ENVIRONMENTAL LAWS IN INDIA: A CRITICAL ANALYSIS

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INTRODUCTION:

The article critically reviews the environmental legislations and enforcement of environmental policy. It portrays the lacunae in the present legislations and the role of judiciary in filling the loopholes through various decisions and making environmental laws a part of the constitution with are enforceable at many grounds. However, this article is also a critique of judicial decisions in their approach of granting compensation and imposing fines which are much lesser than the damage caused to the environment and the victims. This contention is supported by various case laws. Also, there is a total disregard to the present legislations and new legislations in this scenario might result in more degradation of environment than less degradation. Owing to this fact, the importance and shortcomings of polluter pays principle and public trust doctrine are discussed in the light of case laws.

The scope of this article includes the constitutional validity of environmental laws through judicial interpretation which compels citizens to comply with formal environmental regulations; it brings forth the importance of corporate accountability and the partial efforts of the legislature to maintain the same. Nevertheless, the role judiciary in contributing towards sustainable development is discussed briefly with the help of case laws. The conclusion provides for the suggestions on many grounds such as the efficiency of national green tribunals, their independence etc.

CONSTITUIONAL VALIDITY OF ENVIRONMENTAL LAWS:

The most basic Constitutional provision which provides for right to life and personal liberty has been broadened time and again through judicial decisions. This provision has been applied proficiently as a link between the environmental quality and the right to life where the court interpreted the right to life guaranteed by the Constitution to include the right to a wholesome environment .Since India is a common law country, this decision binds other courts to put forth future decisions which are in consonance with the above decision and thereby giving legal

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status to enjoyment of clean environment as part of right to life. The Constitution of India aims at protecting the environment through many other provisions and does not restrict itself only to judicial interpretation. The Directive principles of state policy imbibe that the State shall endeavor to protect and improve the environment. Though DPSP's are not enforceable before any court, they are nevertheless fundamental in the governance of the country and it mandates a duty on the State to apply these principles in making laws.

The Constitution of India also casts a moral obligation on its citizens in the form of Fundamental duties, which puts an obligation on its citizens to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures. Fundamental duties were not directly enforceable at the adoption of the Constitution of India but as a result of judicial intervention there has been a paradigm shift and now fundamental duties are enforceable when backed by a legislation because fundamental duties give a right to the citizens to approach the Court for the enforcement of duty which is casted on State instrumentalities, agencies, departments, local bodies and statutory authorities created under the particular law of the State.

Apart from the constitutional mandate to protect and improve the environment, there are a plenty of legislations on the subject which specifically provide for environmental protection; the Water Act, the Air Act and the Forest Act (Conservation) Act, 1980. Thus, considering Constitutional provisions along with judicial interpretation and other specific legislations, the Indian environmental laws are legally binding. Nevertheless, the mere fact that judicial interpretation validates these constitutional provisions proves that the approach of viewing environmental problems constitutionally, is in isolation. It is also a pointer towards the complex nature of environmental problems and the dire need for constitutional reforms in the country to achieve sustainable development.

FLAWS IN EXISTING ENVIRONMENTAL PROVISIONS:

It is an understandable proposition today that smoking has the ability to affect human health and keeping this in mind the Supreme Court imposed a ban on public smoking , but there is a another side to it. The manufacturing of cigarettes involves the process of cutting trees and neither the legislation nor the judiciary has done anything to check this cause. Also, the execution of ban on pubic smoking has failed adversely. Cigarettes and bidis are openly sold

in tobacco-free railway stations, bus stands, cinema houses, etc. the measures taken by the government to prevent smoking includes a statutory warning 'smoking is injurious to health' on the cover which is printed in such small prints and color that hardly it is readable, Even, if it is readable, it has not served any purpose. Apart from this, the powers vested in the Pollution Control Boards are not enough to prevent pollution. The Boards do not have power to punish the violators but can launch prosecution against them in the Courts which ultimately defeats the purpose and object of the Environmental Laws. Though National Green Tribunals has been set up and all environmental cases are transferred from high courts to the tribunal for rendering speedy and expeditious justice, yet the tribunal is challenged for lack of judicial independence from the Government.

Owing to these backdrops the present legislations against environmental pollution are respected partially and not completely. A sharp evaluation of laws provides for reasons which lead to ineffectiveness of environmental laws in India. The penal code does not exclusively deal with criminal offences which cause environmental damage and the provisions which cover public health and morality do not provide for a stringent punishment. In case of public nuisance and for making the atmosphere noxious the punishment in form of fine is too meager. Also, Environment Protection Act relates directly to the protection and improvement of the environment and the prevention of hazards to human beings, plants and property from the kind of pollution which was earlier envisaged under the Water Act and Air Act. Although the act seems to be an umbrella statute, it does not override the punishment given under specific legislations like the Water Act and Air Act for the purpose of punishment. If an offence is committed which is punishable under environmental protection act and any other act then the offender is punished under the other law and not the environment protection act. The attempt of the government to protect the victims is manifested in the insurance act which provides immediate relief to the victims of accidents which occur while handling hazardous substances, this act also acknowledges the principal of no fault liability. But the question as to the amount of compensation paid to the victims is still not sufficient to meet the loss.

The above provisions appear blatantly contradictory and paradoxical; such provisions seem to ensure that the stringent penalties prescribed by the Act remain only on paper. Also, the punishments are too meager to meet the objectives. With these penal provisions, it is not possible to check environmental pollution.

CORPORATE ACCOUNTABILITY:

With less stringent laws at disposal it becomes very difficult to hold corporate houses accountable to the proportion of damage caused by them to the people and environment. The various principles applied by the courts to determine the compensation have not proved enough to fulfill the claims of the victims and the environmental degradation on the other hand. Now, the catch is, even if the polluter pays compensation to the victims and his obligation is over then who is going to replenish the damage caused to the environment. This issue was discussed by the Organization for Economic Co- operation and Development [OECD] during the 1970s when there were great public stakes involved in environmental issues. At this point of time the polluter pays principal was promoted owing to the threats posed by the modern industrialized society. Polluter pays principal means that the financial costs of preventing pollution should lie primarily with the undertakings which cause the pollution or produce the goods which cause the pollution. Under this principal it is not the role of the government to meet the costs involved because that would indirectly shift the burden of paying costs to the taxpayers. Thus, it provides for compensation as well as obligation on the part of polluter to take necessary action which will put the polluted object in the normal state as it was in its initial stage.

In India polluter pays principle has been accepted as the law of land and considering the scope of this principle it should provide for the requisite checks and balances which are missing in the legislations but the problem with this principle is that the amount of compensation again is based on the direction of the courts and it may not be sufficient at all the times as this problem has been manifested in an order by the Supreme Court where the amount of fine for restitution of the environment was mere Rs.10 lakh. In these kinds of situations where the polluter is a million dollar company and is made to pay only a small sum of money, the deterrence effect cannot be achieved for the country as a whole. Ever since the recognition of polluter pays principle, there has been considerable discussion on its nature, but the precise scope of the principle and its implications for those involved in past, or potentially polluting activities have never been satisfactory agreed.

Apart from recognizing polluter pays principle, the Indian courts have diversified their approach towards the protection of environment and accepted public trust doctrine as a part of common law. This doctrine is based on the principle that certain resources like air, sea, waters and forests have such great importance to the people as a whole that it would be unjustified to

make them a subject of private ownership. This doctrine protects the basic foundation of the environment that it cannot be subjected to use by a private entity alone and thus belongs to everyone. This is a helpful measure in protecting degradation of environment, but again the matter of discussion is whether it has created a deterrence effect? It is quite evident from the cases which have come before the courts even after the recognition of this principle. One the cases being the Taj Mahal's case , which totally shows that there is no deterrence effect on the business houses and it's only after the courts intervention that an activity degrading the environment comes to an halt.

In every developing country the slogan is to develop and stand among various developed countries, but that development should be in the closest possible harmony with environment. In India too, the trend of development is on an upscale. The Indian judiciary has played a pivotal role in keeping this development intact without harming the environment in every way possible. It is also to be highlighted that these judicial interpretations came in the form of public interest litigation and the awareness among the public has to be appreciated.

The Doon valley case was the first of its kind in the country which brought a sharp focus on development and conservation on the other hand, and rights of the people were given more importance. However, courts ought not to put a halt to any development project on the face of conservation and that a balance must be struck between both of them. If a project is causing harm at one place then rather than banning it totally, the right decision is to shift the project to a place where it may suffice without environmental damage, this in fact is the essence of sustainable development. In another case, the Rajasthan government professed to protect environment through notifications and declarations and was itself permitting the degradation of the forest. The Supreme Court passed an order which brought a halt to it. Thus, the judiciary has held a strong position in bringing checks and balance where the legislators themselves were involved. Also, from the perusal of above cases it is evident that the judicial attitude in India has been for the protection of environment which is irrespective of the parties and it has been rightly based on the principles of sustainable development.

CONCLUSION:

The Supreme Court of India has stepped in on numerous occasions to conciliate the economic and pollution issue in various cases by way of accepting sustainable development and polluter

pays principle as law of the land. It has gone to the extent of making right to clean environment as a part of right to life. However, the need of the hour now is to fill the lacunae by way of effective legislations and the government of India needs to play an active role in accomplishing this objective. Every time the courts deliver a judgment in favor of environment protection, the loss to the same has already occurred. Though there has been considerable development lately and the national green tribunals have been established for the purpose of reducing the burden of high courts, yet the problem lies in the fact that the central government has a major say in working of the tribunal, it can remove the chairperson on certain grounds and can appoint another person to fill the vacancy. This has indeed been the problem with tribunals since their inception. A necessary requisite here is to have an independent body where the government has only a partial control if not completely possible to eliminate the role of the latter. It becomes very difficult to whole heartedly trust the government while higher stakes are involved; it has already been seen in kamalnath's case.

Existing legislations cannot be rejected on the face of it; a critical analysis clearly displays the need of proper execution on the part of administrative bodies. As far as corporate accountability is concerned a strict criteria for determining compensation has to be achieved. For big corporations like span motel a small amount of fine will not set a good precedent. In fact, it is only after a precedent has been set forth by providing proper compensation, that a deterrence effect can be achieved which would keep the business houses from degrading the environment. A developing country like India which depends on multinational companies for a substantial part of employment for its citizens must follow an approach which gives a clear interpretation to polluter pays principle and other laws with immediate effect for meaningful enforcement.