

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

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Introduction

For the Government to function properly, there is a need to have perfect harmonization of its organs. In India, we follow the Democratic form of Government due to which there are three organs of the Government assigned to perform their assigned functions. The Legislature makes the Law, the executive implements the law and the work of the judiciary is to adjudicate on matters to provide justice. Any area falling under the purview of governance shall have the backing of all the three organs otherwise there will be an imbalance resulting in the failure to achieve the expected outcome. The area of environmental law is one such important area and the Indian Legislature has been very supportive to the cause of environment protection. However, it is seen that there is gross disregard to the environmental legislations and violations of environmental rights of people. Due to this there have been a plethora of judgments not only under various environmental laws but also under the writ jurisdiction in higher judiciary. This means that prima facie the Legislature and Judiciary are functioning properly in the area of protection of environment. This keeps only one organ remaining – the executive. To attempt to find out the functioning of the executive organ, the law from where its power emanates needs to be ascertained.

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 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 42nd Amendment of the Constitution² added a new part IV-A in the Constitution which consists of ten fundamental duties, out of which Article 51-A (g)³ and Article 51-A (j)⁴ 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 wide the 42nd 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 arbitrariness⁵ 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 (PIL's) 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.⁶ However, this right is subject to reasonable restrictions.⁷ In *Abhilash Textile v. Rajkot Municipal Corporation*⁸ 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. In relation to environment protection, right to life has been interpreted to be right to live in healthy environment.⁹ In *T. Damodar Rao v. S.O. Municipal Corporation Hyderabad*¹⁰ it was held that:

*"It would be reasonable to hold that the enjoyment of life and its attainment and fulfilment guarantees by Article 21 of the Constitution embraces the protection and preservation of nature's gifts without (which) life cannot be enjoyed. There can be no reason why practice of violent extinguishment of life alone should be regarded as violative of article 21 of the Constitution. The slow poisoning by the polluted atmosphere caused by the environmental pollution and spoliation should also be regarded as amounting to violative of article 21 of the Constitution."*¹¹

Environmental legislations in India

As seen above, there is ample scope to give effect to the protection of environment through the provisions of the Constitution. Accordingly, the legislative body has performed its duty to pass such legislations which encompass the vast scope of the technical subject matter of protection of environment. There are more than 15 environmental legislations at the Central level alone, most of which are having subordinate legislations to provide for their effective implementation. As Environment falls within the purview of the concurrent List, there are many State Legislations of all the States and Union Territories which are also important. Below is the list of the Central Environmental Legislations in India.

- Indian Forest Act, 1927

The object and reason of passing of this law was to have a control over the forests, forest produce and mainly timber. 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.

- Wild Life (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. There are provisions relating to declaration of protected areas like 'Sanctuary', 'National Park' and 'Conservation Reserve' are also given in the Act.

- 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. This enactment introduces a separate authority apart from the Forest Department which was functioning as the only implementing authority at that time.

- 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. There is a restriction on de-reservation of forests or use of forest land for non-forest purpose under this Act.

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

This is an Act to provide for the prevention, control and abatement of air pollution and establishing an executive mechanism for the same. 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.

- 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. 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. There are separate Environment Protection Rules, 1986 enacted by the Central Government for the effective implementation of this Act. The Ministry of Environment and Forests is the primary implementing authority of this Act.

- Public Liability Insurance Act, 1991

This is an Act to provide for public liability insurance for providing immediate relief to the persons affected by any accident which has occurred during the handling of any hazardous substance. However, primarily this is an enactment which creates an obligation on the owner to insure the hazardous substance in process and therefore importance has not been given to implementation authorities.

- National Environment Tribunal Act, 1995

This is an Act to provide for strict liability for damages which may arise out of any accident occurring during the process of handling of any hazardous substance. The object behind the establishment of the National Environment Tribunal is to provide relief and compensation for the damages caused to persons, property or environment at large. The National Environment Tribunal is established in Delhi and it has three benches situated in the Eastern, Western and the Southern Zone. The powers, jurisdiction and authority of the Collector under the Public Liability Insurance Act are also provided the National Environment Tribunal for deciding cases. Thus it can be seen that this enactment provides for the judicial body and not for the implementing authority. It is pertinent to note that since 2010 this Tribunal has now been merged in the National Green Tribunal.

- National Environment Appellate Authority Act, 1997

This Act has come into existence for the establishment of the National Environment Authority to hear the appeals with respect to restrictions of areas in which industries, operations or processes or any class of industries, operations or processes should not be carried out, or if they are being carried out then they shall be carried out subject to the safeguards under the Environment Protection Act, 1986. If any person is aggrieved by an order granting environmental clearance by the executive

authority, then they can appeal to the Authority in the prescribed format. No civil court will have jurisdiction on these matters after the establishment of the National Environment Appellate Authority.

- Biological Diversity Act, 2002

The objects of the Act were firstly, to regulate access to biological resources of the country with the purpose of securing equitable share in benefits arising out of the use of biological resources and associated knowledge relating to biological resources; secondly to conserve and sustainably use biological diversity; thirdly to respect and protect knowledge of local communities related to biodiversity; fourthly, to secure sharing of benefits with local people as conservers of biological resources and holders of knowledge and information relating to the use of biological resources; fifthly, to conserve and develop the areas which are important from the standpoint of biological diversity by declaring them as biological diversity heritage sites; sixthly, to protect and rehabilitate threatened species and lastly to involve the institutions of self-government in the broad scheme of implementation of the Act through Constitution of Committees.

- National Green Tribunal Act, 2010

This law was passed taking into account the large number of environmental cases in the higher Courts and the involvement of multidisciplinary and technical issues in such cases. The National Green Tribunal disposes off the civil cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment. Again, this Act also establishes a judicial body and not an implementing body.

Implementation authorities

The most important authority is the Ministry of Environment, Forests and Climate Change (MoEFCC) at the Central Level. This Ministry has one secretary, two Special Secretaries handling more than six to eight portfolios, two Additional Secretaries who also handle three to four different portfolios. The diversity in the subject matters of the works of all these personnel is very vast. At the State level there are State Environment Departments which also function in the similar manner as the MoEFCC. There is a very diverse field of authority of the State Departments.

There is one more Statutory authority created purely as an executive mechanism which is the Central Pollution Control Board and State Pollution Control Boards under the Water (Prevention and Control of Pollution) Act, 1974, the jurisdiction of which was enhanced to cover the Air (Prevention and Control of Pollution) Act, 1981 and subsequently time and again as new legislations have emerged in the field of Environmental Law new duties have been imposed on these Boards over burdening the staff and further reducing their productivity.

Problems in implementation of environmental laws

The major problem in implementation of environmental laws is the sheer quantity of legislations including the Parent Acts and the subordinate legislations both at the Central as well as the State Level. Another problem is the diversity in the areas of protection of environment. The third problem is the requirement of technical knowledge for the effective implementation of any environmental legislation. Last, but definitely not the least, the disparity of the staff available with the implementing authorities and the multiplicity of duties they have to perform in the diverse fields of environmental legislations. The environmental clearances which have to be given to various industries and the time frame involved in checking the plants using such hazardous chemicals also poses pressures on them.

Conclusion

Post the Earth Summit which was conducted in 1992 in Rio de Janeiro environmental issues have been on the anvil in the Global scenario and even at the municipal level. There have not only been pressures to effectively implement the existing environmental legislations but the judiciary through its activism has also increased the burden of these implementation authorities by time and again deciding PIL's to give effect to more and more environmental rights as a part of fundamental rights. This has immensely increased the burden on the implementation authorities whereas the number of their staff members have not proportionately increased. Due to this there is a disparity in the expected outcome from the implementation mechanism.

It is a cardinal rule of governance that the role of the implementation mechanism and the role of judiciary is inversely proportional in any government. Currently, the judiciary is at the forefront with the help of writ jurisdiction and Public Interest Litigations to provide for remedies to the citizens for the violations of their environmental rights in the form of fundamental rights. However, this picture needs to change and the need for the judiciary has to be minimized; and this can only take place if there is effective implementation of the laws by the administrative authorities with the help of enhanced technical support and dedicated work force for the same.

(End notes)

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- 2 The Constitution 42nd Amendment Act, 1976
- 3 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.
- 4 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 endeavor and achievements.
- 5 *Ajay Hasia v. Khalid Mujib* AIR 1981 SC 487
- 6 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.
- 7 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.
- 8 AIR 1988 Guj. 57.
- 9 Rural Litigation and entitlement Kendra Dehradun v. State of U.P. AIR 1985 SC 652. See also M.C. Mehta v. Union of India AIR 1987 SC 1086.
- 10 AIR 1987 AP 171
- 11 Ibid, at p. 181.