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STATUS OF ENVIRONMENTAL LEGISLATION IN INDIA

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Abstract

Environment conscious states have accordingly legislated on the subject of environment from time to time. However, the legislative efforts alone have not been followed by strict enforcement thereby allowing constant deterioration of the environment quality. The fact of this kind has been duly underlined in the scrutiny of available legislation on environment in India. It is clearly established in this paper that sufficient amount of legislation on environment is available in India but the quality of environment is quite poor on account of the poor enforcement of legal provisions for want of support and participation by the society in the process of prevention, control and abatement of environment deterioration.

Introduction

The environment consists of various animate and inanimate objects. The land, air, water, flora and fauna, human beings, human settlements, communication systems, socio-cultural and political systems are the main components of our environment. Various relationships amongst the different animate and inanimate objects determine the quality of environment. Unfortunately, over the years, these relationships have experienced increasingly negative tendencies thereby deteriorating constantly the quality of environment. Based on this kind of realisation, various efforts, including the legislative ones, have been made from time to time in the interest of quality environment the world over. Accordingly, various legislative efforts have also been made in India and it is in this context that the status of environmental legislation has been focussed in this paper for underlining the availability and efficacy of legislative measures for ensuring the environment quality in this country.

Environmental Legislation in India

The status of environmental legislation in India can be examined in terms of constitutional measures and the legislative measures separately.

I. The Constitutional Measures

The Constitution of India is the first one in the world which provides for the protection of the environment. The Constitution (42nd Amendment) Act, 1976 for the first time inserted specific provision

of preservation of environment throughout the country whereas the environment related problems are usually dealt with at the legislative level. The subject of environment in India has attained the constitutional status wherein environmental controls become the mandatory provisions.

The 42nd Amendment of the Constitution has covered three important areas which include :

i) Directive Principles

The Amendment has added the directive principle for the protection and improvement of environment and safeguarding of forests and wild life. To be precise, the addition is in terms of Article 48 A that reads as :

“The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life in the country”.

The State under this Article can adopt both protectionist policy by way of imposing restrictions as well as curative policy by way of improving the polluted environment.

ii) Fundamental Duties

Article 51 A(g) has been inserted in the chapter on ‘Fundamental Duties’ in the Constitution of India and the insertion reads as :

“It shall be the duty of every citizen of India to protect and improve the natural environment including forests, rivers, lakes, and wild life and to have compassion for living creatures”.

iii) Legislative Competence

The Seventh Schedule to the Constitution of India defining legislative competence of Central and State Legislatures has also been amended. The amendment has strengthened the 'Concurrent List' in the following three different ways:

- a) Insertion of entry 17-A providing for 'forests' and thus enabling both Central and State Legislatures for legislating on the subject in the absence of any uniform policy for forests at the state level.
- b) The subject of 'protection of wild animals and birds' has been transferred from 'State List' to 'Concurrent List' as entry 17 B.
- c) An additional entry, i.e. entry 20 A, dealing with the subject of population control and family planning has been inserted. Since the ever-increasing number of human beings has emerged as a great pollutant at the national level and since the State Legislatures have failed in taking effective measures for checking the unprecedented increase in population, the entry 20 A in the 'Concurrent List' stands justified.

The 42nd (Constitutional Amendment) Act has made a constitutional dent in creating general awareness and evolving measures for ensuring environmental quality in the country. Consequently, new Acts have been enacted at Central and State levels for making necessary arrangements in the interest of quality environment.

II. The Legislative Measures**A. Water Pollution Related Provisions****i) The Indian Penal Code (IPC), 1872**

The section 277 of IPC provides that "whoever voluntarily corrupts or fouls the water of any public spring or reservoir so as to render it less fit for the purpose for which it is ordinarily used, shall be punished with imprisonment up to three months or with a fine upto Rs. 500/- or with both".

The pollution of water other than the springs and reservoirs is covered under section 290 of the Code which reads as :

"Whoever commits a public nuisance in any case not otherwise punishable by the Code, shall be punished with fine upto Rs. 200/-.

Further, the section 426 of the Code includes :

"Whoever commits mischief shall be punished with imprisonment upto three months or with fine upto Rs. 500/- or with both".

Since the fouling of water bodies is a public nuisance and since the act of fouling of water is a mischief, the pollution of water may be dealt with under these provisions of the IPC. However, the absence of case law on pollution of water under the Code shows infirmity in dealing with the problem of water pollution.

ii) The Factories Act, 1948

As per the section 12 of the Factories Act, 1948, the following two provisions exist for the abatement of pollution of water;

- a) Effective arrangement shall be made in every factory for the disposal of waters and effluents generated by the manufacturing processes carried therein, and
- b) The State Government may make rules prescribing the arrangements to be made in accordance with (a) above.

The violations shall be punishable with imprisonment upto seven years or with fine upto two lakh rupees or with both. In case the contravention is continued after the conviction, the defaulters may be fined at the rate of five thousand rupees for each day on which the contravention is continued. However, these conditions since have not been observed strictly, the pollution of water bodies has continued ever since the establishment of factories. Absence of case law in this case too tells a story of ground realities as opposed to the spirit and objective of the legislation.

iii) The Municipal Statutes

All the Municipal Acts in the country provide for controlling the pollution of water in the jurisdiction of municipalities. For instance, the proximity and positioning of septic tanks, absorption pits and cesspools have been determined in relation to any percolation well, tube well, or water-course or stream used or likely to be

used for human drinking or domestic purposes or for the manufacturing or preparation of articles of food and drinks for human consumption or otherwise so as to render sources of water free from pollution. Nevertheless, the extent to which the Municipal bodies are seriously concerned is doubtful thereby allowing the fouling of sources of water in the municipal areas.

iv) Laws for River Schemes and Canals

The Northern India Canal and Drainage Act, 1873 prescribes imprisonment of one month or punishment of fine upto five hundred rupees or both for corrupting or fouling the water of any canal so as to render it less fit for the purpose for which it is ordinarily used.

The Damodar Valley Corporation established under the Damodar Valley Corporation Act, 1948 is authorised to make regulations with the previous permission of Central Government for preventing the pollution of water falling under its jurisdiction. The corporation has accordingly framed the Damodar Valley Corporation (Prevention of Pollution of Water) Regulations, 1954. Any violation of these regulations by anybody shall be punishable with fine upto one thousand rupees.

The River Boards Act, 1956 provides for the establishment of River Boards for regulation and development of inert-state rivers and river valleys. In addition, these Boards may advise the concerned governments on the subject of prevention of pollution of waters of the inter-state rivers.

These provisions alongwith many others are the manifestations of sincere efforts made from time to time for safeguarding the water as a natural resource. However, the ground realities indicate large-scale indifferences in enforcing the valuable legal provisions.

v) The Merchant shipping Act, 1958

This Act provides for control and regulation of discharge of oil by the ships in order to give effect to the 'International Convention for the Prevention of Pollution of Sea by Oil, 1954'. The Act accordingly prohibits the discharge of oil or oil mixture by an Indian tanker or ship within the prohibited zone adjoining the water territories of India. The Act further provides for restrictions on Indian ships of 20,000 tons or more from discharging any oil anywhere at sea.

vi) The Water (Prevention and Control of Pollution) Act, 1974

The Centre and States under this Act are empowered to establish Central and State Pollution Control Boards respectively for the purposes of advising the respective governments in matters relating to the prevention and control of water pollution.

The State Boards, according to this Act, shall be performing the following functions :

- a) To plan comprehensive programme for the prevention, control and abatement of pollution of rivers, streams, inland water courses, wells, tidal waters of sea etc. and to secure the execution thereof;
- b) To advise the State Government on any matter concerning this subject;
- c) To collect and disseminate information relating to this matter;
- d) To encourage conduct and participate in investigations and research relating to this matter;
- e) To inspect sewage or trade effluents and works and plants for the treatment of sewage or effluents and to review the plans, specifications etc. and to check the quality of sewage as well as trade effluents;
- f) To lay down, modify or annul effluent standards for sewage and trade effluents and for the quality of receiving waters resulting from the discharge of effluents;
- g) To periodically monitor the effluents to know their quality with respect to the prescribed standards;
- h) To evolve economical and reliable methods of treatment of sewage or trade effluents having regard to particular conditions of soil, climate or water resources of different regions;
- i) To evolve methods of utilization of sewage and trade effluents in agriculture;
- j) To collaborate with the Central Board in organizing the training programmes relating to the pollution control and to organize the mass-education programmes relating thereto;
- k) To advise the State Government in respect

of the location of industries which are likely to pollute the environment; and

1. To collaborate with Central Government in evolving standards for streams or rivers which are inter-state.

The Central Board has also been assigned similar functions. In addition, the Central Board :

- a) advises the Central Government on matters concerning prevention and control of water pollution;
- b) coordinates the activities of the State Boards and provides them with technical assistance and guidance;
- c) acts like a State Board for all the Union Territories;
- d) establishes and recognizes laboratories for enabling it to perform its functions; and
- e) accords consent to the intending industries for discharge of sewage or trade effluents in a stream etc.

In addition, the Act under section 24 provides that no person shall knowingly cause or permit any poisoning, noxious or polluting matter to enter into a river, stream or well nor will he allow the entry of polluting matter directly or in combination with other matters so as to impede the normal flow of water aggravating the pollution. The essence is that all industries, which are discharging or intend to discharge their effluents into any river or stream, shall not do so without the prior consent of the Board. Similarly, the existing industries, local bodies and other public sector undertakings, which are already discharging sewage etc. will have to seek the consent of the Board for continuing their discharge. The violations of any provisions of this Act shall be subject to punishment of fine upto five thousand rupees or imprisonment upto three months or both and for any continued violation, a penalty of one thousand rupees for each day shall be imposed.

However, under the existing provisions, the Board does not have the power to order the closure of any industry even though the industry has persistently flouted the directions of the Boards and violated the provisions of the Act. The Board is neither the prosecutor nor the judge. The Board can only make an application to the court of Law wherever the infringement of the provisions of the

Act takes place.

B. Forests and Wild-Life Related Provisions

i) The Indian Forest Act, 1927

The State Government, under this Act, may constitute any forest land or waste land belonging to the government a 'reserved forest' through a notification in the Official Gazette specifying the limits of land and appointing an officer as the Forest Settlement Officer. Any person who

- makes any fresh clearing;
- sets fire to a reserved forest;
- trespasses or pastures cattle;
- causes damage by negligence in felling any tree or cutting or damaging any timber;
- queries stone, burns lime or charcoal or removes any forest produce;
- hunts, shoots, fishes, poisons, waters or sets; and
- kills or catches elephants

Shall be punishable with imprisonment for a term which may extend upto six months or with a fine upto five hundred rupees or with both in addition to compensation for the damage done to the forest as the convicting court may direct. However, nothing shall be deemed to prohibit any act done with the written permission of the Forest Officer.

Similarly, the State Government may, by notification in the Official Gazette, declare any forest land which is not included in reserved forest but that is the property of the government as the 'protected forest'. Further, the State may make rules regarding the cutting, sawing, conversion and removal of forest produce from the 'protected forest' and granting of licenses for felling trees etc. Any contravention of the rules shall be punishable similarly as in the case of 'reserved forest'.

ii) The Wild-Life (Protection) Act, 1972

This is an Act which provides for the protection of wild animals, birds and which are the important constituents of environment. The Central Government under this Act, is empowered to appoint a Director of Wild Life Prevention alongwith other officers and employees necessary for purpose of implementing the Act. Consequently, the State Governments shall appoint Chief Wild Life Wardens and other officers and employees to perform the

duties and exercise powers under this Act. In addition, the Act includes the provision for the constitution of Wild Life Advisory Boards in States and Union Territories for advising the governments in matters relating to :

- the selection of areas to be declared as sanctuaries, national parks and the closed areas;
- the formulation of the policy for protection and conservation of the Wild Life and specified plants;
- the measures to be taken for harmonizing the needs of the tribal and other dwellers of the forests with protection and conservation of forests; and
- any other matters connected with protection of wild life.

Accordingly, for the protection of wild life, the Act provides that no person shall hunt any wild animals except if the Chief Warden is satisfied that wild animals have become dangerous to human life or these are disabled or diseased beyond recovery. The Chief Warden may additionally grant permit thereby entitling the holder to hunt for the purpose of education, research and scientific management. Similarly, no person shall

- willfully pick, uproot, damage, destroy, acquire or collect any specified plant from any forest land; and
- possess, sell, offer for sale, transfer or transport any specified plant, whether dead or alive.

The Chief Warden, however, with the permission of State Government, may grant any person a permit to pick, uproot, acquire or collect any specified plant for the purpose of education, research, herbarium of scientific institution etc. Any person who contravenes any provision of this Act shall be punishable with imprisonment for a term extending upto three years or with fine upto twenty five thousand rupees or with both. In case the offence is repeated, the punishment with imprisonment shall be for two to six years and with fine not less than ten thousand rupees. The affectivity of this Act is obviously marginalized since the offences against the wild life are still being committed regularly.

iii) The Forest (Conservation) Act, 1980

In continuation of the Indian Forest Act, 1927, the Forest (Conservation) Act, 1980 has been enacted with a view to provide for the conservation of forest and for matters connected therewith. As per this Act, no State Government or any other authority shall make, except with the prior approval of the Central Government, any changes or give directions that

- any reserved forest or any portion thereof shall cease to be reserved;
- any forest land or any portion thereof may be used for any non-forest purpose;
- any forest land or portion thereof may be assigned by way of lease or otherwise to any private person or to any authority; and
- any forest land or portion thereof may be cleared of tress which have grown naturally.

These directions, however, do not include any work relating to conservation, development and management of forests and wild life, such as the establishment of check posts, fire lines, wireless communications, fencing, bridges, culverts, dams, waterholes, pipelines etc. Anybody contravening with any of the provisions shall be punishable with simple imprisonment for a period which may extend to fifteen days.

Implementation of these provisions could help in checking the exploitation of forests and wild life but the ground reality is marked with continuous depletion of forest cover, endangered wild life and the disturbed ecosystems.

C. Air and Environment Related Provisions

i) The Air (Prevention and Control of Pollution) Act, 1981

Under this Act, the Central Pollution Control Board and the State Pollution Control Boards established under the Water (Prevention and Control of Pollution) Act, 1974 have been empowered to exercise the powers and perform functions for the prevention and control of air pollution. However, the States, where the Pollution Control Boards have not been established, may establish their boards under this Act for the prevention and control air pollution. The main function of these Boards shall be to improve the quality of air and to prevent, control or abate the air pollution in the country. Accordingly, the Boards

shall advise respective governments in matters relating to air pollution; prepare nationwide and state-wide programmes for the prevention, control or abatement of air pollution; give directions and impose restrictions; lay down standards for quality of air; establish air laboratories; collect and disseminate information relating to air pollution; establish air pollution control areas and organise through mass media the comprehensive programmes regarding the prevention, control or abatement of air pollution.

Anybody failing to comply with the directions given or restrictions imposed shall be punishable with imprisonment of one year and six months to six years and/or with fine. If the failure is continued after the conviction, additional fine extending upto five thousand rupees for each day may be imposed. In case the failure continues beyond one year, the offender shall be punishable with imprisonment of two to seven years and with fine.

Since the Boards are not the prosecuting authorities, the enforcement of the Act is marked with slackness allowing thereby the continuation of air pollution in the country.

ii) **The Environment (Protection) Act, 1986**

After drawing inspiration from the Stockholm Proclamation adopted by the United Nations Conference on Human Environment in 1972 and after considering the luke-warm response from the concerned quarters for controlling the environmental pollution, the Parliament of India ultimately has come forward with a comprehensive legislation entitled as 'The Environment (Protection) Act, 1986' with a view to deal effectively with the problems of environment. This Act has, accordingly, empowered the Central Government for adopting necessary measures for the protection and improvement of environment. Such measures may include:

- Co-ordination of actions by the State Governments, Officers and other authorities;
- Planning and execution of a nation-wide programme for the prevention, control and abatement of environmental pollution;
- Laying down standards for the quality environment;
- Laying down standards for emission or discharge of environmental pollutants from

various sources;

- Restriction of areas in which any industries, operations or processes shall not be carried out or shall be carried subject to certain safeguards;
- Laying down procedures and safeguards for the prevention of accidents which may cause environmental pollution and remedial measures for such accidents;
- Laying down procedures and safeguards for the handling of hazardous substances;
- Examination of such manufacturing processes, materials and substances which are likely to cause environmental pollution;
- Carrying out and sponsoring investigations and research relating to problems of environmental pollution;
- Inspection of any premises, plant, equipment, machinery, manufacturing or other processes, materials or substances and giving, by order, of such directions to such authorities, officers or persons as it may be considered necessary for the prevention, control and abatement of environmental pollution;
- Establishment or recognition of environmental laboratories and institutions for carrying out the functions entrusted to such laboratories and institutions;
- Collection and dissemination of information in respect of matters relating to environmental pollution;
- Preparation of manuals, codes or guides relating to the prevention, control and abatement of environmental pollution; and
- Such other matters as the Central Government deems fit for the purpose of securing effective implementation of the provisions of this Act.

In addition, the Government may establish an authority or authorities for the purpose of exercising powers and performing functions of Central Government as may be elaborated in the form of rules framed under this Act.

Whoever contravenes with the provisions of this Act or the rules made or the orders and directions issued thereunder shall be punishable with imprisonment for a term extending to five years

or with fine upto one lakh rupees or with both and in case the contravention is continued, the additional fine extending upto five thousand rupees for every day after the first conviction. If the contravention continues beyond one year after the conviction date, the offender shall be punishable with imprisonment for a term extending to seven years.

Various actions have been initiated under this Act for effective implementation of the Act. The actions like the establishment of environmental laboratories, starting of courses on Environment Planning, Research and Management, Coastal Regulation Zone Notification of the Ministry of Environment and Forests etc. are the steps in the right direction. However, in view of the acuteness of damage caused to the environment, it may take very long time for setting the environment in order.

iii) The National Environment Tribunal Act, 1995

This is an Act to provide for determining the liability for damages arising out of any accident occurring while handling any hazardous substance and causing damage to persons, properties and the environment. The Central Government shall, by notification in the Official Gazette, establish a Tribunal to be called as National Environmental Tribunal to exercise its powers and authority conferred on it under this Act. The Tribunal, in addition, shall be empowered to establish Benches as and when required.

As per this Act, where death or injury to any person (other than a workman) or damage to any property or environment has resulted from an accident, the owner shall be liable to pay compensation for such death, injury or damage. The victims in such cases can claim compensation by way of filing their applications to the Tribunal or the Bench. The Tribunal/Bench shall accordingly decide the compensation to be paid to the victims. Anyone failing in complying with any order of the Tribunal shall be punishable with imprisonment upto three years or with fine which may extend upto ten lakh rupees or with both. However, the law in case of this Act is not yet available in any substantial form but obviously the effective implementation of this Act shall prove to be a booster for achieving the environment quality.

Conclusion

The above coverage establishes the fact that sufficient amount of legislation related to environment is available in India. However, like many other laws, the use or enforcement of different laws on environment has been quite poor due to which the resultant quality of environment is also poor. Enacting the required legislation on environment is one side of the picture whereas its effective enforcement is the other side where the Indian scenario represents a dismal picture on account of which the environment quality has been deteriorating continuously. It is therefore evident that the Legislature in this country is aware and conscious enough for legislating on the subject from time to time but the society, including the Legislature, which is marked with ever-increasing numbers and competition on resources, particularly the land, has not responded accordingly to participate in the process of improving the quality of environment. It has, therefore, become imperative for all segments of the society to realize the essence of environment quality and participate in the process of prevention, control and abatement of environmental deterioration.

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