



## WATER, SANITATION, ENVIRONMENT and DEVELOPMENT

### Legal module for environmental protection



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#### Introduction

Quality of life encompasses many parameters. Environmental quality is the most important of these parameters. There is a great deal of awareness in India for the urgent need to preserve the ecological balance in the process of development and industrialization. Unplanned activities of man are degrading the environmental quality, threatening the web of life. Technological advances can help in improving the degraded environmental quality.

Past experience shows that technology alone cannot handle the situation. Governmental, institutional and social actions are desired to maintain the quality of environment. Legal sanction and action are required for the purpose.

The present paper covers the problems being faced by developing countries in maintaining environmental quality with the assistance of legal sanctions. A legal module for environmental quality is presented for effective implementation of the provisions of environmental legislation.

#### Environmental legislations

Regulatory legislation to control environmental pollution is necessary since the rule of law must protect the rule of life. The Indian Constitution provides under Articles 47, 48, 48A, 49 and 51-A(g) for the protection of environment. Salient legislations in this direction enacted by the Indian parliament are The Water (Prevention and Control of Pollution) Act, 1974; The Air (Prevention and Control of Pollution) Act, 1981 and The Environment (Protection) Act, 1986.

#### Aspects of implementation

Environmental issues have no administrative, socio-cultural or political boundaries. In spite of the statutes being available, there are several problems in effective implementation. These problems are being faced by almost all developing nations.

Success in achieving environmentally sound development will depend on the extent of co-operation that can be achieved between government, its subsidiary agencies, voluntary groups, financial institutions, corporate groups in the public and private sectors, education and research bodies, professional societies, religious and cultural institutions.

- The industry in general is not prepared for being asked to control or stop pollution of the environment. It assumes that its role is limited to producing goods and treating the effluents or emissions is not its duty. The industry also harbours the notion that investment in pollution control is unproductive.
- Industry's money power is able to secure the services of better lawyers than those who typically represent environmental agencies and government departments.
- Environmental considerations are not being given their place in decision making as regards planning and location of new industries and expansion of existing ones. Economic and other considerations outweigh environmental aspects.
- It is a fact that closure of industries may bring unemployment, loss of revenue, but life, health, and ecology have greater importance to the people.
- There are two schools of thinking in developing effluent/emission standards in developing countries. Some people believe that under nourished people require pollution limits lower than those of other countries with far better nourished population. Others believe that developing countries should have lenient standards to encourage industrialization. This is creating problems in prescribing standards in most of the countries.
- Lenient pollution control standards made applicable to old industries located near urban areas came in the way of effective implementation of control laws.
- In big countries, there exist different effluent standards prepared by different agencies of the government, resulting in problems in implementation. In the absence of unified set of standards, legal problems are being created.
- The prosecuting pollution control boards often feel frustrated in being unable to achieve their goals on account of technical legal problems.
- The concept of 'conditional consent', being adopted by pollution control boards is tantamount to giving a license to pollute. Once the consent is given, the board find it very difficult to monitor or take action if conditions laid down in the 'conditional consent' are not complied with by the industry.
- Frustrated at the lengthy court procedures, the boards find it convenient to drop the cases or as an alternative, formulate a more lenient policy towards the industries.

- The pollution control boards can do nothing once the case is sub-judice and the environment degradation goes on unchecked in the mean time.
- The laws of evidence are tortuous with consideration to the infringement of environmental laws.
- The litigation process is very slow; many years pass between prosecution and decision allowing for unabated pollution in the interim period.
- Lack of data regarding the health effects and other impacts on quality of life does not convince the judges to award the punishment prescribed.

### Legal module

The law-men should engage themselves in finding out how far the laws are sufficient and to what extent these laws require reinforcement, re-orientation and modification. There is no dearth of environmental protection laws, but a firm hand is needed to implement them. Several actions are required to sharpen the teeth of the statues of pollution control.

- A comprehensive "Environmental law code" should be enacted envisaging specific liability - civil and/or criminal of individual or individuals.
- Instead of dragging questions of environmental violation to a court of law through prosecution, it is advisable to provide the enforcement authority themselves with powers of imposing prohibitive penalties so as to make the cost of violation more than the cost of observance.
- In the interest of speedy and effective remedial justice, separate environment courts should be established with simplified procedure. The responsibility to disprove pollution should lie heavily on the accused.
- Public interest litigation for protection of the environment should be permitted in view of the wider social interest affected by environmental pollution. Public interest litigation should be institutionalized by providing statutory recognition.
- The polluter pays principle must form part of the legal machinery.
- Through legal means, rehabilitation of the victims who have become disabled due to pollution, must be provided.

To solve the problem of ineffective legal management of environmental quality, a permanent solution is to be found. A legal module can be developed by every country to handle the situation.

The module shall consist of separate units at national level, state level and district level. These units shall handle environmental litigation at national, state and district level respectively. The district level unit can solve most of the cases. These units shall be headed by the immediate retired judges of the supreme court, high court and district

court respectively. The legal module will be different from pollution control boards and will be an independent government funded system. Advisory committees consisting of members from industry, engineers, technologists, medical specialists, pollution control boards, general public and women are to be formed to provide advice to the units at each level. The legal module is to be incorporated through a legislation so that the implementation aspect of legal statutes can be taken care of.

The proposed module can be extended to the international level by involving U.N.O. Although the U.N has no power of its own to be effective, it can make all the nations come to an agreement to create a legal module which can take effective steps to maintain global environment.