

**HOW FAR ENVIRONMENT (PROTECTION) ACT 1986
SUCCEEDED IN ABATING ENVIRONMENTAL POLLUTION:
AN ANALYSIS**

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Abstract

To provide an analytical and critical examination of the Environment (Protection) Act, 1986, in the context of the genuine environmental catastrophe that our country is now confronting, this article has been written in the style of an academic paper. The paper's focus is not confined to the aforementioned Act, but rather extends beyond it to include a realistic scenario of the implementation of additional legislations aimed at protecting one or more components of the human environment. Indian scientists and technologists have a strong foundation in science and technology; liberal democratic values, which include a vibrant civil society; an independent judiciary; and a well-developed administrative system, which allows them to better understand the importance of maintaining a fine dynamic balance and putting in place appropriate mechanisms for this purpose. But many of the mechanisms were developed during the 1970s and early 1980s, when systems were not as well developed and the level of knowledge was not as advanced. The upshot is that in numerous sectors, there is a view that the framework of environmental regulations is a barrier to economic progress, and that the framework is also failing to achieve its stated goal of environmental protection. This impression is based on several factors.

Keywords: *Environment, Protection.*

Introduction

The environment is under stress in many parts of the globe for a number of reasons. High population density in many places of India has been exerting strain on natural resources, with carrying capacity being a key contributing factor to this pressure. Other important factors are poverty and the need to accelerate the pace of economic development.

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As defined in the National Environment Policy 2006 (hereinafter NEP 2006), the term "environment" refers to all entities, natural or manmade, external to oneself, and their interrelationships that provide value to humankind now or in the future, as defined in the National Environment Policy 2006 (hereinafter NEP 2006). Environmental problems are related to the damage of the environment caused by human activity.

Objectives

1. To provide for the protection and improvement of environment and for matters connected with it.
2. To effectively implement the decisions taken at the United Nations Conference on the Human Environment (Stockholm) 1972, in which India also participated, to take appropriate steps for the protection and enhancement of human environment and the prevention of hazards to human beings, other living creatures, plants and property;

The Constitutional Framework

It is essential to bring the Constitutional scheme of things to the forefront in order to determine if it is consistent with present objective needs.

Article 246 of the Constitution of India grants exclusive legislative authority to Parliament with respect to any matter listed in List I (Union List) of the Seventh Schedule, and grants exclusive legislative authority to state legislatures with respect to any matter listed in List II (State List) of the Seventh Schedule (State List). Subjects in List III (Concurrent List) can be the subject of legislation by either Parliament or a state legislature, with the Central law normally prevailing in the event of a conflict (subject to the provisions of Article 254(2), which allows a State law to prevail in the State if it has received the President's approval).

The topic "Environment" does not appear in the Seventh Schedule in any of the Lists since it is not a listed subject. Article 48A of the Constitution, which was inserted into the Constitution as a result of the Constitution (Forty-second Amendment) Act 1976, states that the state shall make every effort to protect and improve the environment, as well as to safeguard the forest and wildlife of the country, as a Directive Principle of State Policy. "Forests" and "protection of wild animals and birds" were similarly transferred from the State List to the Concurrent List of the Seventh Schedule as a result of the same Constitutional Amendment Act of 1992. [3]In reality, one of the goals of the Constitution Amendment Act was to "eliminate the obstacles that have developed in the achievement of the socio-economic revolution that would eradicate poverty and illiteracy, as well as sickness and inequality of opportunity."

Environmental legislation

The whole planet is dealing with a wide range of environmental issues. Environmental law plays a significant part in ensuring that the environment remains healthy. On a worldwide scale, a number of laws and regulations have been enacted in order to reduce the negative impact on the environment. Educating people about their primary duty to maintain and preserve the quality of the natural environment is critical to the success of environmental legislations. Environmental regulations help to keep the environment from deteriorating worse. As part of the 1972 Stockholm Earth Summit organised by the United Nations Conference on the Human Environment, governments and peoples were urged to make an effort to preserve and develop the human environment for the benefit of current and future generations.

Environmental legislation in Indian context

With the 42nd amendment to the constitution, which was passed in 1976, India made its first serious attempt at enacting environmental legislation.[3] This amendment incorporated Fundamental Rights and Duties as well as Directive Principles of State Policy pertaining to environmental protection, as well as protection of forests and wildlife in the country.

A provision of the Indian constitution, Article 51 A (on environmental protection and improvement), states that "every citizen of India shall have a responsibility to protect and improve the natural environment," which includes "forests, lakes, rivers, and wildlife, and to have compassion for all living creatures."

According to Article 48-A of the Indian Constitution's Directive Principles of State Policy, "the state should attempt to maintain and promote the environment, as well as to safeguard the forests and animals of the nation."

Compliance with environmental regulations is essential in order to avoid the significant consequences for human health and animal welfare. During the year 1980, the Department of Environment was established. Later, in 1985, the Department of Environment was renamed the Ministry of Environment, Forests, and Climate Change to reflect the growing importance of the ministry.

The Ministry of Environment, Forest and Climate Change (MoEFCC) is the central agency working with prime objectives of

- Protection of the environment & Ensuring the welfare of animals
- Prevention and abatement of pollution
- Afforestation and regeneration of degraded areas
- Conservation and survey of flora, fauna, forests and wildlife

Bhopal Gas tragedy actuates the Indian Government to enact the Environment (Protection) Act, 1986 (EPA). It was enacted under Article 253 of the constitution and came into force on 19th Nov 1986. It was last amended in 1991.

THE ENVIRONMENT (PROTECTION) ACT, 1986,

The Environment (Protection) Act was passed in 1986 and is now in effect. The legislation was passed with the primary goal of ensuring the preservation and enhancement of the environment, and topics related to it..... The Act is one of the most extensive pieces of law ever enacted under the guise of environmental preservation and betterment.[4] The Constitution of India also includes provisions for the preservation of the natural environment. Specifically, Article 48A of the Constitution states that the state must make every effort to maintain and promote the environment, as well as to safeguard the country's forests and natural resources. Article 51 A further states that every person has a responsibility to safeguard the environment. The Environment (Protection) Act, 1986, was intended to serve as a "umbrella" piece of legislation, allowing the Central Government to coordinate the activities of various central and state

authorities established for the preservation, conservation, and protection of the environment under previous Acts such as the Environment Protection Act, 1972, and the Environment Protection Act, 1974.

- Wildlife (Protection) Act, 1972
- Water (Prevention and Control of pollution) Act, 1974
- Forest Conservation Act, 1980
- Air (Prevention and Control of pollution) Act, 1981
- Premises of the Act

A wide range of human activities, from the instinctive drive to reproduce one's kind to the restless desire to improve one's standard of living, as well as the development of technological solutions to this end, as well as the massive amount of waste, both natural and chemical, that these advancements produce, are now widely acknowledged to be a threat to the environment.

Paradoxically, this insatiable need to expand and develop, which was first unchecked, is now commonly viewed as a danger since it leads in the depletion of both living and nonliving natural resources as well as the depletion of life support systems on a global scale. Pollution of the air, water, land, living animals, and the environment as a whole is increasing at an alarming pace, and it must be regulated and curtailed as quickly as possible to prevent further degradation. As a result, the 1986 Act was passed with this intent.

Various pieces of legislation have been implemented in India throughout the years to accomplish this goal. All law previous to the 1986 Act, on the other hand, had been specialised in that it dealt with specific areas of environmental contamination. Article 253 (Legislation to give effect to foreign agreements) of the Constitution was used to pass the 1986 Act, which was general legislation.

Regardless of anything contained in the preceding provisions of this Chapter, Parliament has the authority to pass any law for the whole or any part of the territory of India for the purpose of implementing any treaty, agreement, or convention with any other country or countries, or any decision made at any international conference, association, or other bodies) of the Constitution, in accordance with India's international commitments.

During the Stockholm Conference in 1972, when the global community committed to safeguard and develop the environment, India was one of the signatory countries. The Stockholm Conference on the Human Environment, held in June 1972, declared that "Man is both creator and moulder of his environment, which provides him with bodily nourishment and provides him with the potential for intellectual, moral, social, and spiritual progress." A moment has been reached in the long and arduous growth of the human species on our planet when, thanks to the fast acceleration of science and technology, man has gained the ability to modify his surroundings in an unimaginable number of ways and on an unparalleled scale. In order for a person to be able to enjoy fundamental human rights, including the right to life, both the natural and man-made parts of his environment, both natural and man-made, must be present.[5]

A number of laws, including the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981, were passed following the Conference; but, the necessity

for more comprehensive regulation had become more apparent. The Environmental Protection Agency (EPA) was established in order to remedy this deficit.

Powers of Central Government to take measures to Protect and Improve Environment.

Under the provisions of the Act, the central government has the authority to take all measures that it deems necessary or expedient for the purpose of protecting and improving the quality of the environment and preventing control and abatement of environmental pollution as well as for the purpose of preventing control and abatement of environmental pollution.

Such measures may include those relating to all or any of the following matters: co-ordination of actions by state governments, officers, and other authorities- (a) under this Act or the rules made thereunder, or (b) under any other law for the time being in force that is relatable to the objects of

this Act; planning and execution of a national programme for the prevention, control, and abatement of environmental pollution; establishing national standards for environmental pollution prevention, control, and abatement. Given that different standards for emission or discharge from different sources may be established under this clause, taking into consideration the quality or composition of the emission or discharge of environmental pollutants from such sources; restriction of areas in which any industries, operations, or processes or class of industries, operations, or processes shall not be carried out or shall be carried out subject to certain safeguards; and establishment of procedures, safeguards, etc.[6]

Execution of and sponsorship of investigations and research into environmental pollution problems; inspection of any buildings, equipment, machinery, manufacturing or other processes, materials, or substances and the issuing of orders directing the appropriate authorities, officers, or persons to take steps for the prevention, control, and abatement of environmental pollution; establishment or recognition of environmental laboratories.

When it considers it necessary or expedient to do so for the purposes of this Act, the Central Government may, by order published in the Official Gazette, constitute an authority or authorities by such name or names as may be specified in the order for the purpose of exercising and performing such of the powers and functions (including the power to issue directions under section (5) of the Central Government) under this Act as it deems necessary or expedient for the purposes of this Act.

Additionally, for the purpose of taking measures with respect to any of the matters referred to in subsection (2) that may be mentioned in the order, such authority or authorities may exercise any powers or perform any functions or take any measures that are mentioned in the order, subject to the supervision and control of the Central Government and the provisions of such order, as if such authority or authorities had been empowered by this Act to exercise those powers or perform those functions or take those measures.[7]

As a result of the deterioration of the environment produced by excessive soil erosion and water and air pollution as a result of certain development activities, a significant negative environmental effect has been generated, and it is thus vital to safeguard the environment.

A careful assessment of a project proposed for any location, on the basis of an environmental impact assessment and an environmental management plan for the prevention, elimination, or mitigation of adverse impacts, must be carried out from the project's inception stage onward, in order to achieve this.

The Central Government has issued certain notifications stating that the expansion or modernization of any existing industry or the implementation of any new projects listed on the list shall not be undertaken in any part of India unless and until the Central Government or the State Government has given their environmental clearance.

ENVIRONMENT COURT

We have seen in the recent past that there is an expanding pattern in the quantity of cases in light of environmental contamination, biological obliteration and clashes over normal assets coming up under the steady gaze of the Courts. In a large portion of these cases there is need for normal logical skill as a fundamental contribution to illuminate legal direction. These cases require skill at an undeniable degree of logical and specialized complexity. The experience shows that the indictment sent off in common Criminal Courts under the arrangements of the Water Act, Air Act and the Environment (Protection) Act never arrive at their decision. The procedures require a long time to arrive at resolution. Regularly interval orders are conceded in the interim which actually handicap the specialists from guaranteeing the execution of their orders. It is, consequently, significant to set up a different hardware to chop down the postpones which are thwarting the execution of environmental regulations. Further, the legal officials alone will be unable to see the value in logical and specialized perspectives. It is, in this way, presented that the arrangements be made for the foundation of the Environment Courts with one appointed authority and two specialists from the natural and different sciences. [8] In the first place, we might have a two-level framework one at the State level and the other at the National level which may later be expanded even at the District level. Such Courts might be vested with the ward to conclude both criminal indictment cases under the different environmental regulations and common cases for remuneration to casualties of any movement prompting environmental harm or contamination. These Courts ought to be permitted to embrace rundown procedures for rapid removal of the cases. The allure from choice of the State Environment Courts might be liked to the National Environment Court and allure from the choice of the National Environment Court to the Supreme Court. The arrangements ought to be restricted to single allure.

Environment (Protection) Act, 1986 in the ultimate analysis

Legal Provisions of Recognition of Environmental Laboratories

The requirement for labs in the execution of the different contamination control acts set down for the protection of the environment is fundamental under the accompanying areas of different demonstrations.

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

Under Section 17 (2)

Under Section 17(2), the Board (State) may lay out or perceive a lab or labs to empower the Board to fill its roles under this Section proficiently, including the examination of tests of water from any stream or well or of tests of sewage or exchange effluents.

Under Section 25 & 26

Any individual covetous of releasing any gushing (homegrown or modern) into a stream or well needs to acquire the assent of the contamination control board prior to releasing something very similar. The assent application is upheld by an investigation report acquired from a perceived lab of the Board.

Under Section 51 & 52

Local/State Government needs to lay out a Central/State Water Laboratory and under segment 53 subsection (i) and (ii), an administration examiner (Central/State) is selected to dissect the examples.[9]

Under Section 53 Subsection (iii)

This section enables the Central board as well as State board to appoint with the prior approval of the Central Government or the State Government such persons as it thinks fit to be analysts for the purpose of analysis of samples of water or of sewage or trade effluent.

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

The Preamble of the Act provides that in order to preserve the quality of air and to control air pollution it is being enacted.

Under Section 17 (1)

Under Section 17(1), the functions of the State board shall be:

To plan a comprehensive programme for the prevention, control or abatement of air pollution and, to secure the execution thereof.

Under Section 17(2)

The State board, for the performance of its functions efficiently, may establish or recognize a laboratory or laboratories.

Under Section 21

No individual can work any modern plant in an air contamination control region without the past assent of the Board. The investigation report acquired by the perceived lab in regard of the amount of outflows is to be encased with the assent application.

Under Section 28 & 29 Subsection (i)

State Government ought to lay out or determine at least one State Air Laboratories for the examination of the examples of air. Likewise under Section 29 subsection (1), the State Govt. will choose the Government Analyst to examine the examples got by the Government Laboratory under Section 28.

The Environment (Protection) Act, 1986

This Act is the most important piece of legislation intended to implement the environmental obligations under Stockholm Declaration of 1972 to which India was a participant. Its purpose was also to supply the deficiencies of Water Act and Air Act, which had failed to produce the desired results.

Under Section 12

The Central Govt. shall establish or recognize one or more environmental laboratories to carry out the functions entrusted to an environmental laboratory under the said Act.

Under Section 13

Under this Section, Central Govt. will delegate the Government Analyst(s) for completing the examination of tests of air, water, soil or this substance sent for investigation to the environmental lab laid out under area 12 of the Act.

CONCLUSION :

Environment-protection regulations are based on the principles of sustainable development and improvement in the natural environment, which govern the implementation of environmental protection regulations. It is possible to handle the different environmental concerns via the effective execution of the Environment (Protection) Act. Environment (Protection) Act 1986 empowers the Central Government to publish guidelines, notices, policies, and programmes, which are updated on a regular basis, pertaining to environmental protection, conservation of biological variety, and attainment of high environmental quality standards. The Environment (Protection) Act is based on the "Polluter Pay" concept, which guarantees that polluters are held accountable for damages to the environment and human health. Clean and healthy environments are the only ones that can provide prospects for long-term economic development.

REFERENCES

- [1] Gupta O.K. and K. Priyadarshini (2003): Compliance to Environmental Regulations: The Indian Context, International Journal of Business and Economics, Vol. 2, No. 1, 9-26
- [2] Planning Commission, Government of India (2001-2002): Evaluation Study on the Functioning of State Pollution Control Boards, New Delhi, <http://planningcommission.gov.in/reports/peoreport/peof.htm>
- [3] The World Bank (2006): India: Strengthening Institutions for Sustainable Growth, Country Environmental Analysis, October 2006
- [4] Rangarajan, L.N., 1987. Kautilya The Arthshastra, Penguin Books in India, New Delhi.
- [5] Sangal, P.A., 1996. 'Law as a Tool for Environmental Management in India', in R.B.Singh and S.Misra (eds.) Environmental Law in India Issues and Responses, Concept Publishing House, New Delhi.
- [6] Sankar, U., and O.P. Mathur, 1998. Economic Instruments for Environment Sustainability, National Institute of Public Finance and Policy, New Delhi and Madras School of Economics, Chennai.

- [7] Wade, R., 1988. Village Republics: Economic Conditions for Collective Action in South India, Cambridge University Press, Cambridge.
- [8] Baumol, W.J. and W.E. Oates, 1971. 'The Use of Standards and Prices for Protection of the Environment,' Swedish Journal of Economics, 73(1), 42-54.
- [9] Bator, F.M., 1958. 'The Anatomy of Market Failure', Quarterly Journal of Economics, August.