
ENVIRONMENTAL GUARDIANSHIP: INDIA'S LEGAL FRAMEWORK FOR POLLUTION CONTROL

Harsh Vardhan Singh, Amity University Lucknow Campus

Khushi Singh, Amity University Lucknow Campus

ABSTRACT

Environmental issues have been posing a concern for all living creatures and nature worldwide. This paper highlights the various environmental issues such as global warming, greenhouse effect, soil degradation, deforestation, etc, that have directly affected the quality of the environment. There has been various legislation to protect the environment in India, but the enforcement of this legislation has been a challenging factor.

In the Constitution of India, there are various articles, such as Article 48-A, 51-A(h), and Article 51-A(g) (1), which outline the fundamental duty of each citizen to protect the environment. Other than Constitutional provisions, there are other bodies such as National Green Tribunal (NGT)¹, Pollution Control Board at central and state level have the duty to look out to ensure pollution control. The role of the Judiciary also plays a pivotal role in controlling pollution, as many cases have been filed under Public Interest Litigation in the Supreme Court, against industries or Pollution Control Boards, to enjoin them to ensure pollution control in India by taking proper measures.

The need for Pollution Control is crucial to mitigate the situation, which has worsened in many areas of the country, and also to support national development. There is need to take proper measures of human activity which are contributing to Environment issues.

Keywords: Environmental issues, Constitutional Provisions, National Green Tribunal, Pollution Control Board, Public interest litigation

¹ Samir Mehta V. Union of India(2016)

Introduction

The environment is getting blackened with Pollution. To maintain natural beauty, it is necessary to make the environment free from Pollution. Human activities are one of the main reasons to disturb the earth's ecology, and these are urbanisation, over-exploitation of natural resources, Industrialisation, the explosion of Population, and the tearing down of animal and plant species in greater numbers for economic purposes. In India, Pollution has affected all the living creatures, even species that live in the poles or at the bottom of the ocean. Thus, it has led to a wide range of diseases, in fatal cases it can even cause death.

In India, there are various legislations which have been introduced to protect and improve the environment. The administration of this legislation has been scrutinised and classified comprehensively. There are various environmental regulatory bodies in India which are responsible for the implementation of various laws, conserving biological diversity, conducting research to control pollution, promoting sustainable development and acting as the apex body to control and prevent pollution.

Constitutional provisions

To protect and improve the environment, various articles in the Constitution of India address this issue. The Constitution lays down the fundamental duty of each citizen to protect the environment, thereby providing life with dignity and harmony for every species.

Various constitutional Provisions for Protection of environment, such as:

- There are three types of lists under the Indian constitution, namely- union, State and concurrent.

In the union list, which is referred to as List I, power is governed by the central government and is under the control of Parliament.

State list, which is referred to as list II, and is governed by the state government, contains matters like drainage, supply of clean water, sanitation, etc.

In the Concurrent list, which is referred to as list III, and the handling of matters under

this list is shared between both the central and state governments. It contains matters such as the Protection of wildlife, forests, conserving mines, population control, etc. In any matter where state law is passed and it is subsequent to the central laws, so as to prevail, firstly, there should be a presidential assent as provided in Article 254.

- Fundamental Duties –

Article 51A(g)² of the Indian Constitution states that it is the fundamental duty of every citizen of the country to protect and improve the environment, including wildlife, lakes, forests, and rivers, and to have empathy towards living creatures, not just to preserve the environment from pollution.

- Directive Principles of State Policy-

Article 48A of the Indian Constitution stipulates that the state shall protect and improve the environment, and safeguard the wildlife and forests of the country.

- Article 21 of the Indian Constitution guarantees citizens of India the right to a healthy environment which is free from Pollution.

Legislative Mandate-

There has been various acts provided by the government of India to protect and improve the environment and biodiversity from Pollution. Basically, there are various Pollution regulations which are listed and explained below.

THE WATER (PREVENTION AND CONTROL OF POLLUTION) ACT, 1974 AND ITS AMENDMENTS³-

This Act was enacted with the purpose of “to safeguard and control water pollution and to restore and maintain the wholesomeness of water”. The Act allows the instituted bodies at the central and state levels, such as the central board and the state board, to control pollution of the water bodies.

² State of w.b & ors V. Sujit Kumar rana(2004)

³ Indian Council for Enviro- legal Action V. Union of India(1996) 3 SCC 212

According to Section 2(b) and Section 2(h), two agencies have been established under the Act to control and prevent water pollution, namely the Central Pollution Control Board and the State Pollution Control Board. Thus, the functions of both agencies, i.e., the Central Board, are mentioned in Section 16 of the Act, and the functions of the State Board are mentioned in Section 17 of the Act. The Central Pollution Control Board consists of a Chairman, officials, members from the State Boards, non-officials, and a Member Secretary.

The Act clearly aim to prevent the discharge of any poisonous, harmful or polluting matter into any river or stream. State Board gives consent to discharge any polluting matters in a river or stream, which also includes consent required for “temperature” discharge, which is done by cooling tower users.

There is a formation of the Joint Board in which different state governments enter into an agreement to form a joint Board. Under Section 14 of the Act, composition of Joint Board is mentioned.

THE WATER (PREVENTION AND CONTROL OF POLLUTION) CESS ACT, 1977⁴-

This Act was enacted to provide for the levy and collection of a cess on water used by person carrying on specific industries and by other local authorities, with a view to increase the resources of the Central and State Boards for the prevention and control of water pollution constituted under the water (Prevention and Control of Pollution) Act, 1974.

In this Act, the collection of cess was categorised according to the quantity of water used.

The purpose of which water is used are as follows:

S.No	Purpose for which water is used	Maximum Rate under Section 3(2a)
1.	Refrigeration, for spraying in mine pits or boiler feed	Two and one fourth of a paisa per kilo litter

⁴ Tamil Nadu Electricity Board V. Assistant Commissioner of Labour(cess), Madurai(2007)5 SCC 641

2.	For Domestic purpose	Three paisa per kilo litre
3.	To process where water are getting polluted and where those pollutants are easily biodegradable	Seven and one half paisa per kilo liters
4.	To process where water are getting polluted and where those pollutants are not easily bio- degradable and are toxic	Nine and a half paisa per kilo liter

This Act has been initiated to make plans related to economic actions to control pollution and ask local authorities and certain designated industries to pay a cess (tax) for water effluent discharge. The AIR (Prevention and Control of Pollution) ACT of 1981 and Amendment, 1987⁵-

The decisions made at the United Nations Conference on the Human Environment, held in Stockholm in June 1972, were implemented by the Parliament, which enacted a nationwide Air Act.

To improve the quality of air and to prevent, control and to decrease air pollution in the country is the main aim of this Act.

Some important provisions of this Act are given below:

- Framework of this Act is indistinguishable from that of the Water Act of 1974.
- This Act led to the expansion of the power of the Central and State Boards, which were established under the Water Act, to include air pollution control.
- To set up air pollution Boards in the states where there were no water pollution Boards.
- All industries operating within the particular air pollution control areas have to obtain a “consent” from the State Boards.

⁵ M.C. Mehta V. Union of India (oleum gas leak) AIR 1987 SC 965

- Under the Air Act, the states are advised to enforce the emission standards, which are the legal requirements which limit the amount of pollutants to be released into the air in a specific time period from a specific source for automobiles and industries after informing the Central Board and paying attention to its ambient air quality standards.
- The Act empowers the State Pollution Control Board to test equipment and take samples for analysis purposes from any chimney, fly ash, dust, or other sources.
- Prior to its amendment in 1988, to enforce the provisions of the Act, it was accomplished through criminal prosecution, which the Boards initiated.
- The 1988 amendment Act empowered the SPCB and CPCB to shut down industrial plants that were in default.
- Particularly, the 1987 amendment led to the introduction of a citizen's suit provision into the Air Act and extended the provision of the Act to include noise pollution.

Environment (Protection) Act of 1986⁶-

The main objective of this Act is to authorise the Central government to protect, control and improve the environment. The Act was enacted in May 1986 and came into force on 19 November 1986. The Act was in response to the Bhopal gas leak tragedy.

The Act also led to the imposition of laws related to protecting the environment in regions that were not previously covered by existing laws. It allows taking actions against any person who intends to harm the environment. Its objective was also to implement the decisions made at the United Nations Conference on Human Environment, held in Stockholm in 1972. Its Aim was to engage in the sustainable development of the environment.

The Provisions of this Act give the Central government the power to coordinate and put into effect nationwide programmes and plans to further environmental Protection. The Act can put some restrictions on the location of certain industries. It can authorise certain quality standards of the environment, particularly those which are concerned with such matters as the discharge or emission of environmental pollutants. The Act grants the government the power to examine

⁶ Vellore citizen welfare forum V. Union of India (1996) 5 SCC 647

and test certain equipment and other grounds, as well as to test samples of water, air, soil, or any other material from the environment. The Environment Protection Act distinguishes the discharge of pollutants into the environment in excess of prescribed regulatory standards.

Furthermore, some provisions are only applicable to handling hazardous substances, which are restricted unless in compliance with regulatory requirements. The Act gives power to any citizen of the country, except for any authorized government officers, to file a complaint in a court in a matter of contravention of the provisions of the Act.

The National Green Tribunal Act, 2010⁷-

This Act was enacted to establish a national green tribunal for the speedy disposal of cases related to environmental Protection and the conservation of forests and other natural resources. It is stimulated by Article 21 of the Constitution of India, which specifies the personal liberty and protection of life, thereby guaranteeing the citizens of India the right to a healthy environment.

Thus, this Act led to the establishment of the National Green Tribunal, an administrative body responsible for handling cases related to the protection of the environment and other natural resources.

The National Green Tribunal, which was established under the Act, has the main goal to provide speedy justice in environmental matters, and thus it helps to lessen the burden of litigation in Courts, especially in higher Courts. It is also responsible for making various important decisions, such as declaring the operation of vehicles that run on diesel over fifteen years old on the roads of Delhi illegal, in order to prevent or lessen air pollution. The Tribunal has established five different places of sitting across the country, with its main headquarters in Delhi, as well as additional locations in Pune, Kolkata, Bhopal, and Chennai.

The composition of the National Green Tribunal includes a retired Supreme Court judge as its Chairperson. The Tribunal's judicial members should be the High Court Judge. Furthermore, it includes ten expert members and ten judicial members. The eligibility criteria for expert members include any citizen with a minimum of 15 years of experience and a professional

⁷ Almira H Patel v. Union of India(2017)

qualification in the field of environment and forest conservation. The Current Chairperson of the National Green Tribunal has been Justice Prakash Shrivastava since August 2023.

Challenges and Issues-

- **Environmental Impact Assessments:**

Environmental impact assessments can be a prolonged process and may or may not necessarily address environmental concerns. Environmental Impact Assessment can be a complex process, which requires knowledge and expertise. The data collected in the Environmental Impact Assessment is not easily available and may or may not be accurate. In the Environmental Impact Assessment, the most challenging aspect is ensuring meaningful public participation.

- **Enforcement and Compliance:**

The most challenging part of environmental law is ensuring that it is regulated fairly and applicable everywhere, regardless of external influences or interference. The government of India has established many bodies or organization which ensure social accountability, Protection of natural resources and public health through the environmental laws by imposing and regulating them fairly. To enforce these laws, the agencies or organisations use the “command and control” approach, setting standards and monitoring compliance through inspections and other activities.

- **Public Awareness:**

To make environmental issues more effective and to enforce the existing environmental law all over India, it is necessary to raise public awareness about its norms and provisions through education, public engagement, and collaboration or partnership of local community groups, NGOs, and environmental organisations to educate the younger generation about the protection of the environment. To make it more aware, the organisation and agencies should engage with the local people to understand their concerns and take their valuable feedback into environmental policy development and enforcement.

- **Balancing Environmental Protection with Development:**

Balancing environmental Protection with development is one of the fundamental principles of sustainable development, which requires a comprehensive approach that includes both the need for progress and the responsibility to protect the planet. This involves addressing environmental problems at all levels of decision-making, fostering innovation, and promoting sustainable practices. It also involves addressing the change in climate through mitigation, and thus, adaptation measures are also important to ensure the long-term sustainability.

Judicial Involvement-

In Article 21⁸ of Constitution of India which guarantees a fundamental right to life and personal liberty and furthermore, the Supreme Court has elucidated to include the right to natural, clean and healthy environment in right to life and personal liberty. The Supreme Court has mandated that the right to life also includes the right to a clean and healthy environment, a pollution-free environment, through various landmark judgments.

M.C. MEHTA V. UNION OF INDIA (1996)⁹:

Also known as Taj Trapezium Case, was a landmark judgment of environmental issue in which the Supreme Court had directed various industries of India in the Taj Trapezium Zone (TTZ) to change to natural gas or relocate such industries outside the Taj Trapezium Zone due to severe pollution that was threatening the Taj Mahal, where the white marble of the Taj Mahal had started to turn yellow. The Taj Mahal was facing environmental damage due to emissions discharged from industries, vehicular pollution, and the Mathura Oil Refinery. Thus the Supreme Court of India, after the report acknowledged from the experts, realized that the industries located in TZZ as the most significant factor contributors to air pollution thus directing 292 Industries to transition or relocate outside the TZZ and those who were not obeying the court order within the deadline given by the court to pay the penalties as well.

Vellore Citizens Welfare Forum vs. Union of India¹⁰:

⁸ Subhash Kumar v. State of Bihar AIR 1991 SC 420; (1991) 1 SCC 598

⁹ M.C. Mehta v. Union of India, (1997) 2 SCC 353

¹⁰ Vellore Citizens' Welfare Forum v. Union of India, (1996) 5 SCC 647

It is one of the landmark environmental issue cases in India, which was decided in 1996. In this case, it was filed by the Vellore Citizens Welfare Forum under Public Interest Litigation (PIL) against the Union of India. The case was filed under PIL, this Principle highlights taking preventive measures against environmental issues. The primary issue of the case was the release of untreated effluents from tanneries into the Palar River, a vital water source for the region. In this case, there was the establishment of a special “Green bench” to monitor the Court’s order. The Supreme Court, in its judgment, declared that the Precautionary Principle and the polluter pay principle essential to sustainable development and it is basic aspect of formation of India’s environmental jurisprudence. Thus, the Court also ordered the Central government to establish an authority to administer these principles, assess environmental issues, and recover compensation from polluters.

Andhra Pradesh Pollution Control Board V. M.V. Nayadu¹¹:

In this case, the respondent appealed to the Commissioner of Industries for approval of the industry's setup. Various conditions were issued by the authority that had to be met before the establishment of the industry, such as obtaining a certificate from the SPCB for pollution control. A proposal for the installation of equipment was also required until the authority's requirements were fulfilled. But the A.P. PCB rejected the respondent’s application as the industry lead to the pollution and it was categorized under “Red Category” and the location of industry fir which was proposed is situated within the radius of 102kms of the two lakes- Himayat Sagar Lake and Osman Sagar Lake- which are the primary source of drinking water for the cities of Secunderabad and Hyderabad. Thus, the Supreme Court, in its decision, has supported the appellate authority’s decision, establishing that the industry bears the burden of proof if its establishment causes any environmental issues. The court also highlighted that the ‘Precautionary Principle’ should be applied.

Summary-

Although Pollution is not new in the country, the pollution and its exposure pose the greatest threat to humanity and are an important cause of environmental illness and the death rate in the country. Pollution is one of the leading causes that has polluted various rivers, even sacred rivers, which has led to multiple action plans to control the pollution in those rivers.

¹¹ A.P. Pollution Control Board v. Prof. M.V. Nayudu, (1999) 2 SCC 718

Furthermore, the evolution of environmental laws, from early protection and conservation efforts to the establishment of various comprehensive regulatory frameworks, such as the Water Pollution Protection Act, the Air Pollution Protection Act, and the National Green Tribunal, underscores the country's commitment to addressing environmental challenges.

Various environmental laws and their enactment through judicial activism played an important role in safeguarding the environment from pollutants. Although various challenges still face enforcement, compliance, and the allocation of resources to regulatory authorities. A stabilised idea to protect the environment is important for India's future, as it ensures that developmental needs and preservation of ecology can go hand in hand.