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Environment Laws in India: A Review

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ABSTRACT:

There are numerous laws in India that deal with environmental protection, however they have not been well implemented. The Constitutional mandate and other environmental regulations must be successfully and efficiently implemented. The judiciary has made a significant and admirable contribution. In accordance with the constitutional provisions found in Articles 48A and 51A(h) of the Indian Constitution, numerous Public Interest Litigations against various industries for failing to provide adequate pollution control, as well as against Pollution Control Boards to order them to take appropriate measures to ensure pollution control, have been filed in the Supreme Court of India. To care about regulating and protecting the environment is essentially to want to see national development move in the right direction.

Keywords: Environmental Protection, Sustainable Development, Public Interest Litigations, Judiciary.

Introduction:

Environmental law is an important part of any regulatory body. It includes a set of laws and regulations related to air quality, water quality and other aspects of the environment. Environmental law in India is guided by environmental legal principles and focuses on the management of specific natural resources such as forests, minerals or fisheries. Environmental law in India directly reflects what is envisioned in the constitution. The detailed and developed framework for environmental protection came after the United Nations Conference on the Human Environment in Stockholm in 1972. This led to the creation of the National Environmental Policy and Planning Council. in 1972 at the faculty of science and technology. This was created to establish a regulatory body to review environmental issues and concerns. According to the 2014 Environmental Performance Index (EPI), India ranks 155th out of 178 countries in terms of efforts to address environmental challenges, 118th, Brazil 77th, Russia 73rd and South Africa 72nd. India, ranked last on most policy issues in EPI 2014, with the exception of forests, fisheries and water resources, lags behind, especially in protecting human health from environmental damage. . In particular, India's air quality is among the worst in the world, on par with China in terms of the proportion of its population exposed to average levels of air pollution higher than those of the World Health Organization.

List of Environmental acts in India

Sr. No.	Name of the Environmental Act	Action
1	National Green Tribunal Act,2010	Environment protection and conservation of forest resources
2	Biological Diversity Act, 2002	To provide for conservation of biological diversity.
3	The Environment Protection Act,1986	Providing for protection and improvement of the environment.
4	Forest Conservation Act,1980	Check deforestation and encourage afforestation of non-forest areas.
5	Water Prevention and Control of Pollution act, 1974	Provides maintenance and restoration and quality of all types of surface and groundwater's.
6	Wildlife Protection Act, 1972	Providing protection to wild animals and birds.

Resource: https://www.brainkart.com/article/Environmental-Policies-in-India_35746/

1) The Wildlife (Protection) Act, 1972

The Act provides for the protection of wild animals, birds, and plants; and for matters connected therewith or ancillary or incidental thereto. It extends to the whole of India.

It has six schedules that give varying degrees of protection:

Schedule I and part II of Schedule provide absolute protection, offences under these are prescribed the highest penalties.

Species listed in **Schedule III and Schedule IV** are also protected, but the **penalties are much lower**. Animals under **Schedule V**, e.g. common crows, fruit bats, rats, and mice, are legally considered **vermin** and may be hunted freely. The specified **endemic plants in Schedule VI are prohibited from cultivation and planting**.

Statutory bodies under WPA: National Board for Wildlife and state wildlife advisory boards Central Zoo Authority.

Wildlife Crime Control Bureau

(2) The Air (prevention and control of pollution) act, 1981

The act targets to control and prevent air pollution in India and its main objectives are

To provide for prevention, control, and abatement of air pollution.

To provide for the establishment of the boards at the central and state levels to implement the act.

CPCB and SPCB were given the responsibility. It states that the sources of air pollution such as internal combustion engines, industry, vehicles, power plants, etc., are not permitted to release particulate matter, lead, carbon monoxide, sulphur dioxide, nitrogen oxide, volatile organic compounds (VOCs), or other toxic substances beyond the predetermined limit. It empowers the state government to designate air pollution areas. **(4) The Environment (Protection) Act, 1986** This act was passed under **article 253 (legislation for giving effect to international agreements)** This was passed in the wake of the **Bhopal gas tragedy** in December 1984. It was enacted to achieve the UN conference on the human environment, 1972- Stockholm declaration. Eco-sensitive zones or ecologically fragile areas are notified by MoEFCC under EPA, 1986 – 10 km buffer zones around protected areas. Statutory bodies under the EPA, 1986: **Genetic Engineering Appraisal Committee, National Coastal Zone Management Authority** (later converted to **National Ganga Council** under Ministry of Jal Sakthi)

The ozone-depleting substances (regulation and control) rules, 2000.

It set deadlines for phasing out of various **Ozone** Depleting Substances (ODSs) and regulating production, trade import, and export of the product containing ODS. These rules prohibit the use of CFCs, halons, ODSs such as carbon tetrachloride and methyl chloroform, and SFC except in metered-dose inhalers and for other medical purposes. **Coastal Regulation zone notification 2018**, It was notified based on the recommendations of the **Shailesh Nayak Committee**. To promote sustainable development while taking into account the natural hazards such as increasing sea levels due to global warming. To conserve and protect biodiversity besides livelihood security to local communities including the fishermen.

CRZs have been classified into 4 zones for regulation:

CRZ I– ecologically sensitive areas such as mangroves, coral reefs, salt marshes, turtle nesting ground, and the inter-tidal zone.

CRZ II– areas close to the shoreline, and which have been developed.

CRZ III- Coastal areas that are not substantially built up, including rural coastal areas.

CRZ IV- water area from Low Tide Line (LTL) to the limit of territorial waters of India.

(5) The energy conservation act, 2001

It was enacted as a step towards improving energy efficiency and reducing wastage. It specifies the energy consumption standards for equipment and appliances. It prescribes energy consumption norms and standards for consumers. It prescribes energy conservation building codes for commercial buildings. **Bureau of energy efficiency (BEE)** is a statutory body established under the act.

(6) Biological diversity act 2002

It was implemented to give effect to **CBD, Nagoya Protocol**.

To check bio piracy, protect biological diversity, and local growers through a three-tier structure of central and state boards and local committees.

To set up National Biodiversity Authority (NBA), State Biodiversity Boards (SBBS), and Biodiversity Management Committees (BMCS).

7) Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (FRA)

The act recognizes and vests the forest rights and occupation in forest land in **Forest Dwelling Scheduled Tribes (FDST)** and Other **Traditional Forest Dwellers (OTFD)** who have been residing in such forests for generations. This act comes under the aegis of the Ministry of Tribal Affairs. The act also establishes the responsibilities and authority for sustainable use, conservation of biodiversity, and maintenance of the ecological balance of FDST and OTFD. It strengthens the conservation regime of the forests while ensuring the livelihood and food security of the FDST and OTFD. It seeks to rectify colonial injustice to the FDST and OTFD who are integral to the very survival and sustainability of the forest ecosystem.

The act identifies four types of rights:

1. Title rights It gives FDST and OTFD the right to ownership of land farmed by tribal or forest dwellers subject to a maximum of 4 hectares. Ownership is only for land that is being cultivated by the concerned family and no new lands will be granted.

2. Use rights the rights of the dwellers extend to extracting Minor Forest Produce, grazing areas, pastoralist routes, etc.

3. Relief and development rights to rehabilitation in case of illegal eviction or forced displacement and basic amenities, subject to restrictions for forest protection.

4. Forest management rights It includes the right to protect, regenerate or conserve or manage any community forest resource which they have been traditionally protecting and conserving for sustainable use.

(5) The National Green Tribunal Act, 2010

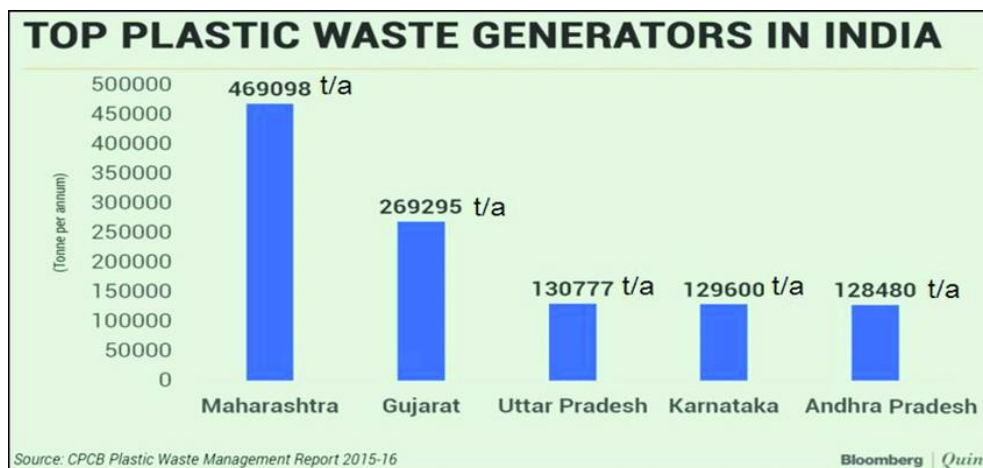
It was established in concurrence to **Rio Summit 1992** to provide judicial and administrative remedies for the victims of the pollutants and other environmental damage. It also agrees with **article 21, the Right to a healthy environment to its citizens of the constitution**. The NGT has to dispose of the cases presented to it within 6 months of their appeals. NGT has original jurisdiction on matters related to substantial questions of the environment.

NGT deals with the civil cases under the 7 acts related to the environment:

1. Water (Prevention And Control Of Pollution) Act, 1974
2. Water (Prevention And Control Of Pollution) Cess Act, 1974
3. Air (Prevention And Control Of Pollution) Act, 1977
4. Forest Conservation Act, 1980
5. Environmental Protection Act, 1986
6. Public Liability Insurance Act 1991
7. Biological Diversity Act, 2002

2 acts have been kept out of the jurisdiction of NGT: Wildlife Protection Act, 1972 Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (FRA).

The decisions of the NGT can be challenged in High Courts and the Supreme Court. **(9) Compensatory Afforestation Fund Act, 2016** The CAF Act was enacted to manage the funds collected for compensatory afforestation which till then was managed by **ad hoc Compensatory Afforestation Fund Management and Planning Authority (CAMPA)**. **Compensatory afforestation** means that every time forest land is diverted for non-forest purposes such as mining or industry, the user agency pays for planting forests over an equal area of non-forest land, or when such land is not available, twice the area of degraded forest land. As per the rules, **90% of the CAF money is to be given to the states while 10% is to be retained by the Centre**. The funds can be used for the treatment of catchment areas, assisted natural generation, forest management, wildlife protection and management, relocation of villages from protected areas.



(Source CPCB Plastic Waste Management Report)

Principles of Environmental Law

Precautionary principle:

The precautionary approach enables decision-makers to adopt precautionary measures when scientific evidence about an environmental or human health hazard is uncertain and the stakes are high. It first emerged during the 1970s and has since been enshrined in a number of international treaties on the environment.

Prevention principle:

This principle allows action to be taken to protect the environment at an early stage. It's not only about repairing damages after they have occurred, but to prevent those damages occurring at all. It means it is better to prevent than repair.

Polluter's pay principle:

Since the early 1970s the "polluter pays" principle has been a dominant concept in environmental law. It simply means that those who produce pollution should bear the costs of managing it to prevent damage to human health or the environment.

Objectives of study

- 1 To find out loopholes of Environment laws in India
- 2 To find out positive impact of Environment laws in India

Methodology This paper has adopted a secondary research methodology like literature reviews, which include textbook reviews, Wikipedia, and journal articles reviews and Newspapers Articles.

Problems of Implementation of Environment Laws in India:**Issues in environmental law enforcement in India:****Lack of strict enforcement:**

Although India has comprehensive environmental laws and regulations, their enforcement is often lax. This leads to unchecked violations and undermines the effectiveness of these laws.

Insufficient resources:

Environmental regulatory agencies and agencies often face a shortage of resources, both in terms of personnel and funding. This hinders the ability to effectively monitor and regulate environmental compliance.

Complicated and overlapping rules:

The legal landscape can be complex and sometimes there is overlap between different laws and regulations. This can confuse industries and law enforcement agencies, and can also create loopholes for non-compliance.

Delays in proceedings: Legal proceedings regarding environmental violations can be time consuming and lengthy in the Indian court system. This delay can result in unfair timing and impede effective enforcement.

Lack of audience participation:

Meaningful public participation is often lacking in the development and implementation of environmental policies and projects. This can lead to projects being approved without adequate consideration of local environmental and social concerns.

Weaknesses of the EIA process:

The EIA process is designed to assess the potential environmental impacts of projects, but there have been cases of inadequate assessment and even manipulation of the process.

Corruption:

Corruption in regulatory bodies can lead to improper approvals, lax enforcement and abuse of resources devoted to environmental protection.

Inadequate sanctions:

The penalties for environmental violations are not always severe enough to effectively deter non-compliance. This could cause industries to pay more fines instead of investing in sustainable practices.

Lack of data and monitoring:

Accurate and up-to-date data on environmental indicators is essential for effective decision making. However, there may be gaps in the data collection and monitoring systems.

Inconsistent implementation:

Environmental regulations may be implemented inconsistently in different states and regions due to different capacities and priorities of state governments.

Poor sense of community:

Many people may not be fully aware of their rights and responsibilities in environmental protection. This lack of awareness can hinder active public participation.

Pressure from urbanization and industrialization:

Rapid urbanization and industrial growth can put tremendous pressure on the environment. Harmonizing economic development with environmental protection is a constant challenge.

Environment laws in India have had several positive impacts on the country's environmental protection and sustainable development efforts. Some of the key positive impacts include:

- 1. Biodiversity Conservation:** India's environment laws have contributed to the conservation of its rich biodiversity. Laws like the Wildlife Protection Act and the Forest Conservation Act have helped in the preservation of endangered species and their habitats.
- 2. Air and Water Quality Improvement:** The Air (Prevention and Control of Pollution) Act and the Water (Prevention and Control of Pollution) Act have led to improved air and water quality in many areas. These laws have established regulatory bodies that monitor and control pollution sources, leading to a reduction in harmful emissions and pollutants in the environment.
- 3. Waste Management:** The implementation of laws like the Solid Waste Management Rules and the Hazardous Waste Management Rules has promoted better waste management practices across the country. This has helped in reducing the adverse impacts of improper waste disposal on human health and the environment.
- 4. Renewable Energy Promotion:** India has enacted policies and regulations to promote renewable energy sources such as solar, wind, and hydroelectric power. These initiatives have led to increased investment in renewable energy projects, contributing to reduced greenhouse gas emissions and a more sustainable energy mix.
- 5. Conservation of Natural Resources:** Laws such as the Forest (Conservation) Act have played a significant role in conserving India's natural resources by regulating the diversion of forest land for non-forest purposes and promoting afforestation.
- 6. Protection of Coastal Areas:** The Coastal Regulation Zone (CRZ) notification aims to protect the fragile coastal ecosystem from unregulated development. It helps in maintaining the ecological balance of coastal areas and preventing the degradation of coastal resources.
- 7. Public Awareness and Participation:** Environment laws in India often emphasize public participation in environmental decision-making processes. This has led to increased awareness and engagement of local communities in environmental issues, fostering a sense of ownership and responsibility.
- 8. Legal Framework for Environmental Justice:** Environmental laws provide a legal framework for addressing environmental injustices and holding polluters accountable. This empowers affected communities to seek remedies for environmental harm through legal channels.
- 9. International Commitments:** India's environment laws have helped the country meet its international commitments related to environmental protection and sustainable development. These laws support India's efforts to achieve the Sustainable Development Goals (SDGs) and fulfil its obligations under international environmental agreements.
- 10. Green Technologies and Innovation:** The legal framework for environmental protection has encouraged the development and adoption of green technologies and innovations. This has created new business opportunities and industries focused on sustainability. Overall, India's environment laws have played a crucial role in mitigating environmental degradation, promoting sustainable development, and safeguarding the well-being of both present and future generations.

Conclusion

India has established a comprehensive regulatory framework to address environmental challenges and promote sustainable development. The country's environmental laws reflect its commitment to protecting diverse ecosystems, conserving natural resources, and ensuring a healthier and cleaner environment for its people. These laws cover many different aspects of environmental protection, including air and water quality, forest and wildlife conservation, waste management, and biodiversity conservation. While India's environmental law provides a solid foundation, its successful implementation requires the active involvement of government agencies, industries, communities and individuals. Effective enforcement, awareness campaigns and stakeholder collaboration are essential to achieving the intended goals of these laws. Furthermore, continual updating and adjustment of the regulatory framework is needed to address emerging environmental challenges in a rapidly changing world. The environmental protection law has not yielded the expected results. Therefore, in order to effectively and efficiently enforce these laws, it is necessary to establish environmental courts; with a judge and two technical experts in the field of environmental and ecological sciences. These courts should be allowed to use reduced procedures to resolve the case quickly. First, we can have such courts at the state and national level, then we can expand to the county level on a need-to-know basis. To prevent lengthy litigation, provisions should be limited to a single appeal.

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