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LEGAL ISSUES ON ENVIRONMENTAL POLLUTION

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ABSTRACT

The environmental awareness should be educated in the society to be an ideal society. An Ideal society means, the society which has awareness about the environment. Each and everyone should be aware of the environment so that it is not disturbed by them. Environmental science, which studies the relationship between the environment and human life, has recently emerged as a separate field of study. According to the literature, interactions between people and their surroundings date back as far as human history will allow. It can occasionally be interpreted as a sign of conflict between the two. There have also been instances in which this connection has evolved into civil coexistence. Although though human history over the past several millennia is characterised by its steady and/or consistent advancement in a variety of fields, it has frequently turned out to be quite alluring for human thought and deed to unravel the secrets of nature. The main message of this book is that it's important to preserve the natural equilibrium between human life and the environment. This is a necessary condition for all life to flourish, especially human life. The major contribution of this paper is to build up the environmental awareness among the citizens of India.

Keywords: Environment, Laws and acts, awareness, punishment, Responsibilities

INTRODUCTION:

Our environment is slowly being destroyed as a result of the unprecedented rate of human society growth that has been seen over the past

50 years. All that has to be said is that, from 1970 to 2015, the world's natural resource consumption more than tripled. In order for mankind to maintain its current standard of living today and in 2030, at the current rate of development, 1.5 Earths' worth of resources will be needed. According to NASA, the world's rainforests will vanish by 2100 if current trends continue, and by 2050 there won't be any fish in the oceans around the planet. If "we keep doing what we are doing today," according to Professor Benjamin Sovacool of Aarhus University in Denmark, potable water reserves may run out as early as 2040.

In the past humans and their environment coexisted in some peace. However humans evolved and the tools were advanced and this increased the human activity to cause harm to the environment. Synthetic and organic chemical compound, plastics, deposits of carbon dioxide etc., has been invented by the humans and also it is discharged as a waste and this causes harm to the ecosystem. Within one generation the chemical production by the humans has been increased by 40,000% ie, from 1 million ton to 400 million tons.

Between now and 2040, humanity has a crucial task to do in order to lessen the negative effects of its activity and prevent the destruction of the earth and the ecosystem. Environmental regulations and the Environmental Management System (EMS) can be very helpful in advancing this objective.

BHOPAL GAS TRAGEDY:

The Bhopal Gas Disaster, a significant leak of poisonous chemical vapours from the Union Carbide chemical factory in the city of Bhopal in 1984, led to the enactment of the Environment Protection Act, 1986, which is thought of as an umbrella law because it solves several legal loopholes. As a result, as the issue began to arise, numerous laws were created. The Bhopal disaster highlights the challenge governments face in determining how to respond to crisis scenarios when poverty levels are high and

health infrastructures and government resources are severely constrained. This highlights the requirement that privately owned multinational corporations, whether they be public or private, show some consideration for the communities and environments in which they operate.

The Bhopal gas tragedy is the deadliest industrial accident that has ever happened, to this day. The Indian government sued Union Carbide Corporation in February 1985, claiming that the company owed it \$3.3 billion (UCC). Yet by 1986, all of these court cases in the US District had been moved to India due to forum non convenience. That signifies that in order for the trial to go smoothly, the case needs to be moved to a more convenient location.

The Bhopal Gas Leak Disaster (Processing of Claims) Act, which was passed in March 1985, gave the Central Government the authority to represent all victims as the sole witness in all legal proceedings in order to properly defend their interests and expeditiously pursue their claims for compensation. The Union Carbide Corporation was compelled to pay 350 crores as interim compensation in 1987 after charges were filed in the Bhopal District Court. The UCC, however, declined to pay the sum because the interim order could not be decreed. This interim compensation sum was later decreased to 250 crores before the High Court. The UCC and the Union of India both requested special permission to appeal this High Court's decision. Absolute culpability is one of the major questions that the Bhopal Gas tragedy brings up. In the case of **M.C. Mehta v. Union of India** had a detailed discussion of this subject.

This absolute culpability theory in India developed primarily as a result of the awareness that the Bhopal Gas Tragedy and the Oleum Gas Leak case provided. In a way, the Bhopal Gas Disaster also contributed to the Public Liability Insurance Act of 1991's passage, which mandates mandatory insurance for any factory or unit engaging in hazardous activity.

It is the responsibility of the government to ensure that everything runs smoothly. In addition to this, the government should ensure that a suitable system for victim compensation exists. It should provide prompt justice and make certain that the victims receive appropriate relief. Who is right and who is wrong, who was careless and who was not, become completely immaterial in the plight of thousands of people who are affected in just one night in the event of a calamity of the magnitude of Bhopal. To fail to provide assistance to even one victim is completely unjustifiable. Ideally, such tragedies won't happen again, but even if they do, we should remember the lessons from Bhopal and make sure that any legislation capping the culpability for disasters of this scale is ruled unconstitutional.

LITERATURE REVIEW

For this article, a sizable number of open-source publications, including books, journal papers, and UN reports, have been reviewed. The article gathers the findings and scientific opinions of authors from many nations and cultural backgrounds.

RESEARCH QUESTIONS:

1. What is the basis for the Environmental Management System (EMS) and laws?
2. Why aren't environmental laws as effective as they ought to be?
3. What difficulties does it pose to enforce those rules?
4. What is required for environmental compliance to be sustained?

The article makes an effort to consolidate and integrate the corpus of knowledge concerning environmental legislation, the EMS, how environmental regulations are enforced, and the difficulties involved in enforcement. The practises from different nations are compiled and used to support a number of environmental compliance models. And an effort has been made to suggest ways that environmental compliance can become sustainable.

LEGAL BASIS OF ENVIRONMENTAL LAWS IN INDIA:**ENVIRONMENT PROTECTION FROM INDIA CONSTITUTION PRESPECTIVE:**

Article 48-A of our constitution establishes the State's obligation to maintain the environment, as well as the nation's forests and wildlife, and states that the State "must endeavour to protect and improve the environment."

According to Article 51-A (g) of our constitution, which states that "it shall be the duty of every citizen of India to protect and improve the natural environment, including forests, lakes, rivers, and wildlife and to have compassion for living creatures," environmental protection is a fundamental responsibility of every citizen of this nation. No individual shall be deprived of his or her life or personal liberty except in accordance with the method prescribed by law, according to Article 21 of the Constitution. Under the constitution, fundamental duties are covered by Article 51 A(g) and directive principles of State policy are covered by Article 48-A.

According to Article 47 of the constitution, "The State shall regard the raising of the level of nutrition, the standard of living of its people, and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption of tobacco products, alcohol, and other intoxicants, as well as the improvement of public health generally."

The country's woods and animals are protected by the 42nd amendment to the constitution, which was passed in 1974 and places responsibility for these tasks on the state governments. The latter, under fundamental obligations, states that it is everyone's essential responsibility to preserve and enhance the natural world, including forests, lakes, rivers, and wildlife, as well as to show compassion for all living things.

Some of the important acts as follows:

- The national green tribunal act, 2010

- The Air (prevention and control of pollution) Act, 1981
- The water (prevention and control of pollution) Act, 1974
- The environment protection Act, 1986
- The hazardous waste management regulations, etc.

The National Green Tribunal Act:

This national green tribunal was established in the year 2010, this act is only for the purpose of adjudicating environmental cases in the country. This act is related to the cases like protection and conservation of natural resources, forests and environment. Further, this act is also giving the compensation for the persons and properties which are damaged.

The Air (prevention and control of pollution) Act:

This act is to control and prevent air pollution and also prohibiting the use of fuels and substances which causes air pollution. The air (prevention and control of pollution) amendment act, passed in 1987, gave the central and state pollution boards the authority to handle serious emergencies. The boards were given permission to act quickly to address such events and to recoup the costs incurred from the offenders. The air act modification has also placed emphasis on the authority to revoke consent for failure to comply with the requirements.

The Water (prevention and control of pollution) Act:

This act prevents from the disposal of pollutants into the water bodies beyond a given standard, if so, then imposes fines for noncompliance. To more closely follow the guidelines of the EPA, 1986, the act was amended in 1988. The CPCB (Central Pollution Control Board) was established, and it establishes guidelines for the water pollution prevention and management. State-level SPCBs (State Pollution Control Boards) work under the supervision of the CPCB and the state administration.

The Environment Protection Act:

This act was authorised by the central government. The main aim of this act was to protect and improve the quality of environment and also to reduce the pollution in all sources. Especially in the industries they release lot of pollutions like they release in water, air etc.

The Hazardous Waste management regulations:

To ensure the handling, generation, processing, treatment, packaging, storage, transportation, use reprocessing, collecting, conversion, and offering for sale, destruction, and disposal of hazardous waste safely, hazardous waste management rules are notified.

GAPS OF ENVIRONMENTAL LAWS:

There are some acknowledged gaps in environmental legislation, which have been sufficiently documented in the literature.

The following are the main causes of the gaps:

FRAGMENTED STRUCTURE:

International environmental law has a disjointed organisational framework. This indicates that a variety of sectoral (legislation on water, air pollution control, waste, etc.), issue-specific, and legally separate treaties address the management of environmental challenges. As a result, several environmental problems are while others are not addressed.

LACK OF EFFECTIVE ENFORCEMENT:

The absence of efficient enforcement instruments is viewed as a basic problem on a worldwide scale. Despite the fact that the majority of environmental legislation include criminal consequences for violators, these sanctions have not had the desired impact.

ENVIRONMENTAL LAWS ARE NOT ECOLOGICALLY ORIENTED:

The fact that the current Environmental Law is primarily focused on the requirements and activities of humans rather than ecosystems is

another important restriction of the law. In contrast to people, nature is not thought to have rights. It is seen as a resource foundation to support human activity instead. Thus, in Because there are no laws banning harm to ecosystem integrity, environmental law's effectiveness is greatly diminished.

LACK OF INVOLVEMENT OF CIVIL SOCIETY:

Several academic studies have shown that enacting environmental regulations alone is insufficient. The desired effects will be more challenging to attain where civil society is not active in enforcement. The important takeaway from this is that environmental restrictions indeed have a strong base and are even incorporated into the constitutions of UN Member States. Nonetheless, there are still gaps that reduce the overall effectiveness and enforcement of environmental rules.

Cost of implementation: It can be expensive to get ISO EMS certified. This price includes both the installation and upkeep costs for the EMS (e.g., monitoring and auditing activities, re-certification, etc.)

human resources: The availability of internal human resources is critical for the successful implementation of EMS. In certain circumstances, the lack of this resource may cause more problems than the cost problem.

Time: Setting up the EMS system and all of its components takes a significant amount of time. Also, it takes time to adopt and maintain requirements.

Management support: The effectiveness of EMS deployment depends on the support of management at all organisational levels. It is not advised to start any EMS implementation in the absence of such assistance.

Exposure of an organization's flaws: EMS mandates that businesses keep track of their obligations for regulatory compliance and transparently disclose performance to management. This could make some organisations vulnerable to regulatory

agencies, which could result in fines or other punitive actions. As a result, both the strengths and weaknesses of the ISO EMS system are well acknowledged. Because of this, firms should evaluate their preparation for the EMS system before committing to it in terms of having enough resources, motivation, and managerial support.

Penalties for contravention:

Whoever violates any provisions, rules, orders and directions of this act shall be punishable with imprisonment which may up to 5 years or with fine up to one lakhs or with both. And for each day that the failure or contravention continues after the conviction for the first such failure or contravention, with an additional fine that may reach 5,000 rupees, and If the failure or contravention referred to in subsection (1) continues for more than a year after the date of conviction, the offender shall be punished with imprisonment for a term that may reach seven years.

Offences by companies:

Every person who, at the time the offence was committed, was directly responsible to the company for the conduct of the company's business as well as the company will be deemed guilty of the offence and will be subject to legal action and punishment in accordance with the law if the offence is committed by a company. 15: However, if the offender can demonstrate that the offence was committed without his knowledge or that he took all reasonable precautions to prevent the offence from happening, nothing in this sub-section will subject the offender to any punishment specified in this Act.

Despite what is stated in subsection (1), if a company violates this Act and it is established that a director, manager, secretary, or other officer of the company either had knowledge of, or was negligent in allowing, the violation to occur, the director, manager, secretary, or other officer shall also be deemed to have committed the violation and shall be subject to legal

action. For the purposes of this section, "company" refers to any legal entity, including a firm or other group of people, and "director" refers to a partner in a firm.

Offences by government departments:

When a government department violates this Act, the department's head is considered to have committed the offence and is subject to legal action and punishment in accordance with the law. However, nothing in this section makes the Head of the Department liable for any punishment if he can show that the crime was committed without his knowledge or that he took all reasonable precautions to stop it from happening.

When a Department of Government violates this Act and it is established that the violation was carried out with the consent or knowledge of, or as a result of any neglect on the part of, any officer, other than the Head of the Department, such officer shall also be deemed to have violated this Act and shall be subject to disciplinary action and punishment in accordance with applicable law, notwithstanding anything contained in subsection (1).

RECOMMENDATIONS:

Although outstanding in scope and coverage, environmental laws in India are more frequently found to be broken than being followed. Enforcement of environmental laws is a not-so-happy picture is painted by the highly specialised domain of execution, which is entrusted to several agencies under various laws. Poor and ineffective law enforcement may be caused by a lack of expertise, inadequate infrastructure, a lack of creativity in understanding the law, conflicts over jurisdiction, and a lack of coordination among the many enforcement authorities.

The ability of some of the more creative companies to conceal their infractions and non-compliance or to put undue pressure on the enforcement agency has also contributed

to the enforcement apparatus's inefficiency. The stringent and absolute culpability principle's deterrence theory of punishment has had some degree of efficacy.

Yet, it is hardly necessary to elaborate on the quest for superior alternative liability concepts. Since development is also a crucial component of life, it is now vital to coordinate developmental activities with the environment. To cope with the wider range of issues that the law has not yet addressed, the environmental regime needs to be strengthened with more expert mechanisms. . The precautionary principle is primarily intended as a guiding principle for the administrative process to prevent negative environmental repercussions.

strategy calls for the creation of knowledgeable environmental agencies at the levels of the original decision-making process, the appeals process, and the reviewing process⁷. Indeed, taking such action will advance efforts to develop sustainably and strengthen a robust environmental regime. There is a need to have distinct "Environment Courts" manned only by the experts in sophisticated scientific and specialised environmental matters. individuals with judicial or legal experience working with individuals with environmental expertise and scientific training. These "Environment Courts" should be founded and formed by the Union Government in each State in order to meet the goals of accessible, quick, and speedy justice. Nonetheless, in the event of smaller States and Union Territories, one court could fulfil the purpose for more than one State or Union Territory. establishing an administrative fines system, streamlining the criminal fine system, and removing any legal restrictions on employing self-monitoring information as evidence in court or other proceedings, establishing and disseminating comprehensive standard compliance monitoring and enforcement policies and procedures, and developing and delivering related training programmes. Increase the emphasis on compliance monitoring and enforcement and

prioritise inspection efforts based on environmental risk.

Our society is paradoxical in that we tend to keep our homes tidy but have no qualms about putting the trash out because someone is being paid to clean it up. This is in contrast to the scenario in developed nations, when it is frowned upon to litter, spit, and use public restrooms. Even while we frequently copy such nations in different ways, we haven't adopted their best practises. There is little environmental awareness in the neighbourhood. Due to their greater worry for losing voters' support, politicians generally ignore environmental issues. In order to create place for new motorways, large trees are uprooted. Without anyone crying over the loss of the beautiful trees, a Highrise building's foundation is built on top of them. Hence, there is no interest in environmental issues. The lonesome Sunder Lal Bahuguna's or Medhat Patkar's voice can be heard in opposition to the government's environmentally harmful policies. Students are not being taught to have a strong passion for and devotion to nature in school. It makes sense that they develop a lack of concern for the environment because it provides so much while asking so little of them. Global warming has recently become more personal due to the Gangotri glacier, the source of the sacred Bhagirathi, rapidly melting. So, environmental challenges are genuine and should not be viewed as leisurely sci-fi.

CONCLUSION:

India, the home of philosophy and spirituality, is also the country of rivers, with 14 major, 44 secondary, and 55 minor rivers. Most rivers, from the Cauvery in the south to the Ganges in the north, Since the Ganges purifies the bather of sins and the sight of the Narmada is thought to do the same, devout Hindu travellers regard the waters as sacred. Yet, residential, industrial, and agricultural garbage are increasingly being dumped in India's waterways. The threat to the human race's ability to survive on Earth posed by environmental pollution puts it in jeopardy.



These environmental issues are not contained inside the borders of any nation; rather, their effects are seen on a worldwide scale. Global concern over the preservation and protection of the earth's ecosystem has been sparked by this widespread environmental degradation.

Thus, attempts are being made to increase environmental knowledge or consciousness among the general public. The only thing that can make a person aware of the environment and informed about environmental issues is education. A large and complex infrastructure of paper and powers granted to certain bodies or individuals already exists in the form of the existing principles, statutes, case law, rules, standards, and so forth. One is compelled to wonder how much of India's resources, wealth, energy, and intellect is to be spent when the present Pollution brought on by too many complicated laws, rules, and government employees is by no means the least of the problems.

hazards to the environment where we live. The requirement to keep rules and regulations in this field generally flexible and open to changes in direction as appropriate is another subject of importance. The lessons to be learned from the natural sciences and from technology should be the driving force behind good environmental regulations, or at least they should be. Yet, there is by no means universal consensus among scientists. law, while seemingly fairly appropriate to the issue, may yet suggest that much more is required. Therefore, it is reasonable to suppose that the massive sums spent on additional scientific and technical study indicate that the scene of scientific "truth" is susceptible to change.

Change must be significant, even abrupt; otherwise, it will be difficult to understand the purpose of this costly endeavour. The prevention and management of pollution at the industrial and local levels depend critically on society's awareness of environmental regulations. Moreover, awareness is necessary for the activity.