

THE EVOLUTION OF INDIAN ENVIRONMENTAL POLICY BEFORE JUDICIAL ACTIVISM

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ABSTRACT

The evolution of Indian Environmental Policy throughout the 20th century reflects a shifting perspective on natural resource management, transitioning from colonial exploitation to post-independence developmental priorities and eventually embracing global ecological concerns. Pre-independence India viewed forests as state-owned commodities, primarily valued for economic gain, exemplified by the Indian Forest Act of 1927. Post-independence policies, notably the National Forest Policy of 1952, emphasized the use of forests for national development, with revenue generation secondary to developmental needs. However, the focus on development overshadowed environmental preservation. The Stockholm Conference of 1972 marked a turning point, highlighting global environmental issues and prompting legislative reforms in India. The Wildlife (Protection) Act of 1972 and the Water (Prevention and Control of Pollution) Act of 1974 were significant milestones, demonstrating Parliament's commitment to environmental conservation. The 42nd Amendment to the Constitution in 1976 elevated ecological protection to a fundamental guiding principle, laying the groundwork for judicial activism in environmental matters. Inspired by grassroots movements like the Chipko Movement, Prime Minister Indira Gandhi established the Tiwari Committee in 1980, advocating for creating a Department of Environment within the Union Government. Subsequent legislation, such as the Air (Prevention and Control of Pollution) Act of 1981, aimed to preserve air quality and limit pollution, aligning with global environmental goals. Despite these legislative efforts, challenges remained in implementation, leading to a reliance on judicial activism to fill gaps in enforcement. Establishing the National Green Tribunal at the end of the 20th century marked a significant milestone in environmental policy development, emphasizing the Judiciary's role in safeguarding ecological rights.

INTRODUCTION

The Indian Environmental Policy has seen various phases throughout the 20th century, during which a shift of perspective towards the environment has shifted. Pre-independent India under

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the British viewed the natural resources of India as a commodity owned by the State that could be used for economic pursuits. The post-independent era, until 1947, also saw little change in how natural resources were perceived, with the perception still being that forests were the State's property. The Stockholm Convention is when the trajectory of the Indian Environmental Policy saw a change with increased participation of the Indian Government in International Environmental Conferences. The involvement and the active implementation of the agendas decided upon in these conferences through various legislations brought about change in India's environmental policy for good. It was in the 1980s that the responsibility for ecological Policy shifted from the legislature to the Judiciary due to unfortunate accidents such as the Bhopal Gas Tragedy and the Oleum Gas Leak. The establishment of the National Green Tribunal emerged as the pinnacle of the development of Environmental Policy at the end of the 20th century.

PRE-INDEPENDENCE ERA: 1900-1947

During early colonial times, woodlands were considered state-owned assets. Colonial officials were interested in the commercial potential of forest products, including timber. Forest policy was influenced by the demand for wood to expand railways and telegraph networks. The Indian Forest Act of 1927 replaced the previous 1878 Act. During that period, the Indianization of forest administration had gained momentum. In 1921, the British government implemented Montague-Chelmsford reforms, transferring control of forests to provincial legislatures. In 1927, the Act expanded to include wood levies while maintaining all primary features. The Act's preamble aimed to consolidate laws regarding forest produce transit and duty levied on timber and other forest products. Forests continued to be primarily valued for their income potential.

POST-INDEPENDENCE ERA UNTIL THE STOCKHOLM CONVENTION (1947-1972)

During the post-colonial period, forestry remained the primary focus of the environmental agenda. The National Forest Policy of 1952 updated the framework of the 1894 Policy to prioritize the use of commercial forests for national development needs such as defence, communications, and industry. Revenue maximization became secondary to development needs. The Policy divided forests into four categories: protected forests (no activity permitted), national forests for development, village woods, and tree lands. The Van Mahotsava program

eventually took shape in the form of The Forest Policy of 1952. Tree lands were designated areas for fast-growing tree plantations to suit local fuel requirements. As a result, the 1952 Policy encouraged complementary land use, with each type of property designated for use in which it would generate the most while deteriorating the least. These measures, however, could not be implemented as efficiently. The focus during these years remained on development instead of environmental preservation.

THE ERA OF LEGISLATORIAL ACTIVISM: 1972-1983

The post-Stockholm period saw significant growth in the field of international environmental law. The Stockholm Conference emphasized global ecological protection concerns, including those for India. Mrs Indira Gandhi, the Indian Prime Minister, was the only head of government to address the Stockholm Conference, apart from the Swedish Prime Minister. The Conference identified underdevelopment in developing countries as the root cause of environmental issues and established 26 principles to promote preserving and improving the human environment for the benefit of all people and future generations. The Indian government adopted the UN Conference's declared principles and reformed environmental Policy through legislative and administrative measures. The Wildlife (Protection) Act, approved by Parliament in September 1972, was the first in a series of such laws. The Act demonstrated Parliament's constitutional authority to legislate on a matter often reserved for the States. The Act remains a crucial tool for animal conservation. Hunting or destroying species listed in the Schedule to the Act is prohibited.

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It was followed by the passage of the Water (Prevention and Control of Pollution) Act in 1974. The Act provided extensive coverage of water bodies, including rivers, streams, the sea, tidal water, wells, and inland water bodies, whether natural or constructed. The Central Pollution Control Board was established, along with State Boards, to provide approvals and enforce regulations. Industry, operation, or procedure, as well as effluent or sewage treatment and disposal, could only be formed by first getting a consent order from the appropriate Board. The Board was given the authority to establish guidelines for acceptable discharge levels and determine effluent release conditions.

The 42nd Amendment to the Constitution in 1976 added Article 48A to the Directive Principles of State Policy, establishing environmental protection and forest and wildlife protection as a fundamental guiding principle for the country's governance. Although the

Constitution expressly prohibited any court from enforcing the Directive Principles, the Courts read Article 48A into the right to life guaranteed by Article 21 as a fundamental right of every citizen, laying the groundwork for future judicial activism in environmental matters. The Amendment moved "forests" and "protection of wild animals and birds" from State Legislatures to the Concurrent List, giving Parliament the authority to create laws on these issues. The 42nd Amendment included Article 51A in the chapter on Fundamental Duties, mandating citizens to maintain and improve the natural environment. The 42nd Amendment shifted administrative action from the States to the Union for Environmental Conservation.

Inspired by the Chipko Movement in 1973, Mrs. Gandhi formed a committee in January 1980 led by Narayan Dutt Tiwari, a former Chief Minister of Uttar Pradesh from the same hilly tracts. The committee's task was to review existing environmental laws and recommend administrative measures to protect the environment. The Tiwari Committee advocated establishing a Department of Environment within the Union Government.

The 1981 Air (Prevention and Control of Pollution) Act was the second legislation to arise. The Air Act emphasized the need to implement decisions made at the UN Conference in Stockholm to preserve air quality and limit pollution. The Act defines an air pollutant as any solid, liquid, or gaseous substance, including noise, in amounts harmful to human health. This definition is broad enough to cover every situation.

However, all these legislations could not manifest how they had been foreseen. This lack of implementation was then filled in by Judicial Activism.

CONCLUSION

The journey of Indian Environmental Policy throughout the 20th century underscores a significant transformation in attitudes towards natural resource management and ecological conservation. From the colonial era's exploitation of forests for economic gain to post-independence priorities focused on national development, and finally, a recognition of global environmental challenges, India's environmental Policy has evolved in response to changing contexts and imperatives.

Legislative milestones such as the Wildlife (Protection) Act of 1972 and the Water (Prevention and Control of Pollution) Act of 1974 reflect a growing commitment to environmental conservation at the national level. The constitutional amendments of the 42nd Amendment in

1976 elevated ecological protection to a fundamental guiding principle, signaling a paradigm shift towards recognizing the intrinsic value of the environment.

However, despite these legislative strides, challenges persist in implementation and enforcement, necessitating the intervention of judicial activism to bridge the gap between policy intent and on-the-ground realities. The era of Judicial Activism succeeded in this trajectory and eventually served to improve the realm of environmental justice in India.

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