

## ANALYSIS OF ENVIRONMENTAL PROTECTION ACTIONS IN INDIA

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### *Abstract*

*It can be said that environment is everything that surrounds any creature and makes an impact on the living and survival of such creature. Environment is primarily and essentially natural. Development in the name of science (and also to fulfill human desires, whether necessary or unnecessary) has added certain artificial elements in the environment. These artificial elements thereby created an unwanted impact on the natural environment raising the need for its protection.*

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### WHAT IS ENVIRONMENT?

When it comes to the analysis of protection of environment it is necessary to understand what environment actually is. According to Britannica, “environment is the complex of physical, chemical and biotic factors that act upon an organism or ecological community and ultimately determine its form and survival.” Thus, it can be said that environment is everything that surrounds any creature and makes an impact on the living and survival of such creature. Environment is primarily and essentially natural. Development in the name of science (and also to fulfill human desires, whether necessary or unnecessary) has added certain artificial elements in the environment. These artificial elements thereby created an unwanted impact on the natural environment raising the need for its protection.

The roots of this artificial contamination can be traced back to 17<sup>th</sup> century with the beginning of Industrial Revolution. Several mechanical inventions involving the use of fossil fuels and other limited resources were on a roll. There was a race for achieving industrial magnificence making it a criterion for the tag of an advanced nation. This haphazard exploitation led to the release of toxins, ample to raise a question-mark on the existence of man-kind.

### NEED FOR ENVIRONMENTAL PROTECTION

Our ancient literatures and ancestors have been constantly reminding us of considering the possible consequences of our actions first and then initiate the proceedings. But objectivity in the nature of mankind always tends to flow in the opposite direction. Till World War II, nations were passionate about use of chemicals irrespective of the disasters it could bring. It was only during the second half of the twentieth century that environmental protection became a topic of discussion for the international agencies. The prominent contributor in driving the attention was Rachel Carson's “Silent Spring”. In her publication, she fiercely attacked the companies involved in the pesticides formation. Such chemicals not only polluted the environment but were also poisoning the wildlife creatures as well as humans. This paved the way for the beginning of an active participation of international agencies in environment protection.

Further, various researches towards climatic conditions and other environmental components showed that the continuous and irregular use of fossil fuels has strenuously affected ozone layering. The emission of Green House Gases (GHG) is increasing the overall temperature of planet earth. According to an ongoing temperature analysis by scientists at NASA's Goddard Institute for Space Studies (GISS), the average temperature of earth rose by a little more than 1°C since 1880 and two-third of it was raised since 1975 roughly at the rate of 0.15°C-0.20°C per decade. Some may argue it as a normal raise as many nations witness a huge fluctuation of temperature only in a day. This one degree change is significant because it not only warm-up the oceans but also melts the ice at the poles. This again results in the rise of oceanic levels which is a real time threat to the coastal regions around the world. According to a latest report by NASA using the research of IPCC (Inter-governmental Panel on Climate Change), 12 coastal cities of India including Mumbai, Chennai, Vishakhapatnam could be 3-ft underwater by 2100. Several other similar reports have forced the so called 'caring' organizations to take some binding steps in order to curb the bewildered destruction of environment.

### STEPS TAKEN TOWARDS ENVIRONMENT PROTECTION

The first ever global initiative towards the preservation of environment was taken by Sweden in 1967. It proposed an international framework towards the protection of environment. This proposal was supported by several nations and first conference on environment, Stockholm Conference, was held in 1972. However, the conference was not a gathering of like-minded. Developing countries argued that developed nations were primarily responsible for the environmental degradation. In the words of Smt. Indira Gandhi, who emerged as a figurehead to represent the fears and priorities of developing nations, "We do not wish to impoverish the environment any further and yet we cannot for a moment forget the grim poverty of large number of people. Are not poverty and needs the greatest polluters?". Another fear which was grasping the developing nations was that these environmental concerns could be used by the developed nations to restrict the utilization of their resources. However, in the end the conference was successfully convened. The take-away from the conference was the Stockholm Declaration which gave first agreed principles for protection of human environment. These principles became the basis of Rio Declaration, 1992. It also provided certain recommendations to the governments and international organizations for the purpose.

Thereafter, several other measures such as World Conservation Strategy(1980), World Charter for Nature(1983), World Commission on Environment and Development, also known as Brundtland Commission, etc were taken but the gatherings which drew the most of the attention were Rio Summit(1992), COP 3 (1997), The Millennium Summit (2000), COP 15 (2015). Rio Summit, also known as Earth Summit was meant to make the governments reconsider their economic policies and decisions in perspective of its environmental impact. The Summit led to many important documents- Rio Declaration on Environment and Development, 'Agenda 21' and Forest Principles. Of all the Conventions which were a part of Rio Convention, United Nation Framework Convention on Climate Change (UNFCCC) itself became an important treaty having its own secretariat and is currently functioning with research support from IPCC. Also, the third Conference of Parties held in Kyoto, Japan led to the adoption of Kyoto Protocol. It placed a commitment on developed nations to drop carbon emissions by 5.2% lower than the levels in 1990, for 2008-2012 period. At the same time, it protected the developing economies from the cost of emission reduction. The Millennium Summit held in 2000 set up 8 MDG (Millennium Development Goals). The most recent conference was COP

21(2015) which was concluded in the form of a legally binding Paris Agreement. It was aimed at Goal 13 of the Sustainable Development Goals (SDG) announced by UN i.e. Climate change. The Agreement aimed to limit the temperature rise to below 2<sup>0</sup>c by 21<sup>st</sup> century and if possible below 1.5<sup>0</sup>c.

In India, the relevant laws striving for environmental protection are- Environment (Protection) Act (1986), Water (Prevention and Control of Pollution) Act (1974), Air (Prevention and Control of Pollution) Act (1981), Wildlife (Protection) Act (1972), Forest (Conservation) Act (1980), National Green Tribunal Act (2010), etc. Among them Environment Act, 1986 is the umbrella law under which Central Govt. issues various rules and notifications for abatement of environmental pollution. Some of the rules adopted under the law are- E-waste Rules 2016, Plastic Waste Management Rules 2016, Solid Waste Management Rules 2016, etc.

Key regulatory authorities involved are Central Pollution Control Board, State Pollution Control Board, and National Green Tribunal. In fact, India is only third country in the world, after Australia and New Zealand, to set-up a dedicated environmental tribunal.

It is worth mentioning that the Apex court has, from time to time, set-up certain mandatory environmental standards through its various revolutionary judgements. Be it “M.C. Mehta case(1987)” in which the closure of tanneries was ordered for polluting the river Ganga or another “M.C.Mehta case”(1989) in which principle of ‘Absolute Liability’ was evolved, the Apex court has been constantly monitoring the need of development and evolution in the criterion for environmental protection.

#### **STEPS WHICH SHOULD BE TAKEN FOR THE PROTECTION AND PRESERVATION OF ENVIRONMENT:-**

##### **1) Autonomy to the authorities**

As mentioned above, several authorities have been instituted for regulating the steps in environmental protection. In recent years, we have observed that National Green Tribunal has been playing a proactive role in controlling the hazard caused by the polluters. Some of the cases worth mentioning are as follows:-

- a) In 2005, an MoU was signed between Odisha govt. and a South-Korean steel giant POSCO for setting up a steel plant making it the India’s largest ever FDI of more than Rs 50,000 crore. But in 2012, the project was stalled by constant opposition from 8 villages of the forest area which was to be allotted to the company. A petition was filed in the NGT and consequently the tribunal intervened and suspended the environmental clearance granted to the company.
- b) Considering the extremity of pollution caused in capital of the country, the tribunal, in 2015, ordered the cancellation of permits diesel vehicles which were older than 10 years. Also the appeal against the order was dismissed by Supreme Court. Later on, the tribunal ordered for deregistration of 15 to 10 years old diesel vehicle in a phased manner. An important feature of the judgement was that it denied giving NOC to such vehicles for plying outside Delhi-NCR.
- c) In 2017, NGT imposed a fine of Rs. 5 crore on Art of Living organization for organizing World Cultural Festival. Later, an appeal preferred to the Supreme Court was also quashed and the order of NGT was upheld.

- d) In 2017, NGT, through an interim order, banned the use of plastic bags thicker than 50 microns and ordered a fine of Rs. 5,000 for the violators. Criticizing the lackadaisical approach of the state govt, the tribunal directed both the state govt. and Delhi Pollution Control Committee to seize the entire stock of such plastic within a week of the order

Another applauding step by NGT is the enforcement of CEPI (Comprehensive Environmental Pollution Index). The tribunal ordered Central Pollution Control Board (CPCB) and State Pollution Control Board to strictly enforce and regulate the CEPI, a much needed step which was due for years, thanks to the inactivity of the responsible officials. The Index marks the industrial clusters as Polluted Industrial Areas (PIA) as –

- 1) Critically Polluted Areas (CPA)
- 2) Severally Polluted Areas (SPA)
- 3) Other Polluted Areas (OPA)

But, sadly, the given achievements are not free from drawbacks. For instance, in the POCSO case, the South-Korean steel giant finally decided to quit the landmark deal with the Odisha Govt. in 2017 leaving behind not only unemployed people but also a barren area which used to be a fertile land of betel-vines. Lakhs of stumps of what were once cashew nut and other fruit bearing trees are tell-tale signs of livelihoods lost and an ecology devastated. The State Govt. did not had a well-designed roadmap for setting up the project. The project was opposed by the villagers right from the beginning when the concerned authorities were acquiring their land on a fertile strip on the coast of Bay of Bengal near Paradip, famous for its betel-vines. The resistance was mainly because the betel-vines based economy was the source of livelihood of 20,000 odd people living in the adjoining villages. Keeping in mind the interest of villagers and environment, the Tribunal suspended the order of environmental clearance but in the greed of getting an industry-favouring tag, the authorities found a way of superseding the order of tribunal. This shows the lack of authority in the adjudication of NGT and create a suspicion on the very existence of the Tribunal. The order by NGT should have been an initiating step towards removal of industrial set-up but nothing happened as such.

Similarly, in 2015 NGT imposed a fine of Rupees 5 Crores on Art of Living Foundation for organizing “World Cultural Festival”. The action was initiated on the application of a ret. Indian Forest Officer Manoj Mishra who has been playing an active role in protecting the Yamuna river via “**Yamuna Jiye Abhiyan**”. Later, NGT constituted a 4 membered committee which was further upgraded to 7 membered committee to address the following issues :-

- a) Assess the environmental damage and degradation caused in organizing the so-called Cultural Festival.
- b) The compensation payable for restoration of the floodplain.

The committee submitted a 47 page report making the following assertions:-

- 1) Entire floodplain area which has been used for the event has been completely destroyed, not simply damaged
- 2) The ground is now totally levelled, compacted and hardened and is totally devoid of water bodies or depressions and almost completely devoid of any vegetation.
- 3) Absence of vegetation has severely compromised the water retention capacity of the area.

In addition to this, a part of the committee wanted the amount of fine to be more but the amount of Rs.5 Crore was finally agreed upon. Now the decision is questionable on the ground that whether the amount is sufficient enough to replenish the ecosystem which was previously in existence. Also, nothing was considered regarding the damage which may occur to the adjoining areas till the ecology of the floodplains is re-established. We all are aware that such events are politically backed but imposing fine and using it in repairing the damage is certainly not an example which an environment regulatory authority would like to set as far as conservation of environment is concerned. Also two important acts- Wildlife Protection Act,1972 and Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 has been kept out of the jurisdiction of NGT which ultimately restricts the jurisdiction as well as hampers the functioning of the Tribunal in adjudication of crucial forest rights issue. Thus, it is suggested that NGT and other related authorities should be conferred with more powers so as to enable them to effectively implement the provisions for environmental protection. Further it is also submitted that the appeal of the order should only be maintainable in the Supreme Court and in no other court. Many writs are preferred in the various High Courts against the order of NGT on the ground that NGT is a statutory body and not a constitutional body. Such easy appeals actually undermine the efforts and authority of the orders of NGT.

## 2)Modification of Permit System

The relevant authorities operating under the Environment Protection laws are NGT, Central Pollution Control Board (CPCB), State Pollution Control Board (SPCB). As far as current status of environment protection procedure is concerned, the govt. has scrutinized the industrial sector in their willful and unregulated expansion against the environment. There is a permit system which an industrial need to obtain mandatorily for conducting its operations depending upon the activity undertaken by the company. There is an integrated permit system to a large extent. For e.g. Consent To Establish (CTE) and Consent To Operate (CTO) and its renewal can be obtained by submitting combined applications to the concerned SPCB. Further E-Waste (Management) Rules 2016 has allowed the companies to make a centralized and India-wide application instead of making it with each SPCB. Also the CPCB has waived the condition of obtaining Environmental Clearance (EC) and CTE/CTO separately. EC alone will be considered as equivalent to both the Consents.

The Industries are classified under **Red, Orange, Green** and **White** depending upon the **PI (Pollution Index)** score.

- Red Category- PI score of 60 or above. It covers nearly 60 sectors (For e.g. Asbestos, Nuclear power plants, oil and gas extraction)
- Orange Category- PI score of 41 to 59. It lists about 83 types of industries.(For e.g. food and food processing, pharmaceutical formulations etc.)
- Green Category- PI score of 21 to 40. The list consist of 63 sectors.( For e.g. Saw mills, Polythene and Plastic products.)
- White Category- PI score of upto 20. It lists 36 types of industries( For e.g. solar power generation through photovoltaic cells, wind power, etc.). These industries are classified as non-polluting industries. They do not need any kind of permit and merely has to notify the relevant SPCB regarding their operations.

This permit system is beyond understanding. On the one side, we are boasting of making India carbon emission free by 2050 and on the other side we are granting permit to the

industries for clearing the area that may have any no. of trees or other vegetation, directly or indirectly. It has been observed in numerous cases that in the light of industrial development, much fertile and vegetative-prosperous land was and is being sacrificed inviting catastrophic circumstances. The abovementioned POSCO case is one such example.

It is submitted that there is thousands of acres of barren land available which could be used for industrial purposes. Instead of granting environmental permits or allowing the conversion of agricultural or forest land into industrial on payment of a mere amount of fees, the govt. should develop infrastructure and transport facility in such barren lands and promote establishment of industries at such places because the fees of some crores would be much smaller than the cost the humanity would have to bear. Also, even if it becomes inevitable to grant such permission the concerned officers should be ordered to plant twice the amount of trees which they would clear while setting up the industry. If they fail to do so their application for renewal of permit should be declined at once apart from imposing a hefty amount of fine.

### **3) Establishment of Regional /Additional Authorities**

As mentioned above, the major authorities involved in environmental protection are NGT, CPCB and SPCB. The functions of SPCB and CPCB as mentioned in the Air(Prevention and Control of Pollution) Act,1981 includes advising respective Govt. on the prevention and control of pollution, carry on research and investigation for prevention, control and abatement of air pollution ,compile and publish data relating to air quality and lay down standards for maintaining quality of air. As per the website of the CPCB, the Board also compiles and publishes data relating to water pollution, urban pollution, industrial pollution, etc. Similarly, various State Boards, constituted under Air Act or Water Act are also performing additional functions under other laws such as Solid Waste Management Rules, 2016, Plastic Waste Management Rules, 2016, E-Waste Management Rules 2016, etc.

It is suggested that the burden of the authorities should be relaxed by establishing additional authorities for monitoring the various aspects of pollution. The necessity of establishing regional or additional authority is felt not only for the purpose of proper monitoring but also for the purpose of proper implementation of the laws and rules. For instance, under the Consumer Protection Act, 2019 the cases of consumer disputes are well classified for adjudication between National Consumer Disputes Redressal Commission, State Commission and District Commission. The recent Act has also introduced new authorities for effective implementation of the object of the law i.e. Central Consumer Protection Authority, State Consumer Protection Authority and District Consumer Protection Authority. Also, under Industrial Disputes Act, 1947 various authorities have been constituted such as Conciliation Officer, Board of Conciliation, Labour Court, Labour Tribunal, National Commission, etc. Therefore, the Govt. should establish Green Tribunals at the State as well as District level so as to effectively resolve the complaints of violation of environmental laws. Also, constitution of District Pollution Control Board will immensely assist the Central and State Boards in accurate compilation of real time data as well as monitoring of acceptability of environmental norms among various industries.

## CONCLUSION

We have witnessed in the past few years that both the Central as well as State Govt. have been constantly promoting the non-conventional sources of energy such as Solar panels. But the range of use of such sources is still restricted mostly to domestic users. It is well known that industrial sector is largest consumer of energy and has not shown much dedication towards the use of renewable sources of energy. Also many of them are using lacunas in the environmental laws for their profits making a huge loss for the upcoming generations. This has to be stopped because the upcoming disasters will certainly not be discriminating between the industrialist and non-industrialist while vanishing the humanity.

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