

## EFFECTIVE IMPLEMENTATION OF ENVIRONMENTAL LEGISLATIONS IN INDIA: THE NEED OF THIS HOUR

MS. ANANYA BIBAVE

Assistant Professor,  
Modern Law College, Pune

### INTRODUCTION

India is said to be a one of the countries in the world having the most environmental legislations. However, when the question of its implementations comes into picture, there is a different scenario altogether. With various issues ranging from population, illiteracy, bureaucracy, insufficiency of qualified officials, corruption, unavailability of funds, industrial development to the most recent change in political leadership of the country, all are partially responsible for the ineffective implementation of the environmental legislations.

### CONSTITUTIONAL PROVISIONS

The Constitution of India is the basic law of the land and all the laws applicable in India should pass the test of Constitutionalism. Indian Constitution fortunately is one of the few Constitutions in the world which contains the provisions of environment protection incorporated in it. The preamble of our Constitution provides that the country follows '*Socialistic*' pattern which means that the state gives more importance to social issues than individual interest. As Environment protection is a social issue it can be dealt with by the State. The Parliament of India is empowered to pass legislations for implementing any treaty, agreement or convention with any other country or any decision made in any International conference or association or body. The 42<sup>nd</sup> Constitutional Amendment has been the most significant one in respect of Environmental Law as for the first time the not only the State but also the citizens have been imposed of certain duties in relation to environment protection. The 42<sup>nd</sup> Amendment of the Constitution<sup>1</sup> added a new part IV-A in the Constitution which consists of ten fundamental duties, out of which Article 51-A (g)<sup>2</sup> and Article 51-A (j)<sup>3</sup> are pertinent to environment protection.

The Part IV of the Constitution deals with the Directive Principles of the State Policy. Article 47 provides that the State shall regard raising of the level of nutrition and the standard of living of its people and the improvement of public health among its prima facie duties. Although not directly, but indirectly this article concerns environment protection. Article 48-A which was inserted vide the 42<sup>nd</sup> Amendment of the Constitution provides that The State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country.

Fundamental Rights which are in Part III of the Constitution also have three articles which have an impact on the environment protection mechanism in India. Article 14 which speaks about right to equality as absence of arbitrariness<sup>4</sup> can be used for controlling arbitrary decisions of the authorities which hamper the environment. Article 19 (1) (a) guarantees every citizen a fundamental freedom of speech and expression. Public Interest Litigations (PILs) in which people exercised their freedom of speech and expression enshrined under article 19 (1) (a). Article 19 (1) (g) guarantees all the citizens the right to practice any profession, or to carry on any occupation, trade or business.<sup>5</sup> However, this right is subject to reasonable restrictions.<sup>6</sup> In *Abhilash Textile v. Rajkot Minicipal Corporation*<sup>7</sup> the court held that one cannot carry on business by which the business activity becomes a health hazard to the

entire society. The apex court considered the protection and improvement of the natural environment as a matter of general public interest and employed this tool in putting reasonable restrictions on the citizen's right to carry on trade or business. Thus, Indian judiciary has played a significant role in shaping the freedoms while taking into consideration the reasonable restrictions. There have been various decisions giving primacy to the principle of sustainable development. Article 21 which provides that no person shall be deprived of his life and personal liberty except according to procedure established by law has been interpreted to have various aspects of life. Environment protection has sought its greatest connection in the Part III with Article 21. There have been multiple facets in which this article has been interpreted for the protection of environment. Article 21 guarantees a right to life – life which is of dignity, which cannot be possible without living in a proper environment, one which is free from danger of disease and infection. Nobody can deny the fact that there is a very close nexus between life and a healthy environment. There would be no meaning to the right to life if there is no healthy environment. Yet another expansion in the scope and the amplitude is the interpretation of right to livelihood as a part and parcel of right to life under Article 21. It has been accepted by the courts that there cannot be a life with dignity without the right to earn a livelihood because if there is no source of livelihood then there is hardly any possibility of having a life with dignity. The Court has taken into consideration this broader interpretation of the right to life which has an impact on the environment and which threatens poor people of their livelihood by dislocating them or by depriving them their right to livelihood.<sup>8</sup>

In this way the provisions of the Constitution make way to the legislations for protection of environment.

### **ENVIRONMENTAL LEGISLATIONS IN INDIA**

There are pre – independence as well as post – independence legislations which deal with environment. However, there has been a paradigm shift in the approach of the legislators in relation to the environmental Law after the 42<sup>nd</sup> Amendment of the Constitution and there has been an overabundance of legislations drafted for the protection of environment after the Stockholm Conference. If we have to divide the legislations on the basis of their need and evolution then there is only one legislation viz. the Indian Forests Act, 1927 which stands apart from plethora of legislations in relation to environment after the 42<sup>nd</sup> Amendment of the Constitution. There has been a constructive legislative input in the environmental arena only after the Stockholm Conference due to the impact of it in the international fraternity.

- **The Indian Forests Act, 1927**

This Act is a long legislation with more than 85 sections divided into thirteen chapters. There are three types of forests categorized by the Act; Reserved Forests, Village Forests and Protected Forests. The crux of the Act is to establish governmental authority on the forests and forest produce. The nature and amount of control of the Government differs on the abovementioned categories of forests making the three categorizations.

Under this legislation, to give effect to the provisions of this Act, a hierarchy of authorities were established including forest officers, etc. These authorities are functioning even till date. Also the initial work which was entrusted to them, of having control on the activities in the three types of forests has increased manifold as the same authorities are now parallel entrusted with the duties under the Wildlife Protection Act.

- **The Wildlife Protection Act, 1972**

This Act contains provisions relating to the protection of wild animals, birds and plants and matters connected with them. The view behind this law is to ensure ecological and environmental security of the country. The plant and animal variety in India is one of the richest in the world and the rapid decline in this number became an area of serious concern due to which this enactment was enacted. There are provisions relating to declaration of protected areas like 'Sanctuary', 'National Park' and 'Conservation Reserve'. Various limitations on the entrance, usage and restrictions on doing certain acts have been imposed in these protected areas. There has even been a Central Zoo Authority created for the recognition of Zoos and other incidental and ancillary functions.

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

This is an Act to provide for the prevention and control of water pollution and the maintaining or restoring of the wholesomeness of water. The Act also establishes Boards at the Central Level as well as the State Levels for carrying out the purposes of this Act, viz. prevention and control of water pollution. For the first time in the history of environmental legislations a separate Board at the central as well as the state levels have been created under this Act. Primarily the objective of these boards is to only control over the water pollution, however subsequently there have been numerous other responsibilities entrusted upon these Boards.

- **The Forest Conservation Act, 1980**

This legislation aims to provide for the conservation of forests and prescribes for penalties for non-compliance of its provisions. Thus, in the area of forest with reference to environmental protection, it is this legislation which can be said to provide for the answer. There is a restriction on de-reservation of forests or use of forest land for non- forest purpose. This legislation is an addition to the Indian Forest Act, 1927.

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

Due to the increase in industrialization which is being congregated in the existing industrial belts, the problems of air pollution are being felt in our country. The air pollution is directly proportional to the industrialization and urbanization of any area. Larger cities are being hit by the menace of air pollution every day. This Act has come into existence to control this menace. As stated earlier, the Central Pollution Control Board and the State Pollution control Boards established under the Water (Prevention and Control of Pollution) Act, 1974 are the same. In fact the powers and functions of those boards have been enhanced to deal with air pollution as well. The primary function of the Boards is to improve the quality of the air and to prevent, control or abate air pollution. However in addition to this, advice, educate, resolve disputes, provide technical assistance and establish standards of air quality and also to devise measures for the effective prevention and control of air pollution are also the functions of the boards. Collection and dissemination of information relating to air pollution is also a very important function of the State Boards. Another important function of the State Board is to lay down standards of emission of air pollutants into the atmosphere from industrial plants and automobiles or for the discharge of any air pollutant into the atmosphere from any other source<sup>9</sup>.

- **The Environment Protection Act, 1986**

This Act has come into existence for the protection of environment and for matters connected with it. In consonance with the decisions taken in the Stockholm Conference and the Declaration

which imposes an obligation to take appropriate steps for the protection and improvement of human environment to which India was a signatory the Act has been enacted. There is a need to implement the decisions relating to the protection and improvement of the environment and to prevent the hazards of environment pollution and degradation affecting human beings, other living creatures, plants and property. Although there were existing laws which were dealing directly or indirectly with environmental issues, a need was felt for the general legislation for the protection of the environment. This work of bridging the gap and filling the loopholes present within the existing laws has been accomplished by this Act. This law covers those areas which were not covered in any specific legislation. This is a blanket enactment which covers all the areas of environmental pollution. Matters relating with industrial and environmental safety have not been covered under any of the previous legislations. Thus, for the coordination of activities of various regulatory agencies, creation of authorities with adequate powers wherever required for the protection of environment, this law has come into force.

### **IMPLEMENTATION AUTHORITIES**

Thus, broadly speaking there are two types of authorities created under all the above legislations. Firstly, the authorities for the protection of forest and wildlife and secondly, the authorities for controlling pollution, i.e. air pollution, water pollution, industrial pollution, pollution by hazardous substances, etc. Looking at the work these authorities have to perform, we can categorize them into positive implementing authorities and controlling authorities. The forest related authorities can fit into the first category while the Pollution Control Boards at the Central as well as the State levels can be treated as the controlling authorities.

### **PROBLEMS IN IMPLEMENTATION OF ENVIRONMENTAL LAWS**

Environment is a very broad area which includes practically everything around us. There are various aspects in which everything around us requires attention, so that it can be used sustainably. However, to control the activity of each and every human and to check whether it is detrimental to the environment will require an enormous work force. Such a work force cannot be available in a country like India. The driving force of every country is its economy, and for the growth and development of the economy there is a requirement of all the raw materials from the environment. There is also a requirement to pollute the atmosphere as without pollution there cannot be any industries working. Therefore a balance needs to be struck down so that there is sustainable development in every country. Poverty plays a very important role in shaping the environmental goal of any country. Corruption also plays a very significant role to control pollution and also to protect the natural environment.

The sheer scope and ambit of the environmental legislations can give us a very fair idea that the implementation of them will require a very large work force, but currently the existing implementation authorities are only over burdened with new responsibilities day in and day out.

### **CONCLUSION**

If an effective and workable solution can be drawn from the current situation, then the only way out is by imposing self-restrictions on ourselves for the benefit of the society at large. Internalization of the problem of environment pollution and its impact on the current and future generations needs to be done by every individual. There can be no implementation better than self-implementation. Of course this can take place only at the individual levels. At the industrial level there will always be

a need of implementation authorities as there is always an inverse proportion in development and environment protection and the industries would never like to work in a loss.

Also, there is a need of increasing the existing authorities by bifurcating the work entrusted to each of them so that everyone will be actually able to complete the tasks in their hands.

### (Endnotes)

- 1 The Constitution 42<sup>nd</sup> Amendment Act, 1976
- 2 It shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for all living creatures.
- 3 It shall be the duty of every citizen of India to strive towards excellence in all spheres of individual and collective activity, so that the nation constantly rises to higher levels of endeavour and achievements.
- 4 *Ajay Hasia v. Khalid Mujib* AIR 1981 SC 487
- 5 Article 19: Protection of certain rights regarding freedom of speech, etc. – (1) All citizens shall have a right: (g) to practice any profession, or to carry on any occupation, trade or business.
- 6 Article 19 (6): Nothing in sub-clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause, and, in particular, nothing in the said sub-clause shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to,- (i) the professional or technical qualifications necessary for practicing any profession, or carrying any occupation, trade or business, or (ii) the carrying on by the State or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise.
- 7 AIR 1988 Guj. 57.
- 8 *State of H.P. v. Umed Ram* AIR 1986 Ker. 1
- 9 Section 17 (g) of The Air (Prevention and Control of Pollution) Act, 1981