

Growth and Development of Environmental Policies in Indian Legislation

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Abstract

Ever thing that surrounds us is Environment. This paper emphasizes upon determining the true meaning and nature of environment. Moreover it deals with the problems which are affecting the environment and also provides the measures which were taken to curb such problems. The main content of this paper highlights the growth and development of environmental policies in Indian Legislation. It provides for Pre independence Environmental Legislation during Ancient India, Medieval India and Mughal Period. Later on Post independence policies are discussed which were made during different Five Year Plans.

Lastly this paper analysis the in depth study of National Environment Policy of 2004 and 2006 and points out its objectives and its importance in the growth and development of Environmental Legislations.

Keywords

Pollution, National Environment Policy, Atmosphere, Organisms, Van Mohotsav

Introduction

The difficulty of defining environment is that it is term everyone can understand but no one is able to define it properly.

The word environment in its etymological sense means not only our immediate surroundings but also a variety of issues connected with human activity, productivity, basic living amenities and its impact on the natural resources such as land, water, atmosphere, forests, damns, habitat, health, energy resources, wildlife etc.

According to the statutory interpretation of word the ‘Environment’, Section 2(a) of the Environment Protection Act, 1986 and Section 2(c) of the National Green Tribunal Act, 2010 states that *Environment includes water, air and land, and the interrelation which exist among and between water, air & land and human beings, other living creatures, plants and micro organism and property.*

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The definition of Environment had been interpreted and given a wider meaning throughout the history of Indian Judiciary. In **T.N. Godavaram Thirumalpad v. Union of India**² Supreme Court observed that Environment is a difficult word to define. Its normal meaning relates the surroundings, but obviously that is a concept which is relatable to whatever object it is which is surrounded.

The environment, thus, is an amalgamation of various factors surrounding an organism that interacts not only with the organism but also among themselves. It means that aggregate of all the external conditions and influences affecting life and development of organs of human beings, animals and plants.

Environmental Policies during Pre-Independence Era

Policy means a plan of action agreed or chosen by a political party or a corporate body or government. It is a broad guideline for administrators to implement the pro-public decision more timely efficiently and effectively. Before starting with the actual special enactments and governmental policies regarding environment, let us see the historical traces of the environmental jurisprudence and rules in pre independence era starting from ancient India and medieval India up to the British India.

India was most environment friendly during the Vedic age. People worshipped water, air, tree etc. Under the ancient culture moral injunctions acted as guidelines towards preservation and conservation of Environment. The Mauryan period was perhaps the most glorious period from environment protection point of view. The detailed and prescriptive law provisions regarding environment are found in Kautilya's Arthashastra. Under the Arthashastra, the necessity of forest administration was realized and various punishments were prescribed for cutting trees, damaging forests and for killing animals. In Yajnavalkya Smriti, cutting trees and forests is considered as punishable offence and a penalty of 20 to 80 pana was prescribed. Also in Charak Sahmita, destruction of vegetation was treated to be the cause of ruin of state. Many instructions were prescribed under these books for the use of water and to maintain its purity. In Srimad-Bhagavatam, it has been appropriately said that, a man who with exclusive devotion offers respect to sky, water, earth and such other heavenly bodies like the living beings, rivers, trees, etc. and consider them as a part of the body of the Lord, attains the state of supreme peace and God's special grace. In Gupta period prohibition for forest destruction and animal killing were announced by Hindu Kings.

² AIR 2003 SC 724

From environmental conservation point of view, a significant contribution of Mughal Emperors has only been the establishment of royal gardens, monuments like Taj Mahal and surrounding gardens and water fountains, fruits orchards, green lawns, central and provincial headquarters, public places like Hamas, on the river banks and dales which they used as holiday resorts during summer seasons. From the Historical traces it can be seen that, the religious policies of Akbar based on principle of complete tolerance also reflects the concern for birds and beast in so much as endeavors were taken during his reign to stop their unnecessary killing. Almost a similar policy was adopted by Jahangir and Shah Jahan. However except few Mughal rulers, for most of them forests meant woodland where they could hunt. Thus, during Mughal period environment conservation did not receive much attention.

The invasion by the British and the establishment of their rule in India ushered in an era of plunder of Natural Resources. At the same time this regime saw the beginning of organized forest management. However no particular legislation was made during this period because of lack of awareness. But, some legislation came after the Industrial revolution as there was pressing need of such legislation to fulfill their greed. However some of the laws acted as seed and paved the way for further legislation in Independent India. In the field of Noise, **Indian Police Act 1861** was framed. It tried to curb the noise pollution generated. It provides noise to be within reasonable limits. In the field of Forest Protection, **Forest Act 1865** came into force. The Act asserts the State monopoly right over the forests. The customary rights of rural communities to manage forests were curtailed by the Act. The act was modified in the year 1927 and was known by the name of **Indian Forest Act 1927**. It denied people living in forest any rights over the forest produce. This act was passed with the objective of conservation, protection and maintenance of forest area. In the field of Water protection, **Bengal Regulation VI of 1819, The Merchant Shipping Act 1858, Indian Penal Code 1860, Indian Easement Act, 1882 and Fisheries Act, 1897** were passed. Thus, the environment policy during the British rule was not towards the conservation of nature but was directed at the objective of earning revenue and had a narrow scope and limited territorial reach.

Environmental Policies Post Independence

The independent India has shown keen interest in protection of environment. The policy statement with respect to a particular issue pronounced by the government is kind of a promise given to the people. There is a direct link between the policies and environmental laws in India which is visible in the drafts and outlays of all five years plans.

During the First Five year plan (1951-1955) India adopted a national festival of tree planting- ‘**van mohotsav**’ in 1950 , which was started with the objective of creating mass awareness about the value of forests in human beings. The Indian Government revised the Forest Policy of British in the year 1952 with a new title as ‘**National Forest Policy**’. The programs of consolidation of areas under forests continued, additionally, construction of forest roads and economic plantation received more emphasis during Second Five Year plan (1956-1960). Similarly a new scheme **Pre- investment Survey of Forest Resources** were started in collaboration with ‘United Nation Special Fund’ and ‘Food and Agriculture Organization’, with a view to investigate the availability of raw materials in the possible industrial catchment areas and further to determine their economic viability during Third Five Year plan (1961-1969). Every five year plan lead to some growth and development in the field Environment Legislation.

Major Environment Policies in India

The Ministry of Environment and Forests is primarily concerned with the implementation of policies and programs relating to conservation of country’s natural resources including lakes and rivers, its biodiversity, forests and wildlife, ensuring the welfare of animals and prevention and abatement of pollution. These objectives are well supported by a set of legislative and regulatory measures, aimed at the preservation, conservation and protection of the environment.³

The *Policy Statement for Abatement of Pollution* was declared on 26th of February, 1992 to abate the pollution for preventing deterioration of the environment. To achieve this goal, the statement adopts fundamental guiding principles, namely (i) prevention of pollution at source, (ii) encourage, develop and apply the best available practical technical solution, (iii) the polluter pays principle and (iv) public participation in decision making. The policy seeks to effect implementation of pollution abatement techniques especially in the critically polluted areas.

The *National Conservation Strategy and Policy Statement on Environment and Development* was declared in June, 1992 covering various environmental problems and its regulatory and promotional measures, development of policies from environmental perspectives, international co- operation, policy and instrumental support for the implementation of the strategy etc. has been prepared and adopted by the Government of India, after extensive consultation at various levels at the Central and State Governments, Universities, academic institutions, nongovernmental organizations and informed individuals. This document adopts the policy of sustainable development and declares the Government’s commitment to re-orient policies and

³ Ministry of Environment and Forest, *ROLE OF MINISTRY, GOVERNMENT OF INDIA* (December, 08, 2017, 09:35PM), <http://www.moef.nic.in/report/0506/ExecSummary.pdf>

action in unison with environmental perspective and was considered as major policy instrument of the Government for dealing with various facets of environment and development in comprehensive manner. Besides providing a perspective, this will help in devising the norms and regulation for integration of environmental consideration in the developmental activities of the various sectors, thus paving the way for achieving sustainable development.

Draft National Environmental Policy – 2004

The Ministry of Environment and Forests released draft national environmental policy on 21st August, 2004 for comments.⁴ It identifies the major environmental problems that India faces, and outlines their proximate and ultimate causes. The preamble of the draft environmental policy states that there is a need for a comprehensive policy statement in order to infuse a common approach to the various sectoral, cross sectoral, including fiscal, approaches to environment management. Further, as our development challenges have evolved, and our understanding of the centrality of environmental concern in the development has sharpened, there is also a need to review the earlier objectives, policy instruments, and strategies. The present national policies for environmental management are contained in the National Forest Policy, 1988, the National Conservation Strategy and Policy Statement on Environment and Development, 1992⁵. The National Environment Policy, 2004 is a response to our national commitment to a clean environment, mandated in the Constitution in Articles 48A and 51A (g), strengthened by judicial interpretation of Article 21 of the Constitution. It is recognized that maintaining healthy environment is not the state's responsibility alone, but also that of every citizen. A spirit of partnership should thus be realized throughout the spectrum of environmental management in the country. While the state must galvanize its efforts, there should also be recognition by each individual – natural or institutional, of its responsibility towards maintaining and enhancing the quality of the environment. The NEP, 2004 is also intended to be a statement of India's commitment to making a positive contribution to international efforts. The NEP, 2004 has been motivated by the above consideration and is intended to mainstream environmental concerns in all the development activities. It briefly described the key environmental challenges currently and prospectively facing the country, the objectives of environment policy, normative principles

⁴ Ministry of Environment and Forest, *NATIONAL ENVIRONMENTAL POLICY, 2004*, GOVERNMENT OF INDIA (December, 09, 2017, 06:21PM), [http://www.fbae.org/2009/FBAE/website/images/PDF%20files/Imporatant%20Publication/National%20environment%20Policy%202004%20\(Draft%20for%20Comments\).pdf](http://www.fbae.org/2009/FBAE/website/images/PDF%20files/Imporatant%20Publication/National%20environment%20Policy%202004%20(Draft%20for%20Comments).pdf)

⁵ Volume 2, K R Gupta, *Environment : Problems And Policies* (Encyclopedia Of Environment)

underlying policy action, strategic themes for intervention, the broad indication of the legislative and institutional development needed to accomplish the strategic themes, and mechanism for implementation and review. It has been prepared through a process of extensive consultation with experts, as well as diverse stakeholders, and this process is also documented.

National Environment Policy – 2006

Across the political spectrum of the country, there has been recognition of that natural resources play in providing livelihoods, and securing life support ecological services. In this perspective a need for a comprehensive policy statement has been evident for some time in order to infuse a common approach to the various, sectoral and cross sectoral, including fiscal, approaches to the environment management. The National Environment Policy was approved by the Union Cabinet on 18th May 2006. The dominant theme of this policy is that while conservation of environment resources is necessary to secure livelihood and well being of all, the most secure basis for conservation is to ensure that people dependent on particular resources obtain better livelihood from the fact of conservation, than from degradation of the resources. According to the NEP 2006 report, the proximate drivers of environmental degradation are population growth, inappropriate technology, consumption choice and poverty. The policy seeks to stimulate partnership of different stakeholders, inclusive of public agencies, local communities, academic and scientific institution, the investment community, and international development partners, in harnessing their respective resources and strengths for environmental management.

Existing Legislations

One of the first legislations, after the UN Conference on Human Environment that came into existence was **Water (Prevention and Control of Pollution) Act 1974**. The objective of the act was to provide for the prevention and control of water pollution and maintaining or restoring of wholesomeness of water and establishing Boards for the Prevention and Control of Water pollution for carrying out these purposes and conferring on and assigning to such Boards powers and functions relating thereto and for matters connected therewith.

Similarly to curb Air Pollution, **Air (Prevention and Control of Pollution) Act, 1981** came into force. The objective if this act was to provide prevention, control and abatement of air pollution.

Further, **Environment (Protection) Act 1986** was enacted. It relates to protection and improvement of environment and the prevention of hazards to human beings, other living creatures, plants and property.

Conclusion

At the end it can be concluded that Environmental legislation had seen an immense growth with the passage of time. Many Policies had been made time to time to curb the effect of dynamic nature of Environment pollution. Strict rules, Heavy punishments, PILs etc. all played a very important role to protect the Mother Nature.

However due to lack of 'proper implementation' of policies and rules, there had been scenarios where the failure of legislation was visible. Steps had been taken earlier and also being taken in today's time. There is a need for the individuals to step up and work with the government to protect the Environment.