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Environmental Issues And Laws In India: An Overview

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Abstract: The post-colonial India faced with the problems of safeguarding its environment. While doing so, it framed laws regarding environment protection in many stages. The economic development policy adopted by India after independence was through different five year the plans. The acceleration of the process of economic development through industrialization further added to the deterioration of the environment in the form of disposal of industrial wastes and mining of resources for industries. The Environment Protection Act of 1986 provided a definite direction for maintaining a complementary relationship among land, water, air and human beings. The two fold spatial spreads of the environmental laws in India are governed by the union and the states. The monopoly houses of India who holds large manufacturing industries quite often avoid implementation of the guidelines provided by the environment protection acts of India because it requires investment of capital in constructing the waste material disposal plants., etc. in the early nineties, the government of India both at union and state levels emphasised the need to involve people in several ways to protect environment from degradation. At present there are about two hundred central and state legislations in India which are directly or indirectly concerned with environmental protection. The present paper deals with the issue of environmental laws, Environmental Protection Act, the water Prevention and Control of Pollution Act, air prevention and control of pollution, and case studies of air, water and mining pollution. For the purpose of efficient and effective enforcement of these laws, it is necessary to set up an Adjudatory Body which should consist of legal as well as technical experts. Caring for regulating and protecting the environment is essentially a desire to see that national development should proceed along the rational sustainable laws.

Index Terms - environmental issues, laws, air pollution, water pollution, mining.

I. INTRODUCTION

When India come to the colonial yoke in 1947, it had the legacy of the colonial empire where the vast majority of population was poor and illiterate and the density of communication network was at its lowest and the environment was left to nature. There was no environmental law in operation. The metropolitan economy was preoccupied with export of raw materials with carrying for its impact on the environment. It was in 1853 in a rudimentary form, that an act was passed on "the sea shore" known as Shore Nuisance Act (Bombay and Coloba). Historically, the colonial legacy continued through India becomes sovereign democratic republic with a constitution on 26th January, 1950 (Bakshi 27).

II. THE INDIAN ENVIRONMENT

In India the potential sources of environmental pollution are found in the industries related to energy, chemical, additive, fertilizer. Synthetic fibre, metallurgy, ceramic pharmaceutical sulphuric and nitric acid and mineral production, besides domestic consumption of low-grade fuels, use of automobiles and throwing of garbage and solid wastes.

The transport carrier, traveling through cities and towns, emitting back smoke from the diesel and petrol engines, is a common sight in India. The increased use of auto-rickshaws, buses and trucks carrying an increased air pollution potential has a direct bearing on the health of the urban pollution. In the last three decades the urban pollution in India has nearly doubled from 109.5 million in 1971 to 217 million in 1991. It may increase further to 325 million by the turn of the century. With the steadily increasing urbanization, the total number of vehicles in India has increased from about 11 million in 1986 to more than 21 million in 1991. About one fifth of the vehicular population in India is concentrated in the major metropolitan cities. Nearly 84 percent of the vehicular population are two and three- wheelers which are mostly two or four- stroke engine driven and only 8 percent of the total are diesel driven vehicles. Evidently, two-wheelers are becoming the most popular mode of vehicular transport. In India the number of two-wheelers has been growing at the rate of about 20% a year and it is estimated that their number will be around 36 million by the turn of the century as against 7 million in 1987. It is expected that passenger cars and diesel vehicles will double by that time. The two and three-wheelers are likely to constitute 80% of the vehicles by the end of this decade and most of them will operate in urban and semi-urban areas. The consumption of petrol and diesel by the road transport sector has increased from 105 and 7.2 million tonnes, which is approximately 1 percent of the world's fuel consumption. To reduce the pollution rate of the environment, the state has enacted several laws known as Environmental Laws of India.

III. ENVIRONMENTAL LAWS

There are about hundred central a state legislation in India which are directly or indirectly concerned with environmental protection. It began with the Shore of Nuisance Act, 1853 (Bombay and Colaba) and the Environmental Protection Act, 1986. Before 1974 the only law available to the Indian citizens against pollution of any nature was the criminal procedure code, civil procedure code and the Indian Penal Code. Besides these, any other regulatory or preventive enactment on environment pollution was hard to find. It was during the year 1974 that a Water (Prevention and Control of Pollution) Act was enacted. Later in 1977 and 1978 the Water (Prevention and Control of Pollution) Act and Air (Prevention and Control of Pollution) act were respectively. Formalized the legislations were only punitive in nature. The demarcation of power of various authorities was never delineated under the acts (Bakshi 68).

The Environmental (Protection) Act 1986 was the first comprehensive legislation framed by the Government of India to control Environmental Pollution. The Indian Parliament passed a few Acts on environment pollution. These are:

- (i) The Environmental Protection Act, 1986
- (ii) The Water Prevention and Control of Pollution Act, 1974
- (iii) The Water (Prevention and Control of Pollution) Act, 1977
- (iv) The Air Prevention and Control of Pollution Act, 1981

IV. THE CONSTITUTION AND ENVIRONMENT

The environmental laws of India leave many gaps unfulfilled. It allows for community action against companies responsible for polluting the environment. Before filing a suit against an arising industrial unit, a 60 days' notice is required to be given to the state pollution board. This opens a soft – option for implementation. It depends on the people's awareness of the environmental protection laws. Even if with the little awareness the people put up complaint to the Board, the Board officials often ignore it. The Factories Act made it mandatory for every hazardous unit to produce a detailed disaster management plan but it was kept secret in the name of "Official Secrets Act".

The constitution of India in its Article 47 makes an indirect reference to the subject of environment which reads thus: "The State shall regard the raising of the level of nutrition and the standard of its people and improvement of public health among its primary duties." Even in the state list of entry 6, there is a Article 48, which is the forty second Amendment Act 1976 (A), and added in the chapter of State Policy, states, "The State shall endeavour to protect and improve the environment and to safeguard the forest and wildlife of the country." Article 51 A (g) of the constitution, introduced by the 42nd Amendment, lays down the following: "It shall be the duty of every citizen of India to protect and improve the natural environment including forest, lakes, rivers and wildlife and to have compassion for living creatures."

V. CASE STUDIES

Air Pollution

The first judgement of the Supreme Court on the subject of environmental pollution (Air Pollution) was delivered in *Govin Singh V Shanti Sarup*. The nuisance was caused by the chimney of an oven which was in existence for the past 16 or 17 years. The Sub-Divisional Magistrate, Khanna ordered the removal of the chimney of an oven constructed by the baker as the same was injurious to the health and physical comfort of the bakery. The Supreme Court upheld the order of the magistrate to preserve and protect the environment in the interest of health, safety and convenience of the public at large.

In the midnight on December 3, 1984, forty tonnes of highly toxic methyl isocyanate (MIC) which had been manufactured and stored in the Union Carbide's chemical plant in Bhopal, escaped into the atmosphere and killed over 3500 people at once. As many as 20,000 persons were injured, many seriously and some permanently. The human tragedy was immense, families and communities disrupted, disabled, dislocated.

The parliament of India enacted the Bhopal Gas Leak Disaster (Processing of Claims) Act, in March, 1985. In April 1986 the Indian Government sued Union Carbide in the United States. The American Court declined to try the Bhopal Lawsuit, mentioning that India was the more appropriate forum. In September 1986, Indian Government sued Union Carbide in the court of the district judge, Bhopal for Rs.3900crores (US \$ 3 billion) in damages. The matter was brought to the five-judge Supreme Court Bench in December 1988. On February 1989, the Supreme Court induced the Indian Government and Union Carbide to accept its suggestions for an overall settlement of the claims arising from the Bhopal Disaster. The entire amount had to be paid by March 31, 1989 (Shrivastava 32).

Water Pollution

On the bank of river Ganga there were about 74 tanneries which discharged their trade effluents, at first into the municipal sewage and then the waste water joined the river Ganga. A public interest litigation under Article 32 of the constitution of India was filed in the court. It was appealed to the court to restrict the tanneries from discharging their trade effluents into Ganga till such time as they put up necessary treatment plants for treating the effluents. On behalf of the owners of the tanneries, it was urged that they would not be able to meet the enormous expenditure on the treatment plant. The court rejected the argument of the tannery owners and held that's no tannery could be allowed to continue unless it makes provisions for the treatment of its trade effluents. The court in its order further made the treatment plant a part and parcel of the tannery establishment. The tanneries which could not fulfil the minimum need required for treatment of trade effluents were ordered by the court to be closed down. Out of 74 tanneries, 37 neither bothered to respond to the notice issued by the court nor displayed willingness to take appropriate steps for the treatment of trade effluents.

Mining

Mining activity is a source of environmental pollution. Such operation requires clearing of the dense lush green forest. It affects the flow of the streams, disturbs the natural quiet and also the soil and the habitat of wild animals and birds and affects the mountain ranges. Further, the removal of important minerals affects adversely the self-purifying capacity of rivers. These are some of the many effects of the mining activities on the environment. At the same time, quarrying of the minerals and other deposits is an impregnate ingredient in the development process. If the valuable deposits are not quarried, the

country will have to import them from outside, thus, involving a huge amount of foreign exchange, which is a difficult proportion and thus the mining activities are required. The above scenario raises the complex and difficult question of balancing ecology with development. This difficulty is faced by the government when the Department of Environment, Forest and Wildlife vetoed 32 out of 59 mining projects.

A Prologue

Environmentalists all over the country must be grateful to the Supreme Court of India for having directed the Union and State Governments and the University Grant Commission to create environmental awareness among the public and the students. Although the fourth estate has contributed a great deal in highlighting some of the crucial problems of environment, the Government on its part, has not done enough. Mere conditional clearance by the expert committees and pollution control boards cannot ensure safety of the environment. Only environmental awareness among the people can make them put up a united fight to protect their own health and environment.

Environmental laws deal with the distribution of natural resources of the country, such as land, water, forest, minerals and metals. India has a plethora of environmental laws but these have not been able to provide protection to the country's environment efficiently.

Until quite recently the function of law was viewed to be a function of social control. i.e. trying to regulate the human behaviour in general. The social complexities arising out of the technological revolution and the problems of transforming of traditional social structure in developing countries should make law an instrument of social change also. The function of law, therefore, is not only to preserve existing social values and interpret them so as to adjust them suitably to slow and gradual change but also to create new values so that the latter new values are implemented at quicker pace. Friedman had rightly pointed out that it would be tragic if the laws are unable to respond to the changing conditions. The developing societies are going through a transformation through legislative enactments. India is also bringing about socio-economic changes through the instrument of law. If the law schools are to play an important role in modern India, they have to orient themselves in such a way that legal education satisfies the changing, socio-politico-economic needs of the society. In consequence of rapid industrialization and urbanization, the environmental pollution is spreading fast and posing a serious danger to the survival of the living species throughout the world. The ignorance of the pollution hazards has made the human survival a difficult one. This can be minimised by educating the society in protecting and controlling environmental pollution.

However, educators, and overall society keeping in mind the holistic nature of problem as well as the interrelations of the individual issues that go to form it, set their sight on the attainment of the goals of environmental education i.e. i.e. awareness, attitude, skills, motivation, commitment and ethical responsibility, they will be well on the path to the formation of environmentally responsible citizen tomorrow.

The problem of poverty, hunger and mal-nutrition are rampant in under-developed countries, where the population increases at rates higher than economic development. On the other hand, developed capitalist countries are more busy in resource exploitation and industrialization, subsequently resulting in pollution.

However, what is needed in the administration of environmental justice today is the presence of such dedicated lawyers and social workers, who can withstand powerful pressure of the capitalist and save India's environment from further degradation.

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