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Applicability of the Environment Protection Act to Water and Air Pollution

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ABSTRACT

Though this research article the author wants to highlight the applicability of the Environment Protection Act (hereinafter EPA) towards water and air pollution. While India's international obligations has extended a far great deal towards the invocation of domestic environmental laws, yet the lacuna of its efficient applicability still remains. Through this short paper, the author would make an attempt the sail the reader through the basic objectives of the EPA, it's applicability towards water and air pollution parallel to their own specific pollution laws (The Air Act and The Water Act) . further the author would take the liberty of briefly encapsulating the major elements under the EPA. This is followed by an analysis into the effectiveness of the EPA in contrast to the aim with which it was established. To conclude, the author would then draw a line between the incorporation of the act and its followed implementation. The author sincerely hopes that the reader finds it useful to understand the basic nuances of the interplay of various pieces of legislation with respect to the environmental law in India.

I. INTRODUCTION

“Nature provides a free lunch, but only if we control our appetites”

Since time immemorial, human beings have found numerous ways to utilize all that nature had bestowed on us. From the early theorization of a variety of concepts like ownership and individual property, the social contract theory, and with the emergence of the notion of rights, humans have dominated their place in the global ecosystem and continue to do so to this day.

However, with the continuous harsh overutilization of resources and lack of stringent measures to put a cap on this, this dominancy is indirectly costing us our future over the present idea of being developed.

While the main focus of the Indian Government like the fellow nations was industrial development and economic growth until the 1970s, this led to rampant and enormous exploitation of natural resources reading to extreme levels of pollution over the decades. To

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help curb some harm done, it was felt important to have legal restrictions in place to regulate the protection of environment and at the same time fit in with the best interests of a developing society.

The EP Act was hence enacted replicating the major contentions at United Nations Conference on Human Environment, Stockholm (1972). The infamous Bhopal Gas Tragedy, which occurred in 1984 and resulted in thousands of deaths overnight as a result of a gas leak in Bhopal, gave the procedure a big boost.

II. THE ENVIRONMENT (PROTECTION) ACT, 1986 (A SHORT VIEW) -

A brief examination of the Preamble reveals that the enactment's goals are divided into three categories.-

1. *Protection of the following from unsafe and dangerous activities –*

- a) *Human beings*
- b) *Plants*
- c) *Animals*
- d) *Property*

2. *Protection of the environment*

3. *Improvement of the environment*

- The Environment (Protection) Act was passed with the goal of ensuring environmental preservation and is one of the most comprehensive legislations on the same.
- It gives authority to the government to create task forces with the aim of preventing pollution and monitoring problems that are specific to any area in the country.
- The Act's direct application rests with the Apex Government, and State can only delegate under Section 23. The Apex Government is given the power to take all such measures which are quintessential for preserving and enhancing the environment quality. (Section 3[1]).

III. APPLICABILITY TO WATER AND AIR POLLUTION

(A) Application With Respect To Water Pollution-

The *Water (Prevention and Control of Pollution) Act, 1974* is the major statute dealing with water pollution's prevention, and regulating, restoring water bodies. The Act creates Board of Central Pollution Control at the national level and similar at the state/union territory level to achieve its aims.

While this Act only relates to water pollution, the EP Act which governs environmental

protection and improvement, covers a wide range of environmental contamination, including water pollution. In the event of a dispute between the two statutes, the requirements of the EP Act shall take precedence.

(B) Application With Respect To Air Pollution-

Similar is the case with Air pollution. The *Air (Prevention and Control of Pollution) Act, 1981* is the initial major legislation dealing with norms regarding the air quality standards that are to be maintained. It was enacted to oblige to India's commitments made at the 1972 United Nations Conference on Environment. This law gave the governments of both the levels broad authority to take action to improve air quality, implement pollution control measures, shut down defaulting industries, and imprison polluters.

The T.S.R. Subramaniam committee, which was founded to appraise environmental protection laws, suggested in 2014 that the Air Act may be repealed and its sections be absorbed into the EP Act.

(C) The Environment (Protection) Act, 1986-

The Act acts as an "umbrella/shield" legislation designed to encapsulate a framework for the Government and to organize the actions of several authorities formed under prior laws such as the ones listed above. As a result, in the case of air and water pollution, the residue protection of these would fall under the Environment Act, in addition to the preventive or regulating actions under their specific acts.

The EP Act was enacted to reinforce the existing legalities on pollution management by adopting a general legislation for environmental protection and to remedy regulatory holes in key environmental dangers. The Environment Act via sections 3 and 4 gives the Central Government the following powers to –

- The authority to set canons for environmental quality as well as to monitor the expulsion of the pollutants of environment from numerous heads, regardless of their quality or configuration.
- As a result, rules have been issued that establish water quality standards for various locations and uses, as well as maximum permitted limits of concentration of various water pollutants for various sections.
- The legislation also forbids anybody carrying out any activity, procedure, or process from discharging water contaminants, or even allowing their release or emission in excessive amounts as compared to their set standards.

- When a discharge of a pollutant in excess of the prescribed standards occurs or is suspected of occurring due to an unforeseen act or an accident or other, the individual liable for the discharge and in charge of the location where the event occurs are required to mitigate the resulting water pollution, as well as to notify the prescribed authority of such an apprehension or actual occurrence. The prescribed authority is also under an obligation to take the necessary corrective actions as soon as possible.
- Section 4 of the act gives the govt the authority to appoint officers and bestow them with essential powers and functions as necessary.

Section 24 of the act also details out that in case of an offence being punishable under any other act apart from this act, the other act will have precedence over this act and if this is not the case, it is only then that the EP Act will take precedence.

IV. ANALYSIS

Environmental regulations in India, despite their broad scope and ambit, are more frequently observed in violation as compared to practise. The enforcement and implementation of the laws relating to environment, being a highly specialised area entrusted to several agencies functioning under various regulations, paints a gloomy image. Lack of or insufficiency of adequate skills; poor facilities when it comes to infrastructure; a deficient knowledge of the law; conflicts regarding jurisdictions; and a lack of cooperation amongst different enforcement agencies all tend to contribute and add on towards fairly poor and ineffective law enforcement.

Practical Limitations Of Implementations
<p>Despite having legislations in place to control and regulate water pollution, there is still a lack of proper implementation and in some cases even non-implementation of these laws.</p> <ol style="list-style-type: none"> 1. <u>Monitoring-</u> Even though parameters have been set for measuring the level of pollution, yet there is no adequate track of the commercial as well as the agricultural waste flow. Even if the effort to monitor is increased, yet this effort is not continuous and consistent and the water sampling too takes effect once in every quarter of the year which does not give a true picture of the its quality and pollution level. 2. <u>Lack of legal enforcement-</u> Despite having numerous legislations at hand, the major drawback to its objective fulfilment is lack of strict enforcement. The powers bestowed upon various agencies and boards that are set up is not properly and efficiently implemented due to lack of proper structural reforms which leaves a major loop-hole to pollution levels actively getting checked and controlled.

3. Accountability- When it comes to having an efficient agency or a regulatory body in place, requisite funding and independence from any sort of unwanted interference is a priority. Uncapped governmental powers like appointment and dismissal, salary allowances etc. put up a rock restriction on even the best of the experts to have the regulatory measures strictly imposed and monitored.

Even though India has an impressive set of laws and administrative agencies working towards their implementation, yet there is still a need felt for a strong structural reform and stricter monitoring with consistent efforts to actually reach to a substantial level of curtailing the environmental hazards.

In this perspective, a regulatory framework is imperative to maintain, preserve and improvise the current enriched environmental system and to better integrate realities into economic decisions and activities related to growth and development in the urban areas. The development of a comprehensive policy regarding environment in India faces certain challenges, including establishing a regulatory framework that covers all aspects of environmental protection, amending existing legislation to better achieve its goals, and establishing governing boards to implement the framed and modified legislation.

V. CONCLUSION

Through this synoptic research project, the author has attempted to analyse the applicability of Environment Protection Act towards water and air pollution and has made an attempt to put across the actual implementation scenario in the country as against its theorization under statutes. It has been briefly observed that while having various legislations at hand to cover issues holistically has a benefit, yet its improper execution rings in a greater loss. To actually be able to function efficiently and consistently, independence from unwanted interferences along with better funding and expertise is required at hand.

The ability and the capacity of some of the more industries to either hide their breaches and not-comply or put unwanted burden on enforcement agencies has also contributed to the inefficiency of the enforcement apparatus. As a result, it is past time that we align the activities of development with environmental concerns, as development becomes an imperative component of life. For this very reason, the environmental orders must be audited and strengthened with much more competent mechanisms to interface and weigh with the broader range of issues that have hitherto gone unaddressed by the legislation.

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