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IMPLEMENTATION OF ENVIRONMENTAL LEGISLATIONS FOR ENVIRONMENTAL PROTECTION

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ABSTRACT

Undoubtedly the whole world is facing irreparable damage to the mankind and the Environment due to the adverse Impacts of various Wastes including Hazardous wastes produced by several chemical & Explosive industries. These Hazardous wastes Contain significant Concentrations of Toxic elements & compounds; some of them are even Carcinogenic. On the other hand, several Acts, Rules and Regulations have been enacted by the Parliament under article 252 of the Indian Constitution viz. The Water (prevention & control of pollution) Rules 1974 & 1975, the Air (prevention and control of pollution) Acts 1981, The Environment (protection) Act, 1986; The Water (prevention & control of pollution) Act, 1977 and The Hazardous wastes (Management & Handling) rules, 1989. These Hazardous wastes have also been categorized according to their composition & toxic effects. In spite of several Rules & Acts enacted by the Indian Parliament and their implementation by Central pollution control Board, Delhi & state pollution control Boards, the quality of the Environment is facing severe degradation. Hence more effective steps need to be taken in dealing with major polluting industries at all levels so as to keep our Environment free from all types of pollution.

INTRODUCTION

Although Environment has always been Important, its concern over imbalance surfaced first during the 1950's with the publication of some articles and books. It was in 1960's that the west voiced its concern for environmental issues for the first time. Biological environment remained as the main focus in the 1970's. It was seriously taken up in 1972 when international conference at Stockholm took place. There was U.N. Conference on Human Environment in the same year. In 1972 itself, the world heritage

convention related with protection and maintenance of monuments was also negotiated. In 1983 observed the formation of the United Nations Commission on Environment and Development (UNCED) also known as the Brundtland commission.

In 1989, Intergovernmental panel on climate change (IPCC) was established by UNEP and world meteorological Organization (WMO). Thereafter, in 1987 Montreal Protocol on substances which deplete the Ozone layer entered into force in 1989 had 182 parties as of December, 2001 and it was definitely a successful venture. The UN conference on Envi-

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ronment and development (UNCED) on the Earth Summit took place in 1992 at Rio de Janeiro (Brazil). The UN framework convention on Climate Change (UNFCCC) came into force in 1994 and has 186 parties as of Dec 2001. In 1994 the International conference on population and development was held at Cairo and in 1995 world summit for Social Development was held at Copenhagen. Although various issues related to environment of growing concern have been well recognized but the actual purpose is not very encouraging.

In order to preserve our environment, numerous Laws have been enacted at the National and International levels. India is among few developing countries to the common law rules applicable to environmental issues, legislation on water, Air and noise pollution as well as the comprehensive Environment (Protection) Act of 1986.

Need for Environmental Legislation

Global warming, depletion of the Ozone layer, disposal of toxic and Nuclear wastes in the vulnerable areas of the planet, the loss of forests and of arable soil at an alarming rate are a few of the numerous global environmental changes that will adversely affect the survival of the present and future generations.

The United Nations Conference on Human Environment (1972) Proclaimed that :

“The protection and improvement of human environment is a major issue, which affects the well being of people and economic development through the world and it is the duty of all governments and people, in general, to exert common efforts for the preservation and improvement of human environment for the benefit of all people and their posterity”. Many countries have therefore introduced control mechanism to punish the responsible enterprises violating the environment. The Japanese law for the punishment of crimes relating to environmental pollution was the first such step. Penal codes of the federal Republic of Germany, Hungary, Portugal, Spain and Brazil followed it soon. U.S. based U.S.E.P.A. (United States Environmental Protection Agency) has taken serious efforts in this direction.

India was the first country to impose a constitutional obligation on the State and citizens to preserve & improve the environment as one of their Primary duties.

Article 48 (A) of the Indian Constitution provides :

“The State shall endeavour to protect and improve the environment and to safeguard forests and wildlife of the country.

Whereas Article 51A provides “It shall be the duty of every citizen of India to protect and improve the natural environment including forest, lakes, rivers and wildlife and to have compassion for living creatures.”

Thus the constitution of India has broad provisions to make strict environment legislations. Consequently several laws have been enacted by the Indian parliament & Published in the Gazette of India viz.

LIST OF ACTS ENACTED BY THE INDIAN PARLIAMENT

- The wild life (Protection) Act 1972.
- The water (Prevention & Control of Pollution) Act, 1974.
- The water (Prevention and Control of Pollution) Rules, 1975.
- The water (Prevention and Control of Pollution) Cess act, 1977.
- The forest (Conservation) Act, 1980
- The Air (Prevention and Control of Pollution) Act, 1981.
- The Air (Prevention and Control of Pollution) Rules, 1982.
- The Environment (Protection) Act, 1986.
- Hazardous wastes (management & Handling) Rules, 1989.
- The Biological Diversity Act, 2002.
- The National Green Tribunal Act, 2010.

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

The water Act, 1974 defines water pollution, prescribes various levels of penalties and establishes an administrative machinery, called the Water Pollution Control Boards at the Central and State level in order to control and prevent water pollution.

The coverage of this act is quite comprehensive in that it includes, streams, rivers, watercourses, Inland water, subterranean water as well as the Sea and tidal waters under state Jurisdiction. The State and Central pollution control boards have been given comprehensive powers to advise, coordinate and provide technical assistance in the prevention and control or abatement of water pollution. More important features are that these Pollution Control

Boards are entrusted with the task of laying down standards of permissible and objectionable levels of pollution parameters at their own level keeping in view the various polluting industries operating in a particular state.

Air (Prevention & Control of Pollution) Act, 1981

The Air act was passed in 1981 to mainly regulate and control emission from automobiles and industrial units. The central board for the prevention and control of water pollution (C.P.C.B.) is authorized to strictly implement and enforce this act also. U/S 19 of this Act, the Central Board is given powers mainly to co-ordinate the activities of the State Boards. After consultation with the state boards, the state governments may declare any area within the state as “pollution control areas” & prohibit the use of any fuel other than those approved fuel in the area causing air pollution. Further, no person shall operate any industrial plant involving industries specified in the schedule without the previous consent/ Environment clearance from the respective State pollution control board.

The Environment (Protection) Act

The environmental (Protection) Act was Passed by the Indian parliament on 23rd May, 1986. This Act refers to the Stockholm conference of 1972 and is based on Article 253 of the constitution. By virtue of this Act, the union Govt. has armed itself with considerable powers deemed essential for the prevention, control and abatement of environmental pollution.

These powers include co-ordination of actions by states, planning and execution of nationwide environmental programs, laying down environmental quality standards, particularly those governing emission or discharge of environmental pollutants, setting restrictions on the location of industries etc. The powers vested in the act are indeed comprehensive; the coverage includes handling of hazardous substances, prevention of Environmental accidents, collaborating environmental research, inspection of polluting industrial units, Establishment of pollution control laboratories, dissemination of information etc.

If implemented in letter and spirit, this act will definitely convert the MOEF into a super ministry controlling the entire gamut of industrial and other developmental activities resulting in pollution free clean environment.

Difficulties in Enforcement of Environmental Legislation

In spite of numerous legislative activities, the real state of the environment continues to be gloomy. The rivers and the lakes continue to be choked with sewage and industrial wastes. The air quality in some major/ Metro Indian cities (e.g. Delhi, Mumbai, Jamshedpur etc.) has gained the dubious distinction of being worse than that of the American cities like Chicago and New York. What can the country do to reverse the process and restore a balanced state of the environment?

Litigation is apparently an expensive affair. Environmental litigation is more expensive than other types of disputes, since it involves expert testimony, technical evidences and so on. “Most of the State pollution control boards suffer from inadequate expertise and funds to attain their objectives. There is, therefore, a tendency to exercise gentle pressure on polluting industries and pursue settlements outside the courts.

If the amended environment (Protection) Act, is implemented seriously, all the municipalities and municipal corporations polluting the holy river will have to be prosecuted. This Act, rightly, makes no distinction between private and Public polluters. But that would be taking a very restrictive view of the law. The modern view is that the law must guide and help people and establish a trend of acceptance. There is nothing fundamentally wrong with out-of-court settlement of certain environmental disputes. In fact in some developed countries, like the U.S., a preference is shown towards such a procedure.

CONCLUSION

Although several laws relating to environment have been enacted from time to time (including national Green tribunal Act, 2010), but the overall impacts of these Environmental legislations is not encouraging due to various reasons well known to the pollution control authorities, polluting industrial establishments, NGOs and people in general.

Environmental laws have little chance of acquiring real objectives unless accompanied by a composite set of promotional measures, ranging from direct financial subsidies to cost sharing, e.g. in installation of ETP's by Polluting Industries. However, the most significant step will be to create environmental

awareness among people as a whole regarding their duties and rights with regard to the protection of the Environment.

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