty in the way of improving the environmentalism in India is the meager implementation of these laws. The environmental healthiness of a country not only provides the people pure and clean natural surroundings but also outlines the progress of the nation. It discussed here the exhausting condition of the Indian environment, measures taken by the government to overcome the situation and to improve the condition and difficulties faced.

⁴ Press Information Bureau: Government constitutes High-level Ministerial Committee for implementation of Paris Agreement

Observations

The current legal and regulatory approaches to environmental pollution seem to be inadequate with respect to the negative impacts and the risks already witnessed on the environment. Existing environmental laws and policies require quick and proper action at global, national and regional levels. It should reach across every economic sector engaging the public.⁵ Nevertheless it is apparent that there is disconnection between the complex problem of the state, society and the law.

- There is poor implementation of environmental law lack of political will and public awareness.
- Most of the laws seem to be human approach oriented and not for the ecosystem and nature etc.
- Industries take permission from the State Pollution Control Board to discharge effluents which will be received easily on bribery.
- There is negligence in compliance of every report due to lack of strong penalty measures.⁶
- The central and the state boards are not independent they have to rely on the state and the central government for every aspect like appointment, legal decisions, funds etc.
- The existing laws only seek importance to some specific types of pollution or specific categories of hazardous substances.⁷
- The present legal structure of environment fails to implement the polluter pay principle.
- Environmental Litigations are more expensive compared to other cases as it requires expert testimony and technical evidences.
- There are no any regulations to control the religious rite severally affecting on the environment.

Suggestions

To resolve this crisis it requires commitment of the state, awareness of the people as well as the accountability of the bureaucracy.

- An independent regulatory body needs to be established for monitoring, regulation and enforcement' of environmental governance.
- To detect violations and take action regarding the issue a reward mechanism needs to be developed.
- Financial assistance and subsidies as well as cost sharing facilities should also be promoted.
- A definite structure of awareness program to be made for public at large.
- The independent regulatory bodies and boards should exercise their power without any political interference.
- There should be strict and severe disciplinary civil and criminal mandates to be engineered against the defaulters of rules.
- A separate and independent hierarchical redressal machinery to be constituted. It is important to have a comprehensive general legislation for environmental protection.

⁵ European Environmental Agency (EEA), 'Air Quality in Europe – 2016 Report', EEA Report No 28/2016.

⁶ The Comptroller and Auditor General in India in its 2011-12 report on Performance Audit of Water Pollution in India say that the penalties for contravention of WPCA 1974 are too weak.

⁷ Implementation of Environmental Legislations for Environmental Protection, Journal for Industrial Pollution Control, Binod B. Sandwar, <http://www.icontrolpollution.com/articles/implementation-of-environmental-legislations-forenvironmental-protection-.php?aid=45644>

- Total ban on the religious activities adversely affecting on the nature and other beings.
- Town planning department should fix the limit about the minimum and maximum constructions in a city.

Conclusion

Since the ancient time humans and nature's have a deep connection. Every being is exclusively depends on nature for its survivorship. Among all the beings human become most selfish to exploit the natural resources to unlimited extent affecting the livelihood of all other beings. Government has no control over itself to give permission to industrialization, urbanization and technological development causing adversely on severally o the environment. No doubt law making bodies are passing the laws and regulations. There are enormous types of these legislations. Nevertheless due to the lack of political will no environmental legislation India implementing properly. So it is very essential that environmental laws need to implement strongly on priority basis. Otherwise time will give the answer about survivorship of not only human being but also every being including small organisms too.
