



Effectiveness of environmental law in India: An analytical study

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Abstract

This research paper is focused on the study of the effectiveness of environmental laws for environmental protection in India. The environmental awareness needs to be cultivated in any society to be an ideal society, or rather to be more precise, in other words, an ideal society means, and the society which has the environmental awareness. There is no dearth of legislation on environmental protection in India but their enforcement has not been satisfactory. There is a need for the effective and efficient enforcement of the Constitutional mandate and other environmental legislation. Although numerous legislative steps have been taken to give effect to the significant right of man to live in a sound environment and the corresponding duty on state and individuals to ensure environment preservation and conservation, our endeavor, in this study, is to analyze the environmental law in India. Pursuant to the Constitutional provisions contained in Articles 48A and 51A (h), many Public Interest Litigations have been instituted in the Supreme Court of India against many industries for failing to provide adequate pollution control. Forests are diminishing at an alarming rate, landmasses are getting eroded, the climate in different parts of the world is undergoing a change due to global warming and clean air and water are increasingly becoming rare commodities. Poor sanitation conditions and sewage problems compound the problem affecting the health of ordinary citizens in India. The reasons for these disconnections between enlightened environmental laws and high levels of pollution could be traced to lax enforcement of existing environmental laws, discrepancies in the environmental guidelines for businesses to follow between the central government and at the state levels.

Keywords: environment, environmental laws, and acts, environmental protection, awareness, public interest litigation, judiciary

Introduction

The need for protection and conservation of the environment and sustainable use of natural resources is reflected in the constitutional framework of India and also in the international commitments of India. An Environment is the wellspring of life on earth like water, air, soil, etc., and determines the presence, development, and improvement of humanity and all its activities. At the end of 2011, India's population reached 1.21 billion and its economy is growing at 8.5%, the fastest after China. Due to the population pressure, India pushes ahead with aggressive industrial development. Consequently, thousands of industrial clusters nationwide produce enormous amounts of untreated toxic waste that often end up in rivers, lakes, forests, and landfills^[1]. The concept of environmental protection and preservation is not new. It has been intrinsic to many ancient civilizations. Ancient India texts highlight that it is the dharma of each individual in the society to protect nature and the term 'nature' includes land, water, trees and animals which are of great importance to us. In the 'Atharva Veda', the ancient Hindu Scepters stated: "What of thee I dig outlet that quickly grows over"^[2]. The rapid economic growth experienced by India over the past decade and a half has come with some unwelcome consequences. The rapid industrialization and economic growth have resulted in unhealthy air and water pollution affecting infant mortality rates and life expectancy rates^[3]. India's efforts to regulate air and water pollution have resulted in only marginal improvements in infant mortality rates in the country. The

ineffectiveness of the regulations could be traced to poor institutional settings and lack of enforcement of the regulations. Consequently, thousands of industrial clusters nationwide produce enormous amounts of untreated toxic waste that often end up in rivers, lakes, forests, and landfills¹. Even though India has sufficient environmental laws, weak enforcement and the lack of funds and manpower are most often the stumbling blocks for the pollution control boards^[4]. The issues of environment are the effect of the human's activities that have no civic conscious and only think the profit without concern about the impact towards the environment and their future of life. The Government of India has established an environmental legal and institutional system to meet these challenges within the overall framework of India's development agenda and international principles and norms. In the Constitution of India, it is clearly stated that it is the duty of the state to 'protect and improve the environment and to safeguard the forests and wildlife of the country'^[5]. It imposes a duty on every citizen to protect and improve the natural environment including forests, lakes, rivers, and wildlife^[6]. Reference to the environment has also been made in the Directive Principles of State Policy as well as the Fundamental Rights. The Department of Environment was established in India in 1980 to ensure a healthy environment for the country.

The objective and methodology of the study

The main objective of this research paper is to identify the

present scenario and study the nature and extent of till date developments in various environmental statutes through various statutes, law, and convention. In the present paper, an attempt has been made to briefly outline the Indian laws which are primarily and more relevant to protect and improve the environment. The enforcement of these laws has also been examined and evaluated. This paper commences with the meaning and needs for environmental laws. It also analyzes the judicial remedies available for environmental protection and some remarkable principles and doctrine propounded by the Indian judiciary. The proposed study will lead to a more descriptive and comprehensive understanding of the environmental law and the policy along.

To meet the above objectives of the study, the required data have been collected from secondary sources, such as the internet, websites, and professional magazines, referred journals, newspapers and conference books and in addition to books on environmental law and reports published are also used.

Environment and Environmental law

The word "environment" relates to surroundings. It includes virtually everything. It can be defined as anything which may be treated as covering the physical surroundings that are common to all of us, including air, space, land, water, plants, and wildlife ^[7]. According to the Webster Dictionary, it is defined as the "Aggregate of all the external condition and influences affecting the life and development of an organism ^[8]. The Environment (Protection) Act, 1986 Section 2(a) environment "includes water, air and land and the interrelationship which exists among and between water, air and land, and human beings, other living creatures, plants, micro-organism and property ^[9]. Thus, after analyzing all the above definitions, the basic idea that can be concluded is that environment means the surroundings in which we live and is essential for our life

Environmental law is a combination of three things: the first is the statute that is passed by the parliament. The second is the list of regulations imposed by the Environmental Protection Agency in relation to that particular statute. And the third is the legal interpretation of these regulations by the Indian courts in the event of an environmental issue or problem.

Literature review

Literature review part of this research paper is to find out the research gap. Literature review takes into consideration the broader concept of sustainable development and enforcement of environmental law.

Veena Bamba *et al.*, (2012) ^[10], they focused on environmental awareness in present scenario due to unawareness among people towards nature because in present technical era environment is being depleted day by day, forests are diminishing at an alarming rate, landmasses are getting eroded, climate in different parts of the world is undergoing a change due to global warming and clean air and water are increasingly becoming rare commodities. So they focused awareness and alertness about environmental protection

Ussain S. Syed, Seshaiyah Sepuri and Viswanath Buddolla (2012) ^[11] they found and suggested that Hindu pilgrims

consider the waterways sacred since the religious texts hold that the Ganges purifies the bather of sins - merely catching the sight of Narmada is said to do the same. However, India's rivers are increasingly becoming the dump sites for domestic, industrial, and agricultural wastes. Polluted environment endangers the human race by threatening its survival on planet earth. Awareness of environmental laws in society plays a vital role in prevention and control of pollution in industrial as well as at community levels. Moreover, awareness is essential for the action.

Chandran M. Vijaya *et al.*, (2013) ^[12] introduced that Environmental Impact Assessment and Environmental Management Plan are widely used as tools of Environmental appraisal in project analysis and plays an effective role in supporting the sustainable development. Poor quality of data or information was the major bottleneck in improving and strengthening the EIA reports. The factors that determine the quality of EIA reports are legislation, quality of consultant groups and their expertise, scoping, the extent of land use change coverage of EIA reports, public response, and nature of projects.

Chandra Mahesh (2015) ^[13] they found that India undertakes a new approach in the fight against environmental pollution. The key element of this new initiative is the shared and cooperative participation of the people, the government, the industrial sector, and NGO's. This type of approach seems to have worked for a few countries and it appears to be a doable solution for India too. A series of steps are recommended that could lead to an improved environment and at the same time prove to be helpful for the Indian population. Furthermore, to reduce the growing MSW problem, it is recommended that India undertake proven waste to energy conversion techniques that have been adopted by the European Union.

Parikh Madhuri Dr. (2017) ^[14] she studied the Environmental Governance and the Role of Indian Supreme Court, with special a focus on the period from 1988 to 1996 in India. The study shows that the procedural innovations have widened the scope for environmental justice through recognition of citizens' right to healthy environment, entertaining petitions on behalf of affected people and inanimate objects and creative thinking of judges to arrive at a decision by making spot visit, substantive innovations have redefined the role of Court in the decision-making process through application of environmental principles and expanding the scope of environmental jurisprudence.

Constitutional and Legislative measures for environment protection

Stockholm Declaration of 1972 was the first major attempt to conserve and protect the human environment at the international level. As a consequence of this Declaration, the States were required to adopt legislative measures to protect and improve the environment. The need for protection and conservation of the environment and sustainable use of natural resources is reflected in the constitutional framework of India and also in the international commitments of India. The Constitution under Part IVA (Art 51A-Fundamental Duties) casts a duty on every citizen of India to protect and improve the natural environment including forests, lakes, rivers, and wildlife, and to have compassion for living creatures. Further,

the Constitution of India under Part IV (Art 48A-Directive Principles of State Policies) ^[15] stipulates that the State shall Endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country. India has an elaborate legal framework with over two hundred laws relating to environmental protection ^[16]. Ministry of Environment and Forests (MoEF) was established in 1985, which today is the apex administrative body in the country for regulating and ensuring environmental protection and lays down the legal and regulatory framework for the same. The MoEF and the pollution control boards ("CPCB", i.e., Central Pollution Control Board and "SPCBs", i.e., State Pollution Control Boards) together form the regulatory and administrative core of the sector. These important environment legislations have been briefly explained in the succeeding paragraphs:-

a. The water (Prevention and Control of Pollution) Act, 1974

The Water Prevention and Control of Pollution Act, 1974 (the "Water Act") has been enacted to provide for the prevention and control of water pollution and to maintain or restore wholesomeness of water in the country. It further provides for the establishment of Boards for the prevention and control of water pollution with a view to carrying out the aforesaid purposes.

b. The Air (Prevention and Control of pollution) Act, 1981

The Air (Prevention and Control of Pollution) Act, 1981 (the "Air Act") is an act to provide for the prevention, control, and abatement of air pollution and for the establishment of Boards at the Central and State levels with a view to carrying out the aforesaid purposes.

c. The environment protection act, 1986

The Environment Protection Act, 1986 (the "Environment Act") provides for the protection and improvement of the environment. The Environment Protection Act establishes the framework for studying, planning and implementing long-term requirements of environmental safety and laying down a system of speedy and adequate response to situations threatening the environment.

d. The national green tribunal Act, 2010

The National Green Tribunal Act, 2010 (No. 19 of 2010) (NGT Act) has been enacted with the objectives to provide for the establishment of a National Green Tribunal (NGT) for the effective and expeditious disposal of cases relating to environmental protection and conservation of forests.

e. Hazardous wastes management regulations

There are several legislations that directly or indirectly deal with hazardous waste management. The relevant legislation is the Factories Act, 1948, the Public Liability Insurance Act, 1991, the National Environment Tribunal Act, 1995, and rules and notifications under the Environmental Act. Some of the rules dealing with hazardous waste management are discussed below:

- Hazardous wastes (Management, Handling and

Transboundary) Rules, 2008, brought out a guide for manufacture, storage and import of hazardous chemicals and for management of hazardous wastes.

- Biomedical Waste (Management and Handling) Rules, 1998, were formulated along parallel lines, for proper disposal, segregation, transport, etc, of infectious wastes.
- Municipal Solid Wastes (Management and Handling) Rules, 2000, aimed at enabling municipalities to dispose of municipal solid waste in a scientific manner.
- Batteries (Management & Handling) Rules, 2001, deal with the proper and effective management and handling of lead-acid batteries waste. The Act applies to all manufacturers, assemblers, re-conditioners, importers, dealers, auctioneers, and bulk consumers, consumers, involved in the manufacture, processing, sale, and purchase of this products.
- E-Waste (Management and Handling) Rules, 2011 have been notified on May 1, 2011, and came into effect from May 1, 2012, with the primary objective to reduce the use of hazardous substances in electrical and electronic equipment by specifying the threshold for use of the hazardous material.

f. Other laws relating to environment

In addition, there are many other laws relating to the environment, namely:-

1. **The Indian forest act, 1927:** Consolidates the law relating to forests, the transit of forest-produce and the duty leviable on timber and other forest produce.
2. **The wildlife protection act, 1972:** The Wild Life (Protection) Act, 1972 was enacted with the objective of effectively protecting the wildlife of this country and to control poaching, smuggling and illegal trade in wildlife and its derivatives.
3. **The forest conservation act, 1980:** The Forest Conservation Act, 1980 was enacted to help conserve the country's forests. It strictly restricts and regulates the de-reservation of forests or use of forest land for non-forest purposes without the prior approval of Central Government.
4. **The Scheduled tribes and other traditional forest dwellers (Recognition of forest rights) act, 2006:** Recognizes the rights of forest-dwelling Scheduled Tribes and other traditional forest dwellers over the forest areas inhabited by them and provides a framework for according the same.
5. **Public liability insurance act, 1991:** The Public Liability Insurance Act, 1991 was enacted with the objectives to provide for damages to victims of an accident which occurs as a result of handling any hazardous substance. The Act applies to all owners associated with the production or handling of any hazardous chemicals.
6. **The biological diversity act, 2002:** The Biological Diversity Act 2002 was born out of India's attempt to realize the objectives enshrined in the United Nations Convention on Biological Diversity (CBD), 1992 which recognizes the sovereign rights of states to use their own Biological Resources.
7. **Coastal regulation zone notification, 2011:** The Ministry of Environment and Forests had issued the

Coastal Regulation Zone Notification vide Notification no. S O. 19(E), dated January 06, 2011 with an objective to ensure livelihood security to the fishing communities.

The effectiveness of the environmental laws & regulations in India

The Clean Development Mechanism projects in India has been introduced and as on 4 January 2016, 1593 out of a total of 7685 projects registered by the CDM executive board are from India, which so far is the second highest in the world with China taking the lead with 3764 projects registered. These projects are in the energy efficiency and having Certified Emission Reductions (CERs), fuel switching, industrial processes, and municipal solid waste, renewable energy and forestry sectors and are spread across the country. Earlier the Kyoto Protocol of 1997 signed by 37 industrialized countries and the European Union, the goal for 2008-2012 was to reduce the Green House Gases (GHGs) emissions to 5.2% lower than the 1990 level. India, as the third largest producer of GHGs, is facing tremendous pressures from the international community to meet these targets. India's extensive environmental laws seem to have very little effect in reducing the harmful effects of pollution, and GHG emissions.

- The Government of India is reluctant to enforce its own laws on air and water pollution lest it stops developmental projects that help create jobs and improve the economy^[17].
- Although many of the environmental regulations in India on air and water pollution are similar to those of the existing standards of other industrialized countries, the lack of its enforcement has upset the global business community as it seems to provide Indian businesses an important cost advantage^[18].
- In a similar vein, environmental activist Rama Kumar states that enforcement of current laws is patchy and uneven. Effective control has been inconsistent, especially among smaller companies. For example, in Rajasthan industrial effluent discharge into the Bandi river bed seems to be the main source of contamination of groundwater in the area resulting in the degradation of other natural resources such as land, soil, and vegetation creating problems of salinity and sodicity in soils that have resulted in declines in herbal biomass^[19].
- Small businesses are more likely to have out-of-date processes, and curtailing emissions is more costly in comparison with fine-tuning the newer technologies employed by global players. Stringent enforcement of environmental regulations might put these companies out of business creating mass unemployment, something the government of India wants to avoid;
- Corporations are now in a position to identify and estimate the environmental costs, benefits, investments, assets and liabilities into mainstream accounting and reporting practices, for a variety of managerial decisions. These in return have sharpened and improved the global reporting standards on environmental issues. In India, large companies have yet to incorporate these techniques into mainstream reporting^[20].

The above discussion sums up the problems faced by the Indian government in for effective enforcement of current

environmental laws and safeguarding the health of its people.

Legal remedies for environmental pollution and landmark cases

The remedies available in India for environmental protection comprise of tortuous as well as statutory law remedies. A writ petition can be filed under Article 32 in the Supreme Court of India or under Article 226 in the High Court. The Indian judiciary has developed the following tortuous remedies:

1. The rule enunciated in *Rylands v. Fletcher by Blackburn J.* (1868)^[21] is that the person who for his own purpose brings on his land and collects and keeps there anything likely to be a mischief, if it escapes, must keep it as its peril, and if he does not do so is prima facie even though, he will be answerable for all the damage which is the natural consequence of its escape. The doctrine of strict liability has considerable utility in environmental pollution cases especially cases dealing with the harm caused by the leakage of hazardous substances.
2. In the case of *M.C. Mehta vs. Union of India (1987)*^[22] *Shriram Gas Leak*, involving a leakage of Oleum gas which resulted in substantial environmental harm to the citizens of Delhi, the Apex court held that the quantum of damages awarded must be proportionate to the capacity and magnitude of the polluter to pay. However, the Apex Court has deviated from this test in the Bhopal Gas Tragedy.
3. The Bhopal Case: *Union Carbide Corporation v. Union Of India (1990)*^[23] In this case, the court held that, where an enterprise is occupied with an inherently dangerous or a hazardous activity and harm results to anybody by virtue of a mishap in the operation of such dangerous or naturally unsafe movement coming about, for instance, in getaway of poisonous gas, the enterprise is strictly and completely obligated to repay every one of the individuals who are influenced by the accident and such risk is not subject to any exemptions. Accordingly, Supreme Court created another trend of Absolute Liability without any exemption.
4. *Vellore Citizen's Welfare Forum v. Union of India (1996)*^[24]. The Supreme Court has declared that the polluter pays principle is an essential feature of the sustainable development.
5. *M.C. Mehta v. Kamal Nath and Others (1997)*^[25]. The Public Trust Doctrine primarily rests on the principle that certain resources like air, water, sea and the forests have such a great importance to people as a whole that it would be wholly unjustified to make them a subject of private ownership.
6. In *Almitra H. Patel v. Union of India, (1998)*^[26], the Supreme Court reiterated the observations made in Wadehra's case-Historic city of Delhi, the Capital of India, is one of the most polluted cities in the world. The authorities, responsible for pollution control and environmental protection have not been able to provide the clean and healthy environment.

Recommendations

Thus, after the analysis of above cases, we find that the

Supreme Court is, at the present time, stretching the different legal provisions for environmental protection. We have more than 200 Central and State legislation which deals with environmental issues. More legislation means more difficulties in enforcement. In order to effectively enforce the environmental laws stringently, mere miss-description and technical flaws should be disregarded by the Courts. The creative role of the judiciary has been significant and laudable. The jurisdiction of the Courts has been expanded by way of Public Interest Litigation in India, environmental statutes though impressive in range and coverage are more often observed in the breach than practice. The effectiveness of Environmental law, being a highly specialized area of implementation, entrusted to different agencies under different laws, presents a none-too-happy-a picture. Lack or inadequacy of skill; less than satisfactory infrastructural facilities; poor and unimaginative understanding of the law; jurisdictional conflicts and lack of coordination, among different agencies of implementation, appear to contribute to the poor and ineffective implementation of the laws. The Supreme Court of India has played a vital role in giving directions from time to time to the administrative authorities to take necessary steps for improving the environment Ability of some of the more resourceful industries in either camouflaging their violations and non-compliance and in exerting undue pressure on the enforcement agencies, also has contributed to the inefficiency of the enforcement apparatus^[27]. There is a need to have a comprehensive and an integrated law on environmental protection for meaningful enforcement and separate environmental courts^[28]. The deterrent theory of punishment employed under strict and absolute liability principle has achieved some degree of success.

Conclusion

There are no means for any law unless it's an effective and successful implementation, and for effective implementation, public awareness is a crucial condition. Therefore, it is essential that there ought to be proper awareness. In this way, the judiciary tries to fill in the gaps where there is slackness of the legislation. These new innovations and developments in India by the judicial activism open the numerous approaches to help the country. The key element of this new initiative is the shared and cooperative participation of the people, the government, the industrial sector, and NGO's. This type of approach seems to have worked for a few countries and it appears to be a doable solution for India too. The Public Liability Insurance Act, 1991 which provides for mandatory public liability insurance for installation and handling hazardous substance to provide minimum relief to the victims, is a welcome step in the right direction. In India, media is the fourth pillar of the popular government. It plays an exceptionally essential and compelling part in the general improvement of the country. Economic activity should not be guided by 'profit motive' alone, but should also include "quality of life" and "ecological balance". The key to sustainable growth, therefore, is not to provide less but to provide efficiently with the help of environmental management system. The right of life is guaranteed as fundamental right under article 21. In order to live a healthy life it is of utmost importance that our environment and

surroundings be pollution free and clean. To effectively disposal of the environmental case there is also an urgent need to strengthen the hands of the judiciary by making separate environmental courts, with a professional judge to manage the environment cases/criminal acts so that the judiciary can perform its part more viable.

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