

राष्ट्रीय मानव अधिकार आयोग

NATIONAL HUMAN RIGHTS COMMISSION

मानव अधिकार भवन, सी-ब्लॉक, जीपीओ कम्प्लेक्स, आईएनए, नई दिल्ली-110-023
Manav Adhikar Bhawan, C-Block, GPO Complex, INA, New Delhi-110 023 India
Ph. No. (O) 011-24651329, 24651332
E-mail : cr.nhrc@nic.in, Website : www.nhrc.nic.in

F. No. R-20/1/2022-PRP&P (RU-3)

Dated: 09th May, 2022

Subject: Advisory to Prevent, Minimize and Mitigate Impacts of Environmental Pollution and Degradation on Human Rights

Dear Sir,

The National Human Rights Commission (NHRC) is mandated by the Protection of Human Rights Act, 1993, to protect and promote the human rights of all the citizens in the country.

2. Towards the fulfillment of the above mandate, the Commission, in consultation with the domain experts, has examined the effects of air and water pollution and ecological degradation on enjoyment of basic human rights.

3. On the basis of a detailed analysis, the Commission issues "Advisory to Prevent, Minimize and Mitigate Impacts of Environmental Pollution and Degradation on Human Rights". A copy of the same is enclosed for necessary follow up action.

4. All concerned authorities of Union/ State Governments/ UTs are advised to implement the recommendations given in the said advisory and send an 'Action Taken Report' (ATR) within three months for information of the Commission.

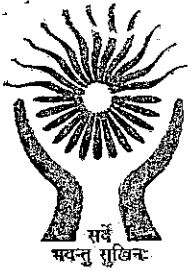
With regards,

(Devendra Kumar Singh)
Secretary General

Encl.: As above (9 pages)

To,

1. The Secretary,
Ministry of Environment, Forest and Climate Change, Government of India
Indira Paryavaran Bhavan,
Jorbagh Road, New Delhi - 110 003
2. The Secretary,
Ministry of Panchayati Raj, Government of India
11th Floor, J.P. Building, Kasturba Gandhi Marg,
Connaught Place, New Delhi - 110 001
3. The Chief Secretary (of all States/UTs)
4. The Registrar (of all High Courts)



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NATIONAL HUMAN RIGHTS COMMISSION

No. NHRC/Advisory/01/2022-23

Dated 9th May, 2022

Advisory to Prevent, Minimise and Mitigate Impacts of Environmental Pollution and Degradation on Human Rights

A clean, healthy and functional environment is integral to the enjoyment of basic human rights. Every individual has a right to breathe clean air and drink clean water free from contamination. The well-being of the human race is dependent on health of the planet. Both are inextricably linked. In spite of having one of the world's best statutory and policy framework for environment protection, India is experiencing a serious problem of air and water pollution and ecological degradation.

The Commission issues this advisory to prevent, minimise and mitigate impacts of environment pollution and degradation on human rights without impairing genuine developmental needs of the country.

I. In Re: Punishment of Polluters and Violators of Environmental Laws

1. The Union and State Governments should make efforts to ensure effective and expeditious punishment of polluters and violators of environmental laws. These efforts should include:

- (i) Strengthening of Pollution Control Boards (PCBs) and other regulatory authorities by:

- (a) Appointment of persons, having adequate knowledge and past experience in implementation of environmental laws, as Chairperson, Member-Secretary and on other key positions.
 - (b) Creation of separate investigation and prosecution wings in Pollution Control Boards.
 - (c) Regular training and skill up-gradation of officials posted in the investigation and prosecution wings.
 - (d) Expansion of the existing network of monitoring stations to cover each area vulnerable to pollution and degradation in each district to detect air and water pollution and to maintain statistics.
- (ii) The Union and State Governments should ensure that in the cases where an industry/project has started establishment and/or operations without obtaining mandatory prior consent/clearance, application for grant of such consent/clearance should be considered only after complaint before the competent court under relevant provisions of the environmental laws is filed against the persons and/or authorities responsible to initiate the work.
- (iii) Union and State Governments as well as the Pollution Control Boards should endeavour to ensure public involvement at State and district levels for adherence to the prescribed environmental norms and prosecution of offenders by:

- (a) Creating public awareness through print, electronic and social media, as to provisions of environmental laws including duties and responsibilities of the Pollution Control Boards and harmful impacts of environmental pollution/ degradation on enjoyment of basic human rights.
- (b) Establishment of an online portal to receive information and evidence (documentary, photographic, audio, video) regarding pollution and environmental offenders and making it mandatory for the concerned Pollution Control Boards to examine each information/evidence received on the portal and to display the outcome of examination of each such information/evidence. The Union Government should endeavour to make the portal operational as early as possible.
- (c) Making it mandatory for the Pollution Control Boards to include in their annual reports a chapter containing details of:
- I. Investigation of cases involving violation of environmental laws and prosecution and conviction of environmental offenders.
 - II. Information and evidence received by the Board, *inter-alia* on online portal, complaints filed and where complaints have not been filed by the Board along with reasons thereof.

- (d) Making it mandatory for the State Pollution Control Boards to place on their website, a copy of each Consent to Establish (CTE) and Consent to Operate (CTO) issued by it.
- (e) Making it mandatory for the Union Government, State Pollution Control Boards and State Environment Impact Assessment Authorities to place on their websites a copy of:
- I. regulatory approvals accorded by them;
 - II. periodic self-monitoring reports on compliance of conditions stipulated in the regulatory approvals received from the project proponents;
 - III. reports on periodic monitoring of conditions stipulated in the regulatory approvals; and
 - IV. reports on actions taken on shortcomings noticed during monitoring.
- (f) Making it mandatory for the concerned project proponent to display at prominent places on the site and in vicinity of each industry/project a copy, both in official language of the State Pollution Control Board and local vernacular language, of Consent to Establish/Operate.
- (iv) State Governments should undertake annual performance audit of the State Pollution Control Boards by independent expert auditors to be appointed by a selection committee consisting of Chief Minister, Leader of Opposition and Chief Justice of the concerned High Court or his nominee.

The Auditor should, inter-alia identify all cases where State Pollution Control Board has failed to file complaints against the polluters and environmental offenders.

(v) The State Judicial Academies, State Legal services Authorities and District Legal Services Authorities in collaboration with the Pollution Control Boards should organize workshops, seminars and training programs on various provisions of environmental laws and harmful impacts of pollution and environmental degradation for all stakeholders.

(vi) High Courts should establish Special Environmental Courts and ensure speedy trial of the cases involving violation of environmental laws.

II. In Re: Prevention and Minimization of Vehicular Pollution

1. The Union and State Governments should:

(i) Monitor performance of agencies entrusted to issue pollution under control (PUC) certificates and take appropriate punitive measures in case of false, fabricated or fraudulent certificates.

(ii) To establish a separate new mechanism to undertake random check of vehicular emission, even of those having pollution under control certificates, and take appropriate punitive and corrective measures in the cases where emission does not conform to the prescribed standards.

- (iii) Undertake regular inspection of fuel quality and take appropriate punitive and corrective measures in the cases where fuel quality does not conform to the prescribed standards.

III. In Re: Processing of Proposals Seeking Clearances/Approvals Mandated by Various Environmental Laws in an Informed, Transparent and Non-Partisan Manner

1. The Union Government should Government should endeavour to complete, as early as possible, the ongoing project to establish a geographical information system (GIS) based decision support system (DSS) containing updated layers on each parameter considered for grant of Consent to Establish/Operate and Environmental/Forest/Wildlife/Coastal Regulation Zone Clearances to facilitate the concerned regulatory authority to verify the contents of applications, documents, reports and plans submitted for obtaining these consents/clearances and regularly update the portal.
2. Union and State Governments to ensure that persons of impeccable integrity having special knowledge and past experience in the matters relating to environment are only appointed as non-official Chairperson and Members of the Expert Appraisal Committee, State Environment Impact Assessment Authority, State Expert Appraisal Committee, National Board for Wildlife, Forest Advisory Committee, Regional Empowered Committees and Pollution Control Boards. It would be appropriate that the Union and State Governments make rules or orders or guidelines to disqualify a person for being appointed as a non-official member of the afore-mentioned Committees/Authorities/Boards if he:

- (i) has been convicted and sentenced for an offence, which in the opinion of the Union or the concerned State Government involves moral turpitude; or
- (ii) is of unsound mind and stands so declared by a competent court; or
- (iii) is an undischarged insolvent; or
- (iv) has been removed or dismissed from service of the Government or organisation or undertaking owned by the Government; or
- (v) has in the opinion of the Union or the concerned State Government such financial or other interest in any of the project to be considered by the concerned Committee or the Authority or the Board.

3. The Union Government should formulate objective, unambiguous and transparent guiding principles/parameters and citing norms for acceptance and rejection of proposals seeking prior Consent to Establish/Operate, Environmental/ Forest/ Wildlife/ Coastal Regulation Zone Clearance.

IV. In Re: Measures Required for Development, Promotion, Propagation and Replication of Cost- Effective Innovative Measures To Prevent, Minimise and Mitigate Environmental Pollution and Degradation

1. The Decision Support System for processing of applications seeking prior consent/clearance should have a section on environment management

knowledge, containing details of all available best practices on prevention, minimization and mitigation of environmental pollution and degradation.

2. The Union and State Governments should create public awareness through print, electronic and social media about best practices on prevention, minimization and mitigation of environmental pollution and degradation.
3. The Union and State Governments may launch schemes/programmes to provide financial assistance for adoption and mass propagation of the identified best practices.
4. The Union and State Governments may endeavour to establish environmental innovation funds at centre and state levels to sponsor research on prevention, minimization and mitigation of environmental pollution and degradation.
5. The Union and State Governments may institute appropriate awards to recognise and felicitate the industries and entrepreneurs for development, promotion and adoption of good practices on prevention, minimization and mitigation of environmental pollution and natural degradation.

V. In Re: Strengthening and Capacity Building of Local Bodies

1. Each Local Body should establish an environmental cell to plan, supervise and monitor various activities to prevent, minimize and mitigate environmental pollution/degradation and for waste management.

2. Each local body should earmark a certain minimum percentage of its annual budget for activities relating to prevention, minimization and mitigation of environmental pollution/degradation and waste management.

3. The State Finance Commissions may undertake assessment as to requirement of funds by local bodies for prevention, minimization and mitigation of environmental pollution/degradation and waste management and make appropriate recommendations and to encourage studies for the purpose by expert institutions/organisations.
