

To What Extent are Environmental Requirements Enforced by Regulators?

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Environmental provisions in Indian Constitution

Constitutional Provision

- 42nd amendment, 1976 explicitly **incorporates Environmental Protection and Improvement.**

Directive Principles of State Policy

- Article 48A, which was added to the **Directive Principles of State Policy** says: **The State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country.**

Fundamental Duties

- Article 51A(g) in the name of **Fundamental Duties**, **pins the responsibility on every citizen to protect and improve natural environment** including forests, lakes, rivers and wildlife, and to have compassion for living creatures.

Fundamental Right

- Article 21 of the Constitution states, **No person shall be deprived of his life or personal liberty except according to procedure established by law.** This article **protects the right to life as fundamental right** which is very much linked to environmental quality. Hence, **right to quality environment was equated with right to life.**

Evolution of Environmental policy

- 1980 Department of Environment was established
- 1985 It became Ministry of Environment and Forests (MoEF)
- 1993 First National Environmental Plan was prepared
- 2004 Unveiled a new Draft Environmental Policy

Evolution of Environmental Legislation in India

- Our PM Smt Indira Gandhi gave a thought provoking speech at UN Conference on The Human Environment, Stockholm, June 1972
- The Wildlife Protection Act, 1972
- Water (Prevention and Control of Pollution) Act, 1974
- Forest Conservation Act, 1980
- Air (Prevention and Control of Pollution) Act 1981
- Bhopal Gas tragedy 2 Dec 1984 MIC leak
- Pesticide factory in MP, deaths 3,787 >16,000 claimed.
- Environment(Protection)Act, 1986. (Umbrella legislation)
It gives more powers to regulators. This law empowers regulators to serve closure notices to the polluting industries.

Compliance vs Enforcement

Compliance meaning

- FOLLOWING A RULE OR ORDER
- THE ABILITY TO ACT ACCORDING TO AN ORDER, SET OF RULES OR REQUEST

ENFORCEMENT MEANING

- TO MAKE PEOPLE OBEY LAW, OR TO MAKE A PARTICULAR SITUATION HAPPEN OR BE ACCEPTED

What is the Compliance Enforcement?

Process of ensuring compliance with laws, regulations, rules, standards and social norms.

The effective enforcement of environmental laws and regulations

is crucial for proper environmental management which is a must to protect human health and environment

If, no compliance and no enforcement
of environmental regulations,

the fundamental human right
to a healthy environment
will go unfulfilled.

How are the Environmental Laws being Enforced by the regulating agencies?

- No dearth of laws for protecting and conserving the Environment.
- Ironically, Centre and State governments do not provide required funds for implementation.
- Unlike the earlier acts, the Environment (Protection) Act 1986 is giving Government agencies surplus powers to deal with the polluters, but they are reluctant to use these powers to discipline the offenders.
- Lawmakers never insist for strict implementation.
- As a result enforcement of environmental requirements is becoming weak.

The major stumbling block in mitigating climate change is failure to implement and enforce environmental laws

Inherent deficiencies of some laws are responsible for the lapses in enforcement

- Ex. Water Act 1974

The key person for enforcement of this act is the Chairman of the State PCB who should be professionally qualified and appointed on fulltime basis. However, the Act does not stipulate such requirement.

Several State Pollution Control Boards are headed by Part time Chairman without requisite qualifications and experience.

Further, the persons who lack technical knowledge of pollution control are made as member secretaries of the PCBs.

Visakhapatnam Port Trust
attracts the ire of the public
by allowing dirty open cargo

A senior IAS officer is posted as Port Chairman with the intention to utilize his image and goodwill in running the dirty port smoothly and to avoid closure threats from the regulating bodies (PCBs).

The PCB officers being juniors or subordinates generally hesitate to take stern action in spite the situation warrants such stern action. Consequently, compliance enforcement will become weak.

PCBs are acting under pressure.
They were made answerable
to the industries department.

- If, permission is not given to any industry, the concerned PCB has to answer the Industries department. PCB is being made subordinate to the industry department. This may lead to disinterest on compliance.

Ease of Doing Business (EoDB)

To attract and promote establishment of more industries, governments are now implementing Ease of Doing Business (EoDB).

To appease and attract the industry in the name of EoDB, the environmental regulations are being diluted now. The regulators are becoming silent over the compliance of environmental regulations quite often.

What role is the industry playing?

- The industry is driven by profit motive. Hence, it uses all its might/tactics to make profits even at the cost of environment, ecology and public health.
- They often use lobbying - put political pressures (nowadays politics has become the preferred destination to several industrialists. Consequently the environment is undermined or victimised)-exploit legal loopholes- resort to delaying justice tactics etc.

What role is the Judiciary playing?

- Judiciary is coming forward and putting the polluters into discipline. Never hesitates to close down or shifting the polluting industrial units to safer locations. In fact, the **judicial activism is a boon to environmentalism.** Because of apathy, helplessness, inept or irresponsive behaviour of the governmental regulating bodies, the judiciary is taking up cases as su moto cases or as PILs. Land marking judgements were delivered by the honourable Supreme Court.

AP Water, Land and Trees Act 2002

- Greenbelts developed by industries;
- Compensatory tree plantation taken up by the contractors of the high way widening projects;
- Trees raised in the individual houses and layouts;
- Trees planted by NGOs;
- Trees raised to earn carbon credits and
- Trees raised under Neeru-Chettu program.

If all of the above are added together, green cover should be doubled or trebled. If so, it can be used as a proof that the Acts are implemented. Certainly, the green cover is not increasing.

Then, if the violators are sent to jail at least the number in the jails should swell.

A Layout in the catchment area of Mudasarlova Reservoir.

- No law says to make a layout in the upstream or in the reservoir.
- But wide roads were laid with in the reservoir
- Here protectors are becoming the predators.
- Concerned officers should be made answerable.

Coastal Cleanup Day-21st September

- In the name of cleanup drive, several vinyl flex banners appeared welcoming the Eastern Naval Command officials to the clean drive. These banners will ready for next clean up drive!!!!

Corporator vs. Compliance

For obtaining house plan approval you have to meet the requirements stipulated by law such as **planting of trees; digging of ground water recharge pits**. If not met, **no plan will be approved, no water connection and no power connection will be given**. Surprisingly, no enforcement is there. No compliance is necessary. But you need to have blessings of the concerned ward corporator for approval. **As long as Municipal Authority issues house plan approvals, on the recommendations of the corporator, no owner will think of compliance of the Act.**

Silence Zones

- Hospitals, Educational institutions, Courts, Libraries and Prayer halls comes under silence zones
- An area of 100 meters radius should be observed as silence zone where noise should not exceed 50 dB during day and 40 dB during night hours.
- As per the article 19(1)A one has a right to not to be subjected to unwanted noise.

The myth of silence in silence zone

- University campuses are to be declared as silence zones. But we never see silence zone boards in the campus. Thinking that the students are above law or unmanageable, the authorities never attempt to enforce/ implement the environmental regulations.
- The students use loud speakers while conducting Fresher's party and Send off party to Seniors in class rooms during the working hours.

Dolby sounds in Cinema halls

- The sound in cinema halls should not exceed 90 dB
- One should face the punishment for playing loud music.
- Function halls, Banquets hall, Band parties, firecrackers are likely sources of big noise
- NGT has slapped a fine of 7 lakh on a Noida banquet hall for creating excess noise.
- HC asked Mumbai top cop: Why no action against noise pollution? (20/Feb 2019)

Why no environmental items in political agendas?

- It amply reflects that the environment is not a priority area either to the voter or to the politician.

On the initiation of Hon'ble SC Environmental Education was made as compulsory Education at all levels starting from KG to PG.

The survival education course was introduced but the spirit of the SC directions was diluted by making the course as non credit course. No marks will be added while calculating the grades or ranks. No trained teachers are recruited. No classes are held. It shows lack of seriousness and sincerity in implementation of SC orders.

Now there is no distinction between a politician and an industrialist

- Nowadays politics has become the preferred destination to several industrialists.

A majority of the politicians has industries.

As a result some erosion can be anticipated starting from policy making, enforcement and compliance of environmental regulations.

Dilution of the set standards Coastal Regulation Zone (CRZ)

- CRZ is now diluted to allow beach encroachment up to 50 meters and it may be further diluted to encourage even sea encroachment.
- Earlier we were under the opinion of Development at any cost. But now changed our mindset and believing that the development should not be at the cost of environment .
- Now to address the population pressure, we are relaxing the environmental regulations of No Development Zone from 200meters of 2011 to 50 meters for CRZ III A of 2019. The same is visible in CRZ Regulations notified in 2019. 20meters was set as no development zone for all the islands.
- Now temporary tourism facilities are allowed on coastal areas.

Right to live was equated with
Right to environment
It was made as fundamental right

- I am leaving it to your guess
- How far this concept is respected by the governmental agencies?
- Trusting this can you demand quality air, water food and medicine from the market.

Compensation to pollution victims

- No industrial owner can escape from the responsibility of paying compensation to the pollution victims. Even there is no fault of the owner, responsibility was fixed by courts.

Green Benches for speedy disposal of environment related disputes

- Weekly once a special bench is formed to deal with environment related cases.
- With the directions of CJ of SC can direct the CJ of the concerned HC to create a green bench.
- Such benches are formed in West Bengal and Tamil Nadu states.

National Green Tribunal Act, 2010

- National Green Tribunal was created as per the NGT Act 2010 and is aimed at effective and expeditious disposal of cases relating to Environmental Protection and Conservation of Forests and other Natural Resources

MC Mehta - A Green Advocate

- His contributions are significant in enforcing the environmental laws and penalizing the pollution creators starting from Union Carbide Company.
- He helped in the evolution of Green Law and green education in India. (Ganges, Tajmahal, Bhopal, Leadfree gasoline etc)
- His contributions to Indian environment are unparalleled and praiseworthy.
- He was richly awarded and rewarded by national and international organizations. He won the Goldman Environmental Prize in 1996 and the Ramon Magasaysay Award for public services in 1997.

Recommendations

Stronger institutions and senior heads can only enforce environmental laws and ensure environmental quality and effective management of natural resources.

So strengthen the regulating bodies by filling the posts with high cadre and upright people.

Judiciary help may be drawn in enforcement of the regulations.

Officers of the regulating bodies should be allowed to continue in the specified post for the full tenure.

Inaction and corruption should not be tolerated.

Recommendations should not be entertained.



Thank You