ENVIRONMENTAL PROTECTION LAWS IN INDIA- WELL ARMoured YET VULNERABLE

By Tisa Padhy and Smruti Kanugo
From National law Institute
University, Bhopal

‘Environmental concern is so firmly embedded in public life: in education, medicine and law; in journalism, literature and art.’

INTRODUCTION

The entire world is facing the biggest catastrophe ever since the existence of mankind in the form of the global COVID-19 pandemic. However, there is another issue that has been marring mankind for ages now, having the potential of causing greater havoc; environmental degradation across the world.

Instances of environmental pollution and the disaster thereafter it may lead to are both huge in numbers. Humans both knowingly and unknowingly are denting the environment, leaving an irreparable impact on it. Ironically enough, even though environmental protection is a hot topic of discussion and concern among the learned masses, it has still managed to escape the realm of law. Not that there is complete ignorance of environment in laws, there have been several laws passed both on an individual as well as international level for the protection of the environment. However, the implementation of these laws has not proved to be efficient enough in preventing the harm caused to the environment by human activities. This paper is an attempt to understand the current state of environmental laws across the globe with a special focus on environmental laws in India. The paper is a study of major laws dealing with environmental protection in India and goes on to analyse the shortcomings in the same. Towards the end of the paper, the authors also try to give potential suggestions in order to overcome the drawbacks and give rise to an effective environmental protection legal mechanism.

THE ROLE OF LAW IN ENVIRONMENT PROTECTION

The basic tendency of human nature is to squander away and disregard anything which comes to them without any price to pay. Humans have been trading this earth from time immemorial, habiting in the beautiful environment, breathing fresh air, drinking fresh water, etc. However, with the gradual growth of technology, humans have started to disregard the biggest gift of God. Environmental pollution in the name of development has left such deep impacts on environment that it can no longer go back to the state it was in a few decades back. This degradation of nature has called for several unprecedented phenomena with the potential to harm the entire humankind. Melting glaciers; fires, global warming-induced climate changes are just a few examples of the atrocities of nature. Despite such dangerous outcomes, human activities continue to harm the environment. This unapologetic human behaviour has called for the intervention of laws for the protection of the environment. As a result, commendably several laws have been passed to ensure the adoption of environment-friendly approaches on individual as well as institutional levels.

PRINCIPLES BEHIND ENVIRONMENTAL LAWS

Modern-day environment laws have been largely shaped around five broad principles.
These five principles though not exhaustive, but are majorly inclusive of all environmental laws across the world. They aim at a renewal of the environment through active human participation. Following is a brief discussion of the same:

- **Precautionary principle:** Most of the environment-centric laws are framed with an aim of protecting and preventing any damage to nature, hence focusing more on precautions. This principle also finds its base on the idea that waiting for scientific proof of damage caused by an activity might result in the infliction of irreversible damages to the environment and human lives thereof. The precautionary principle requires that, if there is a strong possibility of environmentally harmful consequences resulting from an activity, it is better to take precautionary measures well in time rather than to wait for incontrovertible scientific evidence for the same. This is even enshrined in principle 5 of the Rio Declaration, which reads as " threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation." Some examples of incorporation of this principle can be the instance of the suit filed by Australia and New Zealand against Japan in 1999, for its alleged overfishing of southern bluefin tuna.

- **Prevention principle:** The prevention principle is based on the idea that they work on the principles of ‘prevention is better than cure’, hence focusing more on preventive measures. It is far cheaper, easier and more effective to prevent any harm to the environment than to undo the harm already taken place. Any state is under an obligation to prevent damage to the environment within its jurisdictional limits. This principle finds its application mostly in laws relating to the regulation, generation, transportation, treatment, storage, and disposal of hazardous wastes and the use of pesticides and harmful substances. An example of application of this principle can be the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (1989), which sought to minimize the production of hazardous waste and to combat illegal dumping.

- **Polluter pays principle:** The basic idea behind the polluter pays principle is that one who reaps the benefits of pollution caused to the environment must also bear the consequences of it and make good the damage caused. The one responsible for pollution has to restore the environment to its conditions prior to the wrong being committed. If that is not possible then the polluter must bear all the costs arising out of such damage. In theory, such measures encourage producers of pollution to make cleaner products or to use cleaner technologies. This principle finds its major application in several international laws passed by the UN, EU and as well the common law notions of strict and absolute liability in torts. An example of this principle can be seen in the Oil Pollution Act of 1990, which was passed responding to the spillage...
of about 11 million gallons (41 million litres) of oil into Prince William Sound in Alaska in 1989.\(^4\)

- **Sustainable development principle:** Sustainable development is an idea to use the resources available in such a manner that not only satisfies the needs of the present generation but also does not harm the ability of future generations to use the resources to satisfy their needs.\(^5\) Sustainability has been a key concept in the formulation of environmental laws for the past two decades. It was the major focus of the 1992 Earth Summit. However, many economists have argued that sustainable development is a difficult principle to adopt owing to the difficulty of assessing it. Nevertheless, this principle has caught the attention of lawmakers across the globe. Broadly, sustainable development, encompasses at least these three elements: (i) intergenerational equity (ii) sustainable use of natural resources (iii) integration of environment and development.\(^6\)

- **Public participation principle:** This principle is twofold; firstly inculcating individualistic participation of the public in the prevention of environmental pollution and secondly their active participation in the law-making process. Environmental protection laws are aimed at integrating and inviting public participation at an individual level. Any law passed is made for the public in general, hence their participation in the process and implementation becomes very vital. The public should be given a fair opportunity to comment on any laws being passed by the government.

**LEGAL ATTENTION TOWARDS ENVIRONMENTAL ISSUES IN INDIA**

India is a fast developing country. It aims to become a USD 25 trillion economy by the year 2025. The economic growth aimed by the government is targeted to be achieved by rapid technological advancements and applications. Coupled with these huge technology induced developmental goals, is the ever increasing threat of climate change and environmental degradation. Given its rapid urbanisation, industrialisation and growth of population, India has to take firm steps to ensure the protection of the environment.

The attention towards environmental degradation and protection has not been new to India. Ancient Indian scriptures propagate the idea that it is the dharma or duty of every individual to protect the environment. Mythologically nature has been given a spiritual status. Trees, rivers and animals have been traditionally worshipped in India. Ancient sources of law, whether it is Manu’s *Manusmriti* or Kautilya’s *Arthashastra*, mention about use of natural resources in a judicious and efficient manner. The ancient Vedas have several references to environmental protection, ecological balance, weather cycles, rainfall phenomena, hydrologic cycle, and related subjects that directly indicate the high level of awareness towards issues of environmental concern in


the people of that time. For example *Atharvaveda* mentions the protection of wildlife, purity of water and the give and take relation between the earth and humans. Emphasis on environmental protection was not only laid on in the Hindu religion but also formed part of teachings of other religions such as Buddhism, Jainism, Sikhism, Christianity and Islam.

This regard for the environment is also reflected in the constitutional, legislative, policy framework as well as the international commitments of the country. Even before India gained independence in 1947 environmental legislations existed but the real major impetus for bringing about a formulated plan was realised only after the UN Conference on the Human Environment, 1972 held in Stockholm. Under the influence of this conference, the National Council for Environmental Policy and Planning within the Department of Science and Technology was set up in 1972. This Council later evolved into a full-fledged Ministry of Environment and Forests (MoEF) in 1985 which today functions as the apex administrative body in the country for regulating and ensuring effective measures for the protection of the environment. The MoEF and the pollution control boards ("CPCB"; Central Pollution Control Board and "SPCBs"; State Pollution Control Boards) together form the regulatory and administrative core of the sector. Following this several other legislations have been passed to curb the degradation of God’s most valuable gift to mankind. A major step in this regard came in the form of the National Green Tribunal Act, 2010 which established National Green Tribunals across the country to deal with matters pertaining to environmental degradation in any manner. This was done in order to expedite the disposal of such cases. Another significant event in the history of environmental laws in India was the Bhopal Gas Tragedy. It brought to the forefront the shortcomings of the laws in India and gave rise to legislations such as the Environment Protection Act (E.P.A) of 1986, Environmental Impact Assessment Notification of 1994 etc. Following this landmark event, the Supreme Court of India also devised the principle of absolute liability in order to inflict accountability on account of industries engaging in hazardous activities. Furthermore, India is a signatory to many International Environmental Protection Conventions. This binds India to take measures in accordance with the principles enshrined in these conventions and treaties. For example, India is a signatory to the Convention on International Trade in Endangered Species of wild fauna and flora (CITES), 1973, which aims at preventing international commercial trade in endangered species.

### The Constitutional Provisions Related to Environmental Protection in India

The Constitution of India is the most important piece of law governing the citizens of the country. Every other law in the country stems from and must adhere to the Constitution of India. Provisions related to Environmental protection are also incorporated in the Constitution. Lawmakers over time have rightfully recognised the need of governing the people by directing them to

---

make judicious use of natural resources without hampering the environment. Remarkably, the Constitution originally did not contain any provisions related to environmental protection. Following the Stockholm Conference of 1972, amendments incorporating such provisions were made in the Constitution of India. Below is a brief of the provisions related to the environment enshrined in the Constitution of India:

a) **Article 51 (A) (g)**: This article was inserted by the forty-second amendment of the Constitution. Article 51 A (g) forms part of Part IV-A of the Constitution of India that deals with the fundamental duties of the citizens. This article reads as “It shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures”. It is a fundamental duty of every citizen of India to ensure protection of environment. This is the most direct environmental protection provision in the Constitution. However, this duty is not enforceable before a court of law since Part IV-A is unenforceable.

b) **Article 47**: The Directive principles under the Indian Constitution are directed towards achieving the ideals of building a welfare state for the people. A healthy and clean environment is one of the most essential elements of a welfare state. Article 47 reads as “Duty of the State to raise the level of nutrition and the standard of living and to improve public health”. This article imposes a duty on the State to improve public health. The improvement of public health also includes the protection and improvement of the environment without which public health cannot be assured. Hence this provision also puts the responsibility of environmental protection on the government.

c) **Article 48(A)**: This article imposes a direct duty on the state for the protection of the environment and various phenomena related to it. It reads as “the state shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country”. The State shall work in accordance with this directive principle in order to ensure the welfare of people.

d) **Article 21**: Part III of the Indian Constitution guarantees inalienable fundamental rights to the citizen. No one can be deprived of these rights except for the due process of law. Article 21 guarantees the right to life to every citizen. A broad interpretation of the article incorporates the right to clean environment as a part of right to life. Right to healthy environment is an important attribute of the right to live with human dignity. The right to live in a healthy environment as part of Article 21 of the Constitution was first recognized in the case of *Rural Litigation and Entitlement Kendra vs. State* (Popularly known as Dehradun Quarrying Case). Furthermore, in the landmark case of *M.C. Mehta vs. Union of India*, the Supreme Court recognised the right to live in a pollution free environment as a part of the fundamental right to life under Article 21 of the Constitution.

It has been time and again established by the Supreme Court that, a citizen cannot carry on business activity, if it poses health hazards to the society or the general public. Thus, safeguards for the protection of the environment are inherent in these
judgements. The Supreme Court, in the case of *Cooverjee B. Bharucha Vs Excise commissioner, Ajmer*14 dealing with the trade of liquor observed that, if there is a clash between environmental protection and the right to freedom of trade and occupation, the courts have to balance environmental interests with the fundamental rights to carry on any occupations. Public Interest Litigation has been widely used as a tool to protect the environment. Some renowned cases arising from PILs are the *Dehradun Quarrying case*15, *Vellore Citizens Welfare Forum vs. Union of India*16, *M.C. Mehta V. Union of India*17, etc.

**ENVIRONMENTAL LEGISLATIONS IN INDIA**

A plethora of issues concerning the environment come under the awareness and consideration of our constitution. These issues concern the areas which are often well known by at least a large part of the public, but the legal aspects of which aren’t including the pollution of water, the air and the soil, the degradation of land, urbanisation and industrialisation along with the natural resource depletion.

In this scenario, legislations concerning the environment play an important role so as to regulate and manage the already scarce resources of the environment. The success of any environmental legislation depends heavily on how it is enforced and brought forth in its practicality. The legislations and the debates around the topics often also serve as a useful tool towards spreading awareness and educating the common public about their duties and responsibilities to maintain the environment around them. At national and even international levels, due to the rise in concerns regarding the environment numerous legislations have been proposed and enacted.

Not too long back, a number of problems pertaining to the environment threatened the welfare of human society. One aspect of the problem was that the impact of these environmental activities was not confined to the source of the area but had consequences that were dire and far reaching. There was a need for effective legislation to curb and prevent the misuse and the degrading effect of these activities on the environment, to restrict the practices of untrustworthy groups of people, of mafia groups of forests, the polluters and the poachers and the unlimited exploitation of the resources of the environment, effective legislation was the need. But what is needed with effective legislation is an effective implementation to curb these activities at the grassroot level. A lack in any of the two leads to not much change in the disastrous pace with which the environment is being degraded. Below mentioned are separate areas of environmental laws in India.

1. **LAWS PERTAINING TO WASTE MANAGEMENT**

“The term hazardous waste often means those wastes which are due any of its aspect relating to its physical nature, chemical, toxic, reactive, explosive, flammable or corrosive nature causes danger and is often likely to cause grave danger to the environment or to the health, whether alone or in relation to the wastes and substances

---

The topic of hazardous waste management has been handled by various different kinds of legislations. The Factories Act of 1948, the National Environment Tribunal Act of 1955, the Public Liability Insurance Act of 1991 and various other notifications and rules by the government are some instances. Below mentioned are some of the prominent rules.

**Hazardous Wastes (Management, Handling and Transboundary) Rules, 2008,**

The rules define a well laid out plan for the storage and manufacture along with the import of various hazardous chemicals and for managing the wastes which are hazardous in nature.

**Biomedical Waste (Management and Handling) Rules, 1998**

These rules were laid out and formulated for the segregation, disposal and transport of infectious wastes on parallel lines.

**The municipal solid wastes (management and handling) Rules, 2000**

The purpose of these rules is to enable the disposal of the solid waste in a manner which is in accordance with scientific prescriptions by the municipalities.

Since some of these acts had shortcomings and were overlapping, it caused inconvenience for the implementation of the Biomedical waste (the management and the handling) Rules, 1998 as well as the municipal solid wastes (management and handling) Rules, 2000. Through the draft biomedical waste rules of 2015, the BMW rules were formulated by the ministry of environment, forest and climate change.

Solid waste management rules of 2015 were also drafted and the comments were sought. The Rules were created to replace the Biomedical waste (management and handling) Rules and the new SMW rules were to replace the municipal solid waste (Management and handling) Rules of 2000. The main objective behind the creation of the Act was to empower the authorities for the implementation of these rules considerably reducing the generation of waste that was bio medical in nature and for the appropriate treatment and disposal of that waste to ensure soundness and environmental sustainability.

**E - Waste (Management and handling) Rules of 2011**

These rules were drafted with an aim to reduce the use of hazardous substances in the manufacturing of electrical and electronic substances and for encouraging recycling of the waste generated in the process. It also attempts to specify the threshold of hazardous materials.

**Batteries (Management & Handling) Rules, 2001**

These rules specify about the wastes which pertain to the lead acid batteries, and their handling and effective management are covered by this Act.

In addition to the above-mentioned legislations there have been several other laws to manage the waste which do not confer to any of the above laws. The Plastics (Manufacture, Usage and Manufacture) Rules of 2009, aim to regulate and manage the generation of plastic for various means and methods.

---


19Government of India SBM, MUNICIPAL SOLID WASTE MANAGEMENT MANUAL, vol 2 (MINISTRY OF URBAN DEVELOPMENT 2016)

20Galea B, Waste Regulation in India: An Overview (Centre for Public Policy Research 2010)
Some other legislations with respect to waste management in India are:
- Recycled manufacturing and usage of plastic rules, 1999\(^2\)
- Hazardous and other wastes (management and transboundary rules), 2016
- Construction and demolition waste management rules, 2016

The guidelines regarding waste management are not limited to the legislations. There have been many pronouncements by a number of courts in the country which address the issue. Below mentioned are some of the prominent cases where the apex court has addressed the problem of waste management directly.

**Landmark Legal Pronouncements**

1. **Almitra H. Patel v. Union of India**\(^2\): Unfortunately, there is a major difference between the implementation and the formation of legislations concerning environmental protection. In the Almitra Patel case, the Supreme Court ruled and shed light on the disinterested approach by the states and the union territories towards the implementation of these green rules. A separate committee was formulated, which was tasked with examining projects of the government on an environmental scale. The Supreme Court gave a go ahead to the pilot projects of the ministry of non-conventional energy sources for the creation of energy from waste only after the submission of its report containing positive results. Almitra Patel proceeded to file numerous petitions and applications with the national green tribunal for the municipal solid waste management. Measures were directed by the NGT with regards to the firing up of the landfills in the city, that the railway stations were made to pay reparations for not following the rules laid out by the MSW and to deal with the proper disposal and segregation of the highways under the authority of India.

2. **Captain Mall Singh v. The Punjab Pollution Control Board**\(^2\): There were concerns raised by multiple organisations, majorly NGOs about these plants in turn are becoming plants which create pollution. In the case of Capt. Mall Singh v. Punjab Pollution control board, the clearance and the sanitary management of these mines was then overlooked. The objections which were then raised were not accepted and the court passed an interim order directing these states to implement the rules judiciously.

3. **Karamjit Singh v. The State of Punjab**\(^2\): In the present case, the residents of a colony complained and petitioned against the accumulation of the dump of garbage in their own vicinity and petitioned that the waste being thrown by the medical colleges should be stopped with immediate effect. The high court of Punjab and Haryana ruled in the favour of the residents. A plant for the collection of this municipal solid waste was then proposed for the public interest. In the case of Invertis University V The Union of India, the green tribunal often applied the concept regarding the balance on instance of a dispute arising on the location of the plant.

---

\(^{21}\)Government of India SBM, MUNICIPAL SOLID WASTE MANAGEMENT MANUAL, vol 2 (MINISTRY OF URBAN DEVELOPMENT 2016)  
\(^{22}\) (1998) 2 SCC 416  
\(^{23}\)Appeal No. 70 of 2012, National Green Tribunal  
\(^{24}\)Punjab-Haryana High Court, C.W.P.No.3611 of 2009 (O&M)
in Bareilly where the health concern of the residents was the issue in question.

"An oft-repeated saying in India is that our environmental laws are good, but their implementation is poor. There is no dearth of rules and policies as to the procedure of waste management. Waste management laws have grown dramatically over the last three decades but, due to the lack of implementation and enforcement, they fall far short of what is required to address these challenges."\(^{25}\)

2. **FOREST MANAGEMENT LAWS IN INDIA**

India has a forest policy from as back as the year 1984. Below mentioned are the legislations which are enacted for the protection of wildlife and forests.

**The Wildlife (Protection ) Act of 1972 and the subsequent amendment of 1982.**\(^{26}\)

In the year of 1972 the parliament enacted the Wildlife Protection Act, 1972. The Act often provides for advisory boards, which regulate many aspects in relation to the hunting of animals and wild birds, the establishment of sanctuaries and national parks, the mapping and control over the trade in the products of the wild animals, their products and their trophies, the hunting of wild birds and animals and the trade in wild animals. As per the Act, the harming of endangered animals, and the list of species that have been enlisted under Schedule 1 of the Act is prohibited throughout India. Some species such as those which require some special protection under Schedule II, bigger animals like those which have been enlisted under Schedule III including the small game animals under Schedule IV of the Act is often regulated through licensing. An improvement in the Act of 1982, introduced a special provision that allowed the capturing and transporting these animals for the management and control over the animal population.

"India has also been a part of the convention of the international trade in flora and fauna under which the producers of the endangered species and their exports and imports have been made conditioned and various stipulations have been laid down with regards to them."\(^{27}\) Several projects for individual species have also been started by the government of India.

**The Forest (Conservation ) Act of 1980**\(^{28}\):

The earlier Forest Conservation Act was enacted in the year 1927 and is one of the surviving colonial legislations. The Act was enacted to bring together under one head all the forest acts for the various kinds of forest produce which were there at the time. The Forest Conservation Act of 1980 was later passed in order to reform the one which was passed in 1927. There are some categories of forests which have been specified in the Act of 1927. These categories are the protected

---


\(^{26}\)The Wildlife (Protection ) Act 1972, Act No. 53 of 1972 (India)

\(^{27}\)India legal S, “Forest Management In India” (Legal Service India2019) &lt;https://www.legalserviceindia.com/article/l215-Forest-Management-In-India.html&gt; accessed August 1, 2021

\(^{28}\) The Forest (Conservation ) Act,1980, Act No.69 of 1980 (India)
forests, the private forests, the village forests and lastly the reserve forests. The state has been given the powers to declare forestlands or wastelands as forests that are reserved and to market the product of such land. Any hunting, cutting down trees, or quarrying in the forests which are reserved is punishable with imprisonment or fine or both. Since there was a rapid decrease in the forests in India, and alarmed by the downward trend, the government enacted the Forest (Conservation) Act in the 1980s. Under this Act it was made mandatory to acquire prior permission of the central government for using the forest land for non-forest purposes. An advisory committee was set up under the Act to assist the government on these matters.

The Biodiversity Act of 2000:

The Act recognises the richness of the country of these biological resources and gaining the knowledge which is related to them. A major challenge in adopting any instrument which helps in realising these objectives have been enlisted and enshrined in this convention. An extensive and elaborate process that required consultation on many levels was formulated for the legislation towards biodiversity through this Act. This bill majorly aims to control and regulate who can access the biological resources and to ensure that these resources are shared between people equitably and properly.

The major intention behind the laws regarding biodiversity is to protect and preserve the rich biodiversity in India, the traditional and associated knowledge with and to protect it against the unlawful and ruthless use by foreign organisations or individuals without sharing the benefits accruing out of such a business with the country and also to keep a check on bio-piracy. The Act also proposes the setting up of a National Biodiversity Authority, the biodiversity management committees and the state biodiversity boards. An approval by the National Biodiversity Authority is then required by all foreign nationals for obtaining the rights to biological resources and any associated knowledge.

The Indian people and the entities also need to have approval from the NBA for transferring the results of any research in relation to any biological resource to the national organisations. The various research projects undertaken along with the exchange of knowledge and resources are often exempted as long as it is clear that they are in accordance with the policy guidelines of the central government and the objectives of conservation, of sharing of the benefits accrued and sustainable use, are often realised. However, the Indian traditional entities such as vaidis and hakims are to have access to all the resources for the purposes of medicine and research.

There have been many acts in accordance with the conservation of biodiversity in the country, these acts are as enlisted –

- The Scheduled Tribe and other Traditional Forest Dwellers
Recent Developments and Pronouncements on Conservation of Biodiversity

“There is a dire need today to conserve forests as the population of the country increases, the cover of the forest area is gradually decreasing. As has been specified, at least the 30 percent area has to be covered by forests”32. However, owing to the large scale exploitation, depletion, and deforestation in the country this forest cover had significantly reduced to less than 18 percent of its total area. Originally, these forests were covered under the category of the state list under which the states alone could make all the legislation concerning forests. By some later years, by 1976 the forests were then placed under the concurrent list. The higher courts in the country in a lot of cases had issued directions to prevent the degradation of the environment. The role of the courts, the judicial pronouncements and the statutory provisions are needed to be taken care of in the present scenario. There have been many cases supporting the present hypothesis. One landmark case in the matter was that of N. Godavarman vs. Union of India. N. GodavarmanThirumulakpad v. Union of India 34 This lawsuit has aided India’s forest protection efforts. The "forest case," as it's sometimes called, is an example of the judiciary going beyond its constitutional duty. The Supreme Court has essentially assumed control of the day-to-day management of Indian forests, resulting in significant social, ecological, and administrative consequences. The Godavarman case is the single most significant court intervention in the country. The case ensued with the concern for the timber felling on the Nilgiri hills of Tamil Nadu. And several other cases subsequently when were brought before the court were tagged with the same Godavarman Case. Several methods were utilised by the court to resolve the conflicts which have a bearing on the entire country. The apex court defined the various forests and forest lands, to appoint the enforcement of the forest laws in the country to be overseen33. The judiciary in the country played an active role towards the preservation of the environment and the eco system. The higher courts in the country in a lot of cases had issued directions to prevent the degradation of the environment. The role of the courts, the judicial pronouncements and the statutory provisions are needed to be taken care of in the present scenario. There have been many cases supporting the present hypothesis. One landmark case in the matter was that of N. Godavarman v UOI

---

34(1997) 2 SCC 267
various committees and the commissions, to rely on the opinions of experts on issues which are beyond the ambit of the area which is covered by the judiciary and the new methods for the use of amicus curae and instances where the courts have often pleaded the interests of justice.

All aspects of forest management including the very definition of a forest, all the working planes with respect to the forest, the various other natural resources like the dams, the saw mills, the infrastructure, the mining, the use of the land of the forests and the pronouncements laid down by the case are not limited to any one specific location of the state. In the present case, the Forest (Conservation) Act was reinterpreted by the Supreme Court of the country. The scope of the term “forest” was expanded and now all the areas that came within the dictionary meaning of the word “forest” were included and not just the forests as mentioned in the records of the government.

This case also led to the creation of various new structures like the national committee on forestry which was popularly also called the Central Empowered Committee created under the Environment Protection Act of the country. The parliament, in the 1980s, while responding to the forest cover decline in the country and to fulfil its obligations under the constitution, proposed and brought into force the Forest Conservation Act of 1980. Deforestation on an extensive scale caused an imbalance in the ecology which often led to the deterioration of the environment. The Forest Conservation Ordinance of the 1980s was then promulgated to keep a check on further deforestation. The prior approval of the government of India was made compulsory for the de reservation of these forests for use into forest lands and for non forest purposes. It also provided for an advisory committee to help the central government towards granting such an approval. The enactment of the Forest Conservation Act happened with a vision to keep a check on deforestation and the basic aim of the Act was laid out to be the conservation of the forest land on matters which were sudden and ancillary thereto.35

The Act regulated the diversion of forest land towards non-forestry purposes.

WHERE IS THE SHORTCOMING IN THE SYSTEM?
As we have already observed, the laws relating to the environment are very strong and numerous in India but the lack of obedience from the people is a major problem in the country. Even after having a court that specialises in the issues of the environment and cases arising out of it, the rank of India is still high when it comes to pollution around the world. Environmental law in India is truly facing a crisis when it comes to implementation. With the rapid increase in industries, an increase in pollution and population and the lack of awareness in the masses, the natural resources of the country are declining at a terrible rate.36 The reasons behind ineffective implementation in


the country are numerous. Firstly, there is a lack of any independent regulatory authority in the country for governance when it comes to issues of the environment. All the laws and their implementation are looked after by the Ministry of the Forests and the Climate Change in the country. Since there is an interference of the government in how the ministry functions there is a lack of a free and fair regulatory mechanism. This leads to very poor implementation of the law relating to the conservation of the environment. Furthermore, the public awareness and the political will in the country experiences a serious drag. As we can also observe from the above judgements and laws, the laws which relate to the environment consider humans superior over any other ecosystem in nature. Thus, satisfying human needs by means of rapid developmental activities harming the environment is given priority over conservation of nature. The pollution control mechanism of the country is also still ineffective. The recent mechanisms which are in place regarding the water and air pollution control follow the structure of command and control and hence are ineffective. On paper there is a requirement for the industries to take permission from the pollution control boards before discharging any effluents and causing any emissions but due to the laxity in compliance, and the lack of strong penal measures, it again is rendered ineffective. These Pollution control boards experience a lack of funds and a lack of proper infrastructure in the industries and laboratories. Moreover, the central and the state boards do not enjoy independence and still depend on the central government for their appointments which in turn leads to a lack of people who are competent in the industry. Thus, the laws being frigid, the failure of the present mechanism to accept the principle of polluter pays completely and the environmental litigation being very expensive are some of the major reasons for the considerable gap between the laws and their implementation in the country.

**SUGGESTIONS TO OVERCOME THE SHORTCOMINGS**

A thorough analysis of the existing legal structure in India dealing with environmental issues reveals that there is no dearth of laws but a clear laxity in its implementation. The existing laws are sufficient to curb the menace of environmental degradation only if they are utilised properly. These shortcomings in implementation are not only hampering the ideals envisioned by these laws but also acting as counter-productive for the same. However, not everything is lost yet. Though the environment has already suffered huge scars owing to careless human activities, a proper and timely response towards these shortcomings can prevent a greater catastrophe. Some suggestions to achieve more effectiveness of the already existing laws have been listed hereafter:

- The creation of an independent regulatory body is the primary necessity for the effectiveness of environmental protection laws in India. The MoEF in the year 2009 had proposed for establishment of a “National Environmental Protection Authority” in its discussion paper. This body would act as a means for proper and timely ‘monitoring,
regulation and enforcement’ of environmental governance. Minimum political interference in the functioning of the independent regulatory body must be ensured.

- The adoption of a reward mechanism can prove to incentivise the business, organizations etc. to detect violations and take action in order to address the issue. Since, the environmental protection measures can be very costly and economically expensive, measures such as financial subsidies, cost sharing should also be promoted.

- Public awareness and an increase in the political will is a must. Active participation of the public in matters relating to environmental protection can be very fruitful in curbing the degradation of the environment. NGOs and awareness campaigns undertaken by private or public authorities can play a very important role in spreading public awareness.

- More decision making power needs to be given to the boards. There is also a need to establish a body of experts just like the civil services.

- It is important that laws give environmental values to society and Courts and Tribunals should refrain from carrying out policy functions and must focus on making a strong environmental jurisprudence in India.

- Currently, environmental legislation in India is very scattered. There are few provisions in the Constitution, separate states have their own regulations and also there is an influence of India’s international commitments. All this makes environmental related regulatory mechanisms very complex and difficult to understand. In order to simplify the process it is important to have a general and consolidated legislation for environmental protection.

- There is also a need to focus on a strong civil liability mechanism, based on the polluter pays principle, rather than a criminal penalty mechanism. Causing damage to the environment should be dealt with as a civil wrong rather than criminalising it. This was also identified in The National Environmental Policy 2006.

- It is high time for the government to pass the much-delayed Environmental Laws Amendment Bill, 2015. This bill would impose a fine of 50-100 million rupees under civil liability for causing substantial damage to the environment.

**Conclusion**

Based on the aforementioned research, the authors have tried to identify the existing state of environmental laws in India. The focus on the environment has been inherent in the cultural practices of India since ancient times. Being a fast developing country, depending on rapid urbanisation and technological advancements, India runs the risk of becoming a major polluter of the environment. Hence, it becomes imperative to focus on environmental laws. Not that India is lacking in sufficient laws to deal with the matter. The Constitution of India contains provisions for safeguarding the environment and also there are several laws that try to ensure optimum use of natural resources keeping in mind the various principles of environmental protection laws. Furthermore, India has been an active participant in the Global initiatives for environmental protection, it is a signatory to various treaties and conventions. However, despite such robust laws and regulations in place, India lacks in the proper implementation of these laws. There are still shortcomings that not only mar the environmental protection system of this country, but in turn also
hamper the economic growth, since both are interconnected. Yet not much is lost and there is still scope for improvement in the system. With the increasing global awareness around environmental protection, it is high time India takes a step towards making its system more efficient and effective. A proper mechanism can ensure the safeguarding of the God’s most generous and beautiful, yet utterly disregarded gift to mankind. Development and technological advancements are necessary, but it does not always have to come at a cost of a degraded environment. We have to learn how to harness technology so that it can be used for positive stuff without being disconnected from nature. Laws can be the tools to govern a judicious use of technology without tampering with the environment.

*****