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Environmental Regime in India and its Enforcement Constraints: An Analysis

SHUBHANGI SAXENA¹

ABSTRACT

Environmental Law provides a regulatory mechanism for the protection of environment and places prominence on resolving the issues arising due to environmental hazards. The Constitution of India has incorporated provisions for the protection of environment and the Indian Judiciary by playing a proactive role has also introduced various principles that are to be mandatorily followed. Also India has been signatory to many international agreements and treaties following which numerous legislation have been enacted in the country. Despite the prevalence of these laws, there have been enforcement constraints and due to which the laws are not implemented in the strictest sense leading to an increase in violation of laws and environmental concerns. Further with increase in the development of India due to rapid industrialization, protection of environment is of prime importance. Hence, it is important to scrutinize the previously framed laws and to rectify the provisions that are being misused by the offenders for their ulterior benefits. This article discusses the need for environmental laws and the current environmental regime prevailing in India. It further deals with the enforcement approach adopted by the authorities and the gap prevailing in the enforcement of these legislations. It then focuses on the environmental challenges faced by the authorities in execution of laws and public participation that can be an asset in the same process. At last, the article includes some recommendations that can be adopted in order to improve the enforcement and regulatory mechanism in the country.

Keywords: *Environment, Enforcement, Implementation, Legislations, Pollution, Pollution Control Boards.*

I believe in a sound, strong environmental policy that protects the health of our people and a wise stewardship of our nation's natural resources.

- **Ronald Reagan**

¹ Author is a Student at Jagran Lakecity University, School of Law, Bhopal, India.

I. INTRODUCTION

The term 'environment' can be defined as the sum total of the surroundings of a man which include all living and non-living elements. It comprises all those entities that the human is surrounded with. The protection of environment has been a serious issue that the mankind is facing since last few years and has today become a global concern considering which many countries of the world have implemented major laws and policies after repeated deliberations.

Mythological texts in India state that it is the duty (dharma) of each individual to conserve and protect the nature. The Constitutional framework of India also includes provisions for the protection of environment and sustainable use of resources. These provisions are a result of the international commitments that India has made time and again. In the past few years, with increase in environmental despoliation, Indian Judiciary has been playing a pro-active role in the protection of environment. It has introduced many principles that conform to the international declarations and which must be mandatorily observed by the citizens of the country. Though India has a strong set of legislations separately framed for the Environment conservation, there is a dearth of obedience to these laws which makes these laws more ineffective leading to exploitation of the environment. Lack of knowledge, manpower, funds, poor strategic planning, profit motives etc. are some of the reasons that make these legislations weak. Environmental laws in India hence, lack implementation and with rapid industrialization and development, pollution is surging at a terrifying rate.

II. NEED FOR LEGISLATIONS AND REFORMS

Major environmental issues like the global warming, discharge of waste effluents from the industries, nuclear wastes, ozone layer depletion, deforestation are increasing at a rapid pace in the last few years and have indicated to adopt some strong measures for human survival on earth. The concern for it started in the early 1950s after the publication of articles and books. Environment protection became a major concern in 1970s and was then taken up in the United Nations conference on environment in Stockholm in 1972. In the same year, World Heritage Convention that dealt with the protection and maintenance of monuments was also created. Later the United Nations Commission on Environment and Development i.e. the Brudtland Commission was established in 1983. In year 1989 Montreal Protocol on Ozone layer got enforced in which 182 parties agreed to it. UNFCC later came into force in 1994.

These major events eventually mandated the countries who were signatories to it, to make legislations on environment protection.²

Currently, India despite having many environmental laws is facing some serious environmental issues that are increasing at an alarming rate and which call for some major reforms. As per the Biennial Environmental Performance Index 2020, India ranks 168 out of 180 countries.³ India ranked below the Asian Countries like Bangladesh, Pakistan, Sri Lanka, Nepal etc. Hence, the country needs to focus on a wide spectrum of sustainability issues, with a high-priority to critical issues such as air and water quality, biodiversity and climate change.

III. MAJOR ENVIRONMENTAL LAWS IN INDIA

(A) The Water (Prevention & Control of Pollution) Act, 1974⁴

The Act has been enacted after the Stockholm conference on environment, 1972 with an aim of regulation and controlling water pollution in the country. It defines water pollution and has stipulated penalties for violating the same. The Act is comprehensive and has made provisions for establishment of Pollution Control Board (PCB) and state and central level which work in consonance with the policies of the government.

(B) Air (Prevention and Control of Pollution) Act, 1981⁵

The Act was also passed after the Stockholm Conference, 1972 wherein certain parameters for the pollution have been set up and the penalties have been stipulated for violating any of the provisions of the Act. The task of regulating and controlling the pollution level has been entrusted to the Central Pollution Control Board and the State Pollution Control Board. The Central Board has majorly been given power of coordinating the activities of the State Boards and the government. Also the State government has power to declare any area as Pollution Control Area after consultation with the State Pollution Control Board. Therefore the basic objective of the Act is to prevent, control and abate air pollution.

² Binod B. Sandwar, *Implementation of Environmental Legislations for Environmental Protection*, 27 ICI, 83-84, (2011).

³ Kiran Pandey, *India must redouble its sustainability efforts: Environment Performance Index*, DOWN TO EARTH (June 7, 2020, 10: 04 AM), [https://www.downtoearth.org.in/news/wildlife-biodiversity/india-must-redouble-sustainability-efforts-environment-performance-index-71603#:~:text=India%20secured%20168%20rank%20in,out%20of%20100\)%20in%202018.](https://www.downtoearth.org.in/news/wildlife-biodiversity/india-must-redouble-sustainability-efforts-environment-performance-index-71603#:~:text=India%20secured%20168%20rank%20in,out%20of%20100)%20in%202018.)

⁴ No. 06 Act of Parliament 1974 (India).

⁵ No. 14 Act of Parliament 1981 (India).

(C) The Environment (Protection) Act, 1986⁶

The Act has been enacted with an aim to protect and improve the environment and the issues concerned to it. It seeks to implement the decisions taken in the UN Conference on Environment held in Stockholm, 1972. It is based on Article 253 of the Constitution of India. It is an umbrella legislation under which the government has been given considerable powers like coordinating with states, execution of environmental programs, planning, laying down quality standards.

(D) Wildlife (Protection) Act, 1972⁷

The Act has been enacted to provide safeguard to the flora and fauna i.e. to animals, plants, birds. One of the major objectives of the Act is to prohibit hunting of animals and birds except with the permission of the officer authorized under the Act in circumstances where the animal may be a threat to human life and property. It has prescribed punishment for violation of rules and has given the powers to the concerned authorities to administer and regulate the activities related to the wildlife protection.

(E) Forest (Conservation) Act, 1980⁸

The basic objective of the Act is to conserve forests. Central Government has been given the entire power to carry out the provisions of the Act. An advisory committee can be set up for advising the central government in regulating the matters related to the conservation of forest. Penalties have been stipulated for infringement of provisions of the Act. Another main objective of the Act is to deal with the limitations on de-reservation of forests.

(F) Public Liability Insurance Act, 1991⁹

This Act has been introduced after the occurrence of Bhopal Gas Tragedy. It includes provisions for the factory owners to insure against the loss or injury caused to the surrounding communities due to the use of hazardous substances and the matters incidental to the accidents. The Act provides for compulsory payment of compensation irrespective of the care taken by enterprise. The claim for compensation can be filed by the victims within five years of the accident. The collector provides an opportunity to the parties of being heard and post the inquiry announces the award determining the amount of relief. The Act prescribes

⁶ No. 29 Act of Parliament 1986 (India).

⁷ No. 53 Act of Parliament 1972 (India).

⁸ No. 69 Act of Parliament 1980 (India).

⁹ No. 6 Act of Parliament 1991 (India).

punishment for violation of the provisions of the Act and also stipulates punishment for subsequent offences by the owners.

(G) National Green Tribunal Act, 2010¹⁰

The National Green Tribunal under the Act has been empowered to work on the principles of natural justice and is not bound to follow Code of Civil Procedure, 1908 and Indian Evidence Act, 1872. It exercises original and appellate jurisdiction in the implementation of some major environmental laws. This Act is applicable only to civil cases and not to criminal cases and it stipulates no limit for granting compensation to the victims.

IV. CONSTITUTIONAL FRAMEWORK ON ENVIRONMENT PROTECTION

Protecting and conserving the environment is a constitutional mandate. Our Constitution has adopted a socialist pattern of society as also stated in the preamble and thus it is the duty of the State to take measures to improve and protect the environment and to provide a decent standard of living to the citizens of the country. At the same time, it is also the duty of the citizens to protect the environment which includes forests, rivers, lakes, ponds and creatures.

Matters like protection of wildlife, conservation of mines, wildlife, population control etc. are covered under the Concurrent List (List III) and the power of dealing with the matters stated under the said list rests with both the state and the central government. In case of inconsistencies between the decisions of both the governments, decision of central government prevails.

(A) Obligations on the State to protect environment

Article 47¹¹ of the Indian Constitution states that the State has the duty to increase the nutrition level and the standard of living of the people of the country. The State must consider this as its primary duty and must prohibit the consumption of the drugs that are injurious to health except for the medicinal purposes.

In *Hamid Khan v. State of Madhya Pradesh*,¹² the court held that the state had failed to fulfil its basic duty of supplying water from hand pumps due to which the citizens were adversely affected and this was a gross negligence on the part of the state.

Later, Article 48A¹³ was inserted which states that the state shall preserve the breeds and prohibit slaughter of cows and must organize the agriculture and animal husbandry on

¹⁰ No. 19 Act of Parliament 2010 (India).

¹¹ India Const. 1950.

¹² AIR 1997 MP 191.

¹³ India Const., amended by The Constitution (Forty-Second Amendment) Act, 1976.

scientific lines. Term environment has been given a wider interpretation under this Article. Since all the natural resources in the environment are inter-dependent and thus animals, creatures, plants, rivers are also inter-related.

The Constitution of India deals with Fundamental Duties in Part IV-A¹⁴ and Article 51-A(g)¹⁵ states that it is the fundamental duty of the citizens to protect and improve the natural environment. C.M. Jariwala, who has been an expert in Environmental Law, observed that Article 48-A and 51-A(g) accentuate the 'principle of intergenerational equity'. In *State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat & Ors.*¹⁶, the Supreme Court stated that the intent of parliament behind the enactment of Article 51A was that the said article was to be read in consonance with Article 48 and 48A thereby keeping the spirit of provisions intact.

In the case of *M.C. Mehta v. Kamal Nath*¹⁷, the Honourable Supreme Court of India observed that Article 48-A and 51-A(g) are to be read in the light of Article 21 of the Constitution of India which states that 'no person shall be deprived of his life and personal liberty except according to the procedure established by law. In another case of *Andhra Pradesh Pollution Control Board v. M.V. Nayudu*¹⁸, the court stated that human rights and environmental rights derive their notion from Article 21 of the Constitution of India and the environmental issues arising under Article 32 and Article 136 or Article 226 are paramount to Human rights issues arising under the same Articles.

Further, Article 253 of the Indian Constitution empowers the Indian Parliament to frame laws for the purpose of implementing the agreements and conventions signed with the other countries. In *Vellore Citizens' Welfare Forum v. Union of India*¹⁹, honourable Supreme Court of India stated that international customary laws must essentially be included in the municipal laws as long as they are consistent.

V. THE ENFORCEMENT APPROACH ADOPTED IN THE IMPLEMENTATION OF ENVIRONMENTAL LAWS

A major reason behind the success of any environmental policy is the conduct of consumers and producers. The basic aim of any environmental policy must be to alleviate the environmental hazards without hampering the development. Therefore a criteria must be

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ AIR 1998 Guj 220.

¹⁷ (1997) 1 SCC 388.

¹⁸ 1994(3) SCC 1.

¹⁹ AIR 1996 SC 2715.

established to examine any policy which must include parameters like fairness, improvement, efficiency, enforceability.²⁰ So the enforcement includes two ingredients i.e. Sanctioning and Monitoring. If a policy, rule or a law is made, it must include provisions of sanctions i.e. penal measures for violation of such rule or policy. Major approaches to the enforcement of environmental legislations are discussed further:

i. Regulatory Approach

The main focus of this approach is on the social regulations by resorting to various measures as principal mechanisms to prohibit and control harm to the environment. It emphasises on improving the existing methods of production and consumption by having recourse to measures that involve self-regulation and inclusion of non-governmental communities into the regulatory process.

ii. Socio- Legal Approach

It includes utilization of the already existing enforcement mechanisms in order to conserve the environment and creatures. It emphasises on upgrading the quality of investigation, prosecution and conviction of wrongdoers on committing illegal activities hampering the environment.

iii. Social Action Approach

The main focus of this approach is on the requirement of the elementary social changes and to challenge the dominant nations in setting up the environmental agenda. It mainly emphasises on the public participation and deliberation in order to bring radical changes in the society. It includes administering of environmental legislations, creating awareness in the community.²¹

VI. ENVIRONMENTAL CHALLENGES

Rapid industrialization and urbanization in the country has stimulated the economic development but it has also increased serious environmental concerns that have a global impact. Soil erosion, water pollution, deforestation, land degradation are rising at a rapid pace and are impeding the economic development of the country and the process of industrialization in the metropolitan cities is putting a constraint on the limits of municipal

²⁰ 15 BARRY C. FIELD, ENVIRONMENTAL ECONOMICS: AN INTRODUCTION 184-189 (Mc Graw Hill London 1994).

²¹ Ashwani Pant, Santosh Kumar, *Environmental Law Enforcement and Need for reforming the Liability Regime in India: An Agenda to Revisit*, 10, DLR, (Nov. 2018).

services thereby causing problems. Some of the major reasons which hinder the strict enforcement of environmental laws are:

- The Ministry of Environment Forest and Climate Change is entrusted with the governance of environmental issues in India and not by any distinct independent body. The said Ministry works as the administrative agency that examines and checks the implementation of the environmental legislations in India. The government exercises excessive control over the environmental issues in India and hence there is absence of implementation.
- Industries need to obtain permission of the State Pollution Control Board for the disposal of waste and effluents and due to weak penalty measures do not comply with such rules.
- The pollution control boards at state and central level are still dependent on the state governments and central government with regard to appointments and this is a major reason for lack of competent and experienced people²².
- The menace of non-enforcement and disproportionate sanctions.
- Leniency in the monitoring capacity of regulatory agencies.
- Less transparency and accountability on the part of the concerned authorities and corrupt practices.
- Paucity of funds with the Pollution Boards is also a reason for absence of proper infrastructure and laboratories.

VII. PUBLIC PARTICIPATION IN ENVIRONMENT COMPLIANCE AND ENFORCEMENT

A guiding principle of a democratic country is the public participation. It can play a crucial role in promoting the development of a country and in the overall governance of the system. Higher the authority (political, administrative, financial etc.), higher will be the chances of misuse of power and arbitrary decisions for the fulfilment of selfish motives. Here, involvement of the masses is regarded as a significant aspect due to various reasons:²³

²² Dr. Deva Prasad, *Taking Environmental Law Seriously: An Indian Perspective*, LIVELAW, June 25, 2017.

²³ Monish Gulati, *Citizen Participation in Environmental Enforcement in India- looking beyond the RTI Act*, (Jan.11, 2011, 11:10 AM) <https://www.scribd.com/document/46642794/Enhancing-Citizen-Participation-in-Environmental-Enforcement>.

- Valuable and additional information can be provided by the communities to the decision making authorities particularly social, cultural and environmental values that cannot be evaluated easily.
- The political and administrative authorities can be held more accountable and responsible when the framing of environmental policy is open for public response. Transparency will pressurize the policy-makers to follow the desired procedure.
- Participation in the environmental assessment and decision making activity will provide an opportunity to the people who remain unrepresented but are affected by the policies of the authorities.
- Further, participation in the decision making will strengthen the confidence of the citizens that due care is taken for every procedure in the environment related issues.
- The implementation phase of any policy or a law gets more efficient when the public participation is involved in the initial phase of decision making. Involvement of citizens further intensifies the community ownership of resolutions.
- Stakeholder involvement can lead to alliance formation between interested groups and local government.

VIII. SOLUTIONS AND RECOMMENDATIONS

After considering various aspects related to enforcement of environmental legislations, it can be noticed that even though India has various legislations and policies on environment, a rise in pollution can still be witnessed in many cities due to the lack of strict enforcement of laws. However, there is a need to adopt more measures for the efficient enforcement of the legislations. Some of the recommendations have been discussed here.

- i. A program of public disclosure of information can be setup in order to ensure transparency on the part of authorities. A system of rating can be introduced by the pollution control boards in which the major industrial polluters are rated after their assessment.
- ii. A performance evaluation program can be framed wherein performance indicators are prescribed and it should be mandated for the industries to comply to the set standards after which their performance can be measured.²⁴

²⁴ *Environmental Compliance and Enforcement in India: Rapid Assessment*, OCED, 29 (Jan 1, 2006, 01:30 PM), <http://www.environmentportal.in/files/environmental.pdf>.

- iii. Increase in the funding of these boards may help them in setting up proper infrastructure particularly the laboratories for research related work. Also, timely incentives for the staff of these authorities can be a stimulus for them to enhance their performance and responsibilities.
- iv. Government and other institutions should conduct awareness programmes through which they can raise the concerns that are arising lately leading to environmental harm and their responsibility towards protection of endangered species and natural resources.
- v. Complete authority must be given to the authorities stipulated under various Acts in order for them to work efficiently and to resolve issues within due time, since these authorities are dependent on the central and state governments to take actions and the process of deliberation leads to delayed justice to the victims.
- vi. Despite having various environmental legislations, India is among the top countries in terms of pollution level. Since the penal measures are not very stringent and the judicial proceedings take much longer time to announce verdict, the polluters take undue advantage and continue to pollute the environment.

IX. CONCLUSION

As per the data published by the IQ Air Quality Index, India ranks 5th among the polluted countries (PM 2.5) 2019.²⁵ As per USA Today, pollution level in December in the same year was equivalent to smoking of 50 cigarettes per day and it tends to get worse. We can conclude that even after enactment of numerous legislations, India ranks among the top most polluted countries due to the mere reason of lack of strict implementation and lenient penal provisions. It is high time that the drawbacks in our legislations must be rectified, the penal measures shall be made stringent and the execution must be done in the strictest way.

Also, another point of consideration is that the survival of human life depends wholly on the environment hence, protecting it becomes our prime duty. It is important to achieve social and economic growth within the limits of sustainable development base. As far as the governmental projects are concerned, they must be combined with the people's action in order to achieve the goal of conservation. It's the citizens who can supplement the enforcement efforts of the government and their participation can be vital in the

²⁵ *World's Most Polluted Countries 2019 (PM2.5)*, IQAir, <https://www.iqair.com/us/world-most-polluted-countries>.

implementation of the environmental laws and policies. The government should not only consider the requests of the citizens but proactively promulgate the environmental data that it collects in the performance of regulatory duties. Also, proper enforcement will not be possible unless people and institutions are aware of the consequences of non-compliance. Therefore, awareness must be made among the public about the same. Non-governmental groups can assist the authorities in the enforcement by probing the non-compliances, discussing with the violators. The involvement of banking and insurance industries in the enforcement where they require the commitment from the industries to comply with the environmental requirements before granting loan is another innovative manner of enforcement of the legislations. Harsh social sanctions should also be framed for non-compliance. For instance, boycott of a product by public in case of environmental harm caused by the manufacturer to the environment is another way of effective enforcement. Some other examples of enforcement programs that can be adopted include performance, work practices, technology, spreading of information etc. Considering all the aspects discussed in this article, we can conclude that the issue of environmental pollution and enforcement of its laws has become a global issue that needs to be addressed expeditiously at national and international level.

“If we want to achieve the Sustainable Development Goals the whole world has signed up to, we desperately need to increase the rule of law in the field of the environment.”

- Arnold Kreihuber

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