



Environmental Laws and Promotion of Sustainable Development in India: From Legality to Reality.

Abstract

Once, some left-over food was being thrown in garbage, from a nearby auditorium. The crows sitting on the garbage upon seeing the left-over immediately responded – “it appears that even today one discussion on starvation has been concluded”. The appraisal of a lay man, in relation to discussions and meetings conducted by intellectuals more or less resembles the above legend. Therefore to gain more confidence of the masses, what is required is to kindly unearth the harsh realities prevailing in the surrounding related to any issue, then investigate practical and handy solutions that will result in noticeable changes at grass root level. The problem related to environment is not a new one, the issue has been continuously terrifying the entire mankind from a long time. At this stage, it can be said that the humanity has realised its mistake up to an extent. Attempts are going on to reverse those mistakes, which is really a difficult task. The present article is an attempt towards the same. Here we are dealing with the position in India in relation to environment and promotion of sustainable development. India is a country which has a great spiritual heritage and a tradition not only of protecting nature and the environment but also of worshiping the bounties of nature. Expressing gratitude to Nature as the source of sustenance to human life has been one of our ancient traditions. Ganges, Godavari, Narmada, Krishna, Kaveri, Bramhaputra and many others are highly venerated rivers in India. In the midst of such traditions exploitation start taking place parallel to them. This article tries to focus on current scenario of environmental laws and promotion of sustainable development in India in relation to What Laws and Regulations are actually in Existence and What is the Reality when it Comes to Implementation of those Regulations.

Keywords-Environment, Sustainable Development, Exploitation, Regulation, Implementation.

Introduction.

After attaining independence, in the blind enthusiasm for development, we indulge in reckless exploitation of nature unmindful of the evil consequences for human life. At the time of drafting of the constitution we did not even think that the matter of environment should be an issue of law making. Still the constitution of India contain provisions whose interpretation led to the protection of environment, provisions under part-3 (Fundamental rights) are Art-21 along with Art-13,14,15,16,17,19 and Directive principles of state policy Art-47, 48, 48A, 51-A(g) provide the basic law of the land relating to environment. At present we have constitutional provisions, central and state government policies at national, state and local level, then we have formal legislations, laws, regulations, bylaws, and for filling any gap we have judicial pronouncements. It is also argued by experts that much of the environmental laws in India have been developed through judiciary. But when we come in the field of practical implication of these laws, the situation is much worse. We are facing numerous challenges, a lot of thing has to be done may be beyond laws.

The legality: The gradual development of environmental laws in India

The development of environmental laws in India can be classified under three stages.

During ancient ages

During colonial rule

After Independence

Laws relating to environment during ancient ages, can be found in “*Arthashastra*”, Rock edicts of Ashokan period. The core material relating to environment in “*Arthashastra*” are the forest policies and protection of wildlife. Penalties used to be imposed for cutting of trees, hurting or killing of certain animals was restricted. In the reign of “Ashoka”, much emphasis was laid on protection and conservation of nature and natural resources. The “Ashoka’s dhamma” that can be analyzed through various rock edicts, promote non-violence and mercy. There was prohibition of killing of animals, burning of forests.

The form of laws undergoes some modification during colonial era. A survey of earlier environmental legislation indicates the nature and level of governmental awareness to environmental issues. During the Colonial era, Indian Forests Act was passed in 1865. After this, the 1878 Act was a comprehensive piece of legislation, which provided for three classes of forests- reserved forests, protected forests, village forests. Apart from forest laws, nineteenth century legislation also partially regulated two other aspects: water pollution and wild li

The shore Nuisance (Bombay and Kolaba) Act of 1853 was one of the earliest laws concerning water pollution. Attempt was made to regulate pollution by imposing fines, in 1857. The Indian Penal Code, enacted in 1860 also imposed fines on people who voluntarily fouled the water of any public spring, reservoir. The North India Canal and Drainage Act was passed in 1873, to prevent damage to any stream or river. The Indian Fisheries Act passed in 1897 penalized the killing of fish by poisoning water and by using explosives. The Indian Ports Act was passed in 1908, to prohibit throwing of rubbish blast or oil or other things likely to form a bank or shoal detrimental to navigation. The earliest laws concerning air pollution were the Bengal Smoke Nuisance Act of 1905 and the Bombay Smoke Nuisance Act of 1912. The Indian Forest Act, 1927, was evolved during the pre-independence era but still remains in force. The Act consolidates the provisions of the Indian Forest Act of 1878 and its amending Acts.

Impact of international conferences and conventions in moulding our laws and promoting sustainable development

India has obligation under numerous international treaties and agreements that relate to environmental issues. As a contracting party, India must have ratified a treaty, that is, by adopting it as national law before it come into force, or by acceding to it after it has come into force. For a treaty to enter into force, the requisite number of countries must ratify the treaty, which then has force of international law.

The list of major treaty's obligation are:

U.N.conference on human environment at Stockholm 1972

Brutland commission of 1987(Brutland report)

U.N.conference on environment and development (Rio de Janeiro) 1992

Johannesburg summit 2002

U.N.conference on sustainable development 2012

The leading norms that the country accepts and proceeding their legislations in this regard are-First and foremost is the “principle-21” of the 1972 Stockholm declaration, which provides that states have sovereign right to exploit their own resources pursuant to their own environmental policies, with responsibility to ensure their activities within their jurisdiction. Another norm is the “precautionary principle”. Which is basically a duty to foresee and assess environmental risks, and to warn potential victims of such risks and to behave in ways that prevent or mitigate such risks. “Environmental impact assessment” is another widely accepted norm of international environmental law. Typically, such an assessment balances economic benefits with environmental costs. India has adopted this norm for select projects which are covered under the environmental impact assessment (EIA) regulations introduced in January 1994.

In the year 1982 the U.N. general assembly adopted the world charter for nature and principles of “sustainable development”. That was also acknowledged in the year 1987 by a report published by the United Nations World Commission on Environment and Development. The Supreme Court as well as Indian government have recognised the principle of sustainable development as a basis for balancing ecological imperatives with developmental goals. “Intergenerational equity” is among the newest norms of international environmental law. It can be best understood not so much as a principle, but rather as an argument in favour of sustainable economic development and natural resource use.

The reality: Position- regarding implementation and the judicial activism

These various environmental laws are under criticism because their implementation is inconsistent and haphazard. Many major industries like coal, petroleum, electricity, iron and steel, agro-chemicals and heavy machines are in the public sector. Pollution Control Boards have seldom prosecuted government nominees on the management boards of such public undertakings. The statistics show that the Central Water Pollution Control Board has achieved convictions of only 2.8% and only under the Air Act. Only in Tamil Nadu has the conviction rate been 60.8%. The other States have not secured any convictions. The critics say that *the risk of penalties is so low that it is more cost effective for industries to pollute than to invest in emission control measures.*

The Air, Water and Environment Acts are not comprehensive enough to cover in great detail the environmental impact of large projects like dams and marine life. Particularly in India, most of the environmental conflicts do not much concern pollution but rather relate to resource degradation including systematic problems of soil erosion, deforestation, declining water tables and the loss of flora and fauna and the consequent subsistence economies. Resorts to the remedies under environmental law are also inhibited by the provisions of Official Secrets Acts. The persons and parties adversely affected by industrial use of natural resources have no means of access to the information leading to the undertaking of developmental activities based on natural resources.

In environmental law, although great public interest is involved, there are few provisions for public participation. The citizens' groups have no role in setting statutory environmental standards. The “consent” granted under the Act to the industries to pollute are not published. There is no right of access and public inquiry into polluting activities. These are some of the issues which should be addressed by the legislature to allow more and more public participation in environmental issues which affect peoples' life to a great extent. These are some of the shortcomings of the present legislation on the environment. Therefore, more and more people and action groups approach the High Courts and Supreme Court with public interest litigations on environmental issues. So far the courts have responded positively and tried to balance the rights of the conflicting parties.

Criticism

There is sometimes criticism of the so-called inadequate role of the judiciary in public interest litigation. They say that "while judges undoubtedly try to understand a situation as fully as possible in many cases, they are often remote from the people whose lives are battered and ruined. This handicap of social distance is as real in this field as it is in many other areas of public policy." Yet the importance of the judicial route is acknowledged as "one of the important avenues to be pursued." Judicial activism has played a fruitful role in generating public awareness of, and media interest in, environmental problems and in giving due regard to environmental groups. The value of judicial involvement in environmental matters is great, but the nature of the problem calls for better solutions. Judicial activism on its own cannot ensure environmental protection. A more comprehensive approach is needed, which must also incorporate other ways of giving environmental problems the attention they deserve.

Nobel Prize Winner on Economics, Amartya Sen has the following suggestions to make:

When it comes to remedying the environmental dangers, it is necessary to consider the different means that can be used to address the problem adequately. There is, for example, some choice between the route of value formation and that of institutional reform. If people were to care spontaneously about the effects of their actions on the environment (and through that, about their effects on others), then the need for institutional reform would be, to that extent, reduced. On the other side, if institutions could be effectively reshaped (for example, through regulations prohibiting the discharge of effluents, or through "green taxes", or through appropriate changes in property rights), so that environmental effects are better reflected in private costs and benefits, then the necessity for value formation would, to that extent, decrease.

To prevent the poisoning of our water, the fouling of our air, and other calamities, we can get help both

From value formation that makes us more sensitive to this damage

From changed institutional arrangements that reduce private incentives to destroy the environment and provide contrary incentives to preserve it.

While value formation and institutional reform can, to some extent, be seen as alternative approaches to the environmental problem, there is an opportunity of drawing simultaneously on both, to pursue those changes that require a different outlook and norm as well as new institutions. Greater public awareness of these issues and more active public interest in seeking workable solutions can themselves help to advance the prospects of a solution.

THE CHALLENGES AHEAD

The challenges regarding the proper execution of environmental laws and promotion of sustainable development in India are innumerable. The most burning problem is the population explosion. At present the population of India is 1.31 Billion, where everybody need space, land, atmosphere, safe drinking water etc which are limited. And that led to other devastating consequences.

The issue of poverty is the major issue our country has been struggling with from a long time. Even today 21.9% of the population of this country lives under below poverty line. This give rise to inequality in the society, and other challenges start taking its shape like health problems etc. The consumption of energy is raising day by day and we are clearing forests for agriculture, for extracting more and more foods and space to live, which results in acute destruction of ecosystem. In this scenario when the present generation is struggling, for its own survival,

better living conditions and more comfort then How will they have enough time and resources to think and preserve environment for future generation.

CONCLUSION AND SUGGESTIONS

Environmental laws and notion of sustainable development should not be taken as contrary to the development. They should be taken as parallel to each other.

It appears difficult, but it is executable. We need transcendental laws; the provision of odd and even numbered vehicles on the road at alternate days by the government of Delhi is a praise-able attempt towards the same. More emphasis should be laid on input of efficient technology that is, use of LPG, CNG which are providing better results. The government should make arrangement for *Integrated rural development program*. The villages should be made self reliant, so that dependence on cities will decrease; centers for renewable sources of energy should be started at national and local level. Laws should be formulated to control “The tragedy of commons” that means, the trend of using easily available resources recklessly should be controlled. The government should provide subsidy to farmers engaged in organic farming so that the practice can be promoted. And the most important of all is that, a better environment can only be achieved by the support of all.

The notion of sustainable development should be taken as a way of thinking, as a way of life and present generation always bear in mind about the generation yet to born.

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