



Legislative Approach of West Bengal in Protecting Environment

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Abstract

The environmental crisis is growing every day, but environmental protection initiatives were started over the last few decades. Every year, many conferences and seminars organized to discuss that crisis and global sustainable development, but very few efforts have been observed to recognize the need for sustainability. In recent years, the Government has developed many plans and policies to make legal provisions for international conventions and protocols. These legal initiatives help to deal with global environmental problems. Due to unsustainable developmental activities, our environment degraded day-by-day, and lots of environmental issues emerged (like global warming, deforestation, soil erosion, increasing toxic waste from industrial units etc.). Our paper mainly tries to emphasize the Government of West Bengal's legislation on protecting our environment. This paper is divided into three sections. Section I deals with global awareness on protection and improvement of environmental resources and how the West Bengal economy implements the developmental programmes without jeopardizing the natural resources. In section II, we describe the legislation of the Government of West Bengal on the protection and improvement of our environment; the last section is for limitations, conclusions, and suggestions. It is observed that the lists of legal provisions appear entirely satisfactory to protect the public interest and provide a better quality of life.

Keywords: Micro finance, Banks, Self-independent, women empowerment, Poverty

Received on August 15, 2019; Revision received: November 27, 2019, Accepted: December 15, 2019

Introduction:

The growing environmental crisis has evoked a rational and responsible social response, and the global environmental debate has started over the last few decades. There has been a lot of paper work, conferences and seminars about that crisis and global sustainable environment but no one was serious about that, and there was no effort to recognize the need for global sustainability. In recent years numerous efforts have been made to bring the authorities to the negotiating table to thrash out legally binding international conventions and protocols to deal with transnational environmental problems. Due to developmental activities (like industrialization, urbanization, resettlement of land, change of land use pattern, use of pesticides, construction of dams or water resource projects for irrigation, etc.), our environment degraded day-by-day and serious environmental problems emerged (like global warming, deforestation, soil erosion, increasing toxic waste from industrial units, etc.). This paper is divided into three sections.

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Section I discusses the global awareness on protection and improvement of environmental resources and how West Bengal economy implements the development programmes without jeopardizing environmental resources. In section II we describe legislations of the Government of West Bengal on protection and improvement of our environment; the last section provides conclusions and suggestions including some limitations of these legislations in this context.

The issue of environmental standards has its origin in the June 1972 Stockholm Conference when the global environmental problems resulting from growing industrialization and other economic activities began to be recognized internationally. This was the first comprehensive international attempt to articulate the interrelationship between the quality of environment, a growing world population and the economic growth needed to sustain it. In the conference, Stockholm declaration through 26 principles was passed, and stressed on the specific actions for ensuring economic development and growth with the commitment of environment protection and natural resource conservation. The Stockholm Conference also states in principle 11 that "the environmental policies of all states should enhance and not adversely affect the present or future development potential of developing countries nor should they hamper the attainment of better living conditions for all and appropriate steps should be taken by the states and international organizations with a view to reach agreement on meeting the possible national and international economic consequences resulting from the application of environmental measures." It soon became obvious that the Stockholm Conference's focus on the environment without due concern for development was not enough for the long term advancement of the international environmental agenda. In 1985 United Nation established the World Commission on Environment and Development, which issued its Report *'Our Common Future'* in 1987. This report first articulated the concept of sustainable development systematically. In the same year the nations adopted the Montreal Protocol. New scientific findings indicated that the control measures contained in the protocols were adequate to restore the ozone layer; in addition, the developing countries are in a special situation as they needed the technology as well as financial assistance to enable them to change over to non-ozone depleting substances. The next United Nations Conference on Environment and Development was held in June '1992 in Rio de Janeiro. The conference was a grand 12-day affair with over 100 heads of governments present. In the Rio declaration on environment and development a set of legally binding 27 principles for states to follow was finally unanimously accepted. The declaration states that the industrial countries must take the lead in cleaning up the earth's environment because they have the funds and technology. Developing countries failed to establish their claim that the developed countries must pay because they had caused the damage. The adoption of agenda 21 in this conference raised high hopes. The aim was to ensure a common future for the world that was economically, socially and environmentally sustainable. We have made some progress since Rio but we have to admit that in general, the efforts to follow up agenda 21 have not fulfilled the hopes that we entertained in 1992. In December 1997 at Kyoto Conference the European Union made its commitment to cut carbon emissions in industrialized countries but it is increasingly being understood not as an environmental agreement but a trading agreement. Under this protocol industrial countries are expected to cut their overall

carbon emission by at least 5% below 1990 level during the commitment period 2008 to 2012. To monitor this trading, a global executive board is proposed to be set-up. In 2000 Inter-governmental Protocol for Climate Change (IPCC) issued its 3rd assessment record with the statement "most of the observed warming over the last 50 years are likely to have been due to increase in green house gases." On 15 May, 2002, the World Summit on Sustainable Development was held in Paris and UNDP released a report on an overview of 10 years after Rio.

But in India the earliest legal measure on environment was the Indian Forest Act 1878, which was the first conservation effort in India as well as in West Bengal. Since the beginning of the 19th century many scientific discoveries have been made, which accelerated the industrial and agricultural production; on the one hand the increasing production of these two sectors has accelerated development and on the other it has become a major source of pollution. In 1950 environmental issues were incorporated in the constitution of India with the commitment of the state to protect the environment specially forest and wildlife. A framework for implementation of environmental programme had emerged in 1970s, which was coordinated by the then Prime Minister Indira Gandhi. In the year 1972 the Wildlife Protection Act was passed. In India 1972 was the beginning of national environmental awareness. After attending the Stockholm conference, Indira Gandhi framed Water (Prevention and Control of Pollution) Act in March 1974, for improvement of our environment. Indian parliament, by the 42nd Amendment in 1977, explicitly incorporated in the constitution the primary duty of every government (Central and the State) to improve and protect the environment. Article 48-A of the Directive Principles states that "The state shall endeavour to protect and improve the environment and safeguard the forest and wildlife of the country". Article 51-A(g) mentions that it shall be the duty of every citizen of India "To protect and improve the natural environment including forests, lakes, rivers, and wildlife, to have compassion for creatures." In the year 1980 the National Committee of environmental planning gradually evolved into a department of environment. In the same year the Forest (Conservation) Act was passed. And five years later the Department of Environment became the ministry of environment and forest of the Government of India. And the State Governments also followed this example and established their own departments of environment and forest. In 1981 the Central Water Pollution Control Board was established and the State Governments followed by establishing their own State Pollution Control Boards. For emphasizing the need to restore the ecological balance and conservation of the country's natural forest, the National Forest Policy was adopted in 1988. The Government Housing Policy, 1988, National Water Policy, 1987, Land Use Policy, 1988. All recognized the importance of maintaining the ecological balance. For emphasizing the sustainable lifestyle and proper management and conservation of resources, the Government adopted the National Conservation Strategy and Policy Statement of Environment and Development in June 1992, the year which witnessed the Earth Summit in Rio de Janeiro. In 2004, the Ministry of Forest and Environment of Government of India announced a draft National Environmental Policy for ensuring planning, co-ordination and implementation of different environmental programmes. The objectives of this policy are conservation and protection of critical natural resources, and development of an ecological system of sustaining quality of life and human well-being.

II

In West Bengal, after the Stockholm Conference awareness is growing on protection of environment. During British Rule, after the Indian Forest Act, 1878, the law for protecting environment in West Bengal was implemented in 1905 as Bengal Smoke Nuisance Act. The law was related to the abatement of nuisance, arising from the smoke of furnaces or fireplaces in the town and suburbs of Calcutta and Howrah and gradual extension of its provision to other areas in Bengal. The West Bengal Prevention and Control of Water Pollution Board was constituted immediately after the enactment of the first major environmental legislation of the country, the Water (Prevention and Control of Pollution) Act, 1974. The Board was renamed West Bengal Pollution Control Board in February 1983. To meet the public demand the Department of Environment and also the Board tried to ensure proper implementation of judicial and legislative pronouncements. Initially the Board was to implement the 1974 Act, relating to the prevention and control of water pollution and maintaining and restoring wholesomeness of water. Subsequently, it implemented a series of Acts and Rules. In 1977 the Water (Prevention and Control of Pollution) Cess Act was passed for the levy and collection of cess on water consumed by certain industries and local authorities. In 1980 the Forest (Conservation) Act was passed. The Act is concerned with conservation of land and some restrictions on preservation of forest or use of forest land for non-forest purpose. In 1981 the Air (Prevention and Control of Pollution) Act was passed for prevention, control and abatement of air pollution for better environment. Stockholm Conference (1972), in which India participated, proposed to take appropriate steps for the preservation of the natural resources of the Earth, including the preservation of the quality of air and control of air pollution. In 1986 the Environment Protection Act was passed. The Act provides for the protection and improvement of the environment and prevention of hazards to human beings, other living creatures, plants and property if necessary. In 1988 the Forest Conservation Act was modified. The 1988 forest policy gave new direction in important areas. It emphasized the need to restore the ecological balance and conservation of the country's natural heritage by preserving the still remaining natural forests. It also states that organized industry must satisfy its needs from private lands and asks for more participatory management of forest. In 1989 the Hazardous Waste (Management and Handling) Rules were passed. The Rules state that, waste containing hazardous substances can affect the public as well as environmental health and must be managed so as to reduce the community's exposure to them. The Rule states that the occupier, generating hazardous waste of qualities exceeding the prescribed limits, shall take all practical steps to ensure that such waste is properly handled and disposed of without any adverse effect and the occupier shall be responsible for proper collection, reception, treatment, storage and disposal of these wastes either himself or through an operator. The wastes generated by the industries covered under the 18 categories of hazardous waste described in the Rules, pose a serious threat to environment. In the same year Manufacture, Storage and Import of Hazardous Chemicals Rules were passed. These rules shall apply to any industrial activity in which a hazardous chemical, which satisfies any of the criteria laid down in part 1 of schedule I and is listed in column 2 of part 2 of

this schedule, is or may be involved. Under this Rule, Board grants permission to the importers of hazardous chemicals.

In 1991, that is in the year of the beginning of the economic reforms, Public Liability Insurance Act was passed to provide for public liability insurance for the purpose of providing immediate relief to the persons affected by accidents occurring while handling any hazardous substance and for matters connected therewith. For contravention of any of the provisions of duty of owner to take out insurance policies or fail to comply with any direction of its power and performance of its functions under this Act is punishable with imprisonment for a term which shall not be less than one year and six months but which may extend to six years or with fine which shall not be less than one lakh rupees or with both. In 1992 an amendment was sought to provide wild life protection. In this amendment plants are added to the long title and the definition of the land included wetlands. The notification of coastal regulation zone (CRZ), regulating activities in the CRZ was passed also in 1991. In this notification the Central Government declares the coastal stretches of seas, bays, estuaries, creeks, rivers and backwaters which are influenced by the tidal action up to 500 meters from the High Tide Line (HTL) and the land between Low Tide Line (LTL) and the HTL as coastal regulating zone, where restriction is imposed on the setting up and expansion of industries. In 1993 West Bengal fisheries (Amendment) Act was passed. This amendment states that wetland having area larger than 0.035 hectare cannot be destroyed. In 1994 Environment Impact Assessment (EIA) of development projects was notified. The EIA states that any person who desires to undertake a new project or the expansion or modernization of any existing industry or project listed in schedule I of this notification shall submit an application to the Secretary, Ministry of Environment and Forest, New Delhi. The cases may be rejected due to submission of insufficient data, and the plans may be reviewed as and when submitted with complete data and plans. In the same year modification of CRZ notification was passed. In this modification minimum distance from High Tide Line (HTL) in case of tidal rivers was reduced to 50 meters under the EP Act 1986. In 1995 National Environmental Tribunal Act was passed to fix strict liability for damages arising out of any accident occurring while handling hazardous substances and for the establishment of a National Environment Tribunal for effective and expeditious disposal of cases arising from such accident with a view to give relief and compensation for damages to persons, property and the environment and the matter connected therewith. In 1996 "Rules on Emergency Planning: Preparedness and Response for Chemical Accidents" was passed under EP Act, 1986. In the same year the amendments have been made to hazardous waste and chemical rules. Second modification of EIA statement notification was passed in 1997. In this modification provision of public hearing was introduced. In 1998 the Bio Medical Wastes (Management and Handling) Rules were passed and amended in 2000. Bio-medical wastes are generated during the diagnosis, treatments and immunization of humans or animals or during research activities pertaining thereto and in the production or testing of biological materials. The mismanagement of bio-medical wastes poses immense risk to people and the environment. The objective of the Rules is to prevent indiscriminate disposal of contaminated biomedical wastes and put them under a safe environment. In 1999 the "Recycled Plastics Manufacture and Usage Rules" were passed. The salient features of the rules are:

- (i) No plastic carry bags having less than 20-micron thickness can be manufactured, stored, sold or used.
- (ii) Carry bags made from recycled plastics would have to be coloured, specially marked and should not be used for carrying foodstuffs.
- (iii) The recycled procedure should strictly follow the Bureau of Indian Standard specifications.
- (iv) Plastic carry bags manufactured from virgin granules should either be transparent or white.

In 2000 Municipal Solid Waste (Management and Handling) Rules were passed. Municipal solid wastes are more commonly known as market garbage, domestic garbage and the garbage generated from the households. Proper storage, transportation, disposal and treatment are needed for such wastes. The West Bengal Pollution Control Board is working in collaboration with municipalities and concerned Government departments to ensure proper implementation of these Rules. In the year 2002 the Batteries (Management and Handling) Rules were passed under EP Act, 1986. The rules are applicable to every manufacturer, importer, re-conditioner, assembler, dealer, recycler, auctioneer, consumer and bulk consumer involved in manufacturing, processing, sale, purchase and use of lead storage batteries and components thereof. The main objective of the rules are to recycle the lead after its recovery from lead storage batteries and its components by reprocessing units having environmentally sound management facilities.

III

A number of Acts, Rules and Notifications are available in the State for the protection of environment. Some of these Acts were initiated by the Central Government and equally. Binding upon the State Governments. The lists of legal provisions appear quite satisfactory to protect public interest and to provide better quality of life. The State Government believes that it is both incorrect and unrealistic to assume that environment and development are essentially incompatible. Environment Improvement is a subset of development, as both are needed to sustain the quality of life. The State Government is keen on developing public awareness about environment. Without public participation, formulation and implementation, environmental laws cannot achieve the objective of making our country a non-polluted environmentally sound one. Well-trained, properly motivated and massive educational efforts are needed for the implementation of environmental rules and policies. The regulatory authorities as well as NGOs must conduct awareness programmes through media or camps. Coordination between the Department of Environment and other Departments of Government must be ensured for implementing the Rules and Regulations with regard to environment protection. In education system also environment as a subject has been introduced for better awareness for our society. Of course, the latest Economic Survey of the Government of India states that "Government has put in place necessary legislative and regulatory measures, both preventive and promotive, for protection, conservation and development of the environment, an effective implementation of which is expected to harmonize the demands of development and environment."

However, it should be clear that in India, and consequently in West Bengal, the current concern about environment is an outcome of the western awareness about it and integrated later with our developmental efforts in an *ad hoc* manner. Naturally, the measures to protect environment were not integrated in a holistic manner as it was a way of life in the ancient Indian society when nature and man were complimentary to each other. But the modern concern for environment in India is mainly confined among the liberal elite and hardly any environmental training is available for the common people. Also the environmental strategies came in frequent conflict with the industrialization policies, most of the environmental legislations met with strong opposition from the quarters with strong vested interests in exploiting natural resources in the name of modernization. The implementation of environmental legislations was half-hearted in many cases and the rules themselves contained many loopholes. As the legislation for ensuring environmental justice is still in infancy in India, the principle that polluters must pay, cannot be properly enforced in many cases. There is also no political will as the politicians are very much dependent on the industries, vehicle owners and other pollution creators for votes so that pollution control measures are difficult to implement. The situation has been further aggravated since the initiation of economic reforms in 1991 in India. As under this policy more and more dependence on the market rather than on the state was recommended, it is quite natural that the environmental concern will lose its priority as it is largely outside the market mechanism and requires state intervention for its protection and up gradation. Increasing thrust on agricultural exports under this new economic policy leads to land degradation, pollution through use of pesticides and chemical fertilizers and loss of bio-diversity for which India is internationally known. The export policies and fiscal norms relating to subsidies and tax reliefs are already damaging the environment. In some cases forest lands are given access to industries which was never allowed in the pre-reform days. New polluting thermal power stations are being built in some cases by ruining the breeding grounds for fish (eg., Kayamkulam in Kerala). The situation in West Bengal is no different from that of India as here also environmental degradation is taking its toll in various directions in a variety of ways, be it in the form of arsenic pollution due to overuse of ground water to produce multiple crops, or in the form of fly ash pollution from thermal power stations, or in the form of destruction of fertile agricultural lands in the name of urbanization when the existing smaller towns are suffering from declining civic facilities, and in many other ways. The slackness in the proper implementation of environmental measures often called for judicial activism, which has been also criticized as crossing its natural jurisdiction.

In fact the modern economic reforms aim at equating wealth creation with the conversion of natural resources of the country into cash, a resource that progressively keeps on depreciating. Thus economic growth does not always mean an increase in human well-being as it is likely that such growth could cause a lot of environmental damages or environment-related setbacks to the social scenario as well. Unfortunately the GDP takes into account only the items which are measured in terms of money through the market, but neglects all other factors affecting human welfare which are outside the market, the primary of them being the environmental concerns. Naturally, it is suggested that the current measure of the GDP should take into account the net value of the environment, however inaccurate it may be at present. An idea of its importance may be obtained from

the fact that between 1975 and 1995 the Indian economy grew by 2.5 times in terms of its GDP but the total amount of pollutants increased by 8 times according to one estimate. It is necessary to view the role and future of environmental legislations in this perspective.

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