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Environmental concerns and existing gaps in the legal enforcement

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Introduction:

There could be no better time to reflect on our environment and natural resources, just as we struggle with a gradual exit out of the lockdown resulting from the Covid 19 pandemic. The human-environment interaction has brought about a standstill to any kind of economic growth all over the world and we realise what we have done to the environment. It as if environment is in all its fury laying bare each atrocity done on it and that too after giving umpteen, unimpeded warnings. Zoonotic diseases were bound to recur driven by habitat destruction and humans entering biodiversity hotspots, of which India is very much a part. Just ten days into the lockdown brought down the airpollution in terms of PM 2.5 concentration in Delhi-NCR down by 55 to 67 percent(Greenspace India), clean beaches and rivers, clear skies and increase in migratory birds. The gravity of the situation can be gauged by the fact that despite this improvement our air quality still does meet the WHO prescribed air quality standards. The lockdown gives us moments to step-back and assess the damage done to the environment.

Growth in economic activity shown as fancy numbers over the print and visual media makes good headlines and a reason for appeal of votes which an improvement in environmental standards, in the form of reduction in PMI, carbon emissions, addition to bio diversity, addition to forest cover, national parks, better waste management etc. do not. Agreed, economic activity raises employment but do we adequately measure the employment reduced by the setting up of huge mega projects or loss in work productivity?

Just as we measure the cost of installing pollution control technology for say Coal-fired power plants, we should also be measuring the cost of impact on human health in the absence of the above. Penalties and compensations must be strictly imposed and the operations of environment sensitive projects monitored.

Whether it's the Ministry of environment, forest and climate change(MoEFCC) giving clearances to construction of dams, power projects, coastal roads, bullet trains, nuclear plants or huge refineries, various reports and studies made by independent foreign and national bodies highlight the inadequacies in their assessment with lack of information and short term gains cited as the main reasons.Apart from the introduction, the paper discusses the poor state of the environment and its impact on India, environmental regulations, issues and concerns and lastly conclusion and recommendations.

Abysmal state of the environment

India's ranking on the Environmental Performance Index formulated by Yale Centre for Environmental Law & Policy's fell from 155 in 2014 to 177 in 2018 among 180

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nations.According to the 2019 Global Climate Risk Index (CRI) developed by Germanwatch, India ranks as the 14th most vulnerable country. India accounts for 4.5 percent of the world's greenhouse gases and has been witnessing high intensity natural phenomena like floods, heat waves and melting of glaciers as a result of climate change.With just 10 years to go, India is yet to identify indicators to track its climate change preparedness.

Air pollution is far above permissible limits, the main sources being transportation exhausts, power plant emissions, road dust, construction projects and diesel generators. It is responsible for 12.5 per cent of all deaths in India. Around 44 percent of India's energy came from coal in 2013 with renewables making up only 3 percent leading to very high rates of emissions. Renewable energy generation is minimal due to high costs involved and hydropower and gas based power plants are running at less than 25 percent capacity. Vehicle emissions test are mandatory but mostly done without proper checks.

As per the State of India's Environment 2019 report, there has been a 56 per cent increase in the number of hazardous-waste generating industries between 2009 and 2016. Most of the water bodies are critically polluted and there has been a 136 per cent increase in the number of grossly polluting industries between 2011 and 2018.Waste management is far from the norms decided and as much as 79 major protests against unsanitary landfills and dump yards have been recorded in 22 states in the past three years.

On one hand our rural areas are struggling with problems like deforestation, water pollution, soilerosion, and land degradation hindering economic development while on the other hand, our cities are bursting to the seams with rapid industrialization and urbanization. Unplanned cities with high population density have a detrimental effect on infrastructure as well as on the environment which may be a permanent one.
Most of the densely populated cities of India have high levels of small particulate – PM2.5, polluted air and water with new diseases and no waste disposal mechanism. Forest covers which would have been lungs for the cities are fast depleting due to mega projects. Notwithstanding the ban on garbage dumping in landfills uncontrolled fires at landfills are very frequent.

Rapid industrialisation is leading to massive waste management challenge. As per the State of India's Environment 2018 report, 61,948 million litres of urban sewage is generated on a daily basis in India, but the cities have an installed sewage treatment capacity of only 38% of this.Industrial sector generates 100 million tons/year of no-hazardous solid waste. Various studies reveal that about 90 percent of municipal solid waste is disposed of unscientifically in open dumps and landfills, creating problems to public health and the environment. The Energy and Resources Institute (TERI) has estimated that waste generation will exceed 260 million tons per year by 2047-more than five times the present level.

The rivers of India are in a pathetic state with number of polluted stretches in India's rivers increasing each year. According to a report by World Wildlife Fund(WWF), India's projected

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GDP loss due to environmental degradation could be over 1.5% by 2050 if it does not take any drastic measures.

Environmental Regulations- an overview

Since the 1970s an extensive network of environmental legislation has been developed with the ministry and the pollution control boards (CPCB i.e. Central Pollution Control Board and SPCBs i.e. State Pollution Control Boards) together forming the regulatory and administrative core of the sector.

The Environment (Protection) Act was enacted in 1986 empowering the Central Government to establish authorities charged with the mandate of preventing environmental pollution in all its forms. In 1992, Policy Statement on Environment and Development was brought out by the MoEF and EAP (Environmental Action Programme) was formulated in 1993 with the objective of improving environmental services.

Quality standards of Air, water, vehicular exhaust, noise, auto fuel etc. have been notified to industries. Various legislations and industry-specific standards for emission or discharge of pollutants too have been designed to protect and preserve the environment. National Environmental Tribunal was established in 1995 for imposing strict liability for damage arising out of accidents caused my mishandling of hazardous substances. National Green Tribunal was established in 2010 for ensuring expeditious disposal of cases relating to environmental protection. It is expected to enforce legal rights relating to environment and give relief and compensation for damages to persons and property. There are separate guidelines for sensitive industries and for eco-sensitive zones around protected areas.

Backed by the Environment Protection Act, 1986, a tool called Environmental Impact Assessment (EIA) is used to identify the environmental, social and economic impacts of a project prior to decision-making.The Environment Impact Assessment Notification 2006makes it mandatory for various projects such as mining, thermal power plants, river valley, infrastructure (road, highway, ports, harbours and airports) and industries including very small electroplating or foundry units to get environment clearance by state governments. Public hearing is also a part of this process to reduce conflicts among stakeholders. In 2006, the process has been decentralized and activities are classified into two categories, A(national level appraisal) and B (state level appraisal) based on various potential impacts on human health and natural and man-made resources.

Issues and Concerns

Many of the above regulations lack strict enforcement as enforcement bodies have false teeth leading to the colossal loss to the environment amidst an air of complete neglect.According to a Comptroller and Auditor General (CAG) report many of the forest and environmental clearances issued were in violation of Supreme Court orders and government regulations. In another study conducted on projects cleared between 2014 to February 2020, there were 278

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project proposals approved in and around 672 protected areas. The influence of legal bodies like the National Green Tribunal is waning as it is seen as an impediment to economic growth.

There are many glaring instances of dilution of environmental laws over recent years as it has been seen that Oil and gas companies no more seek environment clearances for onshore and offshore exploratory drilling. Heavily polluting industries including coal and fly ash disposal are no longer subjected to routine inspections who are now supposed to self-regulate (Indiaspend, January 2020). The role of Statutory bodies like the national board for wildlife and forest advisory committee has been substantially reduced.

Most recently during the lockdown caused by the outbreak of Coronavirus, many projects have been cleared without adequate deliberations and only by video –conferencing. As the ministry starts working on fast track mode, there are reports that just 10 minutes haven given to each project and 47 projects have been crammed over three sittings. No site visits are being done by the Expert committee to verify the information presented to it, hence relying entirely on documentation and reports provided by the project developer may prove catastrophic. According to Environment Support Group in Bengaluru, about 99% of such reports are known to be fraudulent.

Environmentally sensitive projects like three-fold expansion of Numaligarh oil refinery in Assam are being cleared over videoconference meetings. Some other projects under consideration are 2,400-megawatt coal power plant at Talabira, Odisha, mining of uranium and diamond. People affected by projects, who don't have ready access to the internet would be unable to send representations or documents to the expert committee.

There are reports questioning the quality of EIA reports, exemptions given andsignificant projects finding ways out of the process in the first place via some exemption clause.Valappilet a1 (1994) reviewed a number of environmental impact reports and found the content to be inadequate in mostcases. The EIA reports are many times not reliable with consultants giving fudged data and the EAC(expert advisory committee) simply clearing projects without proper due diligence. Public hearing is either not done or the information disseminated is limited or missing on many parameters. No further monitoring seems to have been done in many cases, to check compliance on conditions imposed.

Recently, the Ministry of Environment, Forest and Climate Change (MoEFCC) has proposed a draft Environmental Impact Assessment (EIA) notification 2020 which allows for post-facto clearance(Economic and Political Weekly 02/05/2020). This would award clearance to projects even if they have started construction or have been running without securing environmental clearances. This would amount to irreversible damage to the environment and legitimizing the violations in lieu of a meagre fine. It also provides for a reduction of the time period from 30 days to 20 days for the public to submit their responses. Half yearly compliance reports have been replaced by yearly reports and Central government has been given the power to categorise a project as a strategic one. Once a project is considered as

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strategic, the draft notification states that no information related to such projects shall be placed in the public domain. Many of the construction projects too have been kept out of the purview of "detailed scrutiny" by the Expert Committee. The draft reduces the procedures related to giving environment clearances, and regularises violations of conditions of such clearance by simply levying fines. This amounts to legitimizing some actions that should have been treated as violations.

The above dilutions which would restrict public consultations, reduce the number of projects seeking EIA and increase exemptions speak volume about the political will and gradual softening of environmental regulations by the government.

Conclusion and recommendations

The significance of a healthy environment and a right balance between economy and environment should be understood at a no better time than this when the whole world is struggling with future uncertainties about livelihoods. As policy makers and medical experts try to chalk out a future plan to combat the pandemic, India being vulnerable to infectious diseases needs to reaffirm our resolution to conservation of natural resources. Amidst growing damage made to the environment and in turn to human health and productivity, we have to constantly monitor and improve the global environmental parameters and India's ranking. Political will needs to be strengthened to scrupulously enforce environmental laws and make public participation much stronger in the clearance process of projects.

Public consultations and public hearings will safeguard against flagrant violations and promote participatory governance. Real time data on plant pollution levels, started in some states, needs to be disseminated at all levels. Long pending civil projectsof building highways, metros and roads need to be speeded up which would help relieve the usage of fossil fuel. Renewable energy usage, a small proportion right now, has to be increased gradually by investing in its production and simultaneously finding ways to reduce its cost of production.

Quick fix solutions like fitting air filters on public buses in Delhi, sprinkling magnesium chloride and cement powder on roads to absorb water from the air etc. may not help much. Instead permanent solutions which require political and social will have to be explored. More commitment towards implementation of environmental laws and providing adequate power and funds to state and local bodies for effective monitoring of projects is required. The focus of Environmental impact assessment needs to shift from utilization and exploitation of natural resources to conservation of natural resources. The present executive committees should be replaced by expert people from various stakeholder groups, who are reputed in environmental and other relevant fields.

What remains to be seen is whether India would be able to fulfil its pledge to source 40 percent of the country's electricity from renewable and low-carbon sources by 2030. In the end we need an economic growth that is environmentally sustainable and away from

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gratuitous environmental destruction. There are no short cuts in this path which would only lead to environmental catastrophes such as the one we are dealing with right now..

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