

# Present Scenario of Environmental & Legal Issues in India

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**Abstract:** The environmental awareness needs to be cultivated in any society to be an ideal society, or rather to be more precise, in other words, an ideal society means, and the society which has the environmental awareness. Although India has a rich and long history of environmental laws dating back to the 1970s, it still ranks very low on air and water pollution levels compared to the rest of the world resulting in. Poor sanitation conditions and sewage problems compound the problem affecting the health of ordinary citizens in India. The reasons for this disconnect between enlightened environmental laws and high levels of pollution could be traced to lax enforcement of existing environmental laws, discrepancies in the environmental guidelines for businesses to follow between the central government and at the state levels, and the existence of a large number of SMEs who neither have the resources nor the technical skills to adhere to the existing environmental laws.

**Keywords:-** *Environment, laws and acts, awareness, punishment, responsibilities, SMES, NGO's, Natural Hazards.*

## 1. Introduction

The earth's expanding human population and industrial growth have been known to cause serious environmental disasters. At the end of 2011, India's population reached 1.21 billion and its economy is growing at 8.5%, the fastest after China [1]. Due to the population pressure, India pushes ahead with aggressive industrial development. Consequently, thousands of industrial clusters nationwide produce enormous amounts of untreated toxic waste that often end up in rivers, lakes, forests, and landfills [2]. India is drawing the world's attention, not only because of its population explosion but also because of its prevailing as well as emerging health profile and profound political, economic and social transformations. After 54 years of independence, a number of urban and growth orientated developmental programs having been implemented, nearly 716 million rural people (72% of the total population), half of which are below the poverty line (BPL) continue to fight a hopeless and constantly losing battle for survival and health[3]. Even though India has sufficient environmental laws, weak enforcement and the lack of funds and manpower are most often the stumbling blocks for the pollution control boards [1]. The issues of environment are the effect from the human's activities that have no civic conscious and only think the profit without concern about the impact towards the environment and their future of life. The long term effect from the environmental pollution can be seen when the ecosystem is not able to

endure the pollution. According to the relevant literature, the major cause of this ecological crisis is regarding the value and belief in shaping human's relation with the surrounding and the lifestyle itself [4]. Present India is facing many important environmental challenges which currently threaten both the development of India and the outlook for its future [5]. The state of India's environment is in upset at the hands of uncontrolled human activities, and these ecological ailments are affecting social growth potential. India, as a dense country of 1 billion people, faces unique challenges that need unique responses. Here arises the need for environmental regulations and for confirming compliances of these regulations. The Government of India has established an environmental legal and institutional system to meet these challenges within the overall framework of India's development agenda and international principles and norms. In the constitution of India it is clearly stated that it is the duty of the state to 'protect and improve the environment and to safeguard the forests and wildlife of the country'<sup>6</sup>. It imposes a duty on every citizen to protect and improve the natural environment including forests, lakes, rivers and wildlife [6]. Reference to the environment has also been made in the Directive Principles of State Policy as well as the Fundamental Rights. The Department of Environment was established in India in 1980 to ensure a healthy environment for the country. This later became the Ministry of Environment and Forests in 1985.

## 2. Various factors affect the Environment

### 2.1. Population growth and environmental quality

There is a long history of study and debate about the interactions between population growths and the environment. According to a British thinker Malthus, for example, a growing population exerts pressure on agricultural land, causing environmental degradation, and forcing the cultivation of land of poorer as well as poorer quality. This environmental degradation ultimately reduces agricultural yields and food availability, causes famines and diseases and death, thereby reducing the rate of population growth.

### 2.2. Water pollution

India has major water pollution issues. Discharge of untreated sewage is the single most important cause for pollution of surface and ground water in India. There is a large gap between generation and treatment of domestic waste water in India. The problem is not only that India lacks sufficient treatment capacity but also that the sewage treatment plants that exist do not operate and are not maintained.

### 2.3 Air pollution

Air pollution in India is a serious issue with the major sources being fuel wood and biomass burning, fuel adulteration, vehicle emission and traffic congestion. Air pollution is also the main cause of the Asian brown cloud, which is causing the monsoon to be delayed. India is the world's largest consumer of fuel wood, agricultural waste and biomass for energy purposes.

### 2.4 Solid waste pollution

Trash and garbage is a common sight in urban and rural areas of India. It is a major source of pollution. Indian cities alone generate more than 100 million tons of solid waste a year. Street corners are piled with trash.

### 2.5 Earthquakes

An earthquake is a tremor of various intensity in the earth's surface caused by the action of the end genetic forces of the earth. It causes immense damage to life and property of the region if its intensity is measured over 7 on the Richter scale. Studies have shown that over 60% of the country's area comes under the moderate and high seismic zones.

### 2.6 Floods

The submergence of land through a temporary rise in river, lake or sea levels is called flood. It may be caused by increased rainfall, snow-melt, and high tide coinciding with a storm surge, the collapse of a dam or by movement of the land.

### 2.7 Cyclones

Cyclones, mostly tropical cyclones/disturbances, cause immense damage to life and property of the coastal areas of Orissa, Tamil Nadu, Gujarat, Andhra Pradesh and West Bengal. These cyclones are developed in the open seas of the Bay of Bengal and the Arabian Sea and are more frequented during pre and post monsoon periods.

### 2.8 Noise pollution

Noise pollution or noise disturbance is the disturbing or excessive noise that may harm the activity or balance of human or animal life. Noise-wise India can be termed as the most polluted country in the world. The source of most outdoor noise worldwide is mainly caused by machines and transportation systems, motor vehicles, aircraft, and trains.

### 2.9 Land or Soil pollution

In March 2009, the issue of Uranium poisoning in Punjab attracted press coverage. It was alleged to be caused by fly ash ponds of thermal power stations, which reportedly lead to severe birth defects in children in the Faridkot and Bhatinda districts of Punjab.

## 3. Environment Protection (Legal Framework)

**3.1 Water (Prevention and Control of Pollution) Act, 1974:** Prohibits the discharge of pollutants into water bodies beyond a given standard, and lays down penalties

for non-compliance. The act was amended in 1988 to conform closely to the provisions of the EPA, 1986. It set up the CPCB (Central Pollution Control Board) which lays down standards for the prevention and control of water pollution. At the state level, the SPCBs (State Pollution Control Board) function under the direction of the CPCB and the state government.

**3.2 Water (Prevention and Control of Pollution) Cess Act, 1977:** Provides for a levy and collection of a cess on water consumed by industries and local authorities. It aims at augmenting the resources of the central and state boards for prevention and control of water pollution. The water (prevention and control of pollution) cess rules were formulated in 1978 for defining standards and indications for the kind of and location of meters that every consumer of water is required to install.

**3.3 Air (Prevention and Control of Pollution) Act, 1981:** Ambient air quality standards, means for the control and abatement of air pollution, prohibits the use of polluting fuels and substances and regulates appliances that give rise to air pollution. To empower the central and state pollution boards to meet grave emergencies, the air (prevention and control of pollution) amendment act, 1987, was enacted. The boards were authorized to take immediate measures to tackle such emergencies and recover the expenses incurred from the offenders. The power to cancel consent for non-fulfilment of the conditions prescribed has also been emphasized in the air act amendment.

**3.4 The Air (Prevention and Control of Pollution) Rules, 1982:** Defines the procedures for conducting meetings of the boards, the powers of the presiding officers, decision-making, the quorum; manner in which the records of the meeting were to be set etc.

**3.5 The Wildlife (Protection) Act, 1972:** The WPA (Wildlife Protection Act), 1972: provides for protection to listed species of flora and fauna and establishes a network of ecologically important protected areas. The WPA empowers the central and state governments to declare any area a wildlife sanctuary, national park or closed area.

**3.6. The Forest (Conservation) Act, 1980:** restricts the powers of the state in respect of de-reservation of forests and use of forestland for non-forest purposes.

**3.7. Environment (Protection) Act, 1986 (EPA):** An Act to provide for the protection and improvement of environment and for matters connected therewith. It provide a framework for the co-ordination of central and state authorities established under the water (prevention and control) act, 1974 and air (prevention and control) act, 1981 and the central government is empowered to take measures necessary to protect and improve the quality of the environment by setting standards for

emissions and discharges; regulating the location of industries; management of hazardous wastes, and protection of public health and welfare.

### **3.8. The National Environment Appellate Authority Act, 1997:**

Establishment of a national environment appellate authority to hear appeals with respect to restriction of areas in which any industry operation or process or class of industries, operations or processes could not carry out or would be allowed to carry out subject to certain safeguards under the environment (Protection) Act, 1986.

### **3.9. Factories Act, 1948 and its Amendment in 1987:**

The Act contains a comprehensive list of 29 categories of industries involving hazardous processes, which are defined as a process or activity where unless special care is taken, raw materials used therein or the intermediate or the finished products, by-products, wastes or effluents would: i. Cause material impairment to health of the persons engaged. ii. Result in the pollution of the general environment.

**3.10. Public Liability Insurance Act (PLIA), 1991:** The PLIA was amended in 1992, and the central government was authorized to establish the environmental relief fund, for making relief payments.

**3.11. National Environment Tribunal Act, 1995:** The act provided strict liability for damages arising out of any accident occurring while handling any hazardous substance and for the establishment of a national environment tribunal for effective and expeditious disposal of cases arising from such accident, with a view to give relief and compensation for damages to persons, property and the environment and for the matters connected therewith or incidental thereto.

## **4. Current Situation and Key Challenges**

**Compliance Monitoring:** All polluting facilities are legally required to obtain from a respective SPCB a consent (permits) to establish (CTE) and a consent to operate (CTO). In accordance with a Notification issued by the MOEF in September 2006, certain new industrial projects/activities or those planning major notifications also require a Prior Environmental Clearance (from the CPCB for Category A or from an SPCB for Category B) based on an environmental impact assessment (EIA) report. Monitoring and inspection are a key function of SPCBs. The frequency of on-site visits to verify compliance is determined by the pollution potential (red/orange/green) and size (based on the value of capital investment) of the industry. According to the national Environmental (protection) Rules of 1986, each polluting facility must submit an environmental statement at the end of each financial year<sup>17</sup>. The area-based approach to environmental regulation has been

tried in India since 1991 through different CPCB and SPCB programs. While pollution control boards may close an offending facility or order the withdrawal of its power or water supply, it may only impose penalties by filing cases under the Water and Air Acts and the EPA, which may include fines and/or imprisonment<sup>18</sup>. Pursuing cases through trial and appellate courts, however, has proven to be an ineffective enforcement response, since courts are overburdened, procedures are cumbersome, and resources of state boards are overstretched. To help industry achieve compliance, PCBs undertake a range of activities, including:

- i. organizing training and technical assistance;
- ii. Developing industry-specific reports outlining problems,
- iii. Compliance status
- iv. Preventive/control options; disseminating the charter on corporate responsibility for environmental protection in the 17 categories of highly polluting industries, which seek voluntary compliance beyond the prescribed standards; and awareness campaigns.

Currently, economic instruments play a supplemental role in promoting environmental compliance in India. Principal economic instruments include rebate on the water cess, bank guarantees, subsidies for pollution control equipment, and other fiscal incentives<sup>19</sup>. Over the last twenty years, the Supreme Court of India and some High Courts of the states have led the way in the enforcement of environmental laws through citizen-led public interest litigation (PIL) that has its legal basis in the constitutional right to a healthy environment<sup>20</sup>.

Through this judicial activism, the courts have issued orders with specific implementation requirements that not only remedy the case at hand, but also set new policies and practices with widespread implications for the regulated community as well as regulatory agencies. This is evident from a plethora of cases starting from Ratlam Municipality Case, which provoked the consciousness of the judiciary to a problem which had not attracted much attention earlier. The Supreme Court responded with equal anxiety and raised the issue to come within the mandate of the Constitution 6, 21[6].

**4.1 Recommendations:** In India, environmental statute though impressive in range and coverage are more often observed in breach than practice. Environmental law enforcement, being a highly specialized area of implementation, entrusted to different agencies under different laws, presents a none-too-happy-a picture. Lack or inadequacy of skill; less than satisfactory infrastructural facilities; poor and unimaginative understanding of the law; jurisdictional conflicts and lack of coordination, among different agencies of implementation, appear to contribute to poor and ineffective implementation of the laws. Ability of some of

the more resourceful industries in either camouflaging their violations and non-compliance and in exerting undue pressure on the enforcement agencies, also has contributed to the inefficiency of the enforcement apparatus<sup>22</sup>. The deterrent theory of punishment employed under strict and absolute liability principle has achieved some degree of success. Nevertheless, the search for better alternative principles of liability hardly needs an elaboration. Hence it is time to harmonize the developmental activities with environment because development is also a very important aspect of life. For which the environmental regime has to be accounted and strengthened with more expert mechanism to deal with the longer spectrum of problems hitherto unattended by the law. Primarily meant as guiding principle for the administrative process to prevent adverse effects on the environment, the precautionary approach warrants formulation of expert environmental agencies at the initial decision making as well as at the appellate and reviewing levels [7].

## 5. CONCLUSION

The rapid economic growth experienced by India is resulting in adverse and harmful environmental conditions that are affecting the people of India as well the wider global population. In the case of India, this is further exacerbated by the high population density and growth rates. The existing environmental laws, although cover a wide spectrum of environmental concerns, they seem to be ineffective due to lack of enforcement, the lack of resources, and technical challenges faced by a large number of Indian companies, especially the SMEs. Pollution resulting from an excess of the complication and sheer number of laws, regulations and officials is by no means the least of the threats to our living environment. Another matter of concern is the need to keep laws and regulations in this area reasonably flexible and open when necessary to changes of direction. Awareness of environmental laws in society plays a vital role in prevention and control of pollution in industrial as well as at community levels. Moreover, awareness is essential for the action.

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