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POLLUTION FREE ENVIRONMENT-AS HUMAN RIGHT

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ABSTRACT

This study concludes that India should take measures to improve enforcement of various environmental laws, including adopting a revised policy on pollution prevention, developing an integrated approach to pollution abatement, developing a policy on prosecution and enforcement, restructuring various environmental laws to meet treaty obligations, introducing incentive based instruments for pollution abatement and adopting a cooperative approach to enforcement of the environmental laws. This study also favours establishment of an environmental court in each jurisdiction.

Key Words: environmental law, Acts against environmental protection

INTRODUCTION

The environmental challenges facing individuals, communities, private companies and governments throughout the world are numerous and complex. Most governments, companies and civil society organisations now recognise that environmental issues are intertwined with social, cultural and economic issues. Promoting economic growth with environmental, human health and cultural safeguards in place seems to be the path forward for most governments, but decades of environmental mismanagement have created severe legacy issues in most countries. Two huge challenges are determining how to clean up legacy problems, restore natural resources, and achieve human health protection and health ecosystems; and designing strategies to enable future growth while protecting the environment, maintaining biodiversity, safeguarding human health, and preserving cultural and social values. This results in a very complex set of decisions for government at all levels, and a regulatory framework that is supportive, facilitating and enabling is essential.

Methods

Environmental degradation affects national welfare by damaging human health, economic activities and ecosystems. Because environmental problems represent a classic externality, some government regulation is generally warranted. From an economist's perspective, desirable regulation should weigh two factors: the benefits associated with reduced environmental damage, and the opportunity cost of mitigation. In reality, the extent and focus of government intervention will also reflect national political and institutional considerations [1]. It is therefore in this context that evolving a sound environmental policy is a condition precedent to having a sustainable environmental management. Policy is concerned with identifying problems, setting out aims and objectives and designing strategies and action plans. Law acts as one of the vehicles to achieve the aims and objectives set by policy. The success of any environmental policy depends on changes in

the behaviour of producers and consumers. Environmental policy can try to bring about these changes by means of various instruments. We do not have any generally accepted, standardized and unequivocal classification of environmental policy instruments [2]. However, there is some agreement that three broad categories of instruments can be distinguished [3].

- Instruments aimed at voluntary adaptations of individual and group behaviour in a more environmental friendly direction. This category, called communicative instruments includes the provision of knowledge and information in all possible forms, moral suasion and voluntary commitments by trade and industry or agreements between them.
- Instruments, which affect the market condition under which people and firms make their decisions. This category is commonly referred to as economic instruments. This includes charges and taxes, subsidies and other types of financial support (such as tax reductions), tradable rights (to emit a certain amount of pollutants, or to produce or use a certain amount of polluting goods or substances), deposit -refund systems, in which a deposit for a potential polluting product is being paid by the purchaser, who can claim a refund after returning the product showing that the pollution did not take place and liability legislation requiring the polluter to compensate the environmental damage he caused , and thus providing a financial incentive for pollution prevention.
- Instruments, which influence the range of alternatives by means of prohibitions, restrictions or obligations. This category is often called direct regulation or 'command and control' (CAC) regulation. This can be done by introducing product, process or emission standards. Outright bans on certain activities, products or substances also belong to this category.

Environmental policy in India

Respect for nature is part of the Indian psyche. Arthashastra written in 321 - 300 B.C. contains references to environmental management. The author of this treatise, Kautilya, was the Prime Minister of the Magadh Empire during the reign of Chandragupta Maurya. After the advent of British rule in India, the environmental and forest policies were shaped as per the directions of the British administration in India. In fact, policy on the general aspects of the environment was not laid down in British India, as environmental problems were not serious enough to warrant a policy of this nature. Therefore policy was confined to forests only. The British navy has been instrumental in the expansion of empire of the monarchy in 19th century. Britain's Oak Forests having gone, Indian trees were found favourites by the ship building industry of Britain. As a result, Indian forests witnessed large scale felling of trees to cater to the needs of British Navy. It was thought by the British Government that Indian forests should be properly managed for a sustained supply of timber. It was against this background that the Imperial Forest Department was formed in 1864 with Dr. Dietrich Brandis as the first Inspector General of Forests heading the establishment. The colonial rulers recognized the importance of forests late. Before that they had a policy that village communities would be the owners of forests falling within their boundaries. This was thought to be reversed through legislation of 1865, 1878 and finally in 1927. B.H. Bade Powell, a senior civil servant asserted that 'the right of the state to dispose of or retain for public use the waste and forest area is among the most ancient and undisputed of features in oriental sovereignty....the Government is by ancient law..... .the general owner of all unoccupied and wastelands'[4]. The Forest Policy of 1894 upheld the right of the state to exclusive control over forests. This policy also accorded primacy to agriculture. Post-independence India witnessed a forest policy in 1952. The principal aim of this policy was to subordinate industrial use to environmental conservation. It also professed that a third of the geographical area of the country should be brought under forests. This was followed by forest policy of 1988, the principal aim of which is 'to ensure environmental stability and maintenance of ecological balance including atmospheric equilibrium which are vital for sustenance of all life forms, human, animal and plant. The derivation of direct economic benefit must o be subordinated to this principal aim'. The

Forest Policy of 1988, however, does not have a matching forest act. The Indian Forest Act of 1927 is still the ruling forest legislation in the country concerned more with regulating the harvesting of forest produce and matters related thereto. The Government of India has issued detailed guidelines in 1990 directing all State governments to implement joint forest management with peoples' participation. This experiment is working satisfactorily in many states. This measure has overcome some of the limitations of the Indian Forest Act 1927, which did not have such provision. The Stockholm Conference in 1972 on Human Environment increased environmental activities in India. As on today, India has following detailed policy guidelines:

- On Forestry
- On Abatement of Pollution, February 1992.
- On National Conservation Strategy and Policy Statement on Environment and Development, June 1992.

Constitutional provisions and the environment

The Indian constitution is amongst the few in the world that contains specific provisions on environmental protection. The directive principles of state policy and the fundamental duties chapters explicitly enunciate the national commitment to protect and improve the environment. Judicial interpretation has strengthened this constitutional mandate. In the case of Tarun Bharat Sangh Alwar v Union of India [5], the Supreme Court had ruled that 'the issues of environment must and shall receive the highest attention from this court'. In the same case the Supreme Court said: "This litigation concerns environment. A great American Judge emphasizing the imperative issue of environment said that he placed government above big business, individual liberty above government and environment above all" [6]. The Supreme Court has adapted and developed some fundamental norms in the process of adjudicating environmental cases. These norms have come to stay in India as part of the environmental policy and law. These norms include right to a wholesome environment, polluter pays principle, precautionary principle, sustainable development principle, intergenerational equity etc. The Supreme Court has held that the enforcement agencies are under a duty to enforce the environmental laws and they may not plead problems of funds. The Court further clarified that the natural resources are meant for the enjoyment of the general public and cannot be converted into private ownership. India is a federation of states. Therefore, law-making power is shared between the union government and 29 states. Article 246 of the constitution divides the subject matter of laws made by parliament and by the legislatures of the states. "This provides three lists namely the union list, the concurrent list and the state list appended in the seventh schedule to the constitution." [7]. The concurrent list, among others, includes forests, the protection of wild life, mines and mineral development etc. Under this list, both parliament and the state legislatures have overlapping and shared jurisdiction. Parliament is also empowered to legislate in the national interest on matters enumerated in the state list under article 249. In addition, parliament may enact laws on state subjects, for states whose legislatures have consented to central legislation. The Water Act 1947 is an example under this. Environmental protection and improvement were explicitly incorporated into the constitution by the Constitution (42nd Amendment) Act of 1976. Article 48 A was added to the directive principle of state policy which are the commands of the constitution to the governments to run the affairs of the State. Article 48 A says 'the State shall endeavor to protect and improve the environment and to safeguard the forests and wild life of the country.' Article 51 A (g) in a new chapter entitled 'Fundamental Duties', imposes a similar responsibility on every citizen to protect and improve the natural environment including forests, lakes, rivers and wild life and to have compassion for living creatures. Although non-enforceable by a court, the directive principles are increasingly being cited by judges as complementary to the fundamental rights. In several environmental cases, the courts have been guided by the language of the article 48 A. An instance is the case of M.C.Mehta v Union of India [7]. Article 253 of the constitution empowers Parliament to make laws implementing India's international obligations as well as any decision made at an international

conference, association or other body. Entry 13 of the union list covers 'participation in international conferences, associations and other bodies and implementing of decisions made there at.' Parliament has used its power under article 253 read with entry 13 of the union list to enact the Air (Prevention and Control of Pollution) Act 1981 and the Environment (Protection) Act 1986. The preamble of both these Acts state that these acts were passed to implement the decisions reached at the UN Conference on Human Environment held at Stockholm in 1972.

Conclusion

Acts are there. Punishments are there. As those were not implemented in practice, Andolans came into picture. Still environmental imbalance is there. **President Bill Clinton saying that pollution had done "what 350 years of wars, invasions and natural disasters have failed to do [and] begun to mark the magnificent walls of the Taj Mahal"**. This statement is enough to know our position. Acts should be implemented strictly. More awareness programmes should be organised by the cream layers so that even a common man also known about the threat and can protect at least himself.

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