

NAVIGATING ENVIRONMENTAL GOVERNANCE: A COMPREHENSIVE LOOK AT LEGAL AND REGULATORY DIMENSIONS IN ENVIRONMENTAL MANAGEMENT

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Abstract

The intricate interplay between legal frameworks and environmental management presents a multifaceted challenge in today's world. This study underscores the significance of a robust governance framework in ensuring conservation of natural resources. The paper elucidates the evolution of environmental governance in India. It critically examines the roles and responsibilities of various bodies constituted under the various legislations for the prevention control and abatement of environmental pollution in India, in shaping policy trajectories and implementing regulatory measures. Furthermore, the paper probes into the complexities surrounding compliance, enforcement, and monitoring mechanisms. "Navigating Environmental Governance" underscores the imperative for a harmonized, adaptive, and inclusive legal framework that fosters collaboration, transparency, and accountability.

Key Words: Environmental Governance, Regulatory bodies, Environmental legislations, Environmental management.

Introduction

As mankind enters the third millennium, environmental concerns have risen to the fore. No aspect of human society can be isolated from the environment. Indeed the very survival of the life on the earth is linked with the question of environment protection⁸⁷⁶. Humanity today probably faces the greatest environmental crisis. Environmental pollution has reached at such a level, that it is believed that we are heading towards ecological and social disaster⁸⁷⁷. The issue of environmental pollution is not a recent phenomenon. It dates back to the time when Homo sapiens first appeared on Earth and was acknowledged even during Plato's era about 2500 years ago⁸⁷⁸. Yet, in modern times, the challenges and complexities associated with environmental conservation have escalated significantly.

Today, human interactions with the environment have become so pervasive that environmental concerns have become a global issue affecting everyone. Although human advancements in science and technology have granted us unprecedented capabilities, they have also introduced threats to our own existence⁸⁷⁹.

Environmental problem is not of one specific country but it is a global phenomenon. While environmental pollution has assumed alarming proportions, the implementation measures and environmental management is of great concern.⁸⁸⁰ The picture of the environmental degradation is clearly visible world over and this indicates there is a dire need of protection and improvement of environment and its proper governance in every country. Environmental protection, conservation, and enhancement are

⁸⁷⁶ Science Tutorial, GLOBAL ENVIRONMENT 56 (2002).

⁸⁷⁷ SubrataBanerjee, The Rape of the Earth, MAN AND DEVELOPMENT 5(2001).

⁸⁷⁸ P.S Jaswal et.al., ENVIRONMENTAL LAW 1(2021).

⁸⁷⁹ Ibid.

⁸⁸⁰ M.K.Balachandran, Environmental Management-Legal and Regulatory Framework, NAYAYA DEEP 68(2005)

significant concerns both in India and globally.⁸⁸¹ In India, various factors such as unchecked industrial practices, unplanned urban development, rapid population growth, excessive exploitation of natural resources, disturbance of ecological harmony, and economic-driven extinction of numerous species have exacerbated environmental degradation.⁸⁸² This paper aims to highlight the environmental laws established in India designed to safeguard and enhance the environment. The effectiveness and implementation of these laws are also critically analyzed in a structured manner. Additionally, the author offers some recommendations for consideration.

Constitution Mandate for Environment Protection

The Constitution of India is amongst the few in the world that contains specific provisions on environment protection.⁸⁸³ Originally, the Constitution of India did not specifically address Environmental protection.⁸⁸⁴ The only notable mention related to this was Article 47 within the Directive Principles of State Policy.⁸⁸⁵ Article 47 of the Directive Principles of the State Policy reads:

The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties.⁸⁸⁶

Article 21 of the constitution which deals with right to life and personal liberty was not of much help in the beginning as it was given a very narrow and restricted meaning.⁸⁸⁷

In 1976, the Constitution (42nd Amendment) Act, was passed which expressly incorporated

specific provisions for the environment protection and improvement in the form of fundamental duty and directive principles of the State policy.⁸⁸⁸ After the 1976 Amendment, the directive principles of State policy and fundamental duties chapters of the Constitution of India explicitly enunciate the national commitment to protect and improve the environment.⁸⁸⁹

Even if not explicitly stated in Part III of the Constitution, a right can still be considered a fundamental right, including environmental protection. While the Constitution does contain provisions related to environmental protection within the Directive Principles of State Policy and fundamental duties (Chapter IV-A), the judiciary has interpreted the right to a clean environment as an inherent aspect of the right to life under Article 21.⁸⁹⁰ Furthermore, the Indian Constitution ensures various other fundamental rights that can intersect with environmental considerations and individual rights.⁸⁹¹

Environment Protection Laws

There are more than two hundred Central and State statues which have some bearing on environmental protection.⁸⁹² However the most widely accepted and applicable legislative provisions for the protection of the environment are summarized below:

Common Law Remedies

As a common law nation, India largely bases its contemporary judicial structure on the British legal system. However, with dominating feature of British Legal system, the India's legal system is sprinkle of various other legal systems of the world. The common law has traditionally placed a strong emphasis on the protection of private property and people, with little

⁸⁸¹ Ashish Verma, Law of Environment in India: Problems And Challenges In Its Enforcement, RESEARCH AMBITION: AN INTERNATIONAL MULTIDISCIPLINARY E-JOURNAL VI 17-26 (2021). Available at: <https://www.redalyc.org/journal/7039/703973419003/html/> (Last visited: 2th November, 2021).

⁸⁸² Ibid.

⁸⁸³ Shyam Divan and Armin Rosencranz, ENVIRONMENTAL LAW AND POLICY IN INDIA 41 (2021).

⁸⁸⁴ S.C. Shastri, ENVIRONMENTAL LAW 57 (2015).

⁸⁸⁵ H.N. Tiwari, ENVIRONMENTAL LAW 83(2022).

⁸⁸⁶ Article 47, The Constitution of India, 1950.

⁸⁸⁷ Supra, note 9 at 83.

⁸⁸⁸ Id.

⁸⁸⁹ Article 51 –A (g) and 48-A, The Constitution of India, 1950.

⁸⁹⁰ See Rural litigation Entitlement Kendra v. State of U. P (Now UK), A.I.R. 1985 S.C. 652; M.C.Mehta v. U.O.I (Oleum Gas Leakage Case) A.I.R. 1987 S.C. 1086; T. Damodhar Rao v. S.O.Municipal Corporation, Hyderabad, A.I.R.1987 A.P. 171; L.K.Kolwal v. State A.I.R. 1988 Raj.2 etc.

⁸⁹¹ The Constitution of India guarantees “right to equality” to all persons without any discrimination. This indicates that any action of the “State” relating to environment must not infringe upon the right to equality as enshrined in Article 14 of the Constitution.

⁸⁹² Supra, note 5 at 69.

recognition or protection of public right in the environment.⁸⁹³ The reflection of common law system for the protection of environment is visible in the area of tort law. Most pollution cases in the tort law are addressed under law of nuisance, trespass, negligence and strict liability. To these traditional categories, the Supreme Court has introduced new principle of absolute liability.⁸⁹⁴

Specific Statutory Provisions

The statutory provisions for the environment protection fall under the following heads:

Indian Penal Code, 1860

Indian Penal Code, 1860 which is a substantive law makes various acts affecting environment as offences. Chapter XIV of IPC containing sections 268–290 deals with offences affecting the public health, safety, convenience, decency and morals.⁸⁹⁵ The sole object of Chapter XIV is to safeguard the public health, safety, convenience by making those acts punishable which pollute the environment or threaten the life of people. Under sections 426, 430, 431 and 432 of the IPC, general pollution caused by mischief can be controlled as same is punishable. Similarly, the provisions of Cr.P.C can also be invoked to prevent the pollution of almost all kinds.⁸⁹⁶

Civil Procedure Code, 1908

The Civil Procedure Code provides the right of action in case of public nuisance.⁸⁹⁷ Order 1 rule 8 of the code talks about representative suit or class suit.

Specific Environmental Legislations

The specific environmental legislations and acts

⁸⁹³ Vidya Bhagat Negi, ENVIRONMENTAL LAWS : ISSUES AND CONCERNS 226(2011).

⁸⁹⁴ This norm was developed by the apex court in post-Bhopal period in response to the spread of hazardous industries and was later adopted by the legislature both in Public Liability Insurance Act, 1991 and National Environment Tribunal Act, 1995.

⁸⁹⁵ See Hari Singh Gaur, INDIAN PENAL CODE 2095-2197(2019).

⁸⁹⁶ Under section 133 of the Cr. P.C., the district magistrate or the sub-divisional magistrate or executive magistrate, on the receipt of report from the police officer or other information, may make conditional orders to remove the public nuisance causing pollution. The conditional orders may be made absolute and if the person concerned fails to comply with the said orders, he may be prosecuted under section 188 of the IPC.

⁸⁹⁷ Section 91, Civil Procedure Code. 1908.

provide important obligations responsibilities and rights for the protection of environment in different fields.⁸⁹⁸ Some brief outline of the environmental legislation has been stated as under:

The Water (Prevention and Control of Pollution) Act, 1974

The Water (Prevention and Control of Pollution) Act, 1974 was enacted in pursuance of clause (1) of Article 252 of the Constitution-

to provide for the prevention and control of water pollution and the maintenance or restoration of wholesomeness of water, for the establishment, with a view to carrying out the purposes aforesaid, of boards for the prevention and control of water pollution, for conferring on and assigning to such boards powers and function relating thereto and for matters connected therewith.⁸⁹⁹

The act consists of VIII Chapters, divided into 64 sections. The act is quite comprehensive in its coverage and contains provisions for the establishment of Central Boards and State Boards for the Prevention and Control of Water Pollution which under the act are autonomous bodies.⁹⁰⁰ The Water (Prevention and Control of Pollution) Act, 1974 controls and monitors the water pollution and also regulates the water quality throughout the State Pollution Control Boards.⁹⁰¹ The Act further seeks to control pollution primarily through standards to be laid down by the boards and consent orders issued by them.⁹⁰²

The Air (Prevention and Control of Pollution) Act, 1981

The Air Prevention and Control of Pollution Act, 1981 was enacted under article 253 of the Constitution to implement the decisions taken at the United Nations Conference on

⁸⁹⁸ Supra, note 18 at 235.

⁸⁹⁹ Statement and Objects and Reasons, ater Prevention and Control of Pollution Act, 1974.

⁹⁰⁰ Sections 3 and 4, Water (Prevention and Control of Pollution) Act, 1974.

⁹⁰¹ See Sections 14 to 19, The (Water Prevention and Control of Pollution) Act, 1974.

⁹⁰² Sections 19, 22, 23, 24 and 25, Water (Prevention and Control of Pollution) Act, 1974.

Human Environment held at Stockholm in June, 1972, in which India also participated. The Air Act is implemented by the Central and State governments and the Central and State Boards.⁹⁰³ The Act consists of VII Chapters and 54 sections and contains important provisions for the control of air pollution. Contravention of provisions may be visited with criminal liability.⁹⁰⁴ The purpose of enacting such legislation is clearly reflected in the Preamble of the act itself. Thus, it purports to be an act-

- (i) to provide for the prevention, control and abatement of air pollution;
- (ii) with a view to carrying out the aforesaid purposes, for the establishment of boards, and
- (iii) for conferring on and assigning to such boards the powers and functions relating thereto and for matters connected therewith.⁹⁰⁵

For, realising the objectives of the act as embodied in the Preamble, the central government and the State government are required to constitute the central board and state boards respectively for the control and abatement and air pollution.⁹⁰⁶ The Act's foundational structure resembles the Water (Prevention and Control of Pollution) Act of 1974. Both Central and State Boards established under the Water Act possess authority to grant or withdraw licenses from industries that pollute, enforce emission criteria, and establish guidelines for curtailing air pollution.⁹⁰⁷ In states where the Water Act isn't applicable, the state government can establish a State Board for addressing and controlling air pollution through an official gazette notification.⁹⁰⁸

Environment (Protection) Act, 1986

Although, there are existing laws dealing directly or indirectly with several environmental matters and the existing laws generally focus on specific types of pollution or on specific categories of hazardous substances. However, some areas of environmental hazards are not covered by these specific legislations.⁹⁰⁹ In view of this, the Environment (Protection) Act, 1986 was enacted that provide for the protection and improvement of environment and for matters connected therewith.⁹¹⁰ This Act is divided into 26 sections, and four chapters. The aim of the Act is to protect and improve the environment. The Act also put possible deterrent control over the polluters of environment by making them liable to penal action.⁹¹¹ Even the abetment of environmental pollution has been made a punishable offence.⁹¹² The jurisdiction of the civil court is ousted in accordance with section 22 of the Act.⁹¹³

National Green Tribunal Act, 2010

As the plethora of cases on various environmental problems was increasing, a need has been felt to establish a specialised tribunal to handle the multidisciplinary issues involved in environmental cases. Accordingly, it has been decided to enact law to provide for the establishment of the National Green Tribunal for the effective and expeditious disposal of civil cases relating to environment protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment.⁹¹⁴ The main objective of the Act has been set in the Preamble of the Act which says that:

Act is to provide for the establishment of National Green Tribunal for the effective and expeditious disposal of cases relating to

⁹⁰³ Statement of Objects and Reasons, Air Prevention and Control of Pollution Act, 1986.

⁹⁰⁴ Javid Talib, Control of Air Pollution in India, NAYAYA DEEP 97(2012).

⁹⁰⁵ Cited in: Sukanat K. Nanda, ENVIRONMENTAL LAW 170(2019).

⁹⁰⁶ Id. at 171.

⁹⁰⁷ Supra, note 29 at 97.

⁹⁰⁸ Id.

⁹⁰⁹ S.C.Tripathi, ENVIRONMENTAL LAW 23 (2022).

⁹¹⁰ Preamble, Environment (Protection Act), 1986.

⁹¹¹ Id., Section 15.

⁹¹² Id., Section 16 and 17.

⁹¹³ This section provides that jurisdiction of the Civil Court to entertain any suit or proceedings in respect of anything done, action taken or order or direction issued under this act is ousted.

⁹¹⁴ Statement of Objects and Reasons, National Green Tribunal Act, 2010.

environment protection.⁹¹⁵

The National Green Tribunal is a specialized body equipped with the necessary expertise to handle environmental disputes involving multidisciplinary issues. The tribunal shall not be bound by the procedure laid down in Civil Procedure Code, 1908, but shall be guided by principles of natural justice.⁹¹⁶

A reference may also be made to the laws for the protection and preservation of forests, flora, fauna and wild life.⁹¹⁷

A Critical Appraisal of Environmental Legislations

The Environment (Protection) Act, 1986 is “umbrella” legislation designed to provide a framework for central government, and coordination of the activities of various central and state authorities established under previous laws, such as the Water Act and the Air Act. Despite the existence of this apparently well defined and well established strategy, past experience has shown that the implementation of these legislations has been extremely slow. Records show that almost 70 percent of the cases on pollution matters all over the country are pending in various courts. The ineptitude of the regulatory agencies is seen as a major reason behind this. The Central Pollution Control Boards has complained in the past that it lacks the requisite strength in terms of staff. Inspectors of the Boards cover from 500 to 20,000 stations. This is compounded by the fact that there are not enough experts. In State of Karnataka there was a time when PWD engineers were sent to inspect stations.⁹¹⁸ As regards air pollution, apart from the preventive or controlling measures under the Air Act, the residue protection of air would come within the Environment Act as well. The attitude of the Courts has also been very positive to enforce

the provisions of the Act in spirit.⁹¹⁹ The Environment (Protection) Act, 1986 even though enacted after the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution Act), 1981, is the most important piece of legislation when it comes to environment protection in India. It gives immense powers to Central government to protect the environment and most importantly it gives the central government powers to frame rules on various aspects of environment protection especially those relating to management of various types of wastes.⁹²⁰ However, the constitution of Boards is not free from drawbacks under the Water and Air Act. Air pollution prevention and control has been given as an additional or secondary duty of the (Water) Pollution Boards. The importance of control of air pollution is underrated, as there remains a tendency to provide greater importance to primary function. Further, like water act the air act does not provide for an integrated approach to check pollution, as the local and municipal bodies which are armed with statutory powers for ensuring environmental purity have not been integrated into the national and state-level enforcement machinery. Each state government is granted discretion to designate particular areas as “air pollution control areas” within which the provision relating to regulations of pollutant discharges through permit system is to be applicable. It seems that polluters located outside such air pollution control areas cannot be subjected to regulations of pollution or be prosecuted for violations of standards laid by the state boards. Hence, it becomes important that the improvement on implementation of the Acts has to be looked upon. Rules have been framed under the Air Act, 1981, viz. the Air (Prevention and Control of Pollution) Rules, 1982, provided for the procedure on transaction of

⁹¹⁵ Id., Preamble.

⁹¹⁶ Id., Section 19.

⁹¹⁷ The Indian Forest Act 1927 and The Forest (Conservation) Act 1980 are important. The later Act envisages permission of the Central Government for dereserving a reserved forest, use of forestland for non-forest purposes and assignment of forestland and other issues concerning reforestation. Mention may also be made of The Wild Life Protection Act 1972.

⁹¹⁸ Leaking Plugs, India Today, June, 1997.

⁹¹⁹ See M.C.Mehta v. U.O.I (Taj Trapezium Case), (1997) 2 SCC 353; M.C.Mehta v. U.O.I (Matter regarding diesel emissions) (1999) 6SCC 9; M.C.Mehta v. U.O.I (Matter regarding emission standards for vehicles M.C.Mehta v. U.O.I (CNG Case), AIR 2002 SC 1696.

⁹²⁰ For example Bio-Medical Waste Management Rules, 2016; Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016, Battery Waste Management Rule, 2022 etc.

business of the Board and its committees; temporary association of persons with the central board (for assistance or advice); and budget, account, and annual report of the central board. Rules in other areas (viz. taking of samples of emissions or air) are required to be framed in order to overcome the subjective satisfaction of the board. Thus, the Air Act is a good piece of legislation and has shown the right path to be pursued in the direction of prevention and control of air pollution.⁹²¹ National Green Tribunal, 2010 is another positive step taken by the government for environment-related litigations and India became one of the pioneers among developing nations in establishing a dedicated green court. Before the establishment of NGT, there were two previous attempts to set up green courts through National Environment Tribunal Act, 1995 (NETA) and National Environment Appellate Authority Act, 1997 (NEAA) but it failed to yield expected results.⁹²² The current tribunal comprises of maximum twenty judicial members and an equal representation of subject experts, as mandated by the act to maintain a balance.⁹²³

Judges from the high court and the Supreme Court are usually appointed as judicial members.⁹²⁴ The experts are doctorates either in physical sciences or life sciences with 15 years of experience. Engineering post-graduates can also act as expert members.⁹²⁵ As is evident from the composition, qualification for appointment of judicial members and various other provisions of the tribunal, along with this, the NGT's intervention in environmental issues since its inception has received an overwhelming response from all over the country. But the tribunal is currently facing major administrative and financial challenges. A notable drawback is the limited

environmental expertise among its expert members. Typically, these members are specialized in specific areas rather than having a comprehensive understanding of the broader environmental context. For example, an expert focused solely on forestry might not grasp the complexities of industrial pollution issues. The NGT should develop clear guidelines for determining fines, damages, and compensations.⁹²⁶ While the NGT indicates that its rulings can be appealed to the Supreme Court, some petitioners have chosen to challenge decisions using Article 226, which grants High Courts the authority to issue certain writs. This approach has prolonged the legal process due to a legislative oversight that doesn't exclusively mandate appeals of NGT decisions to the Supreme Court.⁹²⁷

Conclusions

Environment protection in the present time has become a central theme for many activities in all sectors. The environmental jurisprudence in India and various legislations for the environment protection has evolved after Stockholm declaration, 1972. But, this does not imply that before this, period the environmental regulations and laws or awareness in our country was lacking.⁹²⁸ The unique approach of combining the interpretation and implementation of fundamental rights with Directive Principles of State Policy and Fundamental Duties to provide tangible relief is noteworthy. As globalization permeates various aspects of society, pressing challenges emerge. For instance, fields like biotechnology are advancing so swiftly that legal frameworks worldwide must rapidly evolve to address these transformations.⁹²⁹

The dynamism of the courts for addressing various environmental issues and interpreting the environmental legislations in India is a

⁹²¹ Anirban Dhulia and Rajiv Ganguly, Critical Assessment of Existing Environmental Legislation and Policies in India, Its Benefit, Limitation and Enforcement, 9 (2018).

⁹²² Ravinder Singh, Why National Green Tribunal is not as powerful as UK Environment Agency, DOWN TO EARTH (2021).

⁹²³ Supra, note 39 Section 4.

⁹²⁴ Id., Section 5.

⁹²⁵ Id., Section 5 (2) (a).

⁹²⁶ Supra note 47.

⁹²⁷ Ibid.

⁹²⁸ Krishna Kumar, Environmental law in India: An Overview Available at: <https://cms-55lawnow.com/en/ealerts/1999/11/environment-law-in-india-an-overview> (Last visited: 2th November, 2021).

⁹²⁹ Ibid.

welcome approach. Courts in India have not felt restricted by the procedural constraints set forth by the existing laws. The implementation of various legislations relating to the environment which directly or indirectly addresses the environmental problems has played a pivotal role in environmental governance throughout the country. The important concept for environment protection is that of sustainability. Stockholm Declaration, 1972 set up the legal foundation of modern environmental laws world over. The laws for environment in India are an instrument to protect and improve the environment and to control or prevent any act or omission polluting or likely to pollute the environment. However, the loopholes of these legislations which are also disused above in this research paper to some an extent resulted in slow implementation of these legislations. The significant environmental decline has sparked worldwide apprehension regarding the preservation and safeguarding of the planet's ecology. Consequently, initiatives are underway to promote environmental awareness among the general public. The existing principles, laws, case law, regulations, standards, resolution, already constitute a vast and complicated apparatus of paper and of powers conferred upon certain bodies or persons. When it is considered that the existing law is, however, also seemingly quite inadequate to the problem and that much more may be needed.⁹³⁰

Navigating Environmental Governance underscores the imperative for a harmonized, adaptive, and inclusive legal framework that fosters collaboration, transparency, and accountability. So, looking at the scenario of environmental management in India a holistic approach to environmental governance, where legal instruments synergize with scientific research, public participation, and socio-economic considerations to forge a path towards a more sustainable and resilient future

is of paramount importance.

⁹³⁰ Syed Ussain Saheb et. al., Environment and Their Legal Issues in India, INTERNATIONAL RESEARCH JOURNAL OF ENVIRONMENTAL SCIENCES 1 50(2012)