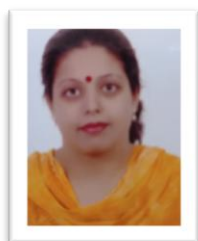


Environment Concerns in India: Problem and Perspective



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Abstract

Indian philosophy has accepted nature as an inherent part of human development. Various hymns in religious scriptures have eulogised mother nature and prohibited humans in harming it. However, the colonial government introduced ruthless exploitation of forest societies disrupting the old values of environment protection. Independent India has also failed to develop a strong code for environment protection. Nevertheless, judicial activism has broadened the ambit of Art. 21 of the Indian Constitution and made pure water, air as basic rights for a good life. Still, the guilty have managed to bypass strict injunction which can be done while bringing Precautionary Principle and the Polluter Pays Principle within the ambit of Environment Protection Act, 1986.

Keywords: Indian Constitution, EPA 1986, Environment Impact Assessment (EIA), Sustainable Environment, Right to Life.

Introduction

The earth whose are the four regions of space, upon which food and the tribes of men have arisen, which supports the manifold breathing, moving things (things), shall afford us cattle and other possessions also!

Atharva Veda, Kanda XII, Sukta 1

Since ancient times Indian ethos have enjoyed close relations with nature. The land of Bharata (India) bound by the Himalayas towards the north and sea in the south has varied climate and temperature zones allowing vast range of vegetation in the region. The region has fertile river systems like Ganga-Jamuna Doab in the central region and Sapt-Sindu in the North West. The Deccan plateau has river system making many part of it well drained. The Himalaya, running from north to east of India, has played an important part in the topography of India. Puranic literature like Skanda Purana provides detailed description of various regions in hills. Considered the land of Goddess, various myths and legends are woven around the flora and fauna of the Himalaya making it a sacred place dotted with many tirtha and dhams.

Indians' sacred bonding with its natural resources under went a tremendous attitudinal shift under the colonial government of the nineteenth century. In its quest to plunder the natural resources of India, Colonial government came with Forest Act from 1865 onwards which ensured its control over the forest.¹ The Act was amended later to facilitate penetration of colonial control into the forest resulting in displacement of forest societies. The canalisation and agrarian expansion delivered devastating blows to Indian natural resources. Rising population and urgent need to feed its millions of people further extended the exploit of the nature even after independence. Industrialisation of modern India and reckless exploitation of both forests and water resources had resulted in water shortage in large areas of India. Composite Water Management Index (CWMI) report which was released by Niti Aayog in 2018, around twelve percent of Indian population is living in acute water shortage (termed Day Zero signifying no availability of ground water) and by 2030 India might be losing 6 percent of its GDP to compensate the need to provide portable water to its population.² Indian Space Research Organisation (ISRO) in 2007 presented a report which brought into light that sixty nine percent of Indian land was already facing desertification making its vulnerable to water and wind erosion.³ Prepared a report on desertification in 2007, about 69 percent of land in the country is dry, making it vulnerable to water and wind erosion, salinization and water logging. Various commission and committees were formulated by successive government of India to address the problem. However, no sustainable success has been achieved so far.

Ancient Indian Wisdom towards the Protection of Environment

Indian sage foresaw close relation between man and environment. Vedic hymns are full of adulation for nature. Offering salutation to the mighty rivers of Indian subcontinent, nadi-sutra records, Like mothers to their calves, like milch kin with their milk, so Sindu unto thee the roaring rivers run...favour ye this land, O Ganga, Yamuna, Satudri, Parusni and Sarasavti: with Asiki, Vitasta...⁴ Obstruction in the flow of rivers was condemned and there are stories of Indra destroying Vrita who attempted to stop the natural flow of the rivers.⁵ The glory of the earth as protector of every being manifest in Atharvaveda where the sages have proclaimed themselves as 'the son of Earth' and earth being their mother.⁶ Various hymns in Atharva Veda further mentions herbs which could help to purify the environment and prescribe strict punishment for anyone found polluting the water bodies.⁷ Vedic sages further cautioned humanity not to cut trees by root and destroy them. Green trees were protected and avoided cutting. Regeneration of environment was also given due importance and there is hymn especially written to pray for the healing of nature, 'What of thee, O earth, I dig out, let that quickly grow over; let me not hit thy vitals nor thy heart, O cleansing one.' ⁸

Epics like Mahabharata and Ramayana have further displayed close understanding of symbiotic relationship between man and nature. It is even argued that Maharishi Valmiki, being a forest dweller himself had highlighted the forest life in Ramayana. Ramayana has reference of various forests like Chitrakoot, Panchvati, Tadaka and Dandakaranya. The distinction between the unbridled materiality in the form of Lanka and its contrast with the forest life through the movement of Rama, Lakshman, Sita, Hanuman and armies of Sugriva have highlighted the contrasting nature of living and need to synergize it through the agency of Lord Rama. Sita embodies nature and had taken birth from earth and went back into it towards the end. She decided to move to forest and even told Rama that she would be happy seeing the lakes and trees in the forest which had abundance food to feed her. For Gowda, Ramayan, in its essence, looked more oriented towards forest dwelling and equal distributive system as favoured by the leftist ideologies.⁹ Mahabharata also have sufficient reference of environment and challenges which its destruction could pose to humanity. Apart from using forests as the settings of various episodes, there are incidents where the untamed hunting of animals, uprooting of trees and plucking of flowers are condemned.¹⁰ Puranic texts also display close understanding of topography and ecological balance in the nature. The forests, rivers, tree and even land mass was given sanctity and protection. Various trees were considered sacred and prohibited any damage without incurring the greatest of the sins. The complex world of texts filtered down into the world of common man as combination of various practices which connected Hindu mind with nature. Salutation to sun and various plants is considered auspicious. One can

see trees and plants occupying significant place in the daily rituals of a common household.

Environmental Jurisprudence in India

Modern India has not recognised environment rights in codified form. It is primarily judicial activism which has brought environmental jurisprudence in limelight. The 'right to life' under Art.

21 of the Constitution have actually been transformed into beneficial legal rights by energetic judicial interpretation. Post Maneka era, the idea of 'right to life' added new definition. Initially, the fundamental rights ensured in Part III of the Constitution were taken into consideration unfavourably in nature and additionally imposing just adverse responsibility on the State. For the very first time, Supreme Court transformed these legal rights into favourable rights and imposed an affirmative job on the State to use it. Fundamental rights are the rights for all individuals, while Directive Principles of State Policy define the frame, in which the legislation and decisions from the authorities can be executed. But one person's right can be another person's duty. The Indian Supreme Court proclaimed in 1980 that Part III and Part IV of the Indian Constitution remained complementing. Whereas Part IV imposes obligations on the State, Part III is the control mechanism.¹¹ Therefore, environmental protection can be demanded by the citizens to be fulfilled by the State as if it were their fundamental rights.¹² In *Koolwal v. Rajasthan*,¹³ the Rajasthan High Court even decided in favour of environmental rights, although no injuries to the population were alleged in the particular case.¹⁴

The dimension of this interpretation of the Constitution for environmental rights can be understood in the light of recognising environment protection not only a fundamental duty of the State, but also of every (legal) person, says Art. 51A(g) of the Constitution. Both the state and individuals are found to be a party to many crimes related to environment. The constitutional right to environment could therefore also be indirectly claimed against private actors. The 'right to remedy' granted by Art. 32 of the Constitution of Indian, gives 'the right to move to the Supreme Court by appropriate proceedings for the enforcement of fundamental rights.' A similar right is vested with the High Court under Art. 226 of the Constitution. Art. 226 is even wider than Art. 32, because Art. 226 'may be invoked not only for the enforcement of a fundamental right but for "any other purpose" as well.' Hence, individuals can enforce in the High Courts that the States adheres to Part IV of the Constitution. In India, the Supreme Court broadened the preview of the right to life in Art. 21 and brought in one's right to a healthy environment. In *Subhash Kumar v. State of Bihar*, Supreme Court made a judgement that right to life under Art. 21 include the right for pollution free water and air.¹⁵ Any violation towards this objective enables a citizen to take help of the provisions of Art. 32 because pure water and air remained basic necessities for a healthy life.

Madhya Pradesh High Court in *K.C. Malhotra v. State*, held that right to dignified life

remains the basic right of every Indian citizen as well as consequently, in the discharge of its responsibilities to people, State has to provide at the very least minimal conditions guaranteeing human dignity.¹⁶ Appropriately, the Court guided that there need to be separate sewage line from which the unclean water may spurt. The drain must be covered and there need to be proper bathrooms for public convenience which should be regularly cleaned up. Public health as well as safety and security cannot experience on any count and all steps to be taken as Article 47 makes it an extremely important concept of government for the enhancement of public health as its vital obligations.

The judiciary has additionally widened the extent as well as ambit of Article 21 and currently 'right to life' includes the 'right to livelihood.' The right to earn livelihood is likewise considered as a component of right to life under Article 21 of the Constitution.¹⁷ This wide interpretation of the right to life is truly beneficial in inspecting the governmental action which has an environmental influence that daunts the poor people of their livelihood by disarranging them from their location of living or otherwise robbing them of their source of income. Supreme Court of India in case of *K.Chandru v. State of T.N* held that if the government plans the construction of a large dam or any other project without making appropriate environmental impact assessment and also resulting in the displacement of individuals from their habit at, thus robbing them of their income, then that activity can be stated as unconstitutional being violative of Article 21 of the Constitution.¹⁸ The procedure of displacing the people from their habit at can be called 'just, fair and reasonable' when they are supplied with ideal different sites with all basic services of life.

When there is any sort of problem between environment as well as development, the concern to be taken into account in the larger dimensions of nation wide in tracies is that, on the one hand for the nation wide growth, the building of dams, thermal power plants as well as exploitation of natural resources are a must. On the other hand, these tasks might infringe the fundamental rights of individuals in the place where that project is executed.

Judiciary in India has actually been really cautious in resolving the ecological interests with the developmental procedure and preventing any sort of dispute between the two. In *Banwasi Seva Ashram v. State of U.P.* the major complaint of the petitioner was that Adivasis as well as various other backward people (tribal forest dweller) were making use of forest as their habitat and also ways of livelihood.¹⁹ Part of the land was stated reserved forest and in respect of other part acquisition proceedings were started as the government had made a decision that a Super Thermal Plant of the National Thermal Power Company Ltd., (NTPC) was to be located there. The Supreme Court gave directions securing as well as safeguarding the interests of the Adivasis and also backwards individuals that were being ousted from their forest land by NTPC. The Court allowed the procurement of land only after NTPC consented to

provide certain facilities to the ousted forest occupants.

In this case the court impliedly dealing with the right of the Adivasis under Article 21 and observed that:

'it is common understanding that Adivasis as well as various other backward individuals living within the forest made use of the forest area as their environment and for generations. They had been utilizing jungles around for gathering the needs for their source of income, fruits, veggies, fodder, flowers, timber, animals by way of sport and gas timber. At the same time the Court highlighted that for commercial development as also for arrangements of improved living facilities there is a great demand in this nation for power such as electrical energy.²⁰

Environmental Laws

The Central and State Governments own control and develop almost all the country's forest, dams, major irrigation systems, power stations, railways, ports, roads, mines and many industries. The government is undoubtedly, a trustee of people's natural resources. There are more than 200 Statutes that can be interpreted one way or another to protect environment. However, this part of the paper will critically examine The Environment Protection Act, 1986, being a small piece of legislation which comprehensive defines 'environment' inter alia, air, water, soil and noise. The Environment Protection Act, 1986 aims to safeguard the environment. It aims to prevent hazards to human beings and other living creatures including plants and property. This Act gives ample power to the Central Government for taking necessary measures for the object sought to be achieved. This Act puts deterrent control over the polluters of environment by making them liable to penal action. Even the abetment of environment deterioration has been declared a punishable offence. Section 16 of the 1986 Act provides that people responsible for carrying out such activities are subjected to punishment with imprisonment or fine or both. If the offence is committed by the government departments, the head of such department shall be liable to penal action under Section 17 of the Act.

The Environment Protection Act, 1986: A Critical Analysis

The Environment Protection Act, 1986 (Hereinafter, referred to as EPA) has remained a mere piece of legislation as it failed to achieve its objective. This Act includes only industrial activities. The daily activities of common man and pollution emitted by the vehicles are not covered in this Act. All these activities are leading to extreme climate change and high emission of carbon which ultimately make the weather hotter every year.

The Monetary Policy announcement of the Reserve Bank of India mentioned about the fear of El Nino looming large on the Indian economy. In northern parts of India during the month of March in 2015, agriculture faced considerable damage owing to untimely rains and hailstorms ruining almost over ninety-four lakhs hectare area. The kharif season also witnessed less productivity. El Nino is a development around Asia and Pacific which occurred

normally between three to seven years. This climatic upheaval lasts around two years owing to the equatorial Pacific Ocean getting warm. El Nino has also been linked to poor monsoons in India and, in many cases, also resulted in drought. As agriculture is the most exposed and affected sector, Environment Protection Act has failed to protect this sector.

The Central Government has been given power under Section 5 to prescribe standards of quality of water, air and soil for various areas and purposes. The wide and vague discretion given to the Government while giving clearance to the projects has often resulted in the filing of PILs. Lack of administrative will, corruption in bureaucracy, political interruptions are major hurdles in the implementation of this Act.

Environment Impact Assessment (EIA) Notification 2006 under EPA, 1986 stipulates that necessary environment clearance from the Ministry of Environment and Forests (MoEF), must be obtained while also providing for public consultation to scheduled projects. Nevertheless, economic concerns behind the logic of wild infrastructural growth have hampered the real working of EIA 2006. More than often, public consultation and environmental clearance are ignored on the pretence of non-mentioning of the project in the schedule. The working of MoEF is greatly influenced by political factors. Therefore, it is recommended that an Independent Committee should be established as the binding authority over the MoEF.

In *Lafarge Umiam Mining Private Limited v. Union of India & Ors*, the court analysed the implementation of EIA, 2006 and observed that the lack of permanence in the Expert Appraisal Committee leads to lack of continuity and institutional mechanism leading to poor knowledge management.²¹

Though EIA requires several documents like ToRs, minutes of public hearing, EIA report (with clearance conditions) and self-monitoring reports to be put in public domain (predominantly on the website), this has not been done leading to the lack of transparency in the processes.

Submissions

At the end, it is submitted that the existing provisions should be amended and enforced strictly and punishment be enhanced. Besides the payment of compensation, the polluter should be asked to restore the previous stage which was before the commission of his wrongful act. The Act must be widened enough to include forests within the definition of 'environment'. The Precautionary Principle and the Polluter Pays Principle are developed by Indian judiciary; these principles should be made part of this enactment. The government has to rethink upon the issue related to environmental concerns and safeguard natural resources for future generation. Fine balance between economic growth and consumption of natural resources remains the only key to protect environment. One can further submit that Indian society is closely aligned to the environment protection. Strengthening the teeth of the

legal system while working at war front in society to reconnect Indian progress with protection towards nature can have better result on the ground.

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