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Environmental Regulations in India: Efficiency & Effectiveness

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ABSTRACT

Environmental protection is a global challenge that cannot be observed as an isolated problem of one country. Since development and exploitation go together, ends to action cannot be determined, and consequently, one cannot escape from exploitation. Climate has been affected by the increase in human economic activities. Natural resources are being exploited at large, and the protection of these resources has become a significant concern that requires us to revisit our legal structure and policies. India ranks 177 out of 180 in EPI (Environmental Performance Index), 2021 due to poor performance in environmental health policy and deaths. India has signed various treaties which have binding and nonbinding effects at different conferences. These international treaties and obligations have influenced India's environmental policies and statutes. But the enactments are observed to be done without real commitment by the executives, resulting in judicial intervention time and again. India has the most extensive legal framework of environmental laws in the world. However, challenges to implementing these laws exist. The author will attempt to analyze the current challenge for an effective and efficient regulatory regime.

Keywords: *environment, exploitation, development, executives, Regulations*

I. INTRODUCTION

Environmental law is a combination of international and domestic laws. In addition, it includes a wide area of the law that concerns public policies, choices, science, regulations, and health concerns in which changes are observed to be occurring rapidly. In the 21st Century, with the technological advancement in science, humans are in a position to develop artificial changes by modifying the environment, but that is limited. In the present scenario, the environmental resources are depleted by environmental pollution and deterioration. The world now has more focus on environmental sustainability, which governments provide to their citizens through regulations and policies. These regulations are one of the key public services which further impose penalties on businesses, government, and common people by compelling them to dispose of pollution in a better way; in return, they provide a cleaner environment with better

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health conditions and other related benefits. India, in formulating these regulations, is no exception. India has enacted more than 200 laws for protecting the environment and has an impressive and wide number of environmental policies and regulations to deal with increasing hazardous pollution wastes.

India follows "dualism" which that means in order to incorporate international law into domestic law, an act of parliament is necessary to be passed under Article 253 to transform international law into domestic law. To implement these regulations, India designed a large network of authorities and government offices which are at both central and state levels. But it is often observed as public opinion on the effectiveness of these laws and regulations has not been positive, with poor performance on Environmental Performance Index (EPI). The Challenges in functioning and implementing effective environmental regulation in India to accomplish their most basic goal of reducing pollution include the corruption in the management of funds passed for these purposes, which ranges from incorrect reporting and underuse in the distribution of these funds both at an upper and lower level. A further question remains unanswered, how the overall benefits of these regulations can be improved in terms of pollution reductions and whether lives saved are greater as compared to the costs incurred in these systems. In simple words, we can say that if a policy shows a positive effect and starts improving people's health, then the cost incurred will be so large that if the same money could have been better spent on other health issues, then it will have given larger benefits.

II. ENVIRONMENTAL CHALLENGES

India is developing with rapid growth in industrialization and urbanization with an increase in economic activities, which causes environmental challenges having far-reaching local and global effects. Mumbai, New Delhi, Kolkata & Chennai are one of the world's most polluted cities due to enormous water pollution, continuous urbanization, land degradation, continued deforestation, and soil erosion which continue to create risks & challenges that are preventing economic developments in a rural part of the country, while in the urban part increasing industrialization is causing serious environmental issues. And if immediate measures are still not taken then the damage to environment & health would be very high and can't be prevented by any means. The challenge faced by the country is to make sure that the good air quality, fresh water & land is available to all its citizens and to protect the environment by any means.

In most of the cities, nationwide, Air quality data indicate that the particulate matter had exceeded the standards of air pollutants provided by the World Health Organization (WHO) as well as by the Indian standards for air pollution. In the total pollution load of the country the

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vehicles share 64 percent, thermal power plants contribute 16 percent and industries & domestic sector contribute 13 & 7 percent respectively.[3] It is assumed that to meet the energy requirements of India's growing economy use of fossil fuels will increase, that will subsequently affect the environment. Fossil fuel fulfills approximately 96 % of India's total commercial energy demand which coal contributes a higher percentage i.e. 60 % while petroleum products provide for the other remaining 36 %. Waste generated generally from industrial processes and other related activities made the country's water bodies (rivers & streams) suffer from obsolete levels of pollution and poor human health. But it is also noticed that untreated sewage, including non-industrial wastes, is responsible for about four times more pollution when compared to industrial pollution discharges. From the total pollution loads, it is observed that over fifty percent of the water waste originated from large & medium-sized industrial plants, while seventy five percent of these are from municipal sources. Approximately 5 % only of the total waste generated is collected, and it is assumed that only 25 percent of this waste is treated in the major cities.[4]

The numbers and figures have provided us some interesting facts in both air and water pollution. Trends has shown us that air pollution has been decreasing with fall of about 17% from 1987-1990 to 2004-2007 in ambient particular matter concentrations as per the provided data.[5] This fall was observed in almost all of the cities in the country. If we talk about water pollution then trends showed us that concentration of water pollution of certain specific pollutants were rising-up while others were decreasing. They were more mixed over this time period. This data shows that the air pollution policies has given more positive results than the water and other environmental policies and left us with a question on other policies. The past phenomenon and behaviors provides some insights in the regulations and policies in environmental law. In particular, the air pollution policies were more criticized by the citizen complaints and many NGO's & activists also approached to the Supreme Court for judicial intervention. But the fact remained that no institutional or regulatory body was empowered with resources & authority to implement them as per the need.

Now the question arises that whether environmental regulations were the reason in fall in the air pollution ? To answer this question we will take an example - the government implemented

[3] Chetan Chauhan, ON WORLD ENVIRONMENT DAY : INDIA'S TOP TEN CONCERN, HINDUSTAN TIMES, Published On June4 2021, https://www.hindustantimes.com/india-news/on-world-environment-day-india-s-topten-concerns-101622810777515.html

[4] *Ibid*

[5] National River Conservation Plan, Ministry Of Jal Shakti, Govt. Of India, also available at https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1739096#:~:text=National%20River%20Conservation%20Plan%20(NRCP,UTs)%20on%20cost%20sharing%20basis

the compulsory adoption of catalytic converters in the cars which resulted into positive data of particulate matter and sulfur dioxide concentrations in air and also led to decrease in other dangerous forms of air pollution. The Supreme Court ordered the Action Plans to control air pollution in the Union Territory of Delhi which was also later implemented in other 17 cities which reduced NO2 (nitrogen dioxide) from the air at a larger extent.[6] Air Regulations seems to be efficient in controlling air pollution but what about the water pollution. Are the same positive results are seen in the water pollution? Again to answer this question we will take an example - the National River Conservation Plan (NRCP) was designed and implemented by the Ministry Of Jal Shakti for abatement of water pollution in rivers[7], the effect of which is never justified by the ministry and measures to control water pollution from the programme were failed with no positive effect.

III. GROWTH OF ENVIRONMENTAL LAWS IN INDIA

India got independence in 1947, the environmental legislations do existed at that time but due to development and industrialization they were needed to be properly enacted. The real effort to implement a well-developed legal framework & legislation was put after the Stockholm Conference, 1972 which is also known as the United Nations Conference on the Human Environment (UNCHE). Further this declaration influenced the Indian leaders in such a way that in 1972 they set up the NCEO - National Council for Environmental Policy & Planning which came under the Dept. of Science & Technology. In 1985, this Council was transformed into supreme administrative body for the enforcement and regulation of environmental protection which today is known MoEF - Ministry of Environment & Forests. In 1976, after the Stockholm Conference, 42nd Amendment was incorporated by the legislators and environmental concerns were added in the DPSP - Directive Principle of State Policy as well as in Fundamental Rights (FR) & Duties through a constitutional sanction.[8] After the 1970 an extensive environmental framework & legislation has emerged in India. The administrative & regulatory regime in country is comprised of CPCB known as Central Pollution Control Board, SPCB which is State Pollution Control Boards and MoEF - The Ministry of Environment and Forests.[9]

In 1992, two policies were framed which are known as Policy Statement on Environment &

[6] *Supra* note 1
[7] *Ibid*
[8] Ibid
[9] Kanchi Kohli, DEVELOPMENT OF ENVIRONMENTAL LAWS IN INDIA, CAMBRIDGE UNIVERSITY PRESS, July 2021, Page 15-35 https://www.cambridge.org/core/books/development-of-environmental-laws-in-india/A6933A5945CAF5EA112C97DCEDA04D81

Development and another policy for Abatement of Pollution & the National Conservation Strategy, to develop & promote initiatives for the protection & improvement of the environment by the Ministry of Environment and Forests (MoEF).[10] Also in 1993 the Environmental Action Programme (EAP) was designed to improve environmental services and further to integrate environmental considerations in development programmes for the environment.

IV. LAWS FOR ENVIRONMENTAL PROTECTION IN INDIA

1. WATER

In India there is a close resemblance in standards set by World Health Organization (WHO) with the standards maintain in the country by the ICMR - Indian Council of Medical Research for drinking water. Also with the governing general standards, there are other specific standards which are implemented for effluent discharges from the industries. The discharge of pollutants by industries for example aluminium, paper & pulp, iron & steel, petrochemicals, oil refineries & thermal power plants have been regulated as per the Indian Standard Codes.

WATER PREVENTION AND CONTROL OF POLLUTION ACT, 1974

It establishes the Central Board known as CPCB - Central Pollution Control Board for prevention & control and also the State Board known as SPCB - State Pollution Control Board for control at State level. The Act also sets up a standard and lays down penalities for discharge of any type of pollutants into the water bodies (rivers, lakes, canals, etc.) around the country.[11]

2. AIR

AIR PREVENTION AND CONTROL OF POLLUTION ACT, 1981

Under this Act standards for air quality were established in 1981, to face the challenges related with the air pollution. The Act also provides solution and guidelines for controlling the air pollution. The use of polluting fuels & substances are prohibited under the Act. It regulates appliances that increase air pollution to combat air pollution. The consent is required from the state boards to establish and to operate any type of industrial plant in the prescribed area. The boards also perform testing process for air pollution in pollution controlled areas, also perform certain inspections on the equipments along with manufacturing processes.[12]

The Central Pollution Control Board notified NAAQS Standards for major pollutants in April

[10] *Ibid*
[11] Water (Prevention And Control Of Pollution), No. 6, Acts of Parliament 1974
[12] Air (Prevention And Control Of Pollution), No. 6, Acts of Parliament 1981

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1994. These standards provide levels of standard air quality which are necessary for the human health, to protect vegetation and property of general public. The NAAQS provides certain standards for residential in urban and rural areas, industrial and other areas. Specific standards for emission form cement plants, oil refineries, iron and steel plants, fertilizer plants and the aluminium industry have also been prescribed. The Ambient Air Quality Standards prevailing in country have close resemblance from those which are followed by many European countries. The Air Act was further Amendment in 1987 to provide some more authority and powers to the central & state pollution boards to face challenges. Through this Amendment the boards were empowered to take immediate steps as per the need to meet such challenges and also to recover the money spend during its function. Boards were provided authority to deny and cancel consent when there is a non-fulfilment of the conditions prescribed. The Air (Prevention & Control of Pollution) Rules were designed in 1982 which provides certain powers to the presiding officers, functions of the Boards, their meetings, the quorum, the manner in which Board's meeting were recorded & set and seeking assistance from specialists.

In 1982, the Atomic Energy Act was enacted in order to control the radioactive waste. The Motor Vehicles Act, was enacted in 1988 so that vehicular traffic can be regulated and also to ensure proper labeling, packaging & transportation of the hazardous wastes. In 1990, the standards for mass emission were notified and were revisited in 1996. Further in 2000 these standards were amended again & provided certain standards for autovehicle manufacturers and their owners. On April 29, 1999 Supreme Court notified Euro-I & Euro-II norms of emission to be followed in the city of Delhi. Through this notification it was made mandatory obligation to clear the Euro-I & Euro-II emission norms in order to sell non-commercial vehicle in Delhi by May 1999.[13]

3. FOREST AND WILDLIFE

THE WILDLIFE PROTECTION ACT, 1972

This Act designed to protect wild animals based on their threat of survival. It also provides list of species to be protected. Under this Act the central as well as state governments can establish any particular area as national park or wildlife sanctuary. Inside these protected areas any industrial activity is completely prohibited. The Act empowers the authorities to implement the Act by restricting any type of wild animal trade & commerce, to protect specified plants, to regulate and observe the hunting of animals, to administer wildlifesanctuaries & national parks

[13] Nidhi Sharma, Euro Norms For Cars In Delhi, TIMES OF INDIA, Published on 24 March 2005, https://timesofindia.indiatimes.com/city/delhi/euro-iii-norms-for-cars-in-city/articleshow/1061873.cms

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and other related matters. As per the proviso of the Act when any animal become dangerous to human life or has become diseased or disabled and cannot be recovered then with a prior permission of authorized officer hunting of animals can be done. The Act was also Amended in 1991 to make it more effective.[14]

THE FOREST CONSERVATION ACT, 1980

The Forest Conservation Act was enacted with an objective to protect & to conserve forests in 1980. It deminishes the powers of the state with respect to defforestation and use of forestland for growing and cultivation of crops, horticulture or any other non-forest purposes.[15]

4. GENERAL

ENVIRONMENT PROTECTION ACT, 1986

Environment Protection Act is designed to ensure better coordination between centre & state authorities which were formed under the Air and Water Act. It also acts as an umbrella legislation for all environmental challenges. The Act empowers and provides framework to the central government to set standards for emissions & discharges, also to regulate the areas of industries & the management of wastes discharged by them and necessary measures for protection of health and public welfare. To ensure protection and to improve the standards & quality of environment, government issues certain notifications and guidelines time to time under the Act for matters under the Environment Protection Act and for ecologically-sensitive areas. [16]

REGULATORY AUTHORITIES

The regulatory authorities in India are comprised of the CPCB which is known as Central Pollution Control Board at centre and the SPCB that is State Pollution Control Board at state level and the Ministry of Environment, Forests and Climate Change (MoEFCC) which also acts as a legislative body, District Level Authorities as a municipal corporations working at ground level. Mainly, State Pollution Control Board (SPCB) provides consents & authorizations and other essential environmental permits which are compulsorily needed to be obtained. Only in few cases for example a consent or permit under the E-Waste Rules 2016 will be needed at central level that is from the CPCB, Environmental Clearance under import & export of hazardous waste is needed from MoEFCC. For groundwater extraction related permits clearance is provided by the Central Ground Water Board. Permits and Authorization

[14] The Wildlife Protection Act, No. 53, Acts of Parliament 1972
[15] The Forest (Conservation) Act, No. 69, Acts of Parliament 1980
[16] The Environment (Protection) Act, No. 53, Acts of Parliament 1986

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related to store diesel at any site for generators is provided by Petroleum and Explosives Safety Organisation (PESO).[17]

TIME PERIOD OF PERMIT

Generally, SPCBs provides Consent To Establish (CTE) for about one year but it depends upon on the scale of the project it can be provided for more time period as the board has discretion in determining the duration of consents. A Consent To Operate (CTO) is provided between three to five years under the Water and Air Acts. As per pollution index score categories of red, orange, green & white industries are made depending on the score. White category industries are termed as "non-polluting" industries and they does not need any consent. While green category industries has to obtain CTO which is valid for 15 years and they need to submit a simple CTO application. CTOs for orange categories and red categories are initially for ten years and five years respectively.

Before the expiry of the CTO, renewal application generally be submitted within 60 to 120 days prior. Renewal will be granted when there is no non-compliance issues. CTO can be revoked by SPCBs when there is a non-compliance issue and will reissue it when the non-compliance has been cleared. Mainly, the companies try to obtain a 1 year CTO so that SPCBs can monitor them closely and compliance must be assured. A self certification is also adopted by the States for all categories when there is no increase in pollution load or decrease is observed in overall production capacity.[18]

PROHIBITED ACTIVITIES AND COMPENSATION FOR WATER POLLUTION

At the initial stage before performing any operations a company need to get a CTE after which CTO is issued by the relevant SPCB.

CPCB have determined under the standards laid down that any polluting matter, poisonous or noxious which is knowingly cause or permit to enter to enter, into any well or sewer, stream or onto land which can be directly or indirectly is prohibited under the Water Act. It is prohibited to stop or distract the flow of water of any stream by any person by causing or permitting matter into a stream, it can be directly or indirectly in order to lead to an aggravation of pollution. A wide range of activities are covered under the Water Act which are broadly drafted to stop and control the activities that will increase water pollution. Under the prevailing Act a person in charge must immediately needed to notify SPCB when due to any accident or other

[17] Planning Commission, Government of India (2001-2002): Evaluation Study on the Functioning of State Pollution Control Boards, New Delhi, http://planningcommission.gov.in/reports/peoreport/peof.htm
[18] Gupta O.K. and K. Priyadarshini (2003): Compliance to Environmental Regulations: The Indian Context, International Journal of Business and Economics, Vol. 2, No. 1, 9-26

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unprevented event, any poisonous or polluting matter is discharged, into any water body which will lead to water pollution.[19]

Compensation

There are various possible approaches including cleanup for example company who is responsible of water pollution can be compelled to clean the pollution caused and also to pay the compensation to all the victims or to remedy the polluted environment.[20] SPCB can also apply for a restraining order from the court if it believes that any event can be responsible for causing water or soil pollution. Refraining order from the court will refrain that company from polluting water bodies or even to remove the damage caused. The court can also authorize the SPCB in a situation when the party fails to clean the water pollution caused and the cost spend can be collected by the SPCB from the person or company that is responsible for the water pollution. SPCB can also act immediately in an emergency situation to prevent, mitigate or remove the water pollution.

The SPCB has also power to direct the company for closure that is causing the pollution. It can also stop the manufacturing process, the electricity or water supply to the company until the pollution is addressed. Remedies to these directions is that company can seek for stay order from the court against the directions of SPCB for closure or file an appeal to the National Green Tribunal.

PROHIBITED ACTIVITIES AND COMPENSATION FOR AIR POLLUTION

At the initial stage before performing any operations a company need to get a CTE after which CTO is issued which is both for Water and Air Act by the SPCB.

In Air Act the consent of application, the type of infringements and their penalties are similar to those of Water Act. Air pollution standards set by the CPCB are also similar to the standards set for water pollution. Air pollution control areas are identified by the state governments in consultation with SPCBs to determine how they are going to entertain consent applications. Use of any fuel or any appliance which may cause air pollution is under the prohibited activity and burning of stubble in agricultural lands may be prohibited by the State observing the prevailing situation. The restricted activities include excessive noise levels by industries are restricted.

[19] Ibid
[20] Ibid

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V. PENALTIES FOR WATER AND AIR POLLUTION

Penalities can be imposed for not having valid environmental permit or consent by the SPCB. For the non compliance of closure direction or stoppage of water and electricity by the Board then in that case imprisonment for a term of one and a half years with or without a fine can be imposed. If a non-compliance is continued then an additional fine of five thousand rupees for each day can be imposed on offender. Under the Water Act for various other offences, offenders are liable for three months of imprisonment, or a fine of ten thousand rupees or both. These offences can be failure to notify an accident, failure to provide information to the Boards, wilfully tampering with monitoring equipment or knowingly making a false statement. The Environment Protection Act provides for single type of punishment which is an imprisonment of 5 years or a fine upto Rs 1 lakh or both if there is any breach of rules under the Act.

When the offences are committed by the companies then every person who is responsible to the company for its conduct and business and who is in charge when an offence was committed is said to be the guilty of offence will be liable to be prosecuted and punished. The person is said to be guilty of that act when he has given his consent performing duties of a director, officer, manager, or any other post for the breach of environmental rules. A closure notice is send by SPCB immediately when a company is operating without a consent to operate by prescribed Boards. If a company fails to get CTO or has been denied to issue CTE by the Board then penalities can be imposed. In a breach of guidelines issued after CTO or CTE any person who is guilty will be punished with eighteen months of imprisonment extended to 6 years with or without a fine.

ROLE OF NATIONAL GREEN TRIBUNAL

National Green Tribunal Act of 2010 prescribes reasonable provisions of penalty that are of greater amount as compared to adopted environmental laws. NGT can also give directions and impose interests for delay in payment of compensation by the offenders. The Tribunal has jurisdiction on all environment related civil cases which are arising out of any of the adopted environmental laws i.e. Envt. Protection Act, the Air Act, the Water Act, etc. The NGT can order relief to all the affected victims of pollution with compensation for environmental damage and also can order restitution for property damaged. The Tribunal can order compensation or relief for claims arising due to environmental harm and for the damage to flora including aquatic animals and vegetables as well as crops. Tribunal includes all the types of environment pollution which may arise from water, air, soil, land and other remaining eco-systems. Tribunal also has power to punish a person when there is non-compliance of an order

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or decision of the Tribunal. NGT can punish for a term up to three years, or with a fine up to One crore rupees or both when the situation of non-compliance arises. An additional fine of 25 thousand rupees for each day can be imposed when there is a continuing contravention of non-compliance to NGT. When a company fails to comply with any decision or order of the Tribunal then a fine of 25 crore rupees can be imposed for non-compliance. If the contravention by the company still continues then an additional fine of 1 Lakh rupees for each day can be imposed b the NGT.

ENVIRONMENTAL TAXES

In India the green taxes which are imposed on environmental pollutants are almost negligible. Green Taxes are not collected like in developed countries on goods whose use contributes to pollution. But on every 1 ton of cal mined or coal imported a cess is levied at Rs 400 per ton. Certain portion of this collected cess is paid to the National Clean Energy Fund(NCEF). After the introduction of GST (Goods and Services Tax) the cess will be utilized to compensate state governments for any loss in revenue.[21] The Ministry of Road Transport and Highways introduced a tax on vehicles which are older than 15 years as a green tax from 1 April 2022. The Supreme Court of India has imposed a one percent of ex-showroom price on diesel vehicles having an engine capacity greater than 2000 CC as Environment Compensation Cess in Delhi. An Environment Compensation Charge (ECC) is also levied on HGV vehicles entering Delhi from other regions. When a request is made for transformation of forest area to non forest area then a contribution to the CAMPA-Fund (Compensatory Afforestation Fund Management and Planning Authority Fund) has to be paid by the agencies.

VI. ASSESSMENT OF LEGAL AND REGULATORY FRAMEWORK FOR ENVIRONMENTAL PROTECTION IN INDIA

In India we follow a command and control type of regime in environmental framework. The prevailing one sided approach of law which existed or either denied to look into the extent of violation is one of the challenges faced in environmental laws. The levels prescribed includes fines and liabilities but there are minimal liabilities to lower the discharges. So, fines are levied on without a proper discussion. In 1992, the Govt. of India enacted a Policy Statement for Abatement of Pollution before the "Rio conference" which further declared that an investigation of economic instruments will be performed to divert them from curative measures to preventive measures to conserve resources and also that market-based approaches will be

[21]The Many Benefits Of Eco Tax, THE HINDU, Published on 24 May 2021, https://www.thehindu.com/opinion/op-ed/the-many-benefits-of-an-eco-tax/article34629283.ece

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entertained in order to control different types of pollution. Under this policy MoEF - the Ministry of Environment and Forest in 1995 formed a task force which will evaluate market-based instruments for controlling industrial pollution. Various incentives such as providing soft loans and subsidies for the adoption of various clean technology, providing depreciation allowances and specific exemptions from excise and customs duty payment are the instances of command and control type of regime.

EEXCESSIVE GOVERNMENTAL CONTROL

In India MoEF - Ministry of Environment Forest and Climate Change administer the environmental governance which is the reason for implementation critics. It is the apex body designated for all administration and implementation related legislation and policies in environmental laws. This is one of the major reasons for implementation challenge and the fact of excessive governmental control which needed to be performed by an independent regulatory body. Excessive governmental control over the environmental regulation and its governance resulted into poor implementation of existing environmental policies and laws. For example clearance needed for the large scale projects require consent from MoEF under the Environmental Impact Assessment Notification, 2006. The ruling government has a complete control over the Ministry, which resulted into arbitrary clearance of many large scale projects as per the interests of ruling government. This directly influences the environmental policies.

INADEQUATE PENALITY AND LOW COMPENSATION FRAMEWORK

In the present framework consisting of the CPCB - Central Pollution Control Board at centre and SPCB - State Pollution Control Boards at state level do not have sufficient powers or authority to penalize those who are involved in water & air pollution. The existing mechanism under the Air Act and Water Act follows the command & control structure in this the industrial entities & other units which are responsible for discharging pollutants and causing pollution are compulsory required to take authorization in the form of consent or permits from the Pollution Control Board. There is a lack of adequate penalty mechanism in the prevailing command & control system which is a big failure in ensuring compliance by the authorities. CAG - Comptroller and Auditor General of India has in his report (Performance Audit of Water Pollution) mentioned that the penalty mechanism is very low for contravention of the Water Act. The report has also mentioned that the costs of non-adherence, defiance and violations are much lower than the costs of compliance. The report is very true and needed implementation after revisiting by the legislatures in order to control pollution in India. The lack of independence of the boards (CPCB and SPCB) is also one reason for the ineffectiveness of

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regulatory regime. The appointment process to these Boards are also questionable. As the members of CPCB and SPCB are appointed by the central & the state government which means that they can be transferred and changed at the whims & fancies of the respective government. It is also noted that the government can at any time change the decision of the Boards which means that SPCB and CPCB does not function as independent regulatory bodies but under the government of India.

VII. SUGGESTIONS

Need for an Independent Environmental Regulatory Body

An independent environmental regulatory body is needed to be setup for an effective and efficient environmental regulatory mechanism in our country. A major step is needed to enable the independent environmental regulatory body which will work without any arbitrariness and any political interference and arbitrariness. The body should be responsible for protection of eco-system, waste management & pollution control. Even existing pollution control boards can be made part of this independent environmental regulatory body for environmental governance. In the year 2009 the MoEF proposed for NEPA - National Environmental Protection Authority as an independent regulatory body in the environmental governance. The NEPA will function to enforce, monitor and regulate the environmental laws in the country. The proposed Authority is very much relevant to the needs of present crisis and should be brought into existence immediately.

Civil Liability and Pecuniary Penalties for Environmental Pollution

Draft Environment Laws Amendment Bill, 2015 was proposed by the legislators to enhance the civil liability for environmental damages. Under this bill civil liability for causing substantial damage to the environment ranges from 5 crore rupees to 10 crore rupees which was the positive step taken by the government. [22] The framework was designed in relevance with the polluter pays for an effective regulatory regime under environmental laws. The compensation for restoration of environmental damages should be relevant. If there will be minimal charges then industries will continue to damage as there turnover will be much higher than the compensation and paying compensation again and again will not harm them in any way.[23]

[22] Key Principles in international Environmental Law, AMERICAN BAR ASSOCIATION, 17 January 2019, also available at https://www.americanbar.org/groups/public_education/publications/insights-on-law-and-society/volume-19/insights-vol--19---issue-1/10-key-principles-in-international-environmental-law/

[23] Philippe Sands, pg 266 – 268, PRINCIPLES OF INTERNATIONAL ENVIRONMENTAL LAW, Cambridge University Press, 9 October 2003 also available at

VIII. CONCLUSION

The efficiency and effectiveness in Environmental regulations at reducing pollution can be observed only when the regulators are positively performing and are sufficiently empowered. The present framework fails to follow "the polluter pays principle", as per which the authorities have to impose the cost of pollution and its restoration upon the polluter. The National Environmental Policy of 2006 indicates the need of civil liability mechanism which is different form prevailing criminal penalty mechanism based on polluter pays principle. The Judicial Intervention had identifies the importance and need of Polluter Pays Principle in many cases to control pollution and protect environment. For optimal level of results, it would require developing a reliable estimate of the costs after comparing to the benefit of society in terms of pollution reductions and better health areas that regulations will impose on businesses as well as on households. Recent developments in the enforcement of environmental legislations in India are the result of rise in judicial activism. We have observed a growth in environment-related cases that convinced the court to take major steps for example ordering to shut down of pollutants coming out of the factories. Agenda 21 further highlighted the need for integration of environmental policies, planning and decision making processes through effective & efficient legal and regulatory framework.

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https://books.google.co.in/books/about/Principles_of_International_Environmenta.html?id=2N5gR1UYT3YC

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