INTERNATIONAL JOURNAL OF RESEARCHES IN SOCIAL SCIENCES AND INFORMATION STUDIES
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www.vmsindia.org

ENVIRONMENTAL LAWS IN INDIA AND SUSTAINABLE DEVELOPMENT

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Abstract: In the Indian Constitution it is clearly stated that it is the duty of the state to protect and improve the environment and to safeguard the forests and wildlife of the country. It imposes a duty on every citizen 'to protect and improve the natural environment including forests, lakes, rivers, and wildlife'. Reference to the environment has also been made in the Directive Principles of State Policy as well as the Fundamental Rights. The Department of Environment was established in India in 1980 to ensure a healthy environment for the country. This later became the Ministry of Environment and Forests in 1985.The constitutional provisions are backed by a number of laws – acts, rules, and notifications. The EPA (Environment Protection Act), 1986 came into force soon after the Bhopal Gas Tragedy and is considered an umbrella legislation as it fills many gaps in the existing laws. Thereafter a large number of laws came into existence as the problems began arising, for example, Handling and Management of Hazardous Waste Rules in 1989.

Keywords: Constitution, Safeguard, EPA, Fundamental, Environment

Objectives

1. To Understand the Environmental laws in India
2. To Highlight the Sustainable Development

Data Collection and Methodology

Present research article is informative .Data and information required to fulfill the objective collected from various sources of secondary data

Introduction:

In India, Environmental law is governed by the Environment Protection Act, 1986. This act is enforced by the Central Pollution Control Board and the numerous State Pollution Control Boards. Apart from this, there are also individual legislations specifically enacted for the protection of Water, Air, Wildlife, etc. Such legislations include:-

1. The Water (Prevention and Control of Pollution) Act, 1974
2. The Water (Prevention and Control of Pollution) Cess Act, 1977
3. The Forest (Conservation) Act, 1980
4. The Air (Prevention and Control of Pollution) Act, 1981
5. Air (Prevention and Control of Pollution) (Union Territories) Rules, 1983
6. The Biological Diversity Act, 2002 and the Wild Life Protection Act, 1972.
7. Batteries (Management and Handling) Rules, 2001
8. Recycled Plastics, Plastics Manufacture and Usage Rules, 1999
9. The National Green Tribunal established under the National Green Tribunal Act of 2010 has jurisdiction over all environmental cases dealing with a substantial environmental question and acts covered under the Water (Prevention and Control of Pollution) Act, 1974;
10. Water (Prevention and Control of Pollution) Cess Rules, 1978
11. Ganga Action Plan, 1986
12. The Forest (Conservation) Act, 1980
13. The Public Liability Insurance Act, 1991 and the Biological Diversity Act, 2002. 14. The acts covered under Indian Wild Life Protection Act 1972 do not fall within the jurisdiction of the National Green Tribunal. Appeals can be filed in the Hon'ble Supreme Court of India.
15. Basel Convention on Control of Trans boundary on Hazardous Wastes and Their Disposal, 1989 and Its Protocols
16. Hazardous Wastes (Management and Handling) Amendment Rules, 2003

Following is a list of the environmental legislations that have come into effect:

General

1986-The Environment (Protection) Act authorizes the government to protect and improve environmental quality, control and reduce pollution from all sources, and prohibit or restrict the setting and /or

operation of any industrial facility on environmental grounds.

1986-The Environment (Protection) Rules lay down procedures for setting standards of emission or discharge of environmental pollutants.

1989-The objective of Hazardous Waste Rules is to control the generation, collection, treatment, import, storage, and handling of hazardous waste.

1989-The Manufacture, Storage, and Import of Hazardous Rules define the terms used in this context, and sets up an authority to inspect, once a year, the industrial activity connected with hazardous chemicals and isolated storage facilities.

1989-The Manufacture, Use, Import, Export, and Storage of hazardous Micro-organisms/ Genetically Engineered Organisms or Cells Rules were introduced with a view to protect the environment, nature, and health, in connection with the application of gene technology and microorganisms.

1991-The Public Liability Insurance Act and Rules and Amendment, 1992 was drawn up to provide for public liability insurance for the purpose of providing immediate relief to the persons affected by accident while handling any hazardous substance.

1995-The National Environmental Tribunal Act has been created to award compensation for damages to persons, property, and the environment arising from any activity involving hazardous substances.

1997-The National Environment Appellate Authority Act has been created to hear appeals with respect to restrictions of areas in which classes of industries etc. are carried out or prescribed subject to certain safeguards under the EPA.

1998-The Biomedical waste Rules is a legal binding on the health care institutions to streamline the process of proper handling of hospital waste such as segregation, disposal, collection, and treatment.

1999-The Environment Rules, 1999 lay down detailed provisions relating to areas to be avoided for sitting of industries, precautionary measures to be taken for site selecting as also the aspects of environmental protection which should have been incorporated during the implementation of the industrial development projects.

2000-The Municipal Solid Wastes Rules, 2000 apply to every municipal authority responsible for the collection, segregation, storage, transportation, processing, and disposal of municipal solid wastes.

2000-The Ozone Depleting Substances (Regulation and Control) Rules have been laid down for the regulation of production and consumption of ozone depleting substances.

2001-The Batteries Rules, 2001 rules shall apply to every manufacturer, importer, re-conditioner, assembler, dealer, auctioneer, consumer, and bulk consumer involved in the manufacture, processing, sale, purchase, and use of batteries or components so as to regulate and ensure the environmentally safe disposal of used batteries.

2002-The Biological Diversity Act is an act to provide for the conservation of biological diversity, sustainable use of its components, and fair and equitable sharing of the benefits arising out of the use of biological resources and knowledge associated with it.

Forest and wildlife

1927-The Indian Forest Act and Amendment, 1984, is one of the many surviving colonial statutes. It was enacted to 'consolidate the law related to forest, the transit of forest produce, and the duty on timber and other forest produce.

1972-The Wildlife Protection Act, Rules 1973 and Amendment 1991 provides for the protection of birds and animals and for all matters that are connected to it whether it be their habitat or the waterhole or the forests that sustain them.

1980-The Forest (Conservation) Act and Rules, 1981, provides for the protection of and the conservation of the forests.

Water

1882-The Easement Act allows private rights to use a resource that is, groundwater, by viewing it as an attachment to the land. It also states that

all surface water belongs to the state and is a state property.
1897-The Indian Fisheries Act establishes two sets of penal offences whereby the government can sue any person who uses dynamite or other explosive substance in any way with intent to catch or destroy any fish or poisonous fish in order to kill.
1956-The River Boards Act enables the states to enroll the central government in setting up an Advisory River Board to resolve issues in inter-state cooperation.
1970-The Merchant Shipping Act aims to deal with waste arising from ships along the coastal areas within a specified radius.
1974-The WaterAct establishes an institutional structure for preventing and abating water pollution. It establishes standards for water quality and effluent. The CPCB was constituted under this act.
1977-The Water Cess Act provides for the levy and collection of cess or fees on water consuming industries and local authorities.
1978-The Water (Prevention and Control of Pollution) Cess Rules contains the standard definitions and indicate the kind of and location of meters that every consumer of water is required to affix.
1991-TheCoastalRegulationZone
Notification puts regulations on various activities, including construction, are regulated. It gives some protection to the backwaters and estuaries.

Air

1948–The Factories Act and Amendment in 1987 was the first to express concern for the working environment of the workers. The amendment of 1987 has sharpened its environmental focus and expanded its application to hazardous processes.
1981-The Air Act provides for the control and abatement of air pollution. It entrusts the power of enforcing this act to the CPCB.
1982-The Air Rules defines the procedures of the meetings of the Boards and the powers entrusted to them.
1982-The Atomic Energy Act deals with the radioactive waste.
1987-The Air Amendment Act empowers the central and state pollution control boards to meet with grave emergencies of air pollution.
1988-The Motor Vehicles Act states that all hazardous waste is to be properly packaged, labeled, and transported.

Environmental law has developed in response to emerging awareness of and concern over issues impacting the entire world. While laws have developed piecemeal and for a variety of reasons, some effort has gone into identifying key concepts and guiding principles common to environmental law as a whole. The principles discussed below are not an exhaustive list and are not universally recognized or accepted. Nonetheless, they represent important principles for the understanding of environmental law around the world.

Sustainable Development

Defined by the United Nations Environment Programme as "development that meets the needs of the present without compromising the ability of future generations to meet their own needs," sustainable development may be considered together with the concepts of "integration" and "interdependence". Laws mandating environmentalimpact assessment and requiring or encouraging development to minimize environmental impacts may be assessed against this principle.
The modern concept of sustainable development was a topic of discussion at the 1972 United Nations Conference on the Human Environment , and the driving force behind the 1983 World Commission on Environment and Development . In 1992, the first UN Earth Summit resulted in the Rio Declaration, Principle 3 of which reads: "The right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations." Sustainable development has been a core concept of international environmental discussion ever since, including at the World Summit on Sustainable Development (Earth Summit 2002), and the United Nations Conference on Sustainable Development (Earth Summit 2012).

Equity

According to UNEP to include intergenerational equity - "the right of

future generations to enjoy a fair level of the common patrimony" - and intergenerational equity - "the right of all people within the current generation to fair access to the current generation's entitlement to the Earth's natural resources" - environmental equity considers the present generation under an obligation to account for long-term impacts of activities, and to act to sustain the global environment and resource base for future generations. Pollution control and resource management laws may be assessed against this principle.

Tran boundary responsibility

Defined in the international law context as an obligation to protect one's own environment, and to prevent damage to neighboring environments, UNEP considers transboundary responsibility at the international level as a potential limitation on the rights of the sovereign state. Laws that act to limit externalities imposed upon human health and the environment may be assessed against this principle.

Public participation and transparency

Identified as essential conditions for accountable governments industrial concerns," and organizations generally, public participation and transparency are presented by UNEP as requiring "effective protection of the human right to hold and express opinions and to seek, receive and impart ideas, a right of access to appropriate, comprehensible and timely information held by governments and industrial concerns on economic and social policies regarding the sustainable use of natural resources and the protection of the environment, without imposing undue financial burdens upon the applicants and with adequate protection of privacy and business confidentiality," and "effective judicial and administrative proceedings." These principles are present in environmental impact assessment, laws requiring publication and access to relevant environmental data, and administrative procedure.

Precautionary principle

One of the most commonly encountered and controversial principles of environmental law, the Declaration formulated the precautionary principle as follows:

In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.

The principle may play a role in any debate over the need for environmental regulation.

Prevention

The concept of prevention can perhaps better be considered an overarching aim that gives rise to a multitude of legal mechanisms, including prior assessment of environmental harm, licensing or authorization that set out the conditions for operation and the consequences for violation of the conditions, as well as the adoption of strategies and policies. Emission limits and other product or process standards, the use of best available techniques and similar techniques can all be seen as applications of the concept of prevention.

Polluter pays principle

The polluter pays principle stands for the idea that "the environmental costs of economic activities, including the cost of preventing potential harm, should be internalized rather than imposed upon society at large." All issues related to responsibility for cost for environmental remediation and compliance with pollution control regulations involves this principle.

History

In the common law, the primary protection was found in the law of nuisance, but this only allowed for private actions for damages or injunctions if there was harm to land. Thus smells emanating from pig house, strict liability against dumping rubbish, or damage from exploding dams. Private enforcement, however, was limited and found to be woefully inadequate to deal with major environmental threats, particularly threats to common resources. During the "Great Stink" of 1858, the dumping of sewerage into the River Thames began to smell so ghastly in the

summer heat that Parliament had to be evacuated. Ironically, the Metropolitan Commission of Sewers Act 1848 had allowed the Metropolitan Commission for Sewers to close cesspits around the city in an attempt to "clean up" but this simply led people to pollute the river. In 19 days, Parliament passed a further Act to build the London sewerage system. London also suffered from terrible air pollution, and this culminated in the "Great Smog" of 1952, which in turn triggered it's on legislative response: the Clean Air Act 1956. The basic regulatory structure was to set limits on emissions for households and business while an inspectorate would enforce compliance.

Notwithstanding early analogues, the concept of "environmental law" as a separate and distinct body of law is a twentieth-century development. The recognition that the natural environment was fragile and in need of special legal protections, the translation of that recognition into legal structures, the development of those structures into a larger body of "environmental law," and the strong influence of environmental law on natural resource laws, did not occur until about the 1960s. At that time, numerous influences - including a growing awareness of the unity and fragility of the biosphere; increased public concern over the impact of industrial activity on natural resources and human health; the increasing strength of the regulatory state; and more broadly the advent and success of environmentalism as a political movement - coalesced to produce a huge new body of law in a relatively short period of time.

Controversy

Environmental law is a continuing source of controversy. Debates over the necessity, fairness, and cost of environmental regulation are ongoing, as well as regarding the appropriateness of regulations vs. market solutions to achieve even agreed-upon ends.

Allegations of scientific uncertainty fuel the ongoing debate over greenhouse gas regulation, and are a major factor in debates over whether to ban particular pesticides. In cases where the science is well-settled, it is not unusual to find that corporations intentionally hide or distort the facts, or sow confusion. It is very common for regulated industry to argue against environmental regulation on the basis of cost. Difficulties arise in performing cost-benefit analysis of environmental issues. It is difficult to quantify the value of an environmental value such as a healthy ecosystem, clean air, or species diversity. Many environmentalists' response to pitting economy vs. ecology is summed up by former Senator and founder of Earth Day Gaylord Nelson, "The economy is a wholly owned subsidiary of the environment, not the other way around." Furthermore, environmental issues are seen by many as having an ethical or moral dimension, which would transcend financial cost. An additional debate is to what extent environmental laws are fair to all regulated parties. For instance, researchers Preston Teeter and Jorgen Sandberg highlight how smaller organizations can often incur disproportionately larger costs as a result of environmental regulations, which can ultimately create an additional barrier to entry for new firms, thus stifling competition and innovation.

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