

Administration of Environmental Justice by Administrative Authorities in India

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1. Introduction

The quest for economic development, technological advancement, industrialization, globalization and urbanization has jeopardized the ecological balance of the globe and it strikes at the root of the existence of the life itself. It constrained the states to change its priorities and to devise policies for the protection of its environment. The development of international environmental legal framework during 1970s laid the foundation of environmental jurisprudence of many countries. On the basis of the international environmental conferences and declarations, environmental laws were enacted in consenting nations. In India also a number of environmental legislations were enacted after the Stockholm conference of 1972.

The law derives its meaning and achieves its object only when the same is applied to the society in a proper manner. The role of the executive branch of the government is to implement laws in society and to derive its true spirit. The realization of the objectives of environmental laws depends on the administrative process involved in the implementation of environmental legal system.

The executive branch of the Government is ideal for the realization of environmental justice for the whole nation. Its expertise in relevant areas, resourcefulness, regulatory powers, competency and mammoth governmental structure enables it to administer environmental justice in society. The scope of this chapter is to analyze the role of administrative authorities in administration of environmental justice in India.

2. Administrative Authorities for Enforcement of Environmental Laws

A number of environmental legislations and policy formulations were enacted to protect our environment and safeguard the interest of citizens. Hon'ble Justices B.N. Kirpal, Kuldip Singh and S. Saghir Ahmad observed that ¹ "If the mere enactment of the laws relating to the protection of environment was to ensure a clean and pollution-free environment, then India would, perhaps, be the least polluted country in the world. But, this is not so". Hence to carry out the objectives of these legislations, administrative authorities in different strata were constituted. Central Government and state governments have their own ministries on environment and for the enforcement of Water Act², Air Act³ and EPA Act⁴, CPCB and SPCBs were constituted. For the purpose of environmental clearance decision making, Ministry of Environment and Forests (For Category A Projects⁵) and State Level Environment Impact Assessment Authorities (SEIAA) in the states (For Category B Projects⁶) were empowered⁷. The regulations⁸ also provide for the constitution of Expert Appraisal Committees (EAC) at the Centre as well as State or Union territory level Expert Appraisal Committees (SEAC) for advising on environmental clearance of projects⁹. For Protection of forests¹⁰, coastal zones¹¹ and biological diversity¹² separate authorities were constituted under the respective enactments.

In spite of these enormous administrative structures in centre and states the implementation of the environmental laws by the authorities are lagging behind the stated objectives. "Despite a multitude of legislation, Constitutional Directives and Duties and the setting up of Pollution Control Board all over the country, the success in curbing environmental degradation has not been very encouraging because of failure in implementing environmental laws..... While the country has adequate legal mandates to solve the environmental problems, the gaps in policy implementation mechanism indicate that the enforcement policy is rather weak and at times non-existent"¹³. The failure in implementation of environmental laws by the administrative authorities can be attributed to a number of reasons like drawbacks in the environmental administrative systems, lack of commitment of officials, political pressures, corruption, gaps in the environmental legal system etc. According to Geetanjoy Sahu, "implementation of environmental law continues to be a failure, largely because of lack of commitment by the executive and the officials of pollution control boards and other environmental regulatory bodies, which are susceptible to political pressures and corruption"¹⁴.

¹ Council For Enviro-Legal Action v Union of India, (1996) 5 SCC 281, Para 23.

² The Water (Prevention and Control of Pollution) Act, 1974.

³ The Air (Prevention and Control of Pollution) Act, 1981.

⁴ The Environment (Protection) Act, 1986.

⁵ See Schedule of Environmental Clearance Regulations, 2006.

⁶ *Id.*

⁷ Para 2 of The Environment Clearance Regulations, 2006.

Judicial review of administrative decisions and judicial activism in environmental decision making have made significant stride in rejuvenating the administrative authorities towards their stated objectives. Within its limited jurisdictional scope, the court has made substantial contributions to the administration of environmental justice by paving the way for the implementation of environmental laws and concepts without usurping the core areas of administrative process. But still the executive branch of the government is the only organ which can carry out the objectives of environmental legal system to its full potential.

Administrative authorities for environmental protection and improvement have been constituted under the Central Government, State Governments and Local Authorities. The scope of these authorities in administration of environmental justice has been briefly analyzed below.

Central Government

Environmental governance in India is centered around the central government because the environmental regulatory regime was developed at a time when centralized political regime held a dominant position. "After independence, centralization of power might have been an unavoidable choice for India in the quest for nation building process and achieving the developmental goals"¹⁵. The centralised administration by Government is also necessitated by the peculiar features of environmental issues. The need for a

⁸ The Environment Clearance Regulations, 2006.

⁹ *Id.* at Para 3 and 4.

¹⁰ See The Forest Act, 1927, The Forest Conservation Act, 1980, The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006.

¹¹ See Coastal Regulation Zone Notification – SO 114 (E) issued by the Ministry of Environment and Forests on 19th February 1991.

¹² See The Biological Diversity Act, 2002.

¹³ Geetanjay Sahu, *Environmental Governance in India*, 5(3) ICFAI J Env L 38 (2006).

¹⁴ GEETANJOY SAHU, ENVIRONMENTAL JURISPRUDENCE AND THE SUPREME COURT xii (1st ed.2014).

¹⁵ *Supra* note 13, at 41.

centralized environmental legal regime to protect the environmental interest of the nation overrides the regional and local environmental and economical interests. Taking into account the need for a comprehensive environmental management regulatory system without compromising the federal structure, some important changes in the constitutional framework have been introduced by the 42nd Constitutional amendment Act ¹⁶. The Environment (Protection) Act, 1986 empowered the Central Government to take all such measures as it deem necessary or expedient for the purpose of protecting and improving the quality of the environment and preventing, controlling and abating environmental protection¹⁷.

Centralized environmental regulatory mechanism may help to formulate and implement a national environmental policy. But conferment of uncontrolled and wide powers on the regulatory agencies may result in negation of environmental justice. According to N.S.Chadrasekharan "any agency charged with the duty of environmental protection should have certain essential qualities if it is to function effectively, viz., (i) Environmental expertise; (ii) Ability to make independent decisions based on valid environmental criteria and possess coercive power; and (iii) Freedom from extraneous influences. The Environment Act does not take into account these significant aspects."¹⁸

The most important regulatory mechanism constituted for environmental protection in India is the Pollution Control Boards. It is a two- tier system with CPCB at the centre and SPCBs at the state

level. PCBs were empowered with vast regulatory powers under the Water Act, Air Act and EPA.

CPCB is the nodal agency for coordinating the environmental protection and regulatory mechanism throughout the country. CPCB which was originally conceived as a Water Board to prevent water pollution under the Water Act, 1974, was later on renamed and burdened with the functions of prevention of air pollution and environmental protection under the respective laws¹⁹. The appraisal of the PCBs legal framework points out a number of lacunas in the system.

¹⁶ The Constitution (Forty-second Amendment) Act, 1976.

¹⁷ *Supra* note 4, at Sec.3 (1).

¹⁸ N.S.Chadracharan, *Environmental Protection: Two Steps Forward, One Step Back*, 30J.I.L.I.184, 186 (1988).

Lack of an independent regulatory agency in environmental administration is the most important lacuna in the administration of environmental justice. Regulatory agencies including CPCB are dependent on the Central government. Central government exercises direct as well as indirect control on the exercise of powers of CPCB through its administrative and financial tools. The members of the board are appointed by the Central government²⁰. PCBs are also bound by the directions issued by the central government²¹. The drawback of these controls on the functions of CPCB is that the decision making by the board may be modeled on the basis of the governmental requirements which may not be appropriate for the protection and improvement of environment. These controls also prevent the PCBs from taking decisions against the government authorities for environmental protection. Hence "such agency should, (i) have full functional freedom: (ii) not be filled with men amenable to political influence: (iii) not be compelled to dance to the tune of any other authority, including the government."²² But unfortunately the PCBs are still under the superintendence of the concerned governments.

Another important problem faced by the PCBs, especially SPCBs, is the deficiency in funding by the concerned government. Even for the day to day expenses, PCBs are dependent on the fees and cess collected from the industrialists and local authorities. This will create situations which increase the possibility that PCBs may issue consent subject to conditions that favor the industries rather than protect the environment in the country²³. Lack of adequate funding affects the independent functioning of PCBs and its consequence on environment may be drastic in the long term.

¹⁹ "Under the provisions of The Water (Prevention & Control of Pollution) Act, 1974, the Central Government constituted the 'Central Board for the Prevention and Control of Water Pollution' on September 23, 1974. The name of the Central Board was amended to Central Pollution Control Board (CPCB) under the Water (Prevention & Control of Pollution) Amendment Act, 1988 (No. 53 of 1988). The Central Pollution Control Board has been entrusted with the added responsibilities of Air Pollution Control since May, 1981 under the provisions of the Air (Prevention and Control of Pollution) Act, 1981. The enactment of the Environment (Protection) Act, 1986, which is umbrella legislation for enforcement of measures for protection of environment and several notifications of Rules under the Act, widened the scope of activities of the Central Board" - CPCB Annual Report 2011-12, http://cpcb.nic.in/upload/AnnualReports/AnnualReport_43_AR_2011-12_English.pdf (August 10, 2015) .

²⁰ *Supra* note 2, Sec.3.

²¹ *Id.* Sec.18.

Extra territorial nature of environmental issues and jurisdictional issues among different administrative authorities negatively affect the functioning of PCBs. The exploitation of loopholes in the law by the industries and project proponents through changing product combinations, resort to lengthy court proceedings, evading closure orders, not operating the effluent treatment plants, relying on uncertain expert testimony etc will handicap the regulatory system and impair the administration of environmental justice. The central government occupies a pivotal role in the administration of Environmental Justice by administrative authorities in India. But the drawbacks of the administrative system impair the implementation of environmental laws by the central government. In consideration of the prevailing situation, the Apex Court pointed out that “It is undoubtedly a matter of universal concern that the quality of the environment continues to deteriorate even now. Any further delay in the performance of its duty by the Central Government cannot, therefore, be permitted”²⁴.

State Governments

The state governments are also not free from the drawbacks of the administration of environmental laws by the central government. In addition, the administration of environmental justice by the state government is also affected by the local and regional interests of the concerned state. State Pollution Control Boards are the regulatory agency to carry out the functions entrusted to it under the Water Act²⁵, Air Act²⁶ and EPA²⁷. SPCBs were empowered by the CPCB to carry out the functions delegated to it. CPCB is also exercising a supervisory and coordinating function among the different SPCBs.

One of the important sources of income for the state government is the exploitation of natural resources and forest wealth. Shyam Divan and Armin

²² *Supra* note 18, at 193.

²³ P.M.Prasad, *Environment Protection – Role of Regulatory System in India*, 41(13) EPW 1278, 1285 (2006).

²⁴ M.C. Mehta v Union of India, (1998) 9 SCC 589, at Para 7.

²⁵ *Id.* note 2.

²⁶ *Id.* note 3.

²⁷ *Id.* note 4.

Rosencrantz rightly pointed out that²⁸ “there was a tussle for control over natural resources such as forests and fisheries which were important economic subjects”. In many of the states, least priority is given to the protection and improvement of environment in consideration of the economic development and financial stability of the government. The promotion of polluting industries, tourism, mining, power plants and hazardous industries without considering the basic concepts of environmental justice has caused serious repercussions on the environment. In the absence of concrete and explicit results, the benefits of environmental protection have been sidelined under the guise of economic development and advancement. The role of state governments and local authorities were subjected to severe criticism by the Apex Court.

In **Indian Council For Enviro-Legal Action v Union of India**²⁹ the Supreme Court of India severely criticized the irresponsible attitude of the central and state governments in implementing the provision of the Coastal Regulation Zone notification 1991. The Supreme Court observed that³⁰ “The lack of commitment on the part of these States and administrations, towards the protection and regulation of the coastal stretches, is evident from their inaction in complying with the aforesaid statutory directive requiring the preparation of Management Plans within the specified period..... The State of Orissa had only partly complied with this Court’s order dated 3-4-1995 inasmuch as the plans submitted by it were only for a small part of a coast.

The State of West Bengal only submitted a preliminary concept while the States of Andhra Pradesh, Gujarat, Karnataka and Kerala did not care to submit any plans at all”.

In **M.C. Mehta v Union of India**³¹, the Hon’ble Supreme Court has pointed out the failure of the state administration in carrying out the orders of the Hon’ble court in respect of vehicular pollution and the bench consisting of Justices B.N. Kirpal, V.N. Khare, A.S. Anand observed³² “We are rather

distressed at this apathy of the State Administration”.

²⁸ SHYAM DIVAN AND ARMIN ROSENCRAZ, ENVIRONMENTAL LAW AND POLICY IN INDIA 43 (2nd ed. 2002).

²⁹ (1996) 5 SCC 281.

³⁰ *Id.* at Paras 20 and 22.

In **Dr.B.L.Wadehra v Union of India** ³³, the Hon’ble Justice Kuldip Singh observed that³⁴ “Non availability of funds, inadequacy or inefficiency of the staff, insufficiency of machinery etc. cannot be pleaded as grounds for non-performance of their (Government authorities) statutory obligations.

The judicial process has successfully brought to the limelight the woeful administration of environmental justice by the administrative authorities. The control of administrative authorities through judicial review of administrative action has created an element of accountability in the system, which helped in the streamlining of administrative process. But the lack of an independent regulatory mechanism to administer environmental laws has an adverse impact on the administration of environmental justice.

Local Governments

Decentralisation of power and empowerment of local self government, a dream of the father of the nation, enshrined in Article 40³⁵ the Constitution of India has been implemented by 73rd and 74th Constitutional amendments. Constitution 73rd amendment³⁶ introduced Part IX of the Constitution which deals with the organization of Panchayats and 74th amendment³⁷ provided for the constitution of Municipalities under Part IX-A.

Article 243-B³⁸ of the Constitution provides for the constitution of Panchayats and Article 243-G lays down its powers, authority and responsibilities. These institutions were entrusted with the duty to prepare plans and implement the schemes for economic development and social justice. Their functional areas were enumerated under the eleventh schedule appended to the Constitution.

³¹ (1998) 6 SCC 63.

³² *Id.* at Para 1.

³³ AIR 1996 SC 2969.

³⁴ *Id.* at 2976.

The analysis of the functions of the Panchayats in the context of the administration of social justice stresses the importance of the institution in administration of environmental justice at the grass root level of administration. The Eleventh schedule of the Constitution contains a number of entries³⁹ which directly or indirectly affect the protection of environment.

The duties of the Panchayats under the schedule directly affect the right to healthy environment enshrined in Article 21 of the Constitution. “Therefore, it is expected that the Panchayats may take up these matters to improve the quality of life which will bring us closer to our constitutional goal to secure ‘social justice’ to all citizens including village community”⁴⁰.

³⁵ Constitution of India, Article 40 – “The State shall take steps to organise village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government”.

³⁶ The Constitution (73rd Amendment) Act, 1992.

³⁷ The Constitution (74th Amendment) Act, 1992.

³⁸ Constitution of India, Article 243-B (1) – “There shall be constituted in every State, Panchayats at the village, intermediate and district levels in accordance with the provisions of this Part”.

³⁹ Agriculture, including agricultural extension; Land improvement, implementation of land reforms, land consolidation and soil conservation; Minor irrigation, water management and

Article 243-Q⁴¹ of the Constitution provides for the establishment of Municipalities and their powers, authority and responsibilities were enshrined in Article 243-W. The powers and functions of the municipalities are almost similar to the Panchayats and the municipalities are also duty bound to strive for social justice. Twelfth schedule of the Constitution, introduced by the 74th constitutional amendment⁴², enumerated the various functions of the municipalities and most of the entries⁴³ had an implication on the protection of environment. Hence the functions of the municipalities and municipal corporations directly affect the right to healthy environment of the people.

watershed development; Animal husbandry, dairying and poultry; Fisheries; Social forestry and farm forestry; Minor forest produce; Drinking water; Fuel and fodder; Non-conventional energy sources; Poverty alleviation programme; Health and sanitation, including hospitals, primary health centers and dispensaries; Family welfare; Social welfare, including welfare of the handicapped and mentally retarded; Welfare of the weaker sections, and in particular, of the Scheduled Castes and the Scheduled Tribes and Maintenance of community assets.

⁴⁰ Vinod Shankar Mishra, *Protection of Environment and Role of Local Self Government: Indian Perspective*, 38 (3) IBR 43, 47 (2011).

⁴¹ Constitution of India, Article 243-Q (1), “There shall be constituted in every State,— (a) a Nagar Panchayat (by whatever name called) for a transitional area, that is to say, an area in transition from a rural area to an urban area; (b) a Municipal Council for a smaller urban area; and (c) a Municipal Corporation for a larger urban area, in accordance with the provisions of this Part”.

⁴² *Supra* note 37.

⁴³ Urban planning including town planning; Regulation of land-use and construction of buildings; Planning for economic and social development; Water supply for domestic, industrial and commercial purposes; Public health, sanitation conservancy and solid waste management; Urban forestry, protection of the environment and promotion of ecological aspects; Slum improvement and upgradation; Urban poverty alleviation; Provision of urban amenities and facilities such as parks, gardens, playgrounds; Cattle pounds; prevention of cruelty to animals and Regulation of slaughter houses and tanneries.

The concerned local authority is the most suitable authority to deal with local environmental issues like waste and sanitation problems, urbanization issues, local environmental and pollution problems etc. But the part played by the local authorities in the administration of environmental justice has been severely criticized by the judiciary. The attitude of the local authorities to keep out of their constitutional and statutory obligations on the ground of lame excuses has been subjected to severe judicial scrutiny. “Inaction or insensitivity of local authorities continues without any fear of penal action under the relevant laws. The local authorities are contributing their part in environmental pollution. The unfortunate part of these decisions is that law remains in the book and not in action”⁴⁴.

In a number of decisions, headed by the **Ratlam Municipality case**⁴⁵, the judiciary has reminded the local authorities of their duty to protect the environment and observed that the pressure of the judicial process, expensive and dilatory, is neither necessary nor desirable if responsible bodies are responsive to duties. In **L.K.Koolwal v State of Rajasthan**⁴⁶, the Hon’ble Apex Court observed that Article 51A of the Constitution empowered the citizens to move the court for the enforcement of the duty cast on state, instrumentalities, agencies, departments, local bodies and statutory authorities.⁴⁷

⁴⁴ *Supra* note 40, at 58.

⁴⁵ Municipal Council, Ratlam v Vardhichand AIR 1980 SC 1622. See also V.S.Damodharan Nair v State of Kerala AIR 1996 Ker 8.

⁴⁶ L.K.Koolwal v State of Rajasthan, AIR 1988 Raj. 2.

⁴⁷ See also Janki Nathubhai Chhara v Sardarnagar Municipality, AIR 1986 Guj. 49; Vnodh Chandra

Varma v State of UP, AIR 1999 ALL 108; Dr. K.C.Malhotra v State of MP, AIR 1994 MP 48; Almitra H. Patel v Union of India, AIR 1998 SC 993; Bangalore Medical Trust v B.S.Muddappa, AIR 1991 SC 1902; M.C.Mehta v Union of India, 1996 (4) SCC 351.

3. Conclusion

The performance of the administrative authorities in the administration of environmental justice has been briefly analyzed in this chapter. The role of administrative authorities in implementing environmental laws and its impact on the different elements of environmental justice has also been discussed. The relevance of judicial review of administrative action is briefly appraised. The importance of environmental governance in the administration of environmental justice by administrative authorities is also pointed out. The empirical analysis of the data shows the importance of the role of governmental authorities in administering environmental justice.

