Journal of Environment and Earth Science
ISSN 2224-3216 (Paper) ISSN 2225-0948 (Online)
Vol.5, No.3, 2015

Environment Ethics, Policies and Inclusive Environment Protection Mechanism in India (With Special Reference to Environmental Inquisition)

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Abstract
From Arthashastra by Kautilya to Bombay Nuisance Act in British regime to recent National Environment Policy, India is way ahead in terms of formulation of policies. Even strong constitutional and legislative frameworks exist. Mandatory Environment Impact Assessment and submission of annual Environmental Statement is also a strong indicator of environmental regulation. Despite having this strong framework, bureaucratic corruption has made it very easy to get government clearances for projects that deteriorate environment. A number of social, economic and institutional factors have made the realisation of existing policies difficult. Although the policy to combine the elements of economic efficiency, intergenerational equity, social concerns and environmental protection has been regularly updated, more emphasis has been given to the promotion of policies and programmes for economic growth through intensive resource and energy use, as is evident in natural resource depletion. Present paper illustrates the environmental ethics and protection techniques in India.
Keywords: Environmental ethics, protection, Environmental policy, Environment impact assessment.

Introduction

Environmental ethics had always been an inherent part of Indian religious percepts and philosophy. Man, nature relationship is at the centre of Vedic Vision and those sacred scriptures specifically talk about man's responsibility to preserve his environment. Worship of nature-Sun, Moon, Earth, Air and Water was not merely primitive man's response to the fear of the unknown but arose from the deep reverence shown to the forces of nature which sustained and preserved human life on earth. The Upanishads provide a vision of cosmic piety and harmony with the natural environment. Decentralisation of environmental policy is crucial. Project-specific legislations, at sub-national levels, are needed to enhance participation equity as well as development. While International treaties are moving progressively to enable public participation, our domestic laws are being diluted to limit and restrict public participation. Evolving new models for environmental legislation based on the notion of law as a programme of social action, entailing people's participation and cooperation, is necessary. India is signatory to various international conventions having a direct bearing on environmental protection and conservation, so it is necessary to incorporate new and innovative policy measures in agreement with international standards without compromising the needs at local level.

The highest plenary existence mandates a balance of earth, water, vegetation and human life. However, 21st century is going through rapidly advancing technology and fast growing economic system and increasing threat from its own activities. The ozone depletion, acid rain, toxic wastes, global warning, deforestation and loss of bio diversities are just few highlights of the development model sweeping across the globe. My paper is a research on how far Indian philosophy is being incorporated in the provisions of various environmental laws and role of law, in materializing this Vedic vision.

Environmental policy is any action deliberately taken (or not taken) to manage human activities with a view to prevent, reduce, or mitigate harmful effects on nature and natural resources, and ensuring that man-made changes to the environment do not have harmful effects on humans. After some decades of environmental activism in the country, India has now got environmental policies in a quantifiable number. It is time now to analyze the existing policies, find out the loop holes and recommend suggestions for their practical realization.

1. Environmental Policy of India

Laws, both statutory and judicial, concern varied aspects of environmental protection and sustainable development. My concentration of study is the philosophical and practical implications of environmental laws in the following areas:

1.1. Control of pollution

In this area**,** the statutory attempts in India, to control pollution through various acts such as, the
Water (Prevention and control of Pollution) Act, The Air (Prevention and control of Pollution) Act, will be studied in the philosophical contexts. Legal approaches towards prevention of soil and noise pollutions will also

form a part of this, and also practical implications, limitations and suggestions.

1.2. Conservation of Energy

Energy conservation for protection of natural resources is the latest trend in environmental protection. The philosophy and practice of Energy Conservation Act 2001 is studied, also the possible legal approaches required in this area. "May peace and tranquility flow to us from the celestial shining region, May peace flow from mid space, may peace be present on earth! May peace flow from waters, plants, trees, nature's bounties, and divine knowledge and from each and every source! May that peace and tranquility come to me! Peace! Peace! Peace!"2 Till the end of nineteenth century, world population had mostly been inhabited in rural areas. Principally India,

Had an agricultural base. Cultivation, animal husbandry and cottage industries were economic enterprises. India in her lifestyle had been close and respectful with nature. Ethics were the dominating force to regulate relation between man and nature3. Worship of nature-Sun, Moon, Earth, Air and water was not merely a primitive man's response to the fear of the unknown, but arose from the deep reverence shown to the forces of nature, which sustained and preserved human life on earth. Philosophy in India is not a mere speculation, but it is completely spiritual, say monks. A true philosophy must be simple and at the same time capable of explaining the vital problems which science can never explain. Indian philosopher does not believe in theories,

Which cannot be carried into practice in everyday life? What he believes he lives up to and, therefore Indian philosophy had been during these thousands of years. Of existence, truly practical.5 its chief concern has not been to conceive a philosophical scheme like a toy machine to play with, but to make of it a chariot in which man could ride.

2. Environmental prudence in Indian Philosophy

Environmental ethics had always been an inherent part of Indian philosophy. Man, Nature relationship is at the centre of Vedic vision and they proclaim man's duty to preserve his environment. The Vedic polity knew that plenary existence of human beings on earth mandates a balance of water, vegetation and human life. Therefore it was a deliberate attempt to enunciate this ultimate truth through sacred incantations. Further it was articulated as rituals for repeated reminding of the need to sustain and foster ecological balance.7 the process of transmutation and cyclic degeneration and generation of life is an accepted postulate in the Vedic worldview.8 standing on the rock of spiritual oneness of the universe, Vedanta explains the basis of ethics. "If we injure, hate or cheat animals, we injure, hate and cheat ourselves. When we begin to love others as to our own self we are truly ethical."9The Bhumisukta of Atharva Veda considers 'Bhumi'ie, the earth, as the personified mother goddess. It is she who nourishes us all like a loving mother nurtures her sons.10In fact the earth in Bhumisukta does not merely represent the land, but all that is part of the environment. She symbolizes the three principal components of environment, land water and air.11At the liquid level 'Bhumi' is the sustainer of oceans, rivers and waters.12She is described as born out of ocean and surrounded by space. And the Air- 'Matarisvaan'blows on the earth and the light of the flame follows the wind. Bhumi is called 'Agnivasa". She represents the energy of fire element in the universe she bears the universal fire which is present in the herbs, waters, stones, men and horses.13This guides us to the point that the mother earth is the source of life and man has to preserve it for his own existence. The Upanishads explained the performance of all components of nature and their inter-relations. Water is the strength of the planet and a source of energy for every living organism. One of the descriptions of water is 'jeevan', means life. Chandogya Upanishad states that water is the sap of the earth14the wind-vayudevta, the forest-van devta are all source of natural energy and to be preserved and worshipped. In the exposition of the evolutionary process of human life by Upanishads, the earth is the disembodied spirit of nature; water is the essence of earth; vegetation is the essence of water; humanlife is the essence of vegetation; meditation is the essence of human life; recitation is the essence of meditation; harmony is the essence of sanitation and the existence of human beings in totality. The Vedic lifestyle was environmentally ethical. Igniting sacred fire was a religiously recognized mode of worship. It intended to keep the environment healthy. The Yajurveda stipulates that the creator ordained the sun and fire to penetrate deep into the substances to segregate their aqueous and soporific contents. The substance then became pure and clean and bestowed happiness on men. Besides this, when firewood and butter are offered to the fire, the flames and smoke remove bad odor from the atmosphere. In Samaveda, the sacrificial fire is compared to a stallion that can stave off the insects. In ancient India, places of worship were mostly located in jungles. People did not see much difference between nature and God. There might have been a method to make people aware that nature is also a divine establishment and should not be interfered unnecessarily. Protection of nature and preservation of natural resources were very much religious and an accepted mode of worshipping god.

3. Pre Independence Period

A few legislative and regulative measures were initiated during the pre-dependence period itself to prevent and control pollution of different segments of environment. Shore Nuisance (Bombay and Kolaba) Act, 1853 Authorized collector of Land Revenue, Bombay able to give notice to any offending party, requiring the removal

of any nuisance anywhere below high water mark in the Bombay harbor. The Serais Act of 1867 Enjoined upon a keeper of a "Serai" or an inn to keep a certain quality of water fit for consumption by persons and animals using it, otherwise a liability of rupees twenty. The Northern India Canal and Drainage Act, 1873 Any interference with the flow of water in any stream- an offence punishable with imprisonment not exceeding one month or a fine not exceeding Rs. 50 or both. The Obstruction in Fairways Act of 1881 It empowered the Central Government to make rules to regulate or prohibit the throwing of rubbish in any fairway leading to a port. The Indian Penal Code, 1860 it lays down that "whoever voluntarily corrupts or fouls the water of any public spring or reservoir, shall be punished with imprisonment of either description for a term which may extend to three months, or with a file which may extend to five hundred rupees or both". Similar other acts were formulated which can be listed as follows:

The Elephant's Preservation Act, 1879; The Indian Easements Act, 1882; The Fisheries Act, 1897; The Factories Act, 1897; The Bengal Smoke Nuisance Act, 1905; Indian Fisheries Act, 1907; The Indian Ports Act, 1907; The Bombay Smoke Nuisance Act, 1912; Wild Birds and Animals Protection Act, 1912; The Motor Vehicles Act, 1938

4. Modern Legislative attempts for protection of environment

The eternal wisdom contained in the ancient texts was not practiced with the required sincerity in the later years. Deterioration of values was a slow process, initially. However, technological advancement accelerated not only development of human settlement, but also, the destruction of environment. Moreover, Colonial years ransacked India's agricultural base by commercialization of crops. Rural Indian who lived close to nature was compelled to leave their villages and migrate to cities in search of livelihood. The factory system introduced in1884, almost liquidated cottage industries. The Little village republics were shattered and scattered into different places. Karl Max says, 'human projects that ignore great laws of nature bring only disaster" Growing industrialization started consuming natural resources on a large scale. Cities and towns started flourishing at the cost agriculture and environment. All the more, western education created disrespect towards Indian lifestyle and traditional values among the youth. The ancient wisdom which maintained a sense of gratitude towards environment was expelled. Environmental ethics became a valueless coin. Serious legislative attempts for protection of environment started in India after many years of independence. The 42nd amendment in 1976 to the Constitution of Indian introduced new provisions. A provision added to directive principles of state policy, read that, the state shall endeavor to protect and improve environment and to safe guard forest and wildlife of the country.23Among the fundamental duties, prominent is the duty to protect environment. Every citizen shall have a fundamental duty to protect and improve the natural Environment including forests, lakes, rivers and wildlife and to have a compassion for living creatures24. The Water (prevention and control of pollution) Act, hereinafter referred as Water Act, 1974, was passed, as its name indicates, for the purpose of prevention and control of pollution. Water being a state subject, parliament passed the law on the request of some of the states25.The Act envisages not only to control pollution of water but to restore and maintain he wholesomeness of water. The philosophy behind is that, water is 'jeevan', the life giving force for every living organism and man has a bounden duty to preserve it. The Act defines pollution as 'contamination of water, alteration of the physical, chemical or biological properties of water or discharge of any sewage or trade affluent or any other liquid, gaseous or solid substance into water. Prohibition of disposal of polluting matter to a stream or well or sewer or on land, is key to the regulatory system under the Act. No person shall 'knowingly' cause water pollution and violation of law will result in penal consequences. For implementation of these provisions, Act sets up Central and State water pollution control boards. Both these boards will be bound by the directions issued by the Central government and State governments respectively. The central board, advices the central government, co-ordinates the activities of state boards, provides them with technical assistance, organizes training of the personnel for pollution control. The most important power of the state boards is to make, vary or revoke an order for the prevention or Control of pollution. In exercise of this power, state board can require any person concerned to construct new or modify existing systems for disposal. No person can set up an industry which is likely to discharge sewage or trade affluent, without the consent of the state board. If a person who has been given consent does not carry out the work prescribed as part of the conditions of the consent, board can on its own execute the work and recover the expenses from the person Concerned.26 besides Water Act, The Environmental Protection Act passed in 1986, hereinafter referred as EPA, also contains provisions for control of pollution of water. EPA defines environment as includes water air and land and the interrelationship which exist among and between water air and land and human beings and other living creatures, plants, micro organisms and properties. Subject to the provisions of the Act, central government shall have the power to take measures necessary for protecting the environment. It can constitute authorities; appoint officers, issue directions for the purpose of the Act. Air (prevention and control of pollution) Act,

Hereinafter referred as Air Act was passed by the union government under Art.253 of the Indian Constitution. This Act is *pari materia* of Water Act 1974 and entrusts powers and functions to the boards which

are constituted under water Act for their exercise and discharge. Under the Act air pollution means any solid, liquid or gaseous substance, present in atmosphere in such concentration as may be injurious to human beings or living creatures, plant, property or environment. State government is authorized to notify 'air pollution control areas' to prohibit use of such fuels in the said areas which in the opinion of the state government is likely to cause pollution. In such areas no person shall establish or operate industrial unit without permission and no person operating industrial unit shall discharge or cause emission of any air pollutant in excess of the prescribed standard.27Failure to comply provisions of the Act will attract penal consequences The Air Act operates in tandem with the Environmental protection Act. It enables central government to lay down emission standards through Environmental Protection Rules.28EPA is a central Act and all pervasive .It brings mostly all types of pollution in its preview, including soil pollution. The act defines environment as including land. Sources of land pollution can be manmade chemicals, spent material from mining or processing, discharge of sewage, waste water or disposal of waste water or solid waste. The boards constituted under the Act will be empowered to control soil pollution also.

5. **Environnent Impact Assessment (EIA)**

On 27th January, 1994 a notification was issued dealing with mandatory EIA. The notification requires project proponent to submit an EIA report, and environment management plan, details of the public hearing and a project report to the impact assessment agency for clearance, further review by a committee of experts in certain cases. By the amendment in the year 1997, public hearing was made compulsory before impact assessment was finalized.

Factors Holding Back the Implementation

5.1 Non authoritative role of environmental activists

One of the weaknesses common to most of the laws relating to environmental protection is that the authorities under the Acts are essentially government officials. There is no involvement of people or environment groups or activists in any of the authorities constituted under the various laws. The scheme of the Acts revolves only around government agencies.

5.2 Near-total criminalization of power, discretion and administration

The political nature of bureaucratic structures, the cost of enforcement for local officials, the cost of compliance for polluters, conflicting interests of state and central authorities, rivalry with other state or central departments have failed the environmental bureaucracy of India, making the government administration corrupted and near-total criminalized.

5.3 Increasing privatization of the Indian State in the traditional way

Government has been still giving clearances to projects in various states of India, without examining the technology they will follow. The green technology is still in the darker side of the stage and same old traditional development mechanisms have been followed by the developers.

5.4 Responsibility without power

The authorities under the various Acts are entrusted with numerous responsibilities but they are not entrusted with commensurate power to carry out the same. For example, under the Water and Air Pollution Control Acts, the powers of the Pollution Control Boards were largely advisory in nature. The only measure of control they could exercise was in issuing consent certificates which were deemed to be given after expiry of four months in the Water Act and merely on application in the Air Act.

5.5 Overlapping of powers

There is a considerable overlapping of powers of various authorities. In addition to the Pollution Control Boards created by the Water and Air Acts, there are local authorities like the Municipalities and Municipal Corporation which are empowered to issue industrial licenses. On account of this, even if the Boards refuse consent certificates, the same can be obtained from the Municipalities. In many states, Boards are yet to be set up as it is not mandatory to set up these Boards. Most of the Boards that are already set up lack adequate infrastructure and funds to ensure effective implementation of the laws.

5.6 Inadequacy of personnel

For implementing the policy, there are not adequate personnel. This has given rise to the overloading of statutory authorities leading to non-performance of statutory tasks. For example, the Tiwari Committee on Environmental Legislation found out that the boards set up for implementation of Water Pollution Act had also been entrusted to enforce the Air Pollution Act.

5.7 Unequal importance to various pollution

With the rapid economic growth, the term pollution now not only refers to water and air pollution. Several other pollution like land pollution, radiation pollution, odor pollution and nuclear pollution have come to front line. But the state has not given due attention to these major pollution seen in the past few decades.

5.8 Lack of sufficient pressure groups

Unlike most other government policies and programmes the environmental policy does not have a well marked

out group of beneficiaries to constitute a pressure group to exert pressure on government. The existing groups of environmentalists and consumer rights activists are not powerful enough to pressurize the policy makers and implementing agencies in the cause of environment. Further, they have to counter the organized pressure of the polluting industries which are backed by huge resources and enormous political clout.

5.9 Lack of citizen education

The enforcement machineries of the legislation are the citizens. However, in most parts of India, the citizens are unaware about the importance of environmental regulation, making the implementation part of the strong legislation impossible.

5.10 Limitation of NGOs

NGOs are also considered an important part of environmental regulation. The NGOs work in the grassroots level being in direct touch with the most affected parts of the society. But what is happening is-the NGOs which are really working at the rural areas don't even know how to write a project report necessary to get the money and those who don't work but know the skill of writing project report, manage to get the money sanctioned. This NGO black business is sky rocketing.

Recently, the Dutch government, funding a multi-crore water supply and sanitation project in Uttar Pradesh, terminated its contract with an NGO because of financial mismanagement. This particular NGO allegedly spent huge amounts of money on setting up a new office and on foreign trips for purposes other than those relating to the project.

5.11 Public Participation and Decentralization, State as an area regular-not source regulator

While International treaties are moving progressively to enable public participation, our domestic laws are being diluted to limit and restrict public participation. Evolving new models for environmental legislation based on the notion of law as a programme of social action, entailing people's participation and cooperation, is necessary. Rules and procedures to legitimize the local-level inter relationships like knowledge sharing and exchange, sectoral and departmental co-ordination in planning resource use is necessary. A local body should be elected which will have the direct control over the natural resources of that area. While giving the clearance to any project, the local body should first approve it and only then, it will go to State boards. Also, certain minimum percentage of revenue collected from the project site should be mandatorily spent for the development of that particular area. The potential benefits of public participation are multifold as it can bring important information, innovative approaches and solutions and enhance public perception of plans and helps make projects viable.

5.12 Receptor focused Clearance Mechanism

Public hearing, although has been practiced, has not been as effective as was assumed to be. Environmental Impact Assessment has been blamed to be mostly fraudulent, plagiarized, not comprehensive and of poor quality. It is even not available timely, widely and the hearing location is often decided to boycott the most affected locality.

The central government should make it mandatory that the State Pollution Control Boards first present and explain the existing environmental site conditions to the community. Only then the developers should be made to clarify to the community how the existing and future environmental baseline would improve due to establishment of project. The developers should also be made to quantify and source the investment that will assess, strengthen and develop the local natural resource base, either to support one or more economic activities in that community.

The objective of project clearance should be such that clearance be given to only those projects that can achieve the fastest clean up of a receptor and can maintain the receptor clean. The centre should set up highly strong committee to monitor the accountability of state and local boards.

It should be borne in mind by the developers that the EIA should not be presented in highly sophisticated and expert driven language, with little appreciation of communicating to a diverse and often illiterate population.

5.13 Environmental Zoning

The Central Government in the Ministry of Environment and Forests should take an initiative to start pilot projects to define different environmental zones across the country. These zones will vary in terms of biodiversity quality, air, water along with socio-economic parameters like population density, income, prevalence of water borne diseases, educational status, etc. This zoning helps to predict the future environmental risks and will also be a guiding tool for the feasibility of various developmental projects. The State governments should be made to compulsorily use it as a decisive resource tool while giving clearances to developmental projects.

5.14 Bargaining for Technology Transfer without sacrificing international relation

The self commitment of India to reduce its carbon emission by 20-25% by 2020 with respect to 2005 base level should not be implemented immediately at the expense of its slowly rising economic growth. India should be able to bargain with industrialised nations for an efficient technology transfer to replace its coal based economy with wind, hydro, solar and other renewable sources. Although India is signatory to various international

conventions, it should be discussed at the local level regarding the level of commitment India should make.
The Government of India should emphasize the need for waste recycle, reuse, and resource recovery for reduction in waste and more advanced technology measures for effective and economical disposal of municipal solid waste.

5.15 Budget allocation for public awareness

The central government should allocate a separate budget for public awareness through television, radio, community making, posters, pamphlets, local newspapers, SMS notices, sky writing etc. because unless there is consciousness among the public, no any environmental legislation and acts will work. Finance and human resources to engage with poor and marginalized communities is of utmost importance. The Greenathon by NDTV can be taken as a case initiative by private sector for the mass awareness. Public education is increasingly important to a well-functioning environmental regulatory system. Knowledge about environmental issues allows the public to carry out the role envisioned in major environmental legislation of identifying violations, applying community pressure, enforcing laws, and contributing to permitting and rulemaking. So, community understanding of their rights, responsibilities and the implications of these rights, in terms of policy, legislative and regulatory processes should be enhanced.

5.16 Timely public participation

Many a times, it happens that government takes decisions in consultations with leading environmental agencies, business giants, and few elite environmentalists. This is a major fault in the decision making process. It is highly imperative to seek public input prior to the initiation of a process by government committees. Project-specific public participation must be initiated at the outset of the decision-making process, whether on framing of policy issues and development of policy solutions and alternatives or on design of development proposals.

5.17 Inclusive Environment Protection Mechanism

An environmental protection mechanism, to be effective, needs to be inclusive of all factors that impact environment directly or indirectly. The mechanism must encompass issues emanating from climate change, conservation, dams, energy, genetic engineering, intensive farming, land degradation (including soil conservation, soil contamination, soil salination), land use, nanotechnology, nuclear issues, overpopulation, ozone depletion, pollution(including water and air pollution), resource depletion (due to consumerism, fishing, logging, mining), toxins and wastes. Highlighting a single factor is not sufficient now.

5.18 Capacity building of Government officials

Before reaching out to the general public, the government should ensure that its officials have thorough understanding about stakeholder issues and concerns. The skills of government officials at all levels should be strengthened with integrated strategy, including proper budgeting ,training and guideline development to ensure that participation is effective, efficient and responds to stakeholder needs and expectations.

5.19 Paving path for multi-CDM projects

From the pie diagram, it is clear that the majority of money mainly goes to HFC projects. Although India is highly successful in drawing money for the CDM projects, the data says that it should open the door to get funds for other projects too, besides biomass.

5.20 Strengthening Women's Participation

Women have a special affinity for helping the cause of sustainable development; they play a critical role in determining some factors that affect sustainable development. In the developing world, it is the women who are drawers, carriers and household managers of water-they understand what water scarcity is and its implications for communities. In India, local forests established by women have a much higher chance of survival than those planted by the government: the ratio stands at 80 per cent for the women compared to 20-30 per cent for the government.

Conclusion

Decentralization of environmental policy is crucial. Project-specific legislations, at sub-national levels, are needed to enhance participation equity as well as development. Evolving new models for environmental legislation based on the notion of law as a programme of social action, entailing people's participation and cooperation, is necessary. Involvement of the public in all levels of planning and decision-making, from policy formulation to project-level planning and design, ensures that policies, programmes, plans and projects are responsive to community needs. Participation builds the credibility and legitimacy of policies, plans and decisions in the eyes of the community, and ensures greater ownership and compliance. Involvement of communities in all aspects of planning and decision-making, gives effect to the notion of participatory governance, enshrined as a Constitutional right, and deepens our democracy. Particular attention must be paid to those who are vulnerable and most at risk from the impacts of decisions taken. Public participation must therefore seek to be as inclusive as possible. Although India is signatory to various international conventions having a direct bearing on environmental protection and conservation, it should not commit to any international decision that has a direct effect on its rising economy. Maximum effort should be put by government to make

meaningful negotiation for technology transfer from developed countries without sacrificing its public needs.

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