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## THE LEGAL FRAMEWORK FOR ENVIRONMENTAL PROTECTION AN INTERNATIONAL AND NATIONAL PERSPECTIVE

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### ***Abstract***

India is one of the most bio-diverse countries in the world, it has one of the richest flora and fauna in the world boasting of varied geographical areas which stretch from the highest mountain peaks in the North to the tropical forests in the central and the southern part of the country, from rare aquatic species to the Asiatic lions. Some of the most exotic and exclusive plant and animal species are found in India and it has been a matter of concern that this invaluable biodiversity may be severely stressed unless a proper mechanism is put into practice for their preservation. It accounts for 7-8% of all recorded species, including over 45,000 species of plants and 91,000 species of animals. The country's diverse physical features and climatic conditions have resulted in a variety of ecosystems such as forests, wetlands, grasslands, desert, coastal and marine ecosystems which harbour and sustain high biodiversity and contribute to human well-being. Out of the 34 globally identified biodiversity hotspots, four of them exist in India i.e., the Himalayas, the Western Ghats, the North-East, and the Nicobar Islands. In this article we are going to discuss the international treaties, conventions, principles etc., which have been broadly agreed to by the international community for combating environmental degradation, it also deals with the juridical basis and the legislative enactments of the municipal law of India related to environmental protection. An effort is made to briefly understand the major provisions related to environmental conservation in India and on an International sphere to understand the influence on Indian law.

**Keywords:** Environmental Protection, International legal Framework, Indian legal framework, Environmental Authorities, Environmental Protection Regulatory framework, etc.

### **1. Introduction**

Environmental protection has been a subject which has started to acquire the attention of the international community in the last few decades. It has been realized that the future of the mankind cannot be secured unless the environment is conserved by the present generation. That is why; this is a field which has witnessed a lot of cooperation between the nations of the world cutting across the economical, geographical, and ideological dividing which is a healthy sign. In this chapter the researcher will be taking a brief overview of

the various treaties and then the domestic legislative framework related to the environment.

### **2. International Environmental Laws**

The International instruments and agreements related to the Environment is an area which has witnessed unprecedented cooperation amongst the international community. This is perhaps an area which is a model for International cooperation where the countries have realized that the key to the future lies in the present. That is why starting with the *Stockholm*

*Declaration*, there have been regular developments in this field which have led to the enactments in the field of climate change, emission cuts, ozone depletion, water bodies etc. to just name a few. Thus, it would be a fruitful exercise if the major international instruments in this area are analysed.

## 2.1 The Stockholm Declaration, 1972

The *United Nations Conference on the Environment* in Stockholm was the first world conference to make the environment a major issue. The participants adopted a series of principles for sound management of the environment including the *Stockholm Declaration and Action Plan for the Human Environment* and several resolutions. There was effort made to understand the roadmap which is needed for the proper maintenance of the ecology. This was a momentous point in the history of environmental movement as the conference outlined combined efforts on the part of mankind to come together for the preservation of their future. The effort was unique because it brought together the North-South block for the proper dialogue and direction to be followed for keeping a balance between the economic growth and environmental conservation which is a common heritage of the mankind and is central to any framework for the proper implementation of the policy.

The *Stockholm Declaration*, which is considered as the *Magna Carta* of the environment had come as a ray of hope for the future of mankind as it contained 26 principles, which placed environmental issues as a priority issue which could no longer be considered as being less important than the other pressing concerns of the international community.<sup>749</sup>

The *Action Plan* of the *Stockholm Conference* contained three main categories:

(i) Global Environmental Assessment Program ;

- (ii) Environmental management activities;
- (iii) International measures to support assessment and management activities carried out at the national and international levels.

The basic principle of ecology is indivisibility due to this, the powerful and the poor nations can no longer afford to have an isolated outlook with regard to the environment. That is the reason why *Stockholm Conference* proved to be a landmark as the common heritage of the mankind was considered to be the responsibility of not only the rich countries but also the poor countries, not only belonging to the South but also to the North.

The politics of environment transcends the politics of isolation; multi-nationalism will take precedence over partisanship. It was with these noble goals that the *Stockholm Declaration* came into being.<sup>750</sup>

## 2.2 The Vienna Convention for the Protection of the Ozone Layer, 1985

The next major landmark in international environment conservation efforts was the *Vienna Convention* further protection of ozone layer. Due to the mad rush for industrialization, human race had perpetuated extreme harmful off atrocities on mother earth little did they realize that what goes around comes around. One of the casualties of the industrialization was the depletion of ozone layer, although ozone is not as crucial for the human habitation as oxygen. Nonetheless, it is a vital component of the ecology which helps protect the humans against the harmful effects of ultraviolet radiations. After the realization that ozone layer is depleting there was an attempt to further prevent the depletion of the ozone layer.<sup>751</sup> It was a result of these efforts that the *Vienna Convention* for the protection of the ozone layer was created. The framework of this agreement

<sup>749</sup> Wayland Kennet, "The Stockholm Conference on the Human Environment" 48(1) *International Affairs* 33(1972).

<sup>750</sup> Jonathan Rutherford, "The Vicissitudes of Energy and Climate Policy in Stockholm: Politics, Materiality and Transition" 51 *Journal of Urban Studies* 1449(2014).

<sup>751</sup> The Vienna Convention for the Protection of the Ozone Layer, 1985 available at : <https://ozone.unep.org/treaties/vienna-convention> (last visited on 17th January 2023).

lays out the principles agreed upon by the member countries. Despite these positive developments it did not mandated the signatories to take concrete actions to protect the ozone layer which was done later through the *Montreal Protocol*.

A unique feature of the *Vienna Convention* was that it was the first convention to be signed by every country which was involved in its drafting; it was even ratified by the signatories in 2009 which once again is a rare occurrence due to the domestic politics and policies of member countries. Presently, the *Vienna Convention* is still underprogress and is still marching ahead and the member states meet once in three years for making further progress on the convention.

### 2.3 The Montreal Protocol on Ozone Layer, 1987

The *Montreal Protocol* followed the *Vienna Convention* on the ozone depletion and makes further progress on the same subject. It is a landmark in the sense that it regulated the production and consumption of over 100 man-made chemicals Ozone Depleting Substance (ODS). The unique aspect of the *Montreal Protocol* is that it is the only *United Nations*, a treaty which has been ratified by each and every member of the United Nations. Cutting across ideological, religious, regional, and economical divide. The reason being that the ecological disasters do not distinguish between the countries on these grounds.<sup>752</sup>

The *Montreal Protocol* phases down the consumption and production of the different ODS in a step-wise manner, with different timetables for developed and developing countries. As per the terms of this agreement, each party is assigned particular duties concerning the phase-out of various ODS groups, trade control, data reporting on an annual basis, national licensing systems to

regulate ODS imports and exports, and other related issues. Equal but distinct responsibilities fall on both developed and developing nations, but most significantly, each group of nations has legally binding, time-bound, and quantifiable commitments. The Protocol includes provisions related to control, measures, calculation of control levels, and control of trade with non-parties, special situation of developing countries, reporting of data, non-compliance technical assistance, as well as other topics. The treaty has stood the test of time and has in fact strengthened by evolving over a period of time taking into consideration the developments in the scientific, economics and technical developments of the world which have the potential of making it more robust. Indeed, it is a model of international cooperation which has laid down a benchmark which if followed in other instruments will lead to hitherto unexplored international environment conservation programs.

### 2.4 The Brundtland Commission, 1987

Almost a decade after the *United Nations Conference on the Human Environment* (Stockholm Declaration), it was realized that a number of global environmental challenges had not been adequately addressed. With the passage of time also these challenges had grown and had become even more complex. One of the key issues which remained unresolved was the pressing problem of eradicating poverty from the earth which was mostly prevalent in the Southern block and needed industrialization which was the most pressing concerns for most poor countries. The Northern countries on the other hand were the main beneficiaries of industrialization and had reaped its benefits with the result that they were largely free from poverty and hence their priority was on controlling the pollution even though it may lead to a setback to industries. The *Brundtland Commission* thus was an effort to resolve these issues at core. It draws upon several notions in its definition of *sustainable development*, which is the most frequently cited

<sup>752</sup> The Montreal Protocol on Substances that Deplete the Ozone Layer, 1987 available at: <https://ozone.unep.org/treaties/montreal-protocol> (last visited on 1st Mar 2023).

definition of the concept to date.<sup>753</sup>

A key element in the definition of *sustainable development* is the unity of environment and development where they are considered as not being opposed to each other but act in harmony with each other. The *Brundtland Commission* is in a way the opposite of the *Stockholm Declaration* which cautioned the world against the ill effects of industrialization. The *Brundtland Commission* provides an alternate hypothesis and essentially calls for having a fresh look at development as not something which must come at a cost to the environment but a phenomenon which can be achieved without compromising on the environment. The *Brundtland Commission* pushed for the idea that while the “*environment*” was previously perceived as a sphere separate from human emotion or action, and while “*development*” was a term habitually used to describe political goals or economic advancement, it is more thorough to comprehend the two concepts in connection to one another.

Beyond that conventional school of thought, the *Brundtland Commission* maintains that the environment encompasses social and political conditions and atmospheres in addition to physicality. It also insists that development is not limited to the poor countries improving their condition, but what the whole world, including developed countries, can do to positively affect the common situation of environment. The term *sustainable development* was coined in the paper *Our Common Future*, released by the *Brundtland Commission*. *Development that satisfies current needs without jeopardizing the capacity of future generations to satisfy their own needs is known as sustainable development*. The two key concepts of *sustainable development* are:

(i) The idea of “needs,” specifically the basic necessities of the world's poorest people,

which ought to take precedence over all other considerations; and

(ii) The notion that the environment's capacity to satisfy both current and future needs is constrained by the state of social organization and technology.

Both these concepts have been instrumental in guiding the environment related measures throughout the world and have taken center stage whereas the concerns of the poor countries are addressed without rejecting the viewpoint of richer countries. Thus, it is a compromise between the nations which despite its limitations has been agreed in principle by various stakeholders.

## 2.5 The Rio Declaration on Environment and Development, 1992

The *Rio Declaration on Environment and Development* was approved by the United Nations during the *Conference on Environment and Development* held in *Rio de Janeiro* in June 1992.<sup>754</sup> It was the next landmark in the international cooperation between the International communities and was aimed at reaffirming the *Declaration of the United Nations Conference on the Human Environment*, adopted at *Stockholm* on June 1972.

The *Declaration* was a work in progress which has embraced a set of guidelines to direct the development going forward. It includes a list of 27 Principles that will direct the next steps of action on *environmental conservation*. These Principles outline each person's entitlement to development as well as their obligations to protect the environment.

These Principles outline people's rights to development and their obligations to protect the community. The rights of people to participate in the growth of their economies and the obligations of all people to protect the environment are outlined in the *Rio Declaration on Environment and Development*. The United

<sup>753</sup> The *Brundtland Commission Report*, available at: <https://www.tandfonline.com/action/showCitFormats?doi=10.1080%2F00139157.1987.992889> (last visited on 1<sup>st</sup> January 2023).

<sup>754</sup> *Rio Declaration 1992*, available at: <https://www.un.org/en/conferences/environment/rio1992> (last visited on 25<sup>th</sup> December 2022).

Nations Conference on the Human Environment initially established the fundamental concepts pertaining to national and individual attitudes toward development and the environment, which are expanded upon in the Declaration. (Stockholm Conference).

According to the Rio Declaration, long-term economic growth can only be guaranteed if it is connected to environmental preservation. In order to accomplish this, countries must form a new international alliance that includes their governments, citizens, and the most important societal segments. International agreements that safeguard the environment while promoting responsible development must be negotiated by all members of human society. The major Principles declared by the *Rio Declaration* are:

- (i) Everyone has the right to live a productive, healthy life in balance with the environment.
- (ii) The needs of the current and future generations must not be jeopardized by development as it occurs.
- (iii) Countries are free to use their resources, but only as long as they don't harm the environment outside of their borders.
- (iv) The development process must include environmental protection as a fundamental component.
- (v) If we are to achieve sustainable development while satisfying the needs of the majority of people, we must eradicate poverty and lessen the differences in living standards across the globe.
- (vi) It is best to involve all concerned citizens in handling environmental issues.
- (vii) The polluter pays principle states that the cost of pollution should, in theory, fall on the polluter.
- (viii) *A deeper scientific understanding of the issues is necessary for sustainable development. Sharing of technologies and knowledge among nations is necessary to*

*attain sustainability.*

## 2.6 The U.N. Convention on Biological Diversity, 1993

A global legal framework endorsed by 196 countries, the Convention on Biological Diversity (CBD) aims to "conserve biological diversity, the sustainable use of its components and the fair and equitable sharing of the benefits arising out of the utilization of genetic resources."<sup>755</sup> Its overall objective is to encourage actions, which will lead to a sustainable future.

The preservation of biodiversity is a shared human concern. All forms of biodiversity, including species, ecosystems, and genetic resources, are covered by the Convention on Biological Diversity. Biotechnology is also covered, including biosafety through the Cartagena Protocol. Indeed, it encompasses every conceivable field that is either directly or indirectly associated with biodiversity and its function in development, from science, politics, and education to business, agriculture, culture, and much more. The Conference of the Parties is the CBD's governing body (COP). Every two years, the ultimate authority of all ratifying governments (or Parties) convenes to assess progress, establish priorities, and make commitments to work plans.

## 2.7 The Agenda 21, 1992

*The United Nations' voluntary, non-binding Agenda 21 is an action plan pertaining to the sustainable development goals. It is an outcome of the Rio de Janeiro, Brazil-hosted Earth Summit, a UN Conference on Environment and Development. It is a plan of action that can be carried out locally, nationally, and internationally by the UN, other multilateral organizations, and individual governments worldwide. The "21" in Agenda 21 refers to the 21<sup>st</sup> century. It is a blueprint on how to make development socially, economically and environmentally sustainable.*

The United Nations oversees Agenda 21, a

<sup>755</sup> Agenda 21, 1992, available at: <https://www.cbd.int/> (last visited on 28<sup>th</sup> October 2022).

program pertaining to sustainable development. In every area where human activity directly impacts the environment, it provides a comprehensive action plan that should be implemented on a global, national, and local level by governments, major groups, and UN organizations. The adoption of Agenda 21 by participating nations is still optional. Divided into four main sections, Agenda 21 consists of forty chapters.

### Section I: Social and Economic Dimensions

*In addition to promoting health and sustainable settlement patterns, it also involves fighting poverty, altering consumption patterns, population and demographic dynamics, and incorporating the environment and development into decision-making processes.*

### Section II: Conservation and Management of Resources for Development

*Protection of the atmosphere, halting deforestation, safeguarding delicate ecosystems, preserving biological diversity, and pollution control are all included.*

### Section III: Strengthening the Role of Major Groups

*It covers the roles of women, girls, and boys as well as those of NGOs, local government, industry, and labor.*

### Section IV: Means of Implementation

*It covers science, technology transfer, education, financial mechanisms, international institutions, and mechanisms.*

## 2.8 The UN Framework Convention on Climate Change, 1992

The UNFCCC came into force in 1994. Its acceptability amongst the member nations of the UN can be gauged from the fact that it has near-universal membership. There are over 197 members to the convention which is a unusually high number of participants. The major aim of the UNFCCC is prevention of 'dangerous' human interference with the climate

system.<sup>756</sup>

The major achievements of UNFCCC were that firstly, it recognized that there was a problem with the environment. This was remarkable for its time. There was less scientific evidence when the UNFCCC came into force than there is now. A crucial clause from the Montreal Protocol was adopted by the UNFCCC, requiring member states to act in the public interest of human safety even in the face of scientific uncertainty. It also set a difficult to achieve but clear goal, which was to stabilize the greenhouse gases concentration in the environment with a definite roadmap towards that particular goal.

It states that 'Such a level ought to be reached in a time frame that permits ecosystems to adjust to climate change naturally, guarantees that food production is not jeopardized, and permits sustainable economic development.' Thus, it seeks to allay the fear of the poorer nations that the environment conservation is yet another step towards their subjugation by the richer countries. Remarkably, it puts the responsibility of controlling environmental pollution on the developed countries which have contributed the most to the production of the greenhouse gases thus naturally they should be the one who should be cutting down the most or even reversing the trend of producing greenhouse gases. The theory goes that industrialized nations should make the greatest domestic efforts to reduce greenhouse gas emissions since they are the primary source of both past and present emissions. They are members of the Organization for Economic Cooperation and Development (OECD) and are referred to as Annex I countries. Twelve Central and Eastern European nations with "economies in transition" are among them. By 2000, Annex I countries were supposed to bring their emissions down to 1990 levels. To that end, many of them have moved decisively, and some have already been successful.

<sup>756</sup> United Nations Framework Convention on Climate Change, 1982, available at: <https://unfccc.int/process-and-meetings/the-convention/what-is-the-united-nations-framework-convention-on-climate-change> (last visited on 30<sup>th</sup> October 2022).

It also makes it a responsibility of the developed countries to bear the cost of supporting financially their efforts which are a part of the action on climate change, this aid is in addition to any other financial help which they may have received already from the developed world. The developed countries are also mandated to share the technological innovations etc. with the developing countries for the common goal of reducing the greenhouse gases.

It also seeks to keep an eye on the developments in the field of environmental change by ensuring that industrialized countries report regularly on the climate change, present an annual inventory of greenhouse gas emission, developing countries are also required to submit reports but the responsibility for them is a bit lenient and is made conditional to them receiving the grants from the developed countries.

The UNFCCC mechanism's greatest accomplishment is its accurate recognition of the importance of economic development for the world's poorest nations. Even without the additional complexities brought on by climate change, such progress is challenging to achieve. The Convention recognizes that in the upcoming years, developing countries will account for a larger portion of greenhouse gas emissions. However, in order to achieve its ultimate objective, it aims to assist these nations in limiting emissions in a manner that won't impede their ability to develop economically.

The Convention recognizes that all nations are vulnerable to the effects of climate change and calls for extra efforts to mitigate the effects, particularly in developing nations that lack the resources to do so. Adaptation was given less attention than mitigation in the early years of the Convention because Parties desired greater clarity regarding the effects of and susceptibility to climate change.

## 2.9 The Kyoto Protocol, 1997

By requiring industrialized nations and economies in transition to strictly adhere to individual emission targets, the Kyoto Protocol operationalizes the United Nations Framework Convention on Climate Change. The Convention merely requires those nations to adopt mitigation policies and measures and to submit periodic reports.<sup>757</sup>

The Kyoto Protocol adheres to the Convention's annex-based structure and is founded on its provisions and guiding principles. Because it acknowledges that developed nations bear a significant portion of the blame for the current high levels of greenhouse gas emissions in the atmosphere, it only binds them and imposes a greater burden on them in accordance with the principle of "common but differentiated responsibility and respective capabilities."

The Kyoto Protocol establishes legally-binding emission reduction targets for the European Union, 37 industrialized nations, and economies in transition in its Annex B. Over the course of the five-year period from 2008 to 2012, these targets add up to an average reduction of 5% in emissions relative to 1990 levels.

Since India is still not a developed country, therefore the *Kyoto Protocol* does not place any immediate responsibility on it for the reduction of emissions, nonetheless there is an effort made by the stakeholders in India to reduce the emissions and show its maturity as a responsible member of the International community.

## 3. Indian Environmental Statute Law and Policy

As a responsible member of the International Community India, has a rich tradition of environmental conservation. Although, the Indian law was perhaps lagging behind, the international movement for environmental conservation was an inspiration which led to the development of the environmental legislation in

<sup>757</sup> Kyoto Protocol, 1997, targets for the first commitment period, available at : <https://unfccc.int/process-and-meetings/the-kyoto-protocol/what-is-the-kyoto-protocol/kyoto-protocol-targets-for-the-first-commitment-period>, (last visited on 14<sup>th</sup> February 2023).

India. The constitution was also amended to adopt the environmental principles in India.

### 3.1 The Constitution of India, 1950

The Constitution of India under part III guarantees fundamental rights which are essential for the development of every individual and to which a person is inherently entitled by virtue of being human alone. *The right to an environment is also a necessary condition for an individual's growth and the realization of their full potential. This part's articles 21, 14, and 19 have been applied to environmental protection.*

*"No person shall be deprived of his life or personal liberty except according to procedure established by law," states Article 21 of the constitution. The Supreme Court's ruling has occasionally led to a liberal interpretation of Article 21. Life is a fundamental right guaranteed by Article 21. It is inherent that there should be no risk of infection or disease in the environment. An essential component of the right to live in human dignity is the right to a healthy environment. The Dehradun Quarrying case marked the first acknowledgment of the right to live in a healthy environment as guaranteed by article 21 of the Indian Constitution.<sup>758</sup>*

The Indian Constitution's Directive Principles of State Policy are geared toward the creation of welfare states. Another component of the welfare state is a healthy environment. According to Article 47, "among its primary duties shall be the raising of the level of nutrition and the standard of living of its people and the improvement of public health." Every citizen of India is obligated to protect the environment, as stated in the Indian Constitution's chapter on fundamental duties. Article 51A (g) states that "every Indian citizen shall have a duty to have compassion for all living creatures and to protect and improve the natural environment, including forests, lakes, rivers, and wild life."

Thus, the Constitution in its original form did not contain any provisions for the protection of the Environment but over the course of its journey it has become one of the few constitutions of the world which provides for the environment.

### 3.2 The Water (Prevention & Control of Pollution) Act, 1974

The *Water Act* is enacted with the aim of prevention and control of Water Pollution in India. This Act aims at establishment of *Central and State Pollution Control Board* at the central level and also at state level for each state and giving powers to the members so as to enable them to carry out the purposes of the Act. The main features of the *Water Act* are:

- (i) It has defined terms like stream, pollution, trade effluent etc.
- (ii) It establishes the central and state boards for pollution control
- (iii) It confers powers on the pollution control boards to impose stringent penalties in case of water pollution.
- (iv) It prohibits the streams and wells to be used for disposal of pollutants.

### 3.3 The Air (Prevention & Control of Pollution) Act, 1981

The *Air Act*, 1981 is yet another legislation which has been drafted for controlling the environment. Similar to the *Water Act*, it has important definitions including that of "air pollution", "air pollutant", "approved fuel", "automobile" etc.<sup>759</sup>

It provides for the establishment of the *Central and State Pollution Control Boards* with term of reference and the qualifications for occupying the office. It empowers the boards for giving directions to prevent air pollution. Similar to the *Water Act*, the pollution control board under the *Act* have been empowered to impose penalties for air pollution. Interestingly, it empowers the State Government to supersede the State board

<sup>758</sup> *Rural Litigation and Entitlement Kendra v. State of Uttar Pradesh*, AIR 1985 SC 652.

<sup>759</sup> The Air Act, 1981 available at: <https://www.jspcb.nic.in/upload/uploadfiles/files/AirAct.pdf> (last visited on 14<sup>th</sup> Feb 2022).

in certain situations which makes the State Government all powerful in the matter related to air pollution.

### 3.4 The Indian Forest Act, 1927

The *Indian Forest Act* 1927, is a period of British rule that is based on earlier Indian Forest Acts. Although the British were a colonial power which were interested in the exploitation of the resources of their colony yet to its credit the Act seeks to restrict the exploitation of Forests in a manner which was ahead of its time considering the awareness level about the environment during that period. The preamble of the *Indian Forest Act* seeks:

- (i) To consolidate the law relating to forests,
- (ii) Controlling the flow of forest products, and
- (iii) To impose taxes on wood and other forest products.

It has recognized three categories of forests:

- (i) Reserve Forests
- (ii) Village Forests
- (iii) Protected Forest

It also includes the process used to designate a region as a village forest, protected area, or reserved area. The Act was primarily included to protect the various forest types, regulate forest products, and distinguish between them. The process by which a forest or waste land is designated as a reserved or protected forest affects the government's rights.

According to procedure, the Forest Settlement Officer must take into account the claims made by the locals regarding their use of the land and then decide, at his discretion, whether to accept, relocate, or stop the practice.

### 3.5 The Forest Conservation Act, 1980

The *Forest Conservation Act*, 1980 was a legislative enactment which was promulgated to check the indiscriminate de-forestation and prevent the protected forests from being turned

into normal forests with the collusion of the authorities.<sup>760</sup>

### 3.6 The Wildlife Protection Act, 1972

This Act provides for the protection of a listed species of animals, birds, and plants, and also for the establishment of a network of ecologically-important protected areas in the country. There are five types of protected areas as provided under the Act.

(i) **Sanctuaries:** A "sanctuary" is a safe haven where mistreated, injured, and abandoned wildlife is permitted to live unhindered in the wild without interference from humans.

(ii) **National Parks:** The government has designated certain areas as "National Parks" in order to preserve the natural environment.

(iii) **Conservation Reserves:** After consulting with the local communities, the State government may designate a region as a conservation reserve, especially if it is close to a park or sanctuary.

(iv) **Community Reserves:** Any private or community land may be designated as a community reserve by the state government following consultation with the local community or an individual who has volunteered to conserve the wildlife.

(v) **Tiger Reserves:** In India, these regions are set aside for the preservation and protection of tigers. They are announced based on the National Tiger Conservation Authority's recommendations.

Apart from this, an important aspect of the *Wildlife Act* is that it contains six schedules, while schedule I deals with the endangered species with stringent penalties for killing them and absolute ban on their killing by humans is prescribed. Apart from this, any trade related to these animals are prohibited. Schedule II deals with animals which are not as endangered as

<sup>760</sup> The Forest Conservation Act, 1980 available at: [https://www.prsindia.org/uploads/media/Compensatory%20Afforestation/bill1185\\_20080723185\\_For\\_est\\_Conservation\\_Act\\_1980.pdf](https://www.prsindia.org/uploads/media/Compensatory%20Afforestation/bill1185_20080723185_For_est_Conservation_Act_1980.pdf) (last visited on 11th March 2023).

those in schedule I, however there is a risk to their survival. Schedule III & IV deals with animals which are not endangered but their hunting is not freely allowed, consequently the penalty for hunting any of these animals is lesser. Schedule V deals with the animals which can be hunted, Schedule VI deals with the plants that are forbidden from being cultivated.

### 3.7 The Environmental Protection Act, 1986

The *Environment (Protection) Act* was enacted in the year 1986. Its primary goal upon enactment was to safeguard and enhance the environment, as well as address related issues. The Act, which is one of the most extensive pieces of legislation, is intended to safeguard and enhance the environment, which is in grave danger and needs to be improved. The *Environmental Protection Act, 1986* (EPA) was passed with the following objects:

(i) It was enacted to implement the decisions which were made at the *United Nation Conference on the Human Environment* held at Stockholm in June 1972.

(ii) Establishing authority for defense by the government.

(iii) As required by law, coordinating the operations of several regulatory bodies.

(iv) The primary duty is to pass general environmental protection legislation, which may be implemented in regions with serious environmental risks.

(v) Penalties that serve as a deterrent to those who incite the destruction of human health, safety, or the environment.

(vi) Sustainable development ought to be the primary objective of the environment and be considered one of the main aims of the *Environment Protection Act of 1986*.

(vii) Achieving the act's goals and objectives as well as protecting life in accordance with Article 21 of the Indian Constitution are all part of sustainable development.

Section 2 of the *Environmental Protection Act of 1986* (EPA) addresses certain definitional information. The following definitions are included in this section:

(i) The "Environment" Water, air, and land are all included in the term "environment," as is the relationship between them. Along with other living things like plants, microorganisms, and people, it also includes property.

(ii) Any material, whether solid, liquid, or gaseous, that is harmful to the health of living things is referred to as a "environmental pollutant."

(iii) 'Handling' means any substance which is in the relation of being manufactured, processed, collected, used, offered for sale or like of such substance.

(iv) 'Environmental Pollution' includes the presence of environmental pollutants in the environment.

(v) A "hazardous substance" is any material or preparation that has the potential to cause physical or chemical harm to people or other living things, including plants, microorganisms, and property.

(vi) "Occupier" refers to a person who has authority over the operations of a factory or other premises.

Based on the definitions provided above, it appears that the *Environmental Protection Act* addresses a broad range of environmental protection-related topics.

#### 3.7.1 The Environment (Protection) Rules, 1986

The rules of *Environment Protection* came into force on 19<sup>th</sup> November 1986 and these rules provide for the following:

(i) The standards of quality of air, soil and water for various areas and purposes of environment.

(ii) The benchmark established to determine the upper bounds of environmental contaminants.

(iii) Rules specify the process and safety

measures required when handling hazardous materials.

(iv) Limitations and outright bans on handling dangerous materials in various locations and buildings

(v) The protocols and safety measures needed to avoid mishaps that could contaminate the environment, as well as the solutions for such mishaps.

(vi) The ban and limitations on the placement of industries in various regions.

### 3.7.2 The Recycled Plastics Manufacture, Sale and Usage Rules, 1999

The *Recycled Plastic Manufacture, Sale and Usage Rules, 1999* were enacted under the *Environmental Protection Act, 1986* which prohibits the usage of carry bags or container made of recycled plastics.

As per these rules 'No vendor shall use carry bags or containers made of recycled plastics for storing, carrying, dispensing or packaging of food stuffs'. Also, as per these rules, the manufacture of carry bag or containers is allowed if they are made of virgin plastic'. The rules mandate that the recycling of plastics will have to be done strictly as per the *Bureau of Indian Standard Specifications 1998*. The *State Pollution Control Board* has the authority to take steps for the enforcement of the provisions of these rules. Thus, the role of the *Pollution Control Board* is central to the implementation of these rules.

### 3.7.3 Regulations regarding the Use of Fly Ash 1999

The thermal based power plants produce waste product in the form of fly ash. This fly ash is a major source of air pollution and is notorious for causing respiratory disease in the human population along with other harmful effects.

The *Ministry of Environment and Forests (MoEF)* has issued a notification regulating the use of fly ash, bottom ash or pond ash in the manufacturing of bricks and other construction activities. As per these regulations 'No person

shall within a radius of 50 kilometers from coal or lignite based thermal power plants manufacture clay bricks or tiles or blocks for use in construction activities without mixing at least 25 % of ash (fly, bottom or pond)'. In 2026, these rules were amended to extend the radius from 50 kilometers to 300 kilometers.

### 3.7.4 The Draft Environment (Sitting for Industrial Projects) Rules, 1999

The Government of India with the stated objective of protecting ecologically sensitive area like national parks, sanctuaries, wetlands etc had promulgated the *Draft Environment (Sitting for Industrial Projects) Rules 1999*.

As per these Rules, the establishment of certain industries like petroleum refineries, chemical fertilizer, Hydrocyanic Acid, distilleries and similar other industries are not allowed in the entire area within the municipal limits of all municipal corporations, municipal councils, nagar panchayats and a 25 kilometer buffer zone around the cities having population of more than 1 million. These industries are also prohibited to be established in the wetlands, national parks, sanctuaries and zones of biosphere reserves within a certain distance.

### 3.7.5 The Draft Coastal Regulation Zone Notification, 1999

The *Ministry of Environment and Forest* issued draft notification on 5<sup>th</sup> August 1999 for amending the *Coastal Regulation Zone (CRZ)* of 1991. The reason for the amendment is to remove the difficulties faced by the local population living in the coastal areas and satisfy the needs for infrastructure facilities in these areas. The important objective of this notification is to decrease the setback from tidal rivers, estuaries, creeks and backwaters from 100m to 50 m, to permit construction of dwelling units for local inhabitants in this area.

Another feature of this notification is that it abolishes the concept of traditional rights and customary uses in the coastal region by substituting the same with the term 'local inhabitants.' As per the notification a person or

his/her descendants who have inhabited the coastal area prior to the 1991 notification shall be considered as local inhabitants.

### 3.8 The Biological Diversity Act, 2002

Biodiversity is very crucial for the functioning of ecosystems that provide us with various products like oxygen, food, fresh water, fertile soil and fuel, besides ecological services such as moderating storms and mitigating climate change making. On June 5<sup>th</sup> 1992, India ratified the Convention on Biological Diversity in Rio de Janeiro, setting up a framework for the conservation and sustainable use of the natural resources in our nation. The Biological Diversity Act was passed by the Parliament in 2002 in accordance with the convention. Its goals are to preserve biodiversity, oversee its sustainable use, and allow local communities to share benefits fairly and equally that arise from the use of biological resources.

Even after the Act was passed nearly 20 years ago, the majority of state local governments still haven't completed People's Biodiversity Registers (PBRs), which are thought to be the fundamental documentation of a region's biological resources, including plants, animals, and indigenous knowledge.

### 4. Specialised Environmental Bodies

There was the persistent problem in environmental cases regarding the lack of expertise in these matters. The judges of the High Courts and Supreme Court are trained judicially. Their awareness and expertise on the environment related matters has always been weak. That is why, the courts themselves had in various judgments called on the lawmakers to establish specialised bodies to deal with the environmental matters expeditiously and efficiently without compromising on the quality of decisions. Thus, there have been some attempts at the creation of specialized environmental courts.

#### 4.1 The National Environment Tribunal Act, 1995

*The National Environment Tribunal Act*

was enacted by the parliament on 17<sup>th</sup> June 1995. India is experiencing a number of environmental problems as a result of its expanding population, which contributes significantly to both environmental accidents and pollution, the primary cause of which is environmental degradation. Participating in the 1992 United Nations Conference, India explored the establishment of a tribunal pertaining to environmental protection and compensation for people, property, and the environment. tribunal established by act to decide cases involving compensation and environmental issues.

The *National Environment Tribunal Act, 1995* consisted of 31 sections to fulfill the broad objectives laid under the act. The owner is required to pay compensation under section 3 in cases where an accident results in environmental damage and death or injury to others. This is because the act was enacted with the broad goal of compensating injured parties. A person may file an application with the Tribunal regarding a claim for compensation under the provisions outlined in section 4(1). The Tribunal will have the same jurisdiction and authority to handle applications for compensation under the Act's provisions as it does for matters covered by the Public Liability Insurance Act of 1991. Owners who cause environmental accidents are liable for compensating victims under the National Environment Tribunal Act of 1995 as well as for providing relief under the Public Liability Insurance Act of 1991, provided that the relief is supported by the compensation awarded.

In section 8, the Central Government established the National Environment Tribunal in order to exercise the authority and jurisdiction granted by the act's provisions. The Chairperson, Vice-Chairperson, and other members of the tribunal, as well as the benches designated by the Act, are necessary for the tribunal to carry out the functions outlined in the Act. The benches have the authority to exercise the authority, jurisdiction, and powers of the tribunal. As qualifications are important for any position, and since the matter before the

Tribunal involves sensitive environmental matters, those nominated as members should be more qualified for the designated role. An individual can only be appointed as a member if they meet the requirements outlined in Section 10 of the Act. For example, a person cannot be appointed as Chairperson unless they have served as a judge in either the Supreme Court or a High Court. Similarly, for Vice-Chairperson and Judicial Member, an individual must be a High Court Judge or a member of the Indian Legal Service as designated by the Act. Section 12 stipulates that members of the tribunal hold office for a term of five years. They are also permitted to resign from their esteemed positions by writing to the president, who has the power to remove any member from their position if he believes they are unfit for their position or have demonstrated inappropriate behavior. Any member may be removed from office by the President by issuing an order against them, provided that the Supreme Court Judge has conducted a thorough inquiry and investigation. The Central Government may establish rules and regulations pertaining to the procedure for conducting the inquiry and investigation required by Section 13(3).

Tribunals have the exclusive authority to handle matters pertaining to applications and claims for compensation made after the Act's implementation. According to section 23, the tribunal has the same authority as a civil court in cases relating to the act's provisions, and any decision made by the tribunal is enforceable similarly to a civil court decree. The Tribunal may collect the order amount from the owner as arrear of land revenue if the owner does not compile the order. A tribunal established under the act is empowered to punish those who violate the act's provisions as well as those who pose a risk to the environment. Anyone who disobeys the tribunal's order faces a three-year prison sentence, a fine of up to ten lakh rupees, or both. The NGT Act of 2010 repealed this law.

#### **4.2 The National Environment Appellate Authority Act, 1997**

This is another law which provided for the establishment of a specialized environmental Court which had been under consideration for long. Primarily, it was meant to hear and handle appeals regarding the limitation of areas where certain industries, activities, or processes, or a class of industries, activities, or processes, may not be conducted, or may be conducted subject to specific protections under the Environment (Protection) Act, 1986, as well as matters related or incidental thereto. Unfortunately, it proved to be a nonstarter and hardly had any decision of note to its credit; this tribunal was abolished after the passage of NGT Act in 2020.

#### **4.3 The National Green Tribunal Act, 2010**

On October 18, 2010, the Union Parliament passed the National Green Tribunal Act 2010, which established the NGT. The act's declared goal was to create a specialized forum for the efficient and prompt resolution of disputes involving the preservation of forests, protection of the environment, and the pursuit of damages to persons or property resulting from the breaking of environmental laws or permission-granting requirements. All civil cases pertaining to environmental matters and inquiries that are connected to the execution of legislation specified in Schedule I of the NGT Act may be heard by the NGT. Among them are the following:

- (i) The Water (Prevention and Control of Pollution) Act, 1974;
- (ii) The Water (Prevention and Control of Pollution) Act, 1977;
- (iii) The Forest (Conservation) Act, 1980;
- (iv) The Air (Prevention and Control of Pollution) Act, 1981;
- (v) The Environment (Protection) Act, 1986;
- (vi) The Public Liability Insurance Act, 1991;
- (vii) The Biological Diversity Act, 2002.

This implies that the NGT may hear challenges to any orders or decisions made by

the Government under these laws, as well as any violations that are specific to them. It's important to note that the NGT is not empowered to hear cases pertaining to the Indian Forest Act of 1927, the Wildlife (Protection) Act of 1972, or other state laws pertaining to forests, tree preservation, etc. As a result, the NGT cannot hear arguments regarding particular or significant issues pertaining to these laws. Anybody wishing to challenge a project must file an Original Suit before the appropriate Civil Judge of the taluk where the project is located, or they may approach the state High Court or the Supreme Court through a Writ Petition (PIL).

### 5. Conclusion

Although, there is no dearth of the legal framework relating to protection of the environment. These principles have not always been adequately incorporated in the domestic legal system for a variety of factors ranging from poverty, lack of technical expertise, low level of awareness etc. This does not mean that there is lack of laws related to environmental protection in India. On the contrary, there is a plethora of laws related to environmental conservation, the major one amongst them has been discussed above. Yet, despite the presence of these laws, the environmental degradation in India continues unabated and is unfortunately worsening with the passage of time due to which there are legitimate concerns over the future of the country. There is a considerable gap in the law with respect to the internationally recognized principles and the implementation of these laws at the planning and policy level leaves a lot to be desired.

As a result, it has often been felt that there is need for the better enforcement of the law which may deal with the environmental issues in a holistic manner and not in piecemeal form as is the case often. There have been instances where the law has been made due to the push given to the legislature by the judiciary, yet in a majority of the cases the judgments are not followed in letter and spirit. This has been one of

the major justifications for the judicial intervention in the environmental matters.