
THE PARADOX OF PROTECTION: WHY INDIA'S ENVIRONMENT CONTINUES TO SUFFER DESPITE CONSTITUTIONAL GUARANTEES

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ABSTRACT

This paper examines the paradox of why India's environment continues to suffer despite strong constitutional guarantees and a robust legal framework. It analyzes the significant gap between constitutional ideals—such as the right to a healthy environment under Article 21 and the fundamental duty to protect nature under Article 51A(g)—and on-the-ground reality. The research identifies key contributing factors to this paradox, including weak enforcement mechanisms, institutional failures, conflicting priorities between economic growth and environmental protection, and a lack of political will. Using key statistics and case studies on air and water pollution, the study highlights how flagship initiatives like the Ganga Action Plan and judicial activism have been undermined by implementation gaps. The paper concludes that while constitutional guarantees are a vital foundation, their effectiveness is limited without a multi-pronged approach that strengthens regulatory bodies, fosters public participation, and ensures administrative accountability.

Keywords: Environmental Governance, Constitutional Guarantees, Environmental Protection, India Pollution Judicial Activism, The Polluter Pays Principle, Precautionary Principle, Environmental Laws Implementation Gap, Public Interest Litigation (PIL), Sustainable Development, National Green Tribunal (NGT), Air Act 1981, Water Act 1974

Introduction

“Earth provides enough to satisfy every man’s needs, but not every man’s greed.”

- Mahatma Gandhi

The issue of environmental governance at present has become an increasingly important concern both at the national and international levels. Governance is about the process by which we take decisions, implement the laws while involving people. It relates to decision making at all levels government and non-government for sustainable development. In short, governance deals with who is responsible, how they weild their, and how they are held accountable.¹ The problem of environment pollution is not a new one. It is as old as the emergence of Homo Sapiens and was realized during the times of Plato 25 hundred years ago. India is home to some of the world’s richest biodiversity and most diverse ecosystems, ranging from the Himalayan glaciers to tropical forests, arid deserts, and extensive coastlines. At the same time, it is also among the most environmentally stressed nations, facing critical challenges such as severe air and water pollution, deforestation, biodiversity loss, and the intensifying impacts of climate change. This ecological decline is not merely an environmental concern but also a social, economic, and public health crisis. The *history of environmental governance* in post-independent India started 25 years after Independence, when the then Prime Minister, Indira Gandhi, returned from the United Nations (UN) Conference on Human, Environment and Development in Stockholm in 1972. Only after taking note of Stockholm reference and growing awareness of the environmental crisis, amended it to act direct provisions for protection of environment (Bansal and Gupta, 1992)

Research problem and objective

Despite these constitutional guarantees and legislative frameworks, India’s environmental indicators paint a grim picture. The country regularly ranks among the most polluted in the world, with major cities breaching air quality safety limits for most of the year. Rivers like the Ganga and Yamuna remain critically polluted despite decades of cleanup programmes. Forest loss continues due to industrial expansion and infrastructure development. This contradiction — between strong legal protections and persistent environmental degradation — forms the core

¹ (Pierre Marie Dupoyjand Jorge E. Vinuales, International Environment Law, 2 (second edition cambridge university press 2018))

of what may be termed the “*paradox of protection.*”

This research seeks to unpack the causes of this *paradox by analyzing the gap between constitutional provisions and ground-level realities and why India’s environment continues to suffer despite constitutional guarantees.* It explores the role of institutional mechanisms, political will, socio-economic pressures, and public participation in shaping environmental outcomes. By examining key case studies and statistical evidence, the study aims to identify the systemic weaknesses that undermine constitutional ideals and suggest pathways towards more effective environmental governance in India.

Constitutional Framework for Environmental Protection

The Constitution of India contains specific provisions for environmental protection in the Directive Principles of State Policy, in the fundamental duties as well as in the fundamental rights part.

Governance of the natural environment has, arguably, emerged as one of the most complex challenges faced by humanity. Consequently, the environment has been increasingly incorporated in the agenda at all levels of governance, for both developed and developing countries.² The Constitution (Forty-Second Amendment) Act, 1976 has made it a fundamental duty to protect and improve the natural environment. Article 48-A states that:

“The state shall endeavor to protect and improve the environment and to safeguard forests and wildlife of the country”. Corresponding to the obligation imposed on the State, Article 51 A (g), which occurs in Part IVA of the Constitution dealing with Fundamental Duties, casts a duty on every citizen of India. Article 51-A (g) provides that 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”.³

The supreme court of India held in *M.C Mehta v. Union of India* ⁴that pursuant to Article 51A(g), the central government is required to adopt mandatory instruction of lessons on protection and improvement of the natural environment for at least one hour per week in all

² (<https://www.sagepub.com/hi/nam/envirnmental-governance-in-india/book265219>, n.d.)

³ (https://ecoinsee.org/conference/conf_papers/conf_paper_125.pdf, n.d.)

⁴ (1983 1 SCC 471)

country's educational institutions.

With the intention of protecting and enhancing the environment, the Environment (Protection) Act was passed in 1986. It enables the Central Government to create agencies under section 3(3) of the Environment Protection Act with the responsibility of preventing environmental pollution in all of its forms and addressing particular environmental issues that are unique to certain regions of the nation.⁵ Eventually under Article 21, the court created new rights including the right to health and pollution free environment and compensation for the victims of pollution and other environmental damage. To give effect to the above directive and to provide for a forum for effective and expeditious disposal of cases arising from any accident occurring while handling any hazardous substance, the Indian Parliament enacted the National Green Tribunal Act, 2010. In the *Dehradun Quarrying case Doon Valley Lime-Stone Quarrying Case-Rural Litigation and Entitlement Kendra and others v. State of Uttar Pradesh*, the Supreme court held that the fundamental right to a wholesome environment is a part of the fundamental right in Article 21 which deals with protection of life and personal liberty of the constitution.

The “Paradox of Protection”

The gap between law on paper and law in practice

Despite these robust legal commitments, India continues to face serious environmental challenges. This contradiction between the existence of strong protective laws and the continued degradation of the environment is what defines the “paradox of protection” in the Indian context.

Environmental laws and regulations in India are too strong, but there is very little obedience from the people. A court handles and deals with different types of environmental cases.

As per the *Environmental Performance Index*, India is high in pollution globally.⁶ Different types of laws related to the environment face different types of challenges to implementation.

⁵ (ENVIRONMENT PROTECTION, Ministry of Environment, Forest and Climate Change, Government of India, <https://moef.gov.in/en/rules-and-regulations/environment-protection/> / (last visited 09 Mar., 2022), n.d.)

⁶ (Sharma, E., & Das, S. (2020). Measuring impact of Indian ports on environment and effectiveness of remedial measures towards environmental pollution. *International Journal of Environment and Waste Management*, 25(3), 356-380. Retrieved on 14th Jul)

As per the rapid and high industrialization, increment in population with high index, deforestation, lack of knowledge and education among the people about the environment, it is being faced with issues for implementing the rules of the environment. Therefore, natural resources have been decreasing at a terrifying rate, creating a significant issue. One of the main reasons for implementing the rules is related to the environment. Due to excessive interference of the Government, no power to work freely is also a reason for facing issues with the implementation of the environmental rules. Lack of awareness among people and education about laws and increasing demand for industrialization are the main reasons for facing issues in implementing environmental policies in India.⁷

Environmental laws and policies are made to maintain air, water, forests, and other natural resources. Humans depend on natural resources to sustain their lives; however, using them carelessly endangers their lives. As per the insights of *Gupta, Soni, and Kumar (2019)*,⁸ negligence of rules and policies to maintain the balance of natural resources may create outstanding issues for people. On the other hand, disobeying the rules, laws, and policies related to the environment may cause punishments like fines and jail time (*Farooq et al., 2019*).⁹ Environmental laws and policies are the only treatment steps for people using the environment poorly.

The Challenges of Putting India's Environmental Rules and Policies into Practice.

The main challenge faced when implementing the environmental laws in India is related to poor coordination among the Government agencies. As per the views of *Manda & Ben Dhaou (2019)*,¹⁰ the capacity of the institutions is also poor, and their instruments, technologies, and arrangements are also not managed by the government.

Corruption among the high designation ministers is also an issue. Industrialists are not

⁷ (Zhang, J., Kang, L., Li, H., Ballesteros-Pérez, P., Skitmore, M., & Zuo, J. (2020). The impact of environmental regulations on urban Green innovation efficiency: The case of Xi'an. *Sustainable Cities and Society*, 57, 102123. Retrieved on 14th July)

⁸ (Gupta, S., Soni, U., & Kumar, G. (2019). Green supplier selection using multi-criterion decision making under fuzzy environment: A case study in automotive industry. *Computers & Industrial Engineering*, 136, 663-680. Retrieved on 14th July, 2023)

⁹ (Farooq, M. S., Riaz, S., Abid, A., Abid, K., & Naeem, M. A. (2019). A Survey on the Role of IoT in Agriculture for the Implementation of Smart Farming. *Ieee Access*, 7, 156237-156271. Retrieved on 14th July, 2023 from: <https://ieeexplore.i>)

¹⁰ (Manda, M. I., & Ben Dhaou, S. (2019, April). Responding to the challenges and opportunities in the 4th Industrial revolution in developing countries. In *Proceedings of the 12th international conference on theory and practice of electronic governance*)

maintaining the rules for their business, and they are not getting punished for violating environmental laws. On the other hand, it can be said critically that lack of awareness and education among people and the demand for money are also creating issues for implementing laws (Campos & Reich, 2019).¹¹ People are not thinking about the near future; they are only thinking about the present. The main issues in India are the lack of money and not being afraid or lack of education to know what is waiting in the future.

Therefore, the Causes Behind the Implementation Gap are:

- (1) Weak enforcement and monitoring mechanisms
- (2) Conflicting priorities: Economic growth vs environmental protection
- (3) Political will and governance issues
- (4) Lack of public participation and awareness
- (5) Corruption and institutional overlaps
- (6) Resource constraints (human and financial)

Key Statistics on Pollution, Deforestation, and Biodiversity Loss Despite Laws (2025)

(1) Air Pollution

- 22 out of the world's 30 most polluted cities are in India (IQAir World Air Quality Report, 2024).
- Delhi's annual average PM2.5 levels are 5–6 times higher than WHO safe limits.

(2) Water Pollution

- Over 70% of Indian rivers are polluted, including major rivers like the Ganga and Yamuna (CPCB, 2024).

¹¹ (Campos, P. A., & Reich, M. R. (2019). Political analysis for health policy implementation. *Health Systems & Reform*, 5(3), 224-235. Retrieved on 14th July, 2023 from: <https://www.tandfonline.com/doi/pdf/10.1080/23288604.2019.1625251>)

- Industrial effluents, untreated sewage, and agricultural runoff are major contributors.

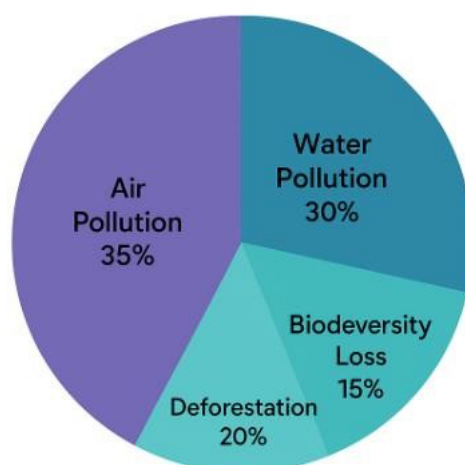
(3) Deforestation

- India lost approximately 3,300 sq km of forest cover between 2019 and 2023 (Forest Survey of India, 2023).
- Deforestation driven largely by mining, infrastructure, and urban expansion.

(4) Biodiversity Loss

- India hosts about 7–8% of global biodiversity, yet about 15% of species are threatened due to habitat loss and poaching (IUCN Red List, 2025).

Key Statistics on Pollution, Deforestation, Biodiversity Loss Despite Laws (2025)



Case Studies Illustrating the Paradox

(1) Air pollution in Delhi (despite Air Act and court orders)¹²

Despite legal frameworks like the Air (Prevention and Control of Pollution) Act of 1981 and repeated court interventions, Delhi's air pollution crisis continues due to a multi-faceted failure in implementation and enforcement. A major issue is the inadequate coordination among government agencies such as the Municipal Corporation of Delhi and the Delhi Pollution Control Committee (DPCC), leading to disjointed efforts. The *Graded Response Action Plan*

¹² (<https://www.scobserver.in/journal/gaps-in-grap-sc-pushes-for-accountability-and-action>, n.d.)

(GRAP), a key strategy, has been implemented inconsistently, with authorities failing to enforce critical measures like restricting the entry of polluting trucks.

Seasonal culprits like *stubble burning in neighboring states* remain unaddressed, while vehicular pollution from older vehicles and inefficient solid waste management within the city add to the problem. The DPCC's effectiveness is further hampered by a large number of vacant positions. The Supreme Court has highlighted the constitutional obligation of the government to provide a pollution-free environment, but a lack of political will and public awareness has stalled progress. A unified, robust approach with strong political resolve is crucial to tackle this persistent challenge.

(2) River pollution (despite Ganga Action Plan and Water Act)¹³

Despite landmark initiatives like the Ganga Action Plan (GAP) and the Water (Prevention and Control of Pollution) Act of 1974, the Ganga river remains heavily polluted due to a combination of systemic failures. Primary reasons include inadequate sewage treatment infrastructure, which allows a large percentage of untreated sewage from urban centers to enter the river. Additionally, industrial waste discharge, particularly from tanneries in cities like Kanpur, introduces harmful heavy metals and chemicals.

A major contributing factor is the weak enforcement and monitoring of environmental regulations. Both the GAP and the Water Act suffered from a lack of accountability, permitting polluters to continue their activities with impunity. Furthermore, the diversion of river water for irrigation and other purposes has reduced the river's flow, diminishing its natural selfcleansing capacity. This pollution poses significant health risks from pathogens and heavy metals, threatens aquatic life like the freshwater dolphin, and impacts the livelihoods of communities dependent on the river. Addressing the issue requires a concerted effort to invest in sewage treatment, enforce regulations strictly, and promote public awareness.

Institutional Mechanisms & Judicial Activism

Role of Judiciary in the Evolution of Environmental Governance in India

India employs a range of regulatory instruments to preserve and protect its natural resources.

¹³ (<https://ijlmh.com/paper/the-rise-in-river-pollution-and-the-need-for-reforming-water-act-1974>, n.d.)

There are stated to be over 200 Central and State statutes, which have at least some concern with environmental protection, either directly or indirectly (*Divan and Rosencranz, 2001*). However, failure on the part of the government agencies to effectively enforce environmental laws and non-compliance with statutory norms by polluters has resulted in an accelerated degradation of the environment. Most of the rivers and water bodies are polluted and largescale deforestation is being carried out with impunity. There has also been a rapid increase in casualties due to respiratory disorders caused by widespread air pollution. Such large-scale environmental degradation and adverse effects on public health prompted environmentalists and the people, as well as non-governmental organizations, to approach the courts, particularly the higher judiciary, for suitable remedies (*Deshpande, 1992*). This is precisely where the role of judiciary in environmental policy can be observed and needs to be examined.

In India, the Central Government passed extensive (special) environment legislation as follows:

- The Ministry of environment and forests (MoEF) was established in 1985 after the National Council for Environmental Policy and Planning was established in 1972.
- Modern, logical wildlife management was the goal of the wildlife (protection) Act of 1972.
- The 1980 Act of Forest (Conservation) act sought to prevent deforestation, divert forest area away from forestry, and advance social forestry.
- The Environment (protection) Act of 1986 is a piece of legislation that tries to close legal gaps and gives the country a singular focus on environmental protection.

A successful environmental policy often combines several instruments, as environmental issues are multifaceted. Key principles include the Polluter Pays Principle (PPP), which mandates that polluters bear the full costs of pollution abatement and environmental restoration, as defined by organizations like the OECD and interpreted by the Supreme Court of India. Closely related is the User Pays Principle (UPP), which requires resource users to pay the full marginal cost of their consumption. The Precautionary Principle (PP), emphasized in the Rio Declaration, advocates for preventative measures against potential environmental threats, even without absolute scientific certainty of harm, to avoid irreversible damage. These principles, when applied effectively, aim to create a flexible and cost-effective framework for environmental

protection.

- (1) The development of PIL in India is of recent origin. It is playing a significant role in the evolution environmental governance in india. Introducing the PIL concept in the ‘*Ratlam Municipal council vs Vardhichand*’ Mr. Justice Krishna Iyer observed that, “Social justice is due to the people, and therefore, the people must be able to trigger off the jurisdiction vested for their benefit to any public function.” He recognized PIL as a constitutional obligation of the courts.
- (2) According to Indian constitution’s article 19(1)(g), citizens have the fundamental right to engage in any profession or conduct any business in any region of the nation with a few reasonable constraints. In *Cooverjee B. Bharucha v. Excise Commissioner*, the supreme court gave environmental preservation the advantage over trade freedom.¹⁴

The above review of literature on evolution of environmental governance in India reveals that environmental governance in India is of recent origin. It also shows that there are a number of actors involved in the emergence of environmental governance. These actors include state, civil society, environmental movements etc. Therefore, environmental governance in India does not exclusively involve decisions made by single entity rather it demonstrates a much more diffuse level of responsibility for environmental governance.

Strategies May Help Mitigate the Laws and Rules or Policies Related to the Environment

The government should be stricter, and there should not be any corruption to allow for the immediacy of rules. As per the insights, the government should take steps that violate the environment's rules and policies. People should be provided with more environmental education so they can also participate in this mission, Workshops and programs should be done to make people more aware of the future of the next generation. People should understand the root causes of natural devastation. On the other hand, people should be supportive of managing the issues, and industrialists must decrease their lust for money, which is the leading cause of all types of pollution (Bhuvaneshwari et al., 2019).¹⁵ Pollution control boards should be stricter to manage the total situation properly. Maintenance of rules and regulations and punishment for the people violating the rules may help implement the environmental rules. Schools and

¹⁴ (https://ecoinsee.org/conference/conf_papers/conf_paper_125.pdf, n.d.)

¹⁵ (Bhuvaneshwari, n.d.)

colleges should provide proper education to help students become more aware of nature (Sharma & Das, 2020).¹⁶ Rewards and benefits should be given with the help of NGOs.

Ultimately, the tree plantation program should be done at any cost and introduced into the people's ordinary lives.

Theory of Environmentally Response Behaviour

The authors of the ERB theory are Hines, Tomera, and Hungerford (1987).¹⁷ As per this theory, one cannot take responsibility for the environment. It is the total work of the people to maintain the environment. Knowledge of the rules and regulations of the environment can help others to know about them. Being influenced by their act, some others may be desired to act as this may help to implement the laws and results related to the environment (Wang et al., 2020).¹⁸

Conclusion

The future of India's environmental governance hinges on strengthening the mechanisms for enforcement and accountability. This includes reforming environmental regulatory bodies like the Central and State Pollution Control Boards, ensuring they are adequately funded and staffed. The judiciary's proactive role will likely continue, but its efforts must be supported by a more responsive and effective executive branch. Furthermore, there is a growing need to integrate environmental concerns into economic development policies and to foster greater public awareness and citizen-led initiatives. Ultimately, a multi-stakeholder approach involving government, civil society, industry, and the public is crucial to bridge the gap between constitutional ideals and environmental realities.

¹⁶ (Sharma, n.d.)

¹⁷ (Hines JM, n.d.)

¹⁸ (Wang, n.d.)