



Review

Indian environmental Policies and their effectiveness

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Abstract: India has a comprehensive set of environmental policies, pertaining to air, water, wildlife, biodiversity and environmental protection. The need for safeguarding the environment is also emphasised in the Indian Constitution. The Central Pollution Control Board (CPCB) and the State Pollution Control Boards (SPCB) are responsible for control of air and water pollution. The Indian Judiciary has also played a pivotal part in upholding the need for environmental protection. This review article aims to shed light on the effectiveness of environmental laws in India. This article was written after reviewing research articles on environmental laws and environmental protection in India, websites and textbooks on environmental laws in India. After thorough analysis of the aforementioned sources, it was found that the enforcement of the environmental laws in India is unsatisfactory and there is an apathetic attitude towards environmental issues, both on the part of the general public, as well as the authorities. The authors recommend more powers should be given to the concerned authorities for stricter enforcement of legislations and public awareness and vigilance should be instituted to address the environmental issues from the grassroot level.

Keywords: environment, legislations, protection, pollution, biodiversity, sustainable

development, judiciary

Introduction:

Today, the conservation, protection and improvement of human environment are major issues all over the world. Human environment consists of both physical environment and biological environment (Agarwal, 2005). Environmental laws are an important part of any governance body. It comprises a set of laws and regulations concerning air quality, water quality, and other aspects of the environment (Mukul, 2021). The environmental laws in India focus on the management of specific natural resources, such as water, air, forests, minerals, wildlife and to maintain biological diversity. The need for protection and conservation of the environment and sustainable use of natural resources is reflected in the constitutional framework of India and also in the international commitments of India (Singh & Agarwal, 2015). Both physical and biological environment are inter-dependent. Industrialisation, urbanisation, explosion of population, disruption of natural ecological balance, over-exploitation of natural resources are the major factors which have contributed to environmental deterioration (Sugathan, 2020).

Environment protection is mentioned in the Indian Constitution both as Directive

Principle of State Policy and in the Fundamental duties: The State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country (Directive Principles of State Policy (Part IV) Article 48A) and To protect and improve the natural environment including forests, lakes, rivers, and wildlife, and to have compassion for living creatures(Fundamental duties (Part IV A) Article 51A). The phrase “protect and improve” appearing in both Articles 48A and 51A seem to call for an affirmative government action to improve the quality of the environment and not just to preserve the environment in its polluted form (Saini, 2022).

There are numerous environmental legislations in India. Important amongst them are the Water (Prevention and Control of Pollution) Act, 1974; the Water (Prevention and Control of Pollution) Cess Act, 1977; the Air (Prevention and Control of Pollution) Act, 1981; the Environment (Protection) Act, 1986; the Public Liability Insurance Act, 1991; the National Green Tribunal Act, 2010; The Wildlife (Protection) Act, 1972; and the Biological Diversity Act, 2002 (Agarwal, 2005). The Air (Prevention and control of Pollution) Act, 1981 targets to control and prevent air pollution in India and its main objectives are to provide for prevention, control, and abatement of air pollution and to provide for the establishment of the boards at the central and state levels to implement the Act. This act provides that no person shall without the prior consent of the State Board establish or operate any industrial plant in an air pollution control area(Saini, 2022). The objective of the Water (Prevention and Control of Pollution) Act, 1974 is to provide prevention and control of water pollution and to maintain or restore the wholesomeness and purity of water in the various sources of water (Govindaswamy, 2012). No person, without the previous consent of the Boards shall bring into use new or altered outlet for the discharge of sewage or trade effluent into a stream or well or sewer or land. The Water(Prevention and Control of Pollution)

Cess Act, 1977 aims to provide levy and collection of a cess on water consumed by persons carrying certain industries, factories and local authorities to boost the resources of the Central Boards and State Boards constituted for the prevention and control of water pollution. The object is to realise money from those whose actions lead to pollution and who must bear expenses of maintaining and running of such boards (Chandra, 2015).

The Central Pollution Control Board (CPCB) and the State Pollution Control Board (SPCB) are given the responsibility to lay down the rules for the enactment of the Air Act and Water Act (Prasad, 2006). An important function of CPCB is to establish standards for the ambient air quality through National Air Quality Monitoring Programme (NAMP). Under NAMP, four air pollutants ie Sulphur Dioxide(SO₂), oxides of Nitrogen, Suspended Particulate Matter (SPM) and Respirable Suspended Particulate Matter (RSPM) have been identified for monitoring at all locations (cpcb.nic.in, 2023). It advises the central government on any matter concerning prevention and control of air and water pollution, co-ordinates the activities of the state boards, provides technical assistance and guidance, prepares manuals and guidelines relating to treatment and disposal of sewage and trade effluents etc. CPCB in collaboration with the concerned SPCBs/PCCs established a nationwide network of water quality monitoring, which is done on quarterly basis in surface waters and on half-yearly basis in case of groundwater (cpcb.nic.in, 2023,). The responsibilities of SPCB include to prepare a comprehensive program to prevent, control and reduce air and water pollution in the state, to motivate, direct and participate in investigations and research on air and water pollution problems, to inspect and treat sewage and trade effluents and provide for setting up of primary and secondary water treatment plants wherever necessary (uppcb.com, 2023). The Environment (Protection) Act was passed under article 253 (legislation for giving effect to international agreements). This was passed in the wake of

the Bhopal gas tragedy (December 1984), and to implement the decisions made at the UN conference on human environment held at Stockholm. It empowers the Central government to establish authorities charged with the mandate of preventing environmental pollution in all its forms, to regulate industrial locations, prescribe procedure for managing hazardous substances, establish safeguards for preventing accidents, emission or discharge of environmental pollutants and to tackle environmental problems specific to different parts of the country. It is also called “the Umbrella Act” as it established the framework for coordination between the central and state authorities (Prasad, 2006). Any infringements of the provisions of this act, rules, orders or directions made thereunder is punishable with imprisonment for a term which may extend to five years or with fine upto one lakh rupees or both.

The National Green Tribunal Act, 2010, 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 enables the creation of a special tribunal to handle the expeditious disposal of the cases pertaining to environmental issues (Gill, 2014). 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.

The Wildlife (Protection) Act, 1972, provides for the protection of wild animals, birds, and plants. It extends to the whole of India. Its provisions paved the way for the formation of Central zoo authority. Stringent punishments, including fines and imprisonment are laid out for violators.

The main objective of the Public Liability Insurance Act, 1991, is to provide for damages to victims of an accident which occurs as a result of handling any hazardous substance (Sancheti, 2020). The Act applies to all owners associated with the production or handling of any hazardous chemical. This Act came into being in the aftermath of The Bhopal Gas Tragedy. The PLI Act is

administered by the Ministry of Environment Forest and Climate Change. The compensation paid under the mandatory insurance policy in the case of death and permanent total disability is Rs 25,000 per person (Rajamani, 2007). The amount paid towards medical expenses is Rs 12,500 per person and a maximum of Rs 6,000 for property damage (indiacode.nic.in, 2022). The Biological Diversity Act 2002 was implemented to give effect to CBD (Nagoya Protocol). Its aim is to check biopiracy, protect biological diversity, and local growers through a three-tier structure of central and state boards and local committees. Statutory bodies under this Act are National Biodiversity Authority (NBA), State Biodiversity Boards (SBBS), and Biodiversity Management Committees (BMCS) (nbaindia.org, 2008)

Another important relevant Act is the Plastic Waste (Management and handling) Rules, 2011. The plastic waste management Amendment rules in the country prohibit the manufacture, import, stocking, distribution, sale and use of plastic carry bags having thickness less than 75 microns wef Sept 30 2021, and having thickness less than 120 microns wef Dec 31 2022. India has set a global example in the fight against plastic pollution by banning the manufacture, import, stocking, distribution, sale and use of identified single use plastic items all across the country from July 1 2022 (livemint.com, 15 July 2022). India's extensive environmental laws, however, seem to have very little effect in reducing the harmful effects of pollution, MSW and greenhouse gases emissions. Researchers have concluded that there are many reasons for this including:

1. Government of India is reluctant to enforce its own laws on air and water pollution lest it stops developmental projects that help create jobs and improve the economy (Mejia, 2009).
2. Enforcement of current laws is patchy and uneven, and effective control has been inconsistent, especially among smaller companies.
3. Small businesses are more likely to have outdated processes and curtailing emissions is

more costly in comparison with fine tuning the newer technologies employed by global players. Stringent enforcement of environmental regulations might put these companies out of business creating mass unemployment (Chandra, 2015).

4. There is also a reluctance by the government to come down too hard on small and medium sized enterprises that has lifted so many Indians out of poverty.

In the sphere of environmental justice administration, the Supreme Court of India has stood tallest not only before the legislature and executive but also before its counterparts in developed and developing countries, whether old or young (Rustomjee, 2008). The Supreme court of India has adopted the sustainable development principles (Saheb et al, 2012). Sustainable development is a development that meets the needs of the present without compromising the ability of future generations to meet their own needs. The judiciary's commitment to social good, in general, and environment protection, in particular, has resulted in the innovative use of "public interest litigation" under Articles 32 and 226 of the Indian Constitution as a tool for social and environmental justice (Rajamani, 2007). The following principles of sustainable development are upheld by the Supreme Court:

1. Inter-generational equity- "Right development must be accomplished so that equality meets developmental and environmental demands to current generation." In the case of *Bombay Dyeing & Mfg. Co. Ltd. vs. Bombay Environmental Action Group*, the Supreme Court of India supported this approach (Dari & Sharma, 2014)

2. The Precautionary Principle- "In order to conserve the environment, the precautionary approach shall be extensively adopted by states according to their capacities."

3. The Polluter pays Principle- The polluter should, in principle, bear the cost of pollution, with due regard for the public interest and without distorting international trade and investment (Gill, 2014)

Justification: Our environment needs protection and conservation and for the same different kinds of laws are in place, but they are not being enforced effectively. Also, there is no single specific body for the enforcement of environmental laws. As is evident, havoc of the natural environment causes many problems such as land, water and air pollution, global warming and ecological imbalance, which in turn affect the health of humans and other living beings. Keeping in view the same, the researchers have reviewed the topic from articles published in journals as well as textbooks.

Objective: This review article aims to shed light on the effectiveness of environmental laws in India.

Materials and Methods:

This article was written after collecting required data from secondary sources such as websites- cpcb.nic.in(2023), uppcb.com(2023), livemint.com(2022), nbaindia.org(2008) and indiacode.nic.in(2022), referred journals from Pubmed and Google scholar, in addition to books on environmental law and protection - *Environmental Law and Policy in India*, third edition (Diwan and Rosencranz, 2022) and *Environmental Law*, seventh edition (Shastri, 2022). The research articles reviewed here include- "Environmental laws in India: Challenges for enforcement" (Agarwal, 2005); "Environment protection: role of regulatory system in India" (Prasad, 2006); "India's pollution nightmare: can it be tackled?" (Agoramoorthy, 2012); "Effectiveness of environmental law in India: an Analytical Study" (Singh, 2018), "Environmental Concerns in India: Problems and Solutions" (Chandra, 2015), "Global Environmental Law and India" (Rustomjee, 2009)

Result:

The enforcement of the environmental laws in India is unsatisfactory and there is an apathetic attitude towards environmental issues, both on the part of the general public, as well as the authorities. The environment and development are two sides of the same

coin, and none can be sacrificed for the sake of the other. Divan and Rosencranz(2022), authors of Environmental Law and Policy in India: Cases and materials are of the view that Environmental law and policy in India affects all sections of society. Those most deeply affected by it are the poor. They are the first victims of poor sanitation, polluted air and contaminated water. Since the 1970s, efforts to protect environmental quality have met with limited success, posing enduring challenges for policy designers and decision makers entrusted with protecting and preserving natural resources. India has a comprehensive set of environmental legislations, however there exists a certain 'implementation crisis' surrounding them (Singh & Agarwal, 2018). It is high time that the general public, public entities, state and central governments realise the damage, which our development process has made to the living environment.

For the success of environmental legislations, it is essential to create a sense of civic consciousness and public hygiene in the use of municipal services like roads, public places, drainage etc. The creative role of the judiciary has been significant and laudable. The right to a healthy environment has been incorporated directly and indirectly into Indian top court judgements, with the first link between environmental quality and the right to life being established in the case of Charan Lal Sahu etc. vs. Union of India and Others, also known as the Bhopal Case.

The Supreme Court introduced the new concept of "absolute liability" for disasters arising from the storage or use of hazardous materials from their factories in M.C.Mehta vs Union of India & others, also known as the Oleum Gas Leak case (Dari & Sharma, 2014) The Supreme Court of India held in Vellore Citizen Welfare Forum vs Union of India, while businesses are important for a country's development, the doctrine of sustainable development must be adopted by them as a balancing concept, and the 'precautionary principle' and 'polluter pays principle' must also be accepted as part of the law. In Karnataka Industrial Development Board

(2006) 6 SCC 321, the Supreme Court maintained that "Coordinated efforts of all concerned would be required to solve the problem of ecological crisis and pollution and unless we adopt an approach of sustainable use, the problem of environmental degradation cannot be solved" (Rustomjee, 2009). In M. C. Mehta v Union of India, AIR 1997 SC 734, the court observed that the Taj Mahal, apart from being a cultural heritage, is an industry by itself. Various orders were passed by the Court. The court created a Taj trapezium in the shape of a trapezium which consisted of 10,400 sq kms to regulate activities in relation to air pollution. Industries were asked to shift to eco-friendly fuel and tanneries operating from Agra were asked to shift from the trapezium. Dr Pawan Kumar Saini(2022) in his paper titled "Law of environment in India: Problems and challenges in its enforcement", states that we have more than 200 Central and State legislations and laws which deal with environment issues and problems and more laws mean more difficulties in enforcement, hence there is a need to have a complete and integrated law on environmental protection for meaningful enforcement. The powers vested to the pollution control boards are not enough to prevent pollution. The researchers agree with Agarwal(2005) that the Boards do not have the power to punish the violators but can launch prosecution against them in the courts which ultimately defeat the purpose of the environmental laws due to long delays in deciding the cases. S.C.Shastri, in his book "Environmental Law" (7th edition, 2022) emphasises on the principles of sustainable development for environmental protection. Strict enforcement of the concerned laws is also needed so that prompt action can handle the situation before it reaches extreme lengths and endangers the public and environment. In this situation, it is upto the regulatory authorities and the judiciary to handle these matters with extreme caution, only then will we be able to fulfill our goal of ensuring a pollution-free developed country for our next generation (Saheb et al, 2012). Also, Chandra(2015), in his paper titled

“Environmental concerns in India: Problems and solutions”, suggests that India should adopt a new approach in the fight against environmental pollution. This initiative should involve the shared and cooperative participation of the people, the government, the industrial sector and NGOs.

As Paul Bigelow Sears said, “How far must suffering and misery go before we see that even in the day of vast cities and powerful machines, the good earth is our mother and that if we destroy her, we destroy ourselves”(Sannaya, 2018).

Conclusion:

After thorough analysis of the aforementioned sources, it was found that though there are enough environmental laws in place, but the enforcement of these laws was not upto the mark. The government and other agencies are failing to effect the implementation of these laws in a stringent manner. There is an apathetic attitude towards environmental issues and a lack of civic consciousness. The authors conclude that affirmative government action is required to improve the quality of the environment and not just to preserve the environment in its polluted form.

Recommendations:

A thorough analysis of the above sources leads us to the following suggestions:

1. It is not enough to enact the legislations. A positive attitude on the part of everyone in society is essential for effective and efficient enforcement of these legislations.
2. The authors agree with Agarwal(2005), that the powers vested to the pollution control boards are not enough to combat pollution and it is imperatively necessary to give them more powers.
3. The traditional concept that development and ecology are opposed to each other is no longer acceptable since ‘sustainable development’ is the answer.
4. The tapping of natural resources must be done with requisite attention and care so that the ecology and the environment are not affected in any serious way.
5. The Public Liability Insurance Act, 1991, is

a welcome step in the right direction. Such an insurance, apart from safeguarding the interests of victims of the accidents will also provide cover and enable the enterprise to meet its liability.

6. As cited by Singh & Agarwal(2018), the authors are also of the view that what we need is not laws from above, but social awareness from below. No law works out smoothly unless the interaction is voluntary.

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