

LAWS RELEATED TO ENVIRONMENT CONSER- VATION IN THE STATE OF J&K: A BRIEF CON- SPECTUS

By: NITAN SHARMA

INTRODUCTION

For the wholesomeness of its environment, Jammu and Kashmir is known as a paradise on earth. But from the past few decades, we have been ignoring the heavenly status of this finest part of the earth. The pollution of all forms, be it air, water and soil, is raising its ugly head in all parts of the State. The Ambient Air Pollution Database shared by WHO in the recent past regarding the deteriorating air quality levels in Jammu and Srinagar City is an eye opener in this regard. The disposal of waste from industries, public institutions and household sources poses a new environmental challenge. Similarly, the issue of establishment of industrial units on prime agricultural and forest lands, and even in most cases their proximity to the residential areas adds additional toll on the already fragile environment and health of the common populace. Our State is rich in biodiversity and is termed as a biodiversity hot spot within the himalayan range. Deforestation, overgrazing, construction of roads through forests and throwing open the hot shot spots of biodiversity have stripped the land of its natural cover. Our state has only 19% forest cover which is much below 30% cover requisite to ensure ecological stability. Despite apex court's wide range of directions to ban the felling of rare species of trees and regulate saw mills in the state, there has been little progress to save the existing forest cover. In view of its carbon sequestration potential, the decrease of forest density is of vital concern especially for the inhabitants of those areas which have lesser forest area but more industrial, vehicular and increasing population pressures.

Although Part III of the Constitution of India is directly applicable to the State of Jammu & Kashmir, the Constitution of the State has almost observed silence in the protection of environment. Barring provisions in the Directive Principles commanding the State to safeguard and promote the health of the people by advancing public hygiene and by prevention of disease through sanitation etc., the State Constitution instead stresses upon the materialistic quest. It is, however, important to mention here that the concern for environment protection can be found in unequivocal manner in various provisions laid down under Ranbir Penal Code, Criminal Procedure Code, Civil Procedure Code and under plethora of self enacted statutes passed before 26th January, 1957, the day declared as the commencement of the J&K Constitution. It is difficult to understand how this important aspect lost sight of the framers of the Constitution of J&K.

It is significant to mention that most of the laws available in the State to protect the environment are the direct result of parliament's obligation and power under Article 249, 250, 252 and Art. 253 respectively and hence made directly applicable to the State. Nevertheless, the State has also promulgated certain legislations on the subjects enlisted in State and Concurrent list. Apart from the legislation, the State Judiciary and the apex court of India has played a prominent role in defining terms and standards for coexistence with nature without damaging the natural environment.

LAWS RELATED TO ENVIRONMENT CONSERVATION

Some important laws relating to environmental protection in the State of J&K are mentioned below:

a. J&K Forest Act, 1987 (1930 A.D.)

This Act provides for the preservation and management of demarcated and undemarcated forests in the J&K State. It also provides for the formation of village forests and the control of timber and other forest produce in transit. It also defines what a forest offence is, what are the acts prohibited in demarcated and undemarcated forests, and penalties leviable on violation of the provisions of this act.

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

This was the first legislation which was passed by the central government in the direction of environmental welfare. Its objective is to ensure that domestic industrial pollutants are not discharged into rivers and lakes without adequate treatment. The reason is that such a discharge renders water unsuitable as a source of drinking water, for irrigation and support for marine life. In order to achieve the intended objective, pollution control boards at the central and state levels were established and given the power to test, record and research the quality of water from any river, canal, well or stream. For infringement of the provisions of the act and the rules made thereunder, anybody or corporation is subjected to fine or imprisonment or both to ensure strict compliance.

c. Jammu and Kashmir Wildlife (Protection) Act, 1978

The act provides for the conservation and management of wild species, wild flora and ecologically important protected areas in the J&K State. Under this act, the State government is empowered to notify National Parks, Wildlife Sanctuaries and Conservation Reserves. The act has also made provision to manage captive and injured animals in Zoos and rescue centres respectively. It has six schedules which give varying degrees of protection.

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

In order to implement the decisions taken at the Stockholm Conference in 1972 in which India also participated, the Air Act, 1981 was enacted by

the Union Parliament as mandated under Article 253 of the Constitution. The Act aims to provide for the prevention, control and abatement of air pollution and for the establishment of Central and State Boards for the effective implementation of the act. The Central Board may advise the Central government on any matter concerning the improvement of the quality of air and the prevention, control and abatement of air pollution besides providing technical assistance and guidance to the State Boards for the aforesaid purpose. Likewise, State Board shall advise the State government on any aspect concerning the prevention and abatement of air pollution. One of the important function of the State Board is to lay down in consultation with the Central Board and having regard to the standards for the quality of air laid down by the Central Board, standards for emission of air pollutants into the atmosphere from industrial plants and automobiles or for discharge of any air pollutant from any other source excluding ship or an aircraft. One of the important characteristic of this legislation is that it also calls for abatement of noise pollution.

e. Environment Protection Act, 1986

Under this act, the Central Government has given wide powers to take all necessary steps for purpose of protection and improving the quality of environment and preventing, controlling and abating environmental pollution. The purpose of this act is to act as an 'umbrella' legislation designed to provide a framework for Central government co-ordination of the activities of various central and state authorities established under the previous laws related to environment protection, such as Water Act 1974 and Air Act, 1981. The scope of the act can be gauged from the definition of 'Environment' under the act which includes water, air and land and the inter-relationships which exist among water, air and land, and human beings and other living creatures, plants, micro-organisms and property. A wide range of rules have been adopted under it, such as the: E-Waste (Management) Rules 2016, Bio-Medical Waste Management Rules 2016, Construction and Demolition waste Management Rules 2016, Hazardous and Other Waste (Management and Transboundary Movement) Rules 2016, Plastic Waste Management Rules 2016 etc.

f. Public Liability Insurance Act, 1991

This act was enacted on January 22, 1991. This act was mainly brought up as a result of the fatal Bhopal Gas Tragedy that killed over 3000 people and injured many others. The main purpose of the act is to provide prompt relief to persons (other than workmen) affected by accidents happening while handling hazardous substances, through the insurance amount paid by the owner of the hazardous substance. Every owner of any hazardous property, before handling that property, shall take one or more insurance

policies providing contracts of insurance whereby he is insured against the liability to give relief claimed by the person injured or suffered any loss occurred due to that hazardous substance. The speciality of this act lies in the fact that it ensures 'No Fault Liability' against the owners of hazardous substances.

g. Jammu And Kashmir Forest (Conservation) Act, 1997

The wide spread concern for large scale deforestation resulting in ecological imbalance and environmental degradation led to the enactment of the Forest (Conservation) Act, 1997. Restriction on de-notifying of demarcated forests or de-reservation, or use of forest land for non-forest purpose is the crux of this legislation. The act enables the State Government to appoint an advisory committee to advise them on the grant of prior approval, and matters connected with the conservation of forests. Primarily, approvals are necessary for the construction of rural roads by the District Rural Development Agency, and border roads constructed mainly for the defence purpose by Army or Border Roads Organisations or any of its agencies. Permissions are, however, subject to the condition that the concerned road is needed for the upliftment of the rural people and does not have any adverse impact on eco-system of the area. Whosoever contravenes or abets the contravention of any of the aforesaid provisions shall be punishable with simple imprisonment for a period which may extend to fifteen days.

h. Biological Diversity Act, 2002

In order to ensure compliance with the Convention of Biological Diversity, 1992, the Parliament enacted the Biological Diversity Act in 2002. The objectives of the Act are to take appropriate action for conservation of biological diversity, sustainable use of its components and fair and equitable sharing of the benefits arising out of utilization of genetic resources. Apart from these main objectives, the Act has also provided for the establishment of National Biodiversity Authority, State Biodiversity Board and Biodiversity Management Committees; to respect and protect knowledge of local communities traditional knowledge related to biodiversity, and to conserve and develop areas of importance from the standpoint of biological diversity by declaring them diversity heritage sites. The Biodiversity Act of 2002 and the Biodiversity Rules, 2004 are implemented by National Biodiversity Authority at the national level, State Biological Board at State level and Biodiversity Management Committees at local levels.

i. J&K Non-Biodegradable Material (Management, Handling and Disposal) Act, 2007

The act has been enacted with an objective to prohibit and regulate handling and disposal of non-biodegradable material in the State and the matters connected therewith and incidental thereto. It defines what a

non-biodegradable material is, enumerates powers and functions of prescribed authority as appointed and notified by government in the government gazette, and the power of the government after consultation with the prescribed authority to declare any area to be non-biodegradable material control area for the purposes of this act. The act also suggests penalties in respect of any commission or omission in contravention of any of the provisions of this act or whosoever aids, abets or assists in the commission of any offence.

j. National Green Tribunal Act, 2010

The National Green Tribunal Act, 2010 has been enacted with the objectives to provide for establishment of a National Green Tribunal for the effective and expeditious disposal of cases relating to environment protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment and giving relief and compensation for damages to persons and property and for matters connected therewith or incidental thereto. The Act envisages establishment of NGT in order to deal with all environmental laws relating to air and water pollution, the Environment Protection Act, the Forest Conservation Act and the Biodiversity Act as have been set out in Schedule I of the NGT Act. It is important to highlight there that subsequent to enforcement of the National Green Tribunal Act, 2010, the National Environment Tribunal Act, 1995 and the National Environment Appellate Authority Act, 1997 stand repealed.

In addition to the above discussed laws, there are number of other laws having direct bearing on conserving the already fragile environment in the State viz., Mines and Minerals (Development and Regulation) Act, 1957; Motor Vehicle Act, 1988; J&K Water Resources (Regulation and Management) Act, 2010; J&K Brick Kilns (Regulation) Act, 2010 etc. It is, however, important to emphasise at this juncture that still there are some beneficial legislations in the field of environmental protection which though has been extended in other parts of the nation are not extended to the State of J&K, as we can see in the case of The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006.

CONCLUSION

To sum up, it can be concluded that no doubt legislature is painting rainbow of rights to make the right to live in a clean and pollution free environment meaningful in the real essence but due to defiance of some persons, who are otherwise duty bound to translate them into reality, the intended objectives of these legislations get eclipsed under dark clouds of insensitivity. The 2018 report on Environmental Performance Index which ranked India at 177 out of 180 countries sufficiently indicates our low

performance in areas of air quality, water & sanitation, biodiversity & habitat, reduced forest cover, green house gas emissions, waste water treatment , etc. In the light of such state of affairs, it can be easily discernible that the application of environmental laws and regulations are less effective and moreover faces an implementation crisis. Lack of coordination across government agencies, weak institutional capacity, corruption and insensitive civil society are the key factors behind the poor effectiveness and implementation of environmental regulations. So, it is highly imperative that the synergy of all relevant stakeholders must be tapped to ensure better compliance of laws related to environmental conservation in the State of J&K.

The author is a Research Scholar at Department of Law,
University of Jammu.
(Feedback at: nitansharmaadv@gmail.com)
