



ENVIRONMENTAL REGULATION IN INDIA & AUDITING ENFORCEMENT OF ENVIRONMENTAL LAWS

Shibani Ghosh

Advocate

**Introduction to audit of Sustainable Development
and Climate Change Issues'**

iCED, Jaipur

23 March 2015

“No democratic government can survive without **accountability** and the basic postulate of accountability is that the **people should have information** about the functioning of the Government. It is only if people know how government is functioning that they can fulfill the role which democracy assigns to them and make democracy a really **effective participatory democracy**...

The citizens' right to know the facts, the true facts, about the administration of the country is thus one of the pillars of a democratic State.”

- Justice PN Bhagwati
SP Gupta v. Union of India



WHY SHOULD AUDITORS BE CONCERNED ABOUT ENVIRONMENTAL REGULATIONS

- Regulatory/ decision making processes involving natural resources have to often navigate through conflicting interests – and vested interests
- Current environmental regulatory structures lack the necessary independence, and in some cases are inherently biased
- Need for objective verification and independent assessment of information, decisions, processes, institutions – compliance of the law, protection of fundamental rights
- Access to data and information to auditors is more than to most stakeholders (?) – Audit reports can act as a mirror to the actions of government agencies – increase transparency in government functioning – awareness building



SOURCES OF ENVIRONMENTAL LAW IN INDIA

- The Constitution of India 1950
- Legislations passed by the Parliament and the State Legislative Assemblies
- Secondary legislations – bye laws, rules, regulations, notifications – issued by the Government under the Legislations
- Judgments of the Courts
- International Law
- Foreign law (law of other countries)



THE CONSTITUTION OF INDIA

- No mention of environment or environmental rights in the original Constitution
- Constitutional Amendment in 1976



THE CONSTITUTION OF INDIA

- **Fundamental Rights – justiciable – Part III**

Article 21 - No person shall be deprived of his life or personal liberty except according to procedure established by law.

- **Directive Principles of State Policy – mostly non-justiciable – Part IV**

Article 47 - The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties

...

Article 48 A - The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country.



THE CONSTITUTION OF INDIA

○ Fundamental Duties – non-justiciable – Part IVA

Article 51A (g) - It shall be the duty of every citizen of India—

(g) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures;



THE CONSTITUTION OF INDIA

- **Fundamental Right to approach the Supreme Court**

Article 32 - (1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.

(2) The Supreme Court shall have power to issue directions or orders or writs, ..., whichever may be appropriate, for the enforcement of any of the rights conferred by this Part.

- **Jurisdiction of the High Courts**



INDIA'S FEDERAL SET-UP

- Powers to legislate are divided between the Centre and the States
- **Article 246** - *Subject-matter of laws made by Parliament and by the Legislatures of States.*
 - *Union list – entering into treaties, regulation of mines, petroleum, oil, atomic energy, inter-state rivers*
 - *State list – water, agriculture, public health, land*
 - *Concurrent list – forests, protection of wildlife*



JUDGMENTS OF COURTS

- Law declared by the Supreme Court is binding on all courts
- Right to a clean and healthy environment
- Right to hygienic environment
- Right to information
- Right to participation in the decision making process



INTERNATIONAL LAW AND FOREIGN LAW

- **Article 253** - Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body.
 - Examples: Air Act; Environment (Protection) Act
 - Stockholm Declaration 1972
- Through judgments:
 - Examples: principle of sustainable development, precautionary principle, inter-generational equity, public trust doctrine



ENVIRONMENTAL LEGISLATIONS

○ Wildlife (Protection) Act 1972

- *Earlier a State subject -11 states passed a resolution – empowering the Centre to legislate*
- Protection of wild animals, birds and plants and connected matters
- Prohibition of hunting (with exceptions)
- Declaration of protected areas – National Parks, Wildlife Sanctuaries, conservation reserves
- Prohibition/regulation of trade in animal articles

- National Board of Wildlife and State Boards of Wildlife, National Tiger Conservation Authority of India, Central Zoo Authority



ENVIRONMENTAL LEGISLATIONS

○ Water (Prevention and Control of Pollution) Act 1974

- *State subject - 12 states passed a resolution – empowering the Centre to legislate*
- Prevention and control of water pollution; maintaining and restoring the wholesomeness of water
- Establishment of Central and State Pollution Control Boards – Lay down effluent standards for sewage and trade effluents and water quality standards, monitor and implement standards
- Consents to Establish and Operate
- Power to enter and inspect establishments



ENVIRONMENTAL LEGISLATIONS

- Penalties
 - Boards can direct closure, prohibition or regulation of any polluting industry – can also stop or regulate the supply of electricity and water to units
 - Appellate Authorities in every State
-
- **Water (Prevention and Control of Pollution) Cess Act 1977**
 - Levy and collection of a cess for use of water by certain industries and local authorities – financial resources for the Pollution Control Boards



ENVIRONMENTAL LEGISLATIONS

○ Forest (Conservation) Act 1980

- Passed to check the rapid deforestation and to ensure conservation of forests
- Restriction on non-forest activities in forest areas – prior approval of Central Government necessary
- Restriction on dereservation of forests – prior approval of Central Government necessary
- Power rests mainly with the Central Government (MoEFCC) – forest clearance process – recommendations of the Forest Advisory Committee or the State Advisory Group



ENVIRONMENTAL LEGISLATIONS

○ Air (Prevention and Control of Pollution) Act 1981

- Implementing the provisions of the Declaration of the Stockholm Conference of 1972 – preservation of natural environment including the quality of air and control of pollution
- Empowers the Central and State Pollution Control Boards to check emissions
- Issue standards for emissions from industries
- *Similar to Water (Prevention and Control of Pollution) Act*



ENVIRONMENTAL LEGISLATIONS

○ Environment (Protection) Act 1986

- Bhopal gas tragedy and leak from chemical industry in Delhi
- Commitments under the Stockholm Declaration
- Umbrella legislation for environmental protection – not on specific issue – many areas of environmental hazards were not covered
- Powers to take measures to protect and improve the environment lie with the Central Government
- Includes the power to set up new regulatory authorities, laying down standards for quality of the environment, restriction of areas in which industries can come up, declaration of eco-sensitive zones.



ENVIRONMENTAL LEGISLATIONS

○ Examples of Secondary legislations

- Coastal Regulation Zone Notifications
- Environment Impact Assessment Notifications
- Noise Pollution (Regulation and Control) Rules, 2000
- Rules for the Manufacture, Use, Import, Export and Storage of Hazardous micro-organisms Genetically engineered organisms or cells 1989
- Hazardous Wastes (Management, Handling and Transboundary Movement) Rules 2008
- Wetlands (Conservation and Management) Rules 2010
- Plastic Waste (Management and Handling) Rules 2011
- E-waste (Management and Handling) Rules 2011



ENVIRONMENTAL LEGISLATIONS

- **National Green Tribunal Act 2010**
 - Special court to decide environmental cases
 - Judges and experts on the panel
 - Fast-tracked decision making



ISSUES TO CONSIDER

- What does *enforcement* mean? How to measure effectiveness/ success of environmental laws?
- Three pillars of environmental governance:

Principle 10 of the Rio Declaration on Environment and Development 1992

“Environmental issues are best handled **with participation of all concerned citizens**, at the relevant level. At the national level, each individual shall have **appropriate access to information** concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the **opportunity to participate in decision-making processes**. States shall facilitate and encourage public awareness and participation by making information widely available. **Effective access to judicial and administrative proceedings**, including redress and remedy, shall be provided



ISSUES TO CONSIDER

- Public participation in the decision-making process
- Access to information – transparency in the process
- Access to justice – accountability and monitoring mechanisms
- Cumulative impact assessment
- Social impact assessment – equity
- Assessment of alternatives
- Analysis of institutional capacity and effectiveness of existing regulatory structures
- *Upholding the law in letter and spirit*



ROLE OF AUDITORS

- What is the technical, and regulatory, capacity of an auditing institution to undertake a second-level of review/ analysis?
- What aspects of the decision/ decision making process can you look at – how extensive can the review be?
- When can auditors ‘intervene’?
 - Can an audit look at future expenditure/ decisions/ policies?
- What is the impact/ implication of an environmental audit report?

