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Environmental Protection: A Critical Analysis of Situation Prevailing In India

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ABSTRACT

Even before Indian independence in 1947, several environmental legislations existed but the real impetus for bringing about a well-developed framework came only after the UN Conference on the Human Environment. Under the influence of this declaration, the National Council for Environmental Policy and Planning within the Department of Science and Technology was set up in 1972. This Council later evolved into a full-fledged Ministry of Environment and Forests in 1985 which today is the apex administrative body in the country for regulating and ensuring environmental protection. After the Stockholm Conference, in 1976, Constitutional sanction was given to environmental concerns through the 42nd Amendment, which incorporated them into the Directive Principles of State Policy and Fundamental Rights and Duties.

Since the 1970s an extensive network of environmental legislation has grown in the country. The pollution control boards (CPCB Central Pollution Control Board and SPCBs State Pollution Control Boards) form the regulatory and administrative core of the sector.

A policy framework has also been developed to complement the legislative provisions. The Policy Statement for Abatement of Pollution and the National Conservation Strategy and Policy Statement on Environment and Development were brought out by the MOEF in 1992, to develop and promote initiatives for the protection and improvement of the environment. The EAP (Environmental Action Program) was formulated in 1993 with the objective of improving environmental services and integrating environmental considerations in to development programmes'.

Other measures have also been taken by the government to protect and preserve the environment. Several sector-specific policies have evolved, which are discussed at length.

KEYWORDS: Air, Water, Land, Environment

Water and Environmental Law:

Water quality standards especially those for drinking water are set by the Indian Council of Medical Research. These bear close resemblance to WHO standards. The discharge of industrial effluents is regulated by the Indian Standard Codes and recently, water quality standards for coastal water marine outfalls have also been specified. In addition to the general standards, certain specific standards have been developed for effluent discharges from industries such as, iron and steel, aluminum, pulp and paper, oil refineries, petrochemicals and thermal power plants.

Water (Prevention and Control of Pollution) Act, 1974

This Act represented India first attempts to comprehensively deal with environmental issues. The Act prohibits the discharge of pollutants into water bodies beyond a given standard, and lays down penalties for non-compliance. The Act was amended in 1988 to conform closely to the provisions of the Environment Protection Act, 1986. It set up the CPCB (Central Pollution Control Board) which lays down standards for the prevention and control of water pollution. At the State level, the SPCBs (State Pollution Control Board) function under the direction of the CPCB and the state government.

Water (Prevention and Control of Pollution) Amended Act, 1977

This Act provides for a levy and collection of a Amended on water consumed by industries and local authorities. It aims at augmenting the resources of the central and state boards for prevention and control of water pollution. Following this Act, The Water (Prevention and Control of Pollution) Amended Ruleswere formulated in 1978 for defining standards and indications for the kind of and location of meters that every consumer of water is required to install.

Control of Air Pollution and the Law in India:

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

To counter the problems associated with air pollution, ambient air quality standards were established, under the 1981 Act. The Act provides means for the control and abatement of air pollution. The Act seeks to combat air pollution by prohibiting the use of polluting fuels and substances, as well as by regulating appliances that give rise to air pollution. Under the Act establishing or operating of any industrial plant in the pollution control area requires consent from state boards. The boards are also expected to test the air in air pollution control areas, inspect pollution control equipment, and manufacturing processes.

National Ambient Air Quality Standards (NAAQS) for major pollutants were notified by the CPCB in April 1994. These are deemed to be levels of air quality necessary with an adequate margin of safety, to protect public health, vegetation and property. The NAAQS prescribe specific standards for industrial, residential, rural and other sensitive areas. Industry-specific emission standards have also been developed for iron and steel plants, cement plants, fertilizer plants, oil refineries and the aluminum industry. The ambient quality standards prescribed in India are similar to those prevailing in many developed and developing countries.

To empower the central and state pollution boards to meet grave emergencies, the Air (Prevention and Control of Pollution) Amendment Act, 1987, was enacted. The boards were authorized to take immediate measures to tackle such emergencies and recover the expenses incurred from the offenders. The power to cancel consent for non-fulfillment of the conditions prescribed has also been emphasized in the Air Act Amendment.

The Air (Prevention and Control of Pollution) Rules formulated in 1982, defined the procedures for conducting meetings of the boards, the powers of the presiding officers, decision-making, the quorum; manner in which the records of the meeting were to be set etc. They also prescribed the manner and the purpose of seeking assistance from specialists and the fee to be paid to them.

Other Enactments for Controlling Air Pollution:

Complementing the above Acts is the Atomic Energy Act of 1982,

which was introduced to deal with radioactive waste. In 1988, the Motor Vehicles Act, was enacted to regulate vehicular traffic, besides ensuring proper packaging, labeling and transportation of the hazardous wastes. Various aspects of vehicular pollution have also been notified under the EPA of 1986. Mass emission standards were notified in 1990, which were made more stringent in 1996. In 2000 these standards were revised yet again and for the first time separate obligations for vehicle owners, manufacturers and enforcing agencies were stipulated. In addition, fairly stringent Euro I and II emission norms were notified by the Supreme Court on April 29, 1999 for the city of Delhi. The notification made it mandatory for car manufacturers to conform to the Euro I and Euro II norms by May 1999 and April 2000, respectively, for new non-commercial vehicle sold in Delhi.

Forests and wildlife

The Wildlife (Protection) Act, **1972:**

The WPA (Wildlife Protection Act), 1972, provides for protection to listed species of flora and fauna and establishes a network of ecologically-important protected areas. The WPA empowers the Central and State governments to declare any area a wildlife sanctuary, national park or closed area. There is a blanket ban on carrying out any industrial activity inside these protected areas. It provides for authorities to administer and implement the Act; regulate the hunting of wild animals; protect specified plants, sanctuaries, national parks and closed areas; restrict trade or commerce in wild animals or animal articles; and miscellaneous matters. The Act prohibits hunting of animals except with permission of authorized officer when an animal has become dangerous to human life or property or so disabled or diseased as to be beyond recovery (WWF-India, 1999). The near-total prohibition on hunting was made more effective by the Amendment Act of 1991.

The Forest (Conservation) Act, 1980

This Act was adopted to protect and conserve forests. The Act restricts the powers of the state in respect of de-reservation of forests and use of forestland for non-forest purposes (the term non-forest purpose includes clearing any forestland for cultivation of cash crops, plantation crops, horticulture or any purpose other than re-forestation).

General Law for Protecting Environment in India:

Environment (Protection) Act, **1986 (EPA)**

This Act is an umbrella legislation designed to provide a framework for the co-ordination of central and state authorities established under the Water (Prevention and Control) Act, 1974 and Air (Prevention and Control) Act, 1981. Under this Act, the Central government is empowered to take measures necessary to protect and improve the quality of the environment by setting standards for emissions and discharges; regulating the location of industries; management of hazardous wastes, and protection of public health and welfare.

From time to time the Central government issues notifications under the EPA for the protection of ecologically-sensitive areas or issues guidelines for matters under the EPA.

Some notifications issued under this Act are:

- Doon Valley Notification (1989), which prohibits the setting up of an industry in which the daily consumption of coal/fuel is more than 24 MT (million tones) per day in the Doon Valley.
- Coastal Regulation Zone Notification(1991), which regulates activities along coastal stretches. As per this notification, dumping ash or any other waste in the CRZ is prohibited. The thermal power plants (only foreshore facilities for transport of raw materials, facilities for intake of cooling water and outfall for discharge of treated waste water/cooling water) require clearance from the MOEF.
- Dhanu Taluka Notification (1991), under which the district of Dhanu Taluka has been declared an ecologically fragile region and setting up power plants in its vicinity is prohibited.
- Revdanda Creek Notification (1989), which prohibits setting up industries in the belt around the Revdanda Creek as per the rules laid down in the notification.
- The Environmental Impact Assessment of Development Projects Notification, (1994 and as amended in 1997). As per this notification:
- All projects listed under Schedule I require environmental clearance from the MOEF.
- Projects under the delicenced category of the New Industrial Policy also require clearance from the MOEF.
- All developmental projects whether or not under the Schedule I, if located in fragile regions must obtain MOEF clearance.
- Industrial projects with investments above Rs 500 million must obtain MOEF clearance and are further required to obtain a LOI (Letter Of Intent) from the Ministry of Industry, and an NOC (No Objection Certificate) from the SPCB and the State Forest Department if the location involves forestland. Once the NOC is obtained, the LOI is converted into an industrial license by the state authority.
- The notification also stipulated procedural requirements for the establishment and operation of new power plants. As per this notification, two-stage clearance for site-specific projects such as pithead thermal power plants and valley projects is required. Site clearance is given in the first stage and final environmental clearance in the second. A public hearing has been made mandatory for projects covered by this notification. This is an important step in providing transparency and a greater role to local communities.
- Ash Content Notification (1997), required the use of beneficiated coal with ash content not exceeding 34% with effect from June 2001, (the date later was extended to June 2002). This applies to all thermal plants located beyond one thousand kilometers from the pithead and any thermal plant located in an urban area or, sensitive area irrespective of the distance from the pithead except any pithead power plant.
- Taj Trapezium Notification (1998), provided that no power plant could be set up within the geographical limit of the Taj Trapezium assigned by the Taj Trapezium Zone Pollution (Prevention and Control) Authority.
- Disposal of Fly Ash Notification (1999) the main objective of which is to conserve the topsoil, protect the environment and prevent the dumping and disposal of fly ash discharged from lignite-based power plants. The salient feature of this notification is that no person within a radius of 50 km from a coal-or lignite-based power plant shall manufacture clay bricks or tiles without mixing at least 25% of ash with soil on a weight-to-weight basis. For the thermal power plants the utilization of the flash would be as follows:
- Every coal-or lignite-based power plant shall make available ash for at least ten years from the date of publication of the above notification without any payment or any other consideration, for the purpose of manufacturing ash-based products such as cement, concrete blocks, bricks, panels or any other material or for construction of roads, embankments, dams, dykes or for any other construction activity.

Legal Protection of Environment form Hazardous wastes:

There are several legislations that directly or indirectly deal with hazardous waste. The relevant legislation are the Factories Act, 1948, the Public Liability Insurance Act, 1991, the National Environment Tribunal Act, 1995 and some notifications under the Environmental Protection Act of 1986. A brief description of each of these is given below.

Under the EPA 1986, the MOEF has issued several notifications to tackle the problem of hazardous waste management. These include:

- Hazardous Wastes (Management and Handling) Rules, 1989, which 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 Wastes (Management and Handling) Rules, 2000, whose aim was to enable municipalities to dispose municipal solid waste in a scientific manner.
- Hazardous Wastes (Management and Handling) Amendment Rules, 2000, a recent notificationissuedwith the view to providing guidelines for the import and export of hazardous waste in the country.

Factories Act, 1948 and its Amendment in 1987

The Factories Act, 1948 was a post-independence statute that explicitly showed concern for the environment. The primary aim of the 1948 Act has been to ensure the welfare of workers not only in their working conditions in the factories but also their employment benefits. While ensuring the safety and health of the workers, the Act contributes to environmental protection. The Act contains a comprehensive list of 29 categories of industries involving hazardous processes, which are defined as a process or activity where unless special care is taken, raw

materials used therein or the intermediate or the finished products, by-products, wastes or effluents would: Cause material impairment to health of the persons engaged and Result in the pollution of the general environment.

Public Liability Insurance Act (PLIA), **1991.**
The Act covers accidents involving hazardous substances and insurance coverage for these. Where death or injury results from an accident, this Act makes the owner liable to provide relief as is specified in the Schedule of the Act. The PLIA was amended in 1992, and the Central Government was authorized to establish the Environmental Relief Fund, for making relief payments.

- National Environment Tribunal Act, 1995
  The Act provided strict liability for damages arising out of any accident occurring while handling any hazardous substance and for the establishment of a National Environment Tribunal for effective and expeditious disposal of cases arising from such accident, with a view to give relief and compensation for damages to persons, property and the environment and for the matters connected therewith or incidental thereto.

An assessment of the legal and regulatory framework for environmental protection in India:
The extent of the environmental legislation network is evident from the above discussion but the enforcement of the laws has been a matter of concern. One commonly cited reason is the prevailing command and control nature of the environmental regime. Coupled with this is the prevalence of the all-or nothing approach of the law; they do not consider the extent of violation. Fines are levied on a flat basis and in addition, there are no incentives to lower the discharges below prescribed levels.

Some initiatives have addressed these issues in the recent past. The Government of India came out with a Policy Statement for Abatement of Pollution in 1992, before the Rio conference, which declared that market-based approaches would be considered in controlling pollution. It stated that economic instruments will be investigated to encourage the shift from curative to preventive measures, internalize the costs of pollution and conserve resources, particularly water. In 1995, the Ministry of Environment and Forest (MOEF) constituted a task force to evaluate market-based instruments, which strongly advocated their use for the abatement of industrial pollution. Various economic incentives have been used to supplement the command-and-control policies. Depreciation allowances, exemptions from excise or customs duty payment, and arrangement of soft loans for the adoption of clean technologies are instances of such incentives. Another aspect that is evident is the shift in the focus from end-of-pipe treatment of pollution to treatment at source. The role of remote sensing and geographical information systems in natural resource management and environmental protection has also gained importance over time.

An important recent development is the rise of judicial activism in the enforcement of environmental legislation. This is reflected in the growth of environment-related Public Interest litigations that have led the courts to take major steps such as ordering the shut-down of polluting factories.

Agenda 21 highlights the need for integration of environmental concerns at all stages of policy, planning and decision-making processes including the use of an effective legal and regulatory framework, economic instruments and other incentives. These very principles were fundamental to guiding environmental protection in the country well before Rio and will be reinforced, drawing on India's own experiences and those of other countries.

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