

ENVIRONMENTAL LAWS IN INDIA

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Now a days, the protection and conservation of human environment and ecosystem is a serious issue before all over the world. Human environment includes both biological and physical environment. In biological environment plants, animals, micro-organisms, etc. are there. Physical environment consists land, water, air, mountains, forests and so on. They jointly make a whole ecosystem of the earth because they both are inter-dependent on each other. Industrialization, deforestation, urbanization, nuclear tests, over population, exploitation of natural resources and destruction of many of the animals or plant species just for fulfill their economic needs and desires. Humans continuously destroy this ecosystem day by day. Environmental pollution is now become the issue of international concern and India is also a part of it.

In this paper we will also focus on the evolution of environmental laws in India like pre-constitutional period and post constitution. Further, we also put light on the different acts and laws passed by Indian government like The Wildlife (Protection) Act, 1972; Water (Prevention and Control of Pollution) Act, 1974; Forest (Conservation) Act, 1980; Air (Prevention and Control of Pollution) Act, 1981 and The Environment (Protection) Act, 1986. Then, we also talk about different case laws regarding environment like Taj Mahal case of 1997 and Bhopal gas tragedy, 1984 and after this tragedy government passed an act called Public Liability Insurance Act, 1991 for immediate relief for victims of accidents occurring by handling hazardous substance and also issue related with there. We will also discuss about National Green Tribunal which was¹ established in 2010 to deal with issues related to environment. It is established by an act called National Green Tribunal Act, 1995. Its main branch established in New Delhi.

In this paper we will also focus on international concerns about the prevention of environment and how much it affects India policies and laws regarding environment. For example- Stockholm Declaration in 1972 was the first major step towards conservation and protection of environment at global level. Another conference held in Rio de Janeiro in 1992 by U.N.

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¹ <https://www.indiacode.nic.in/bitstream/123456789/1960/1/A1991-06.pdf>

regarding the protection of environment. After this conference in Rio de Janeiro Indian government passed an act called Biodiversity act, 2002 to fulfill its international obligation from this conference.

RESEARCH OBJECTIVES

The main objective of this study is to find out at what level Indian laws are more or less relevant to reduce the environmental pollution and protect the ecosystem. The enforcement of these environmental laws will also be examined and discussed. This paper also deals with evolution of environmental laws in India from Stockholm declaration to Biodiversity act, 2002, institutions and policies deals with environmental matters. Further we will also talk about international concerns and missions launched by Indian Government and how much these missions are got success to achieve their targets.

RESEARCH QUESTIONS

Following are the research question we will have to find out through this study:

1. What is the relevance of environmental laws in today's world?
2. How the environmental laws have evolved in India?
3. How much India is serious towards environmental laws?
4. What are the challenges in implementation of environmental laws?

RESEARCH METHODOLOGY

In this research paper we will be adopting the doctrinal research method to find out the answer of the research questions and fulfill our research objectives. In this paper we will deeply analyze the various environmental laws & acts and also their related articles with the help of some major case laws and their history, judgements and evolution.

EVOLUTION OF ENVIRONMENTAL LAWS IN INDIA

42ND CONSTITUTIONAL AMENDMENT, 1976

In 1976 Indian government passed 42nd Constitutional Amendment Act in which particularly provisions for the protection of environment in the form of Directive Principles of State Policy (Article 48A) and Fundamental Duties (Article 51g) were inserted.

ENVIRONMENTAL ACTS

THE WILDLIFE (PROTECTION) ACT, 1972

Under the Article 252 of Indian Constitution government passed this act to protect the wild animals, birds and plants. This act forbids the hunting of wild animals and birds listed in the schedule. This act also gave power to the central and state government to declare any area a wildlife sanctuary and national park. This act also prohibits the damaging of the flora or plant life.

WATER (PREVENTION AND CONTROLLING OF POLLUTION) ACT, 1974

The water legislation is enacted by the Indian Parliament, even though the issue is on the state list (**Article 252**). The state assembly of more than ten states petitioned the central government to pass the water legislation for their respective states, and the water law was enacted in 1974. The term 'pollution' has been defined in the water law. It is stated that the presence of pollutants may cause pollution to the water in such a concentration that it causes health problems for the public or degrades environmental quality. The water law sets a federal and state pollution control board to control water contamination. The water law also specifies the board members' terms and conditions of service. The act regulates the discharge of effluents (pollutants) into rivers and lakes that exceed certain limits. It also specifies the penalties that will be enforced if the law is not followed. The Water Act also defines the roles and responsibilities of environmental bodies such as the Central Pollution Control Board (CPCB) and the State Pollution Control Board (SPCB). This was India's first law to ensure that home and industrial effluents are not released directly into water bodies without sufficient treatment.

FOREST (CONSERVATION) ACT, 1980

The forest law went into effect on October 25, 1980. The law was enacted to control the loss of forest coverage in India. The forest legislation limits the use of forest land for non-forest activities. It implies that the state administration will need to obtain prior consent from the central government before declaring a reserve forest to be no longer reserved. Similarly, prior authorization from the central government is required if the state government wishes to use forest land for non-forest activities. Only with the agreement of the central government can the state government lease any forest area for non-forest purposes to any authority, agency, or

corporation. Cutting down trees on naturally established forest property will require prior consent from the central government.

AIR (PREVENTION AND CONTROL OF POLLUTION) ACT, 1981

This act, often known as the Air Act, was intended to put the UN's Stockholm Conference on the Human Environment resolutions in Stockholm in June 1972 concerning the maintenance of air standards and air pollution control. The reasons and statement of the object are in the Bill refer to the necessity for an integrated approach to addressing pollution-related environmental challenges. It also recommended that the activities of the Air Act be performed by the Central Board and, where appropriate, State Boards established under the Water Act of 1974. This Air Act was enacted in India to address the prevention, control, and reduction of air pollution. Its goal is to keep the air clean and reduce pollution. The new legislation empowered the Water Act's Central Board and State Boards to perform tasks under the Air Act. States that had not previously established state boards were required to do so (where the earlier Water Act had given them authority). Like the Water Act, the Air Act allows the Central Government to direct the Central Board and both the Central Board and the State Government to direct the State Board. **Section 19** of the Act is the primary regulatory trigger, allowing the State Government to designate regions as "air pollution control areas" that limit fuel use or burning of other materials. **Section 20** authorizes the State Government to issue directions to Motor Vehicle Registration authorities regarding enforcing the State Board's emission regulations. The State Board may grant permission to build or operate an industry(s) in an air pollution control zone.

THE ENVIRONMENT (PROTECTION) ACT, 1986

The environment protection law has been adopted, satisfying India's international commitment under the Stockholm Declaration of 1972. The Environment (Protection) Act of 1986 was designed to provide for the protection and improvement of environmental quality and the prevention, control, and reduction of environmental contamination. The Act was enacted as a direct result of the Bhopal Gas Tragedy. The term 'environment' has been defined to include water, air, and land and the inter-relationship that exists between water, air, land and humans, other living animals, plants, microorganisms, and property. The concept is broad to encompass all living things, including plants and microorganisms and their interactions with water, air, and land. The Act has granted the Central Government broad authorities to create and implement a national program to prevent, control, and reduce environmental pollution.

THE NATIONAL ENVIRONMENT TRIBUNAL ACT 1995

This legislation aims to provide for strict liability for damages resulting from any accident occurring while handling any hazardous substance, as well as to establish a National Environment Tribunal for the effective and expeditious resolution of cases arising from such accidents, to provide relief and compensation or damages to persons, property, and the environment, as well as for matters connected with or incidental to that. It recalls the resolution made at the United Nations Conference on Environment and Development in Rio de Janeiro in June 1992. It called on governments to adopt national rules governing liability and compensation for sufferers of pollution and other environmental damages.

The Biological Diversity Act 2002

This act passed by Indian Government in 2002 after the Rio Conference in 1992 to fulfill its international obligation from this conference. The aim of this act is to preserve the biological resources and its diversity. Through this act a board was established called National Biodiversity Authority in Chennai, Tamil Nadu.

INTERNATIONAL CONCERNS

STOCKHOLM CONFERENCE, 1972

In 1972 a conference held by the UN at Stockholm on Human Environment. This conference puts a major influence in India regarding environmental laws. A committee was set up in 1972 under the Department of Science & Technology called National Committee on Environmental Planning and Coordination (NCEPC) to make necessary preparation for Stockholm conference. Indian Government took many steps to fulfill the findings taken in the conference by many ways like constitutional amendments, passing new laws regarding the protection of environment etc. On the basis of the decisions held in Stockholm Conference Supreme Court gave many judgements.

RIO DECLARATION, 1992

In 1992 UN held a conference on environment and development at Rio De Janeiro, Brazil. This conference is also known as United Nations Conference on Environment and Development (UNCED). Basically, it is a declaration signed up by the heads of the states which contains the

principles regarding the environmental preservation and development; agreements on global warming and biodiversity and work plans for environmental development.

LITERATURE REVIEW

- **LAWS AND INSTITUTIONS RELATING TO ENVIRONMENTAL PROTECTION IN INDIA by U. Sankar²**

This is a research paper by U. Sankar which basically deals with the environmental evolution in India in different sections like pre-constitutional period and post-constitutional period, environmental institutions, international concerns regarding the protection of environment & biodiversity and legislations or policies regarding the conservation of environment in India.

The limitation of this research paper is that it is hard and little confusing while reading it.

- **Environmental Laws in India: Challenges for Enforcement by V.K. Agrawal³**

This is a research paper by V.K. Agrawal which talks about the environmental laws in India and what are the challenges in the enforcement of these laws. This paper also includes some important case laws and SC judgement regarding in the favor of the protection of environment.

- **An Introduction to Environmental Laws in India by Arup Poddar⁴**

This is an article by Arup Poddar which contains the environmental laws in India after the post constitutional period in detail. The limitation of this article is that it only gives information about the laws regarding the protection of environment but not what is the necessity of these laws? What is the background behind the passing these laws?

- **ENVIRONMENT AND ITS LAWS IN INDIA by Professor Lalima Singh⁵**

² Sankar, U. (1998). Laws and institutions relating to environmental protection in India. *The role of law and legal institutions in Asian economic development*. Rotterdam: Erasmus University.

³ Agarwal, V. K. (2005). Environmental laws in India: challenges for enforcement. *Bulletin of the National Institute of Ecology*, 15, 227-238

⁴ Poddar, A. An Introduction to Environmental Laws in India.

⁵ Singh, L., & Principal, S. S. (2020). Environment and its laws in India. *Research J. Philosophy Soc. Sciences*, 46(1), 16-21.

This is an article by Prof. Lalima Singh which contains almost all the laws and acts in India regarding environment in brief format. It also talks about the boards and authorities and their function regarding environment such as CPCB, MoEF and SPCB.

- **Environment and Their Legal Issues in India by Syed Usain Saheb, Sepuri Sessaiah and Buddolla Viswanath⁶**

This is a research paper by Syed Usain Saheb, Sepuri Sessaiah and Buddolla Vishwanath which contains important case laws like Bhopal gas tragedy and Oleum gas leak case and what principles established by the Supreme Court in order to deal with the cases regarding environmental issues. This paper also mention about Constitutional Articles and amendments deals with environment and also contains some environmental regulatory acts and authorities. This paper also deals with the punishment for break down these rules and regulations set up for the protection of environment.

CASE LAWS

UNION CARBIDE CORPORATION & OTHERS VS. UNION OF INDIA AIR 1991 4 SCC 584⁷

This case is also known as **Bhopal Gas Tragedy** case which was happen in 1984. This is among the worst industrial disaster in the human mankind's history. On 2/3/12/1984, at midnight, there was a deadly gas (methyl isocyanate) leak from Union Carbide Corporation India Limited, based in Bhopal, which is a subsidiary of Union Carbide Corporation, USA. It took the lives of 3,787 individuals (an unofficial figure much higher) and injured approximately 6 lakh people with a various problem. The Indian Government enacted the "Bhopal Gas Leak Disaster (Processing of Claims) Act, 1985," which gave the Union of India the authority to sue *parens patriae* on behalf of the victims. The UOI filed a case in USA District court, New York for compensation on the behalf of sufferers but New York's court dismissed all the petitions and held that case can be more easily tried by Indian court and also held that UCC gave compensation of five million dollars for immediate relief to the victims.

⁶ Saheb, S. U., Sessaiah, S., & Viswanath, B. (2012). Environment and their legal issues in India. *International Research Journal of Environment Sciences*, 1(3), 44-51.

⁷ 1992 AIR 248, 1991 SCR Supl. (1) 251

Further, the Union of India filed a case on UCC in the Bhopal District Court, M.P. and court ordered UCC to compensate 350 crore rupees to the victims. Then, UOI filed petition in M.P. High Court and M.P. high court reduce the compensation from 350 crores to 250 crores. Then, both the parties sued in Supreme court of India.

The Supreme court decided that UCC have to pay 470 million dollars to the victim in full and final settlement and SC also dismissed all the previous charges against the UCC.

M.C. MEHTA VS UNION OF INDIA (SHRIRAM INDUSTRIES CASE) AIR 1987 SC 1086⁸

In **M.C. MEHTA VS. UNION OF INDIA (SHRIRAM INDUSTRIES CASE) AIR 1987 SC 1086** also called Oleum gas leak case. M.C Mehta filed a writ case seeking the closure of Shriram Industries, which was engaged in hazardous material manufacture and was located in a heavily populated area of Kirti Nagar. While the petition was being processed, and oleum gas leak from one of its units occurred on December 4 and 6, 1985, killing one advocate and endangering the health of several others. On December 4, 1985, the incident occurred. This case was done just a year after of Bhopal gas tragedy. M.C. Mehta was filed a PIL under **Articles 21** and **32** of the Constitution, seeking the shutdown and transfer of the Shriram Noxious Chlorine and Sulphuric Acid Plant, which was located in a densely populated region of Delhi. In this case the principle of absolute liability was established because in the principle of **Ryland vs. Fletcher** i.e., strict liability principal court held that in this principle there is some exceptions like act of God, act of stranger or by the mistake of worker which is also injured. So, the court held that the principle of strict liability will not apply on those industries which are engaged in the manufacturing of hazardous and inherently dangerous substances. The court also held in this case that the industries engaged in the manufacturing of hazardous and inherently dangerous substances which causes the severe harm to the safety and health of the nearby peoples or workers staying around the industry must have the absolute duty towards the health and safety of those peoples and ensures that any kind of harm not happen. The standard of the safety in those industries must be of highest level because if any kind of default happens from the side of person and it causes harm to the safety of the public, industry cannot take defense that they take all the necessary precautions and reasonable care and they are not negligent. The court in this case also established the **deep pocket theory** for compensation to

⁸ 1987 AIR 1086, 1987 SCR (1) 819

the victims by the industry and this theorem said that according to the size and empire of the industry the compensation will be decided like if the industry has larger capacity, then the amount of the compensation of the industry will also be larger.

INDIA'S EFFORTS TO PROTECT ENVIRONMENT

Government of India take a very effective action to deal with the conservation and preservation of environment and also deal with the problem of climate change in the form of National Action Plan for Climate Change. It is a government of India's programme launched in 2008 to alleviate the impact of climate change. There are also total 8 sub-missions launched under NAPCC.

- **National Solar Mission-** National Solar Mission was launched by Ex-Prime minister Manmohan Singh in 2010 to promote the use of solar power with the target to achieve 20 Giga watt till 2022. This target was increased by PM Narendra Modi with 100 GW in the Union budget of 2015. This mission is among the several missions under the National Action Plan on Climate Change. India achieves its original target i.e., 20 GW in 2018. Of The objective of India behind the launching of this mission was to be become a global power in terms of solar energy.⁹
- **National Mission for Enhanced Energy Efficiency-** This mission was launched in 2011 and also one of the part of missions of National Action Plan on Climate Change. The objective of National Mission for Enhanced Energy Efficiency to provide strength to the market of energy efficiency by making effective policies and regulations and to encourage innovative business models to the energy efficiency area.¹⁰
- **National Water Mission-** This mission was launched in 2009 and it comes under the Ministry of Water Resources. This mission is also one of the eight missions launched under NAPCC. The main aim of this mission is to preservation of water, reduce its wastage and ensure that it is equally reached in every part both across and within the States through effective water management system. This mission is also promoting awareness among the citizens regarding water preservation and conservation.¹¹

⁹<https://www.downtoearth.org.in/news/mining/this-un-report-shows-green-laws-remain-in-books-63039#:~:text=Poor%20coordination%20across%20government%20agencies,environmental%20regulations%20C%20said%20the%20report>

¹⁰ <https://lawtimesjournal.in/importance-of-better-environmental-laws-in-india/>

¹¹ <https://www.indiatoday.in/education-today/gk-current-affairs/story/8-missions-govt-napcc-1375346-2018-10-25>

- **National Mission for a Green India-** The National Mission for a Green India, often known as the Green India Mission (GIM), is one of eight Missions established by the National Action Plan on Climate Change (NAPCC). It was established in February 2014 to protect our country's biological resources and associated livelihoods from the threat of adverse climate change and to recognize the critical role of forestry in ecological sustainability, biodiversity conservation, food, water, and livelihood security. It aims to maintain, restore, and improve India's dwindling forest cover and respond to climate change through adaptation and mitigation strategies. It envisions a comprehensive approach to greening that goes beyond tree planting. GIM focuses on various ecosystem services, including biodiversity, water, biomass, and the preservation of mangroves, wetlands, and critical habitats.¹²
- **National Mission for Sustaining the Himalayan Ecosystem-** This mission was launched in 2010. The objectives of this mission are that through scientific research, assess the vulnerability of the Himalayan environment in the short and long term due to variations in temperature and weather. Based on scientific research, develop policies to maintain the fragile ecology. States in the Himalayan region must carry out programs promptly to conserve the Himalayan ecology. Create a knowledge network with the assistance of institutes dedicated to studying the Himalayan Ecosystem. With sound research, forecast the future repercussions that Himalayan regions will suffer. Develop acceptable methods for economic growth in the mountainous areas by considering the ecological and socioeconomic effects of global environmental change.¹³

IMPLEMENTATION PROBLEMS

- The general public is unaware of how the laws are being enforced.
- The rules only allow for one-way solutions.
- Because of following laws and regulations, the pollution control mechanism remains ineffective. More than solutions are provided by the acts of air and water.

¹²<https://www.indiascienceandtechnology.gov.in/st-visions/national-mission/national-mission-green-india-gim#:~:text=It%20was%20launched%20in%20February,water%2D%20and%20livelihood%2Dsecurity.>

¹³<https://byjus.com/free-ias-prep/national-mission-for-sustaining-himalayan-ecosystem-nmshe/#:~:text=National%20Mission%20for%20Sustaining%20Himalayan%20Ecosystem%20was%20launched%20in%20Jun,hill%20agriculture%20and%20remains%20vulnerable.>

- Though industries are required to get permits before discharging effluents, there are no solid limitations or penalties, leading to noncompliance with the regulations and laws.
- The laws merely propose remedies for environmental protection. The laws fall short of giving equitable answers from both parties.
- The monies are not utilised appropriately by governments, resulting in shortages and non-compliance with the rules.
- The inflexibility of the legislation leads to erroneous decisions.
- There are no prohibitions prohibiting some of the hazardous ingredients, and the rules that do exist are only applicable to a subset of the components.
- the constraints on the state government since they are required to seek authorization from the national government for every action they do.

SUGGESTIONS

The criticisms of the current legislations described above pave the way for better environmental regulations in the country. The necessity for environmental regulations is pressing because the country's ecology is deteriorating. The primary causes for the legislation' inadequate implementation.

- The laws are elastic, allowing for better management of the environmental conditions.
- The stricter sanctions are for those who do not obey the norms outlined in the legislation because the absence of severe punishments allows people to break the law.
- The ability of state governments to take required acts without seeking authorization from the federal government allows for instant action to be taken in response to difficulties.
- The laws can balance human needs and environmental protection because current legislation is mainly geared toward environmental protection, which is not practicable. After all, humans' needs cannot be neglected entirely.

- The Wildlife Protection Act failed to be implemented, necessitating the creation of a new law to prevent endangered species from becoming extinct. There has been a gradual drop in wildlife species in recent years. Prevention can be accomplished by establishing rules that provide for better methods.
- Laws that promote long-term development are essential.

RELEVANCE OF ENVIRONMENTAL LAWS IN INDIA

The Acts jointly provide for environmental protection and are related to the prevention of pollution of air and water. The Acts also established limits on some human activities to ensure that they do not result in the exploitation of natural resources. All of the activities are linked to one another.

CONCLUSION

Climate change and environmental pollution is a big issue in front of the whole world. The current environmental regulations lack appropriate explanations, harsh sanctions, and proper execution, are oriented solely toward the environment, and fail to provide suggestions for sustainable development. The necessity for new regulation is also to raise public knowledge about some unknown elements.