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Effectiveness of Environmental Treaties in India: A Study of Fruitless Legislations

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Abstract

Lack of environment related data creates difficulty in asserting the actual measures while dealing with environmental problems that arise from International environmental agreements. The rationale behind inaccessibility has not been discussed properly. However, the "best methodologically doable" way to assess IEA efficacy, according to experts, is not by evaluating environmental conditions. To tackle such an issue nationwide as well as worldwide, a uniform plan of action must be executed at every level of authority assigned for dealing with environmental tensions. Mere environmental treaties or other international instrument are not sufficient to back the good environment; their efficiency and effectiveness plays a vital role when they are modified and executed in a nation according to their legislation. A wave of legislation was passed during the post-independence era thanks to the judiciary's active involvement in the 1990s. Articles 48A and 51A(g) of the Indian Constitution's 42nd Amendment, which was passed in 1976, explicitly incorporated environmental protection concepts. Article 253 of Indian Constitution empowers Indian legislation to follow the essence of Stockholm declaration in their municipal laws, whereby The Air Act and the Environment Act established. Despite of these facts, India witnessed bundles of PILs with regards to pollution and other environmental deficiencies. And the race is still on in the modern India; of course, many times the defence of sustainable development has been taken but the extent of sustainability and efficacy of governing legislations is still in question. This study is an attempt to study the effectiveness of implemented treaties and their use in modern India; at the same time, this study has been developed to draw a clear picture of how such treaties are abused in the name of sustainable development in India. A number of judicial pronouncements has been referred for the same.

Keywords: Environment, treaties, effectiveness, sustainable-development, abuse

INTRODUCTION

Overview

Countries have established hundreds of international legal agreements to address environmental issues they cannot manage alone since at least the late 1800s, and more frequently in the past 50 years [1]. Conventions on ozone depletion, climate change, and biodiversity are well-known, but governments have also reached global, regional, and bilateral agreements to reduce pollution in oceans, regional seas, rivers, and lakes, to curtail overfishing of many fish species, overhunting of birds, and overexploitation of land and marine mammals, as well as to slow the deterioration of wetlands, deserts, and other habitats.

The opinion and views of people, legal minds, social scientists regarding the International environmental agreements (IEAs) are different but their claims do not contain evidence to support the same. There are more than 1000 IEAs but does all of it works efficiently and does all of them achieved

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their objects? There are many listings of international environmental legislations available online and in most law libraries [2]. Many only list specific, significant, or large agreements, or those pertaining to a certain area or problem. Some agreements combine legally enforceable conventions and treaties with purely advisory declarations, resolutions, and statements of ideas.

Governments often only disclose those agreements to which they are parties [3]. Almost no list, even one that purports to be exhaustive, systematically identifies the numerous protocols, amendments, and other modifications required to reconstruct the historical development of international environmental law or its status at a particular time. Such lists frequently omit well-known environmental agreements. Web-based lists are frequently out of date [4]. Most do not offer users systematic and unambiguous definitions and related rules to include or exclude agreements, or worse, do not employ these definitions and standards themselves. And many of those that do, including a particularly extensive list, which includes agreements, that are not with an immediate effect helpful to environment as their effectiveness has been eclipsed by the complex terms of the agreements [5].

STATEMENT OF PROBLEM

It is well known that mere presence of international agreements and instruments on environmental issues is not enough to do justice with environment; their influence and efficacy are largely determined by how these policies and agreements are applied and enforced in member nations. India after independence, exhibited active judicial as well as legislative role in protecting the environment by means of 42nd Amendment, and many landmark judgements. Further, Stockholm conference's influence can be seen in the form of Air Act and the Environment Act with the help of Article 253 of Indian Constitution. Thereby various treaties have been signed by India for betterment of environmental condition, but those treaties and respective legislations has been continuously abused in the name of sustainable development as the scope of and definition of sustainability is not properly defined, which ultimately results into violation of those legislations and no action is taken due to unavailability of proper records.

REVIEW OF RELATED LITERATURE

- An article by Divya Soni, *"The Scope and Limitation of Environmental laws and International treaties in India",* discusses about the constraints of enforceability of international environmental treaties as well as municipal laws related to environment in India. The author in this article dealt with various factors and judicial decisions showing how time and again the treaties have been violated by both legislations as well as judiciary in various occasions [6].
- Another analysis by Chenaz B. Seelarbokus, in the article *"Assessing the Effectiveness of International Environmental Agreements (IEAs): Demystifying the Issue of Data Unavailability",* shows how the arbitrary data and irrational presumptions are leading to environmental degradation. The treaties and agreements entered by countries do not bother to cross check the data and due to unavailability of proper information often they have been misguided as per the author. Although the author only focused on data and information and statistics, but the jurisprudential aspects and obstacles have been ignored by the author in this article [7].
- Another article by Shravan Nune, *"India's environment conservation initiatives: impact analysis",* dealt with the frontiers of Indian techniques that have been adopted by the government to tackle environment degradation smoothly. Irrespective of legislations and judicial decision, how the government is working on social awareness and technological developments are the key focuses of this article [8].
- A research work by Ronald B. Mitchell, "International Environmental Agreements: A survey of their features, formation and effect", majorly focused on the lacuna of India's legal as well as executive system in enforcing multilateral treaties effectively. A number of suggestions has been provided by the author in his paper followed by future position of such legislations in India and

their effect. This article is a pen portrait of how the society in modern India is reacting to environmental concern including government bodies [9].

OBJECTIVES

1. To study the effectiveness of environmental treaties in modern India.
2. To understand the fallacy of Indian system to enforce the said policies and agreements.
3. To analyse the balance between sustainability and environment protection in India.
4. To evaluate the approach of judiciary to uphold the environmental concerns.

RESEARCH QUESTIONS

1. What is the modern picture of functions of environmental treaties in India?
2. What is the approach of judiciary in upholding such treaties in India?
3. What could be the possible reasons for which proper implementation of environmental treaties are suffering obstacles in India?

Hypothesis

The researcher has an opinion that, in the modern India, in fact in the modern world, the advancements and developments are the key to represent the nation; and in that race, the treaties relating to environment have been abused. And despite of number of laws in India, the nation is lagging in enforcements and implementation of such laws, while judiciary tends to support developments and due to lacune in law, the sustainability has been ignored by them too, which ultimately violates the objective of those treaties.

Scope and Limitation

The scope of the study is limited to legal system of India with respect to Indian environmental statues and other agreements entered into by Indian government. Any foreign decision if taken in this study, is just for reference that how Indian judiciary has appreciated those decision and not otherwise. This study has been designed in a manner to deal only with the judicial interpretation to environmental issues and the legislations relating to same. All the analysis has been done based upon the relevant judgements given by respective authorities as well as from the provisions of various Acts. This study has been further extended to question the effectiveness of international environmental treaties in India.

METHODOLOGY

This research work has been designed by using doctrinal method of research throughout. The researcher for the understanding and better outcome divided this study into various sections. The facts and figure displayed throughout this study have been extracted from relevant sources of data and the researcher has given a major weightage to Indian judicial pronouncements, as the study covers the domain of Indian legislation majorly. The researcher has further reviewed opinions of various national and international authors to explore the views of other research scholars and to understand the global perspective of this concept.

EFFICIENCY OF ENVIRONMENTAL TREATIES IN INDIA

There is some appearance of uniformity between national and international environmental norms because, the principles of Indian environmental law are embedded in the judicial interpretation of statutes and the Constitution [10]. The Water (Prevention and Control of Pollution) Act of 1974, the Air Act, the Umbrella Act, sometimes known as the Environment Protection Act (EPA), of 1986, and the Wildlife Protection Act of 1972 are a few of the significant laws. The purpose of the 1974 Water (Prevention and Control of Pollution) Act was to prevent, control, and lessen water pollution. The right to clean air and water has been interpreted by the courts to incorporate Article 32 to bring fundamental rights to life and personal liberty in picture [6].

Limitation of Treaties in India

There are numerous disabilities in India's present body of environmental law. It has a narrow focus, a sectoral strategy, and a hasty response to environmental issues. The Environment (Protection) Act of

1986, for example, was created as a comprehensive piece of legislation to address every imaginable area of the environment. It has largely remained a law governing pollution issues. The activists claim that courts of law are lagging in anticipating environmental problems, which ultimately resulted in to inefficiency to develop appropriate rules and policies and plans, and relying on non-dynamic, reactive (rather than proactive), legislative laws to address the complex and ongoing environmental issues and problems that the world at a large is facing.

The absence of pro-environment and pro-ecological behaviours in Indian environmental laws does not mean that environmental issues have never existed in India. There are several environmental laws that lack the support of a policy statement. These "stand alone" laws include the wildlife (Protection) Act of 1972, the Forest (Conservation) Act of 1980, the Water (Prevention and Control of Pollution) Act of 1974, the Water (Cess) Act of 1977, and the Air (Prevention and Control of Pollution) Act of 1981, to name just a few [11]. The strategy used by pollution control organisations is aptly referred to as "Command and Control", where rules play a preventative rather than proactive role. The power to cut off a unit's access to water or power, the application of penalties and fines, or even jail, is considered "control" as opposed to "command", which entails setting standards and pollution limits.

Environment management turns into crisis management due to insufficient enforcement. As a result, the impact of minimal or non-existent inspection on enforcement results in very little effort on the part of businesses to comply. Following the submission of a report by NEERI on the pollution caused by mining, a shutdown of all mines within a 5 km radius of Badkal Lake and Surajkund (a tourist destination) was ordered in the case of *MC Mehta v. UOI [12]*. Mining operations had been taking place without the required Air Act approval. The Explosive Act and the Mines Act of 1952 were both completely broken. A Public Interest Petition filed by M. C. Mehta, stating that the Haryana State PCB had failed to enforce rules and regulations, resulted in the ruling. Further, because it is challenging to determine the degree of pollution produced by businesses scientifically, a lack of technically qualified labour results in inaccurate monitoring. The Andhra Pradesh PCB had 15 members, 9 of whom were from the bureaucracy and none of whom were technically qualified, in contrast to the EPA's requirement that the State PCBs have a technically competent Board of Members. Out of the 13 members in Maharashtra, 6 were from the bureaucracy and 2 were technical. The Goa PCB, in comparison, had 15 members, of which 3 were from the bureaucracy and 10 were technical. Maintaining Delhi's cleanliness is not an easy task, but it is also not an impossible one, it was decided in the *M.C. Mehta v. UOI*. Initiative, altruistic passion, dedication, and professional pride are needed, but alas they are woefully absent in this situation.

Another major constraint is that there is a lack of an efficient mechanism for punishment and deterrence in the event of non-compliance. No matter how much compliance there is or how many or how high-quality emissions there are, the penalties that are imposed on the companies in the event of non-compliance are incredibly minimal. No matter how much pollution is produced, a defaulting enterprise simply faces a fine of Rs. 10,000 or a bailable 3-month sentence. The difficulty is exacerbated by the issue of pending legal matters. Justice is denied when it is delayed. The residents of Mavoor in Kerala's southernmost state have been engaged in a court struggle for 35 years to prevent a rayon mill from contaminating the Chaliyar River [13]. Despite over 7,000 lawsuits against air and water pollutants being filed in court, Rajasthan has only seen two convictions. Lack of inspectors, dishonest government employees, and liberal judges encourage non-compliance [14].

Judiciary in Securing Environmental Laws

After a thorough discussion of the opinions of jurists in various nations, the court in the case of *A.P. Pollution Control Board vs. M.V. Nayudu* [15] referred to the necessity of setting up environmental courts that would benefit from expert advice from environmental scientists and technically qualified individuals as part of the judicial process. Additionally, the Supreme Court stated in *M.C. Mehta v. Union of India* [16] that setting up environment courts on a regional basis with a professional Judge and

two experts was desirable in light of the expertise needed for such adjudication because environmental cases often involve evaluation of scientific data.

Further, in *Indian Council for Enviro-Legal Action v. Union of India* [17], the Supreme Court made the observation that environmental courts with both civil and criminal jurisdiction must be formed in order to deal with environmental issues swiftly. One of the most prominent cases of water pollution is *Kanpur tanneries or the Ganga pollution case [18]*. It covers the numerous legislative requirements as well as the obligations of municipal organizations and pollution control boards under the law. The Court took a strict action against Municipality in the case after knowing the alarming information about the degree of river Ganga contamination caused by the input of sewage from Kanpur city. It stressed that Nagar Mahapalika of Kanpur is responsible for the pollution in the area around the city of Kanpur. Followed by this, in the case of *Attakoya Thangal v. Union of India* [19], the petitioner approached the court due to a lack of sufficient groundwater resources, drinkable water, and large-scale electric or mechanical pump withdrawals that can deplete the water sources and cause seepage or intrusion of saline water from the nearby Arabian Sea. To satisfy growing demand, the local government had started a plan to increase water supply by drilling new wells and pumping water from those that already existed. The petitioner claimed to issue an appropriate writ to prevent the administration from carrying out the plan. The Supreme Court interpreted "*The right to life is considerably more than the right of an animal to exist, and it has many different aspects, just like life itself".* These locations have seen a new value system and a prioritizing of human needs. Since these are the fundamental components that support life itself, the right to sweet water and the right to unrestricted air are aspects of the right to life.

Another instance can be taken into consideration where water pollution had become a serious issue in the city of Cuttack, with problems ranging from sewage water blockage to direct sewage inflow into rivers to the lack of a sewage treatment facility, which contaminated water and led to a variety of water-borne illnesses. Thereby in the case of *M.C. Mehta v. State of Orissa [20]*, this issue has been addressed before the Hon'ble court and the Court determined that due to the State's failure to establish a waste treatment facility, which led to significant health and sanitary issues, the city of Cuttack, with its rich historical legacy, was in the midst of a severe water pollution catastrophe. Further, the Court instructed the State to immediately take the necessary actions to prevent and control water after looking into the constitutional provisions and the recommendations of the State Pollution Control Board, which had made startling revelations about the conditions of drinking water and health in the city.

In the last few years, India has ratified many international environmental protection conventions and made numerous steps to put them into local practice. Even while India has participated actively in all international forums related to environmental preservation and has signed all but a small number of multilateral environmental accords, there is still much that needs to be done domestically to put these agreements into practice. India is facing real challenge to protect its environment, provide for the basic needs of its expanding population on a land that is already overburdened, meet the country's energy needs, and still leave a legacy for future generations to enjoy the bounty of nature that the current generation is carelessly exploiting.

RECENT APPROACHES OF INDIAN LEGAL SYSTEM IN PROTECTING ENVIRONMENT

The recent environmental initiatives, in contrast to the earlier strategy of passing new laws and launching new programmes, have a new vigour that includes not only the expansion of the issues covered, such as climate change, reforestation, wildlife protection, etc., but also includes new approaches to address environmental challenges. Although India effectively included environmental considerations into its policy framework as early as 1985, it was only in the previous decade, and more specifically after 2014, that the Union Government began proactive environmental conservation programmes. The Ministry of Environment, Forests, and Climate Change, which was previously known as the Ministry of Environment and Forests, was reorganised and given a new name to address the multiplicity of sources that are posing ever-greater environmental risks [21].

Contemporary Methods to Deal with the Issues

Previously, the government was alone in charge of financing and carrying out the environmental conservation measures. ***Public-private partnerships (PPPs)*** have received a lot of attention over the past 3 years as a means of maximizing the money, technological, and human resources at the disposal of the private sector. For example, the PPP Model was used to conserve forests. The participating businesses are permitted to implement reforestation strategies and use the newly generated forest products for commercial endeavours as part of this programme. Less imports of forest products, unrestricted use of forest resources, and less strain on the exchequer are all guaranteed by the PPP model [22].

Secondly, ***Information and communication technology*** has been extensively used to monitor industrial pollution in real time, the condition of natural resources and wildlife, and to resolve issues. The use of technology in environmental management is demonstrated by the deployment of satellites to monitor forest cover and water bodies, web-based applications on Integrated Waste Management Systems, the use of drones for surveillance in deep woods, and camera traps for wildlife census [23].

Active International Collaboration is another factor that enhanced the protection facilities. This entails bilateral and multinational cooperation for environmental conservation. It is clear from the ratification of the Paris Climate Agreement on October 2, 2016, the signing of bilateral agreements and memorandums of understanding (MoUs) on renewable energy resources with developed nations like the United States and Germany, and the submission of Intended Nationally Determined Contributions (INDCs) to the UNFCCC [24]. India's leadership position on the international scene is demonstrated by the formation of the International Solar Alliance, which includes 121 nations. Further, Increased openness, reduced red tape in environmental approvals, and decentralized decision-making were the goals of the procedural reforms. This change led to the opening of the Web Portal for Coastal Regulation Zone (CRZ) Clearances.

Broad-based campaigns is another contemporary approach that has been noticed, as until now, only government organizations had been involved in raising public awareness of environmental conservation. However, in recent years, the government has been able to significantly enhance the involvement of civil society, schoolchildren, and educational institutions in environmental protection thanks to programmes like Chintan Shivir, School Nursery Programs, and Climate Change Special Express.

Effects of Frontiers in the Society

The country's overall forest cover has grown by 3,775 km^2 in the last 2 years, according to the Indian State of Forest Report (ISFR) 2015, which was published in December 2015 [25]. The result is that 79.42 million hectares, or 24.16% of the overall geographic area, is now covered with trees and forests [26]. According to the estimate made public in 2016 by the World Wildlife Fund and the Global Tiger Forum, there are now 3,890 wild tigers, up from 3200 in the earlier estimate made in 2010. Since tigers are a keystone species and are seen as a more reliable indicator of the health of the wildlife population, it is a positive sign.

The quality of air and water pollutants has been declining despite a number of steps for a number of reasons. Reports claiming that about 80% of India's surface water is polluted and an air quality index that is continuing to decline are still causes for concern and serve as an example of the need to reinforce the current regulatory measures in this area. Procedural changes and extensive use of technology have enhanced the administration's performance in recent years. As a result, over the past 3 years, the average time required to provide an environmental clearance has decreased from 600 to 109 days [27].

Environmental compensation and other regulations addressing certain environmental issues remain glaringly missing in India. The most pressing demands of the hour are efficient regulatory institutions, suitable compliance procedures, openness in the creation of legislation, and strict enforcement of those

laws. It is a tough bar to clear, and we are not yet sure how the administration intends to accomplish it. The Ministry of Environment, Forest and Climate Change (MoEFCC) established the Subramanian Committee, which examined the nation's environmental laws in 2014. However, the Parliamentary Standing Committee on Science and Technology (PSCST) denies such findings [28]. The PSCST discovered at the time that the committee's key recommendations would actually impair current environmental regulations and laws. For instance, it suggests that the current environmental legislation be merged into a new "umbrella" law.

The administration consequently established a new committee to direct the evaluation procedure, and we anticipate shortly witnessing the results of its labour. Since then, a new law to replace the three primary existing Acts: Air, Water, and Environment Protection, has been drafted by this new group. And it is doing it secretly, out of sight of the general people. Consolidating and streamlining environmental laws is intended to avoid conflicts and overlaps. However, whatever new components will be included are being kept a secret.

The recent environmental initiatives, in contrast to the earlier strategy of passing new laws and launching new programmes, have a new vigour that includes not only the expansion of the issues covered, such as climate change, reforestation, wildlife protection, etc., but also includes new approaches to address environmental challenges. Despite the government's reinvigorated efforts, environmental issues continue to exist because of a variety of factors, including a growing population, the industrialization of fossil fuels, and ineffective rule and regulation enforcement. It is past time for the government, business community, and civil society to work together to create a sustainable environment that will lead to inclusive and sustainable progress.

CONCLUSION AND SUGGESTION

The legislations and treaties are well placed but at the end the effectiveness of IEAs is demonstrated not through their negotiation but rather through their impact on environmentally harmful human behaviour. Since the relevant IEAs were signed, certain environmental issues have improved, while others have remained the same or gotten worse. Since treaties were signed, there has been a decrease in the production of ozone depleting compounds globally as well as in European and North American emissions of acid precipitants, but despite local, national, and international efforts, many marine ecosystems and fish stocks have deteriorated. However, a straightforward interpretation of this variation, that the earlier agreements outperformed the latter accords, is probably incorrect.

It is tempting to view environmental improvement as a success and ongoing environmental deterioration as failure. Improvements can be attributed to specific provisions of pertinent agreements, which can then be promoted as role models for other environmental spheres. These conclusions could be accurate. But they frequently interpret the data incorrectly. First, a fall is better than an improvement, but because environmental degradation forces are frequently so great, success is frequently only seen in slower rates of degradation. Second, determining the impact of an IEA entails comparing actual results to what would have occurred in the absence of the treaty rather than to what actually occurred before the treaty. Improvements frequently result from fortuitous economic or technological changes unrelated to a pact. Environmental quality and behaviour are products of various factors. Third, variations in efficacy can be caused by variances in the issues being addressed, the global setting, or other elements that are unrelated to the agreements themselves. Similar agreements would have a greater impact on reducing ozone depletion and acid rain than overfishing and marine pollution if the former were more amenable to regulation or under more favourable circumstances.

The study of regimes has dominated work on the implementation, compliance, effects, and efficacy of IEAs. In order to create a very unified study programme in the 1990s, individuals and teams from many fields, nations, and theoretical stances studied numerous cases. English-language edited volumes

that evaluate the performance of environmental regimes on their own list numerous variables and causes that are thought to be influential.

The majority of environmental agreements' effects and effectiveness have not been thoroughly examined, although research to date has found significant diversity in their efficacy. Some of the agreements that have been considered to be quite influential include those addressing stratospheric ozone depletion, the dumping of wastes in the North Sea, and the global dumping of radioactive wastes; those addressing the world's natural and cultural heritage, tropical timber, and many fisheries have typically been considered to be less effective. However, assessments of these and other agreements' efficacy largely depend on the metrics employed to measure it as well as the analyst's prowess in predicting what would have happened in the absence of the agreement.

Research to date has shown that while adding particular design features to particular IEAs may occasionally increase their effectiveness, the success of any given IEA design will also depend on a wide range of additional factors and parameters, such as the characteristics of the countries involved, the environmental issue being addressed, and the international context. For the foreseeable future, treaties, conventions, and other legal agreements between states will remain crucial components of global environmental governance. To solve future environmental issues and remodel current IEAs that are not working well now, policymakers will wish to create IEAs. These policy issues have begun to be addressed by academics, who have also shed light on the elements that encourage and obstruct intergovernmental negotiation as well as those that cause some concluded IEAs to perform well and others to operate poorly. Researchers will be able to give policymakers more confident advice if they make more efforts to address both old and new concerns, apply a wider variety of approaches, and use data from more existing MEAs and BEAs than have been investigated thus far.

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