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ENVIRONMENTAL PROBLEMS AND LEGAL PERSPECTIVES

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ABSTRACT:

Environmental destruction, then, threatens the current economic gains. The answer, according to many analysts, lays not so much in slowing the rate of population growth, or even in drastic lowering of population, but in better environmental governance. A combination of effective government policy and new technology may very well allow India to continue to improve the quality of life for its entire people. In a broader perspective, questions remain regarding the aims of a 21st century economy. Traditional economics looks first at overall growth, yet sustainability advocates argue for a new paradigm based on quality of life rather than economic growth. Sustainability refers both to using better technology and practices and to altering our assumptions about the desirability of consumption, although the balance between the two is contested. This paper deals with the evolution of laws relating to environmental protection in India.

Key words: ***Environment, Law.***

INTRODUCTION:

India is a complex, stunningly diverse country replete with seeming contradictions. It has a strong education ethic indicated by a significant segment of the population holding advanced degrees, yet also massive poverty and illiteracy. It is the world's largest democracy, yet weak implementation of laws and corruption are widespread. Its population is largely Hindu, a faith noted for harmony, peace, care for the poor, and vegetarianism, particularly in the version espoused by Mahatma Gandhi, considered the founder of modern India. Yet India has deep social divisions, most notably in the ―untouchable‖ caste relegated to jobs such as handling human waste. Virulent religious conflict, especially between Muslims and Hindus, also polarize its society. Currently, India is undergoing tremendous economic growth, second only to China, yet its galloping population, together with poor policy and insufficient infrastructure, threaten environmental disaster that could end this growth.

Along with its population, India's economy is galloping ahead. It is doing so against a backdrop of clashing traditions: ―In no other nation-state is there so much of ethno-cultural diversity—in terms of religion, language, region, caste, class, ethnicity and ideology‖ (Kapoor 637). For example, eighteen principal lan-guages and hundreds of dialects are spoken. Furthermore, the country is divided into a relatively wealthy and educated southern half that is at times at odds with a more impoverished and overpopulated northern half.

Nevertheless this growth faces strong challenges. It has been criticized as rewarding a relatively small population segment and increasing income inequality. Moreover, environmental problems might threaten or halt this growth. A 1995 report, for instance, estimated that ―annual losses due to the environment are of the order of 4.5 per cent‖ (Acharya et al, 225). This, however, is only the best guess of a range of figures, while more recent estimates are hard to come by. One ana-lyst warns of ―the enormous danger that economic progress in India faces as a result of wanton destruction and degradation of natural resources of all kinds and a growing dependence on the use of hydrocarbon fuels that cannot be sustained‖ (Pachauri 704).

ENVIRONMENTAL PROBLEMS

Climate change — Global warming • Global dimming • Fossil fuels • Sea level rise •Greenhouse gas • Ocean acidification • Shutdown of thermohaline circulation •Environmental impact of the coal industry • Urban Heat Islands

Conservation — Species extinction • Pollinator decline • Coral bleaching • Holocene extinction • Invasive species • Poaching • Endangered species

Energy — Energy conservation • Renewable energy • Efficient energy use • Renewable energy commercialization • Environmental impact of the coal industry • Environmental impact of hydraulic fracturing

Environmental degradation — Eutrophication • Habitat destruction • Invasive species

Environmental health — Air quality • Asthma • Environmental impact of the coal industry • Electromagnetic fields •Electromagnetic radiation and health • Indoor air quality • Lead poisoning • Sick Building Syndrome • Environmental impact of hydraulic fracturing

Genetic engineering — Genetic pollution • Genetically modified food controversies

Intensive farming — Overgrazing • Irrigation • Monoculture • Environmental effects of meat production • Slash and burn • Pesticide drift • Plasticulture

Land degradation — Land pollution • Desertification

Soil — Soil conservation • Soil erosion • Soil contamination • Soil salination

Land use — Urban sprawl • Habitat fragmentation • Habitat destruction

Nanotechnology — Nanotoxicology • Nanopollution

Nuclear issues — Nuclear fallout • Nuclear meltdown • Nuclear power • Nuclear weapons • Nuclear and radiation accidents •Nuclear safety • High-level radioactive waste management

Overpopulation — Burial • Water crisis • Overpopulation in companion animals • Tragedy of the commons • Gender Imbalance in Developing Countries • Sub-replacement fertility levels in developed countries

Ozone depletion — CFC • Biological effects of UV exposure

Pollution — Environmental impact of the coal industry • Nonpoint source pollution • Point source pollution • Light pollution • Noise pollution • Visual pollution

Water pollution — Environmental impact of the coal industry • Acid rain • Eutrophication • Marine pollution • Ocean dumping •Oil spills • Thermal pollution • Urban runoff • Water crisis • Marine debris • Microplastics • Ocean acidification • Ship pollution •Wastewater • Fish kill • Algal bloom • Mercury in fish • Environmental impact of hydraulic fracturing

Air pollution — Environmental impact of the coal industry • Smog • Tropospheric ozone • Indoor air quality • Volatile organic compound • Atmospheric particulate matter• Environmental impact of hydraulic fracturing

Reservoirs — Environmental impacts of reservoirs

Resource depletion — Exploitation of natural resources • Overdrafting

Consumerism — Consumer capitalism • Planned obsolescence • Over-consumption

Fishing — Blast fishing • Bottom trawling • Cyanide fishing • Ghost nets • Illegal, unreported and unregulated fishing •Overfishing • Shark finning • Whaling

Logging — Clearcutting • Deforestation • Illegal logging

Mining — Acid mine drainage • Environmental impact of hydraulic fracturing • Mountaintop removal mining • Slurry impoundments

Toxins — Chlorofluorocarbons • DDT • Endocrine disruptors • Dioxin • Toxic heavy metals • Environmental impact of the coal industry • Herbicides • Pesticides • Toxic waste • PCB • Bioaccumulation • Biomagnification • Environmental impact of hydraulic fracturing

Waste — Electronic waste • Litter • Waste disposal incidents • Marine debris • Medical waste • Landfill • Leachate • Environmental impact of the coal industry • Incineration • Great Pacific Garbage Patch • Exporting of hazardous waste • Environmental impact of hydraulic fracturing

ENVIRONMENTAL REGULATIONS AND LEGAL FRAMEWORK IN INDIA:

Environment Protection – From Indian Constitution Perspective

a) The State's responsibility with regard to environmental protection has been laid down under Article 48-A of our Constitution, which reads as follows: **"The State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country".**

b) Environmental protection is a fundamental duty of every citizen of this country under Article 51-A (g) of our Constitution which reads as follows: **"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 living creatures."**

c) Article 21 of the Constitution is a fundamental right which reads as follows: **"No person shall be deprived of his life or personal liberty except according to procedure established by law."**

d) Article 48-A of the Constitution comes under Directive Principles of State Policy and Article 51 A (g) of the Constitution comes under Fundamental Duties.

e) The State's responsibility with regard to raising the level of nutrition and the standard of living and to improve public health has been laid down under Article 47 of the Constitution which reads as follows: "The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavor to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health."

f) The 42nd amendment to the Constitution was brought about in the year 1974 makes it the responsibility of the State Government to protect and improve the environment and to safeguard the forests and wildlife of the country. The latter, under Fundamental Duties, makes it the fundamental duty of every citizen to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living

MANDATORY REQUIREMENTS - ENVIRONMENT

The Electricity Act, 2003

This Act seeks to create a framework for the power sector development by measures conducive to the industry. Electricity Act does not explicitly deal with environmental implications of activities related to power

transmission. The applicable legal provisions under this Act are as follows: Section 68(1) - sanction from the Ministry of Power (MOP) is a mandatory requirement for taking up any new project. The sanction authorizes SJVN to plan and coordinate activities to commission new projects.

The Forest (Conservation) Act, 1980

This Act provides for the conservation of forests and regulating diversion of forestlands for non-forestry purposes. When projects fall within forestlands, prior clearance is required from relevant authorities under the Forest (Conservation) Act, 1980. State governments cannot de-reserve any forestland or authorise its use for any non-forest purposes without approval from the Central government. The flow chart for forest clearance as per this law is provided.

Environmental (Protection) Act, 1986

The Environment (Protection) Act, 1986 was introduced as an umbrella legislation that provides a holistic framework for the protection and improvement to the environment. In terms of responsibilities, the Act and the associated Rules requires for obtaining environmental clearances for specific types of new / expansion projects (addressed under Environmental Impact Assessment Notification, 1994) and for submission of an environmental statement to the State Pollution Control Board annually. Environmental clearance is not applicable to hydro projects also.

Air (Prevention and Control of Pollution) Act 1981

The objective of this Act is to provide for the prevention, control and abatement of air pollution, for the establishment, with a view to carrying out the aforesaid purposes, of Boards, for conferring on and assigning to such Boards powers and functions relating thereto and for matters connected therewith. Decisions were taken at the United Nations Conference on the Human Environment held in Stockholm in June 1972, in which India participated, to take appropriate steps for the preservation of the natural resources of the earth which, among other things, includes the preservation of the quality of air and control of air pollution. Therefore it is considered necessary to implement the decisions foresaid in so far as they relate to the preservation of the quality of air and control of air pollution.

Water (Prevention & Control) Act 1974

The objectives of the Water (Prevention and Control of Pollution) Act are to provide for the Prevention and Control of Water Pollution and the maintenance or restoration of the wholesomeness of water for the establishment, with a view to carrying out the purposes aforesaid, of Boards for the prevention and control of water pollution, for conferring on and assigning to such Boards powers and functions relating thereto and for matters connected therewith.

Wildlife Protection Act, 1972

According to the Wildlife Protection Act, 1972 "wildlife" includes any animal, bees, butterflies, crustacea, fish and moths; and aquatic or land vegetation which forms part of any habitat. In accordance with Wildlife (Protection) Amendment Act, 2002 “no alternation of boundaries / National Park / Sanctuary shall be made by the State Govt. except on recommendation of the National Board for Wildlife (NBWL)”.further, in terms of Supreme Court Order dated 13.11.2000 the State Govts have to seek prior permission of Supreme Court before submitting the proposal for diversion of forest land in National Park sanctuaries. Whenever, any part of Wildlife Sanctuary / National Park is getting affected by a hydro project the forest proposal in respect of such project is entertained by MoEF, GOI only after permission of de-reservation / de-notification of Wildlife Sanctuary /National Park has been accorded. After recommendation of Standing Committee of NBWL proposal for de-reservation/ de-notification is ratified by Hon’ble Supreme Court.

The Biological Diversity Act, 2002

The Ministry of Environment and Forests has enacted the Biological Diversity Act, 2002 under the United Nations Convention on Biological Diversity signed at Rio de Janeiro on the 5th day of June, 1992 of which India is also a party. This Act is 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 sued of biological resources, knowledge and for matters connected therewith or incidental thereto.” As per the provision of act certain areas, which are rich in biodiversity and encompasses unique and representative ecosystems are identified and designated as biosphere reserve to facilitate its conservation. All restrictions applicable to protected areas like National Park & Sanctuaries are also applicable to these reserves. SJVNL abides by the provision of act wherever applicable and try avoiding these biosphere reserves while finalising the project infrastructure locations.

Hazardous Wastes (Management And Handling) Amendment Rules, 2003

These Rules classify used mineral oil as hazardous waste under the Hazardous Waste (Management & Handling) Rules, 2003 that requires proper handling and disposal. Organisation will seek authorisation for disposal of hazardous waste from concerned State Pollution Control Boards (SPCB) as and when required.

Ozone Depleting Substances (Regulation And Control) Rules, 2000

MoEF vide its notification dt. 17th July, 2000 under the section of 6, 8 and 25 of the Environment (Protection) Act, 1986 has notified rules for regulation/ control of Ozone Depleting Substances (ODS) under Montreal Protocol. As per the notification certain control and regulation has been imposed on manufacturing, import, export, and use of these compounds. Organisations as per provisions of notification shall is phase out all equipment, which uses these substances, and is aiming at CFC free organisation in near future.

OTHER ENVIRONMENT – RELATED LAWS

The Shore Nuisance (Bombay and Kolaba) Act, 1853

This is the earliest Act on the statue book concerning control of water pollution in India.

The Serais Act, 1867

The Act enjoined upon a keeper of Serai or an inn to keep a certain quality of water fit for consumption by "persons and animals using it" to the satisfaction of the District magistrate or his nominees. Failure for maintaining the standard entailed a liability of rupees twenty.

The North India Canal and Drainage Act, 1873

Certain offences have been listed under the Act contained in Section 70.

Obstruction in Fairways Act, 1881

Section 8 of the Act empowered the Central Government to make Rules to regulate or prohibit the throwing of rubbish in any fairway leading to a port causing or likely to give rise to a bank or shoal.

Indian Easements Act, 1882

Illustrations (f), (h) and (j) of Section 7 of the Act deal with pollution of waters.

The Indian Fisheries Act, 1897

The Indian Fisheries Act, 1897 contains seven sections. Section 5 of the Act prohibits destruction of fish by poisoning waters.

Indian Ports Act, 1908

Water pollution by oil has been regulated by the Indian Ports Act, 1908.

The Indian Forest Act, 1927

Section 26(i) of the Act makes it punishable if any person, who, in contravention of the rules made by the State Government, poisons water of a forest area. The State Government has been empowered under Section 32(f) to make rules relating to poisoning of water in forests.

The Damodar Valley Corporation Act, 1948

The Act _overnment the Corporation to make regulations with the previous sanction of the Central Government for preventing "pollution of water".

The Factories Act, 1948

Factories Act, 1948 is social welfare legislation intend to secure health, safety and welfare of the workers employed in factories. However, some of the provisions of this Act are concerned with prevention of water pollution.

The Mines Act, 1952

Chapter V of the Act deals with provisions regarding health and Safety of the employees. Section 19(i) Government upon arrangement for the quality of water for drinking purposes.

The River Boards Act, 1956

The Act provides for the creation of River Boards for regulation and development of interstate rivers and river valleys. One of the functions of the Board is to advise to the Government concerned on "prevention of pollution of the waters of the interstate rivers".

The Merchant Shipping Act, 1958

The International Convention for the Prevention of Pollution of the Sea by Oil, 1954 is the first treaty for the reduction of oil pollution of the sea. In order to give effect to this Convention, the Merchant Shipping Act regulates and controls the discharge of oil or oil mixture by an Indian tanker or ship within any of the prohibited zones or by a foreign tanker or other ship within the prohibited zone adjoining the territories of India. Further, there is a prohibition for discharging any oil anywhere at sea from an Indian ship.

CONCLUSION:

Equity considerations are also important in environmental policy making. When the distribution of income is highly skewed and about one-third of the population live below the poverty line intergenerational equity must be of social concern. The reason is that the poor are the victims of environmental degradation even though their contribution to environmental degradation is proportionately less than that of the rich. Further, the poor do not have the means to undertake averting expenditures to protect them from various environmental hazards.

Intergenerational equity has been accepted by both international agencies and many countries as an operational principle of sustainable development. The government must function as a trustee for the unborn. The precautionary principle suggests that when there are great uncertainties about the magnitudes of option and existence values of an ecological resource, preservation or conservation may be a better policy option than development. Therefore government intervention to preserve scenic spots, wild life sanctuary and biodiversity is justified in the public interest.

In terms of Durkheim's (1984) classification Indian environmental laws are repressive. In Weber's (1980) sense the laws are prohibitive. In terms of typologies adopted in the ADB Report (1998), the existing laws and rules come under the typologies "state-rule based" and "state-discretionary". India's experience with

environmental policy making during the last three decades reveals that government failures do occur under a CAC regime.

When the economy is being liberalised and globalised the environmental policy must also change. As the resources are limited and the central, state and local governments face severe budget constraints, cost benefit analysis of environmental laws and regulations should be made mandatory. Wherever feasible, greater reliance should be placed on the use of economic instruments for environmental protection because, if the instruments are well designed, they can signal the users of environmental resources about the social scarcity values of these resources and at the same time generate revenues to the governments. The government can also provide an enabling environment to community based organizations to participate in the management of local commons and in the enforcement of environmental laws and rules. The government must make a transparent and conscious assessment of the tradeoff between efficiency and equity in the matter of environmental policy.

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