

PROBLEMS AND CHALLENGES IN THE ENFORCEMENT OF THE LAW RELATING TO THE ENVIRONMENT IN INDIA

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ABSTRACT

Although India lacks competent environmental protection legislation, the fact that environmental protection laws are implemented is not even regarded as sufficient. If India wants to meet its constitutional obligations and other environmental legislation, it must do it effectively and efficiently. The National Green Tribunal [NGT] and Indian courts have made significant contributions to innovation and creativity over this period, and this merits commendation. Since certain businesses and pollution control boards have failed to take the essential procedures to ensure effective pollution control under the Indian Constitution's Articles 48-A and 51-A [h], India's Supreme Court has ordered them to do so. Each state in India should have an adjudicatory body of legal and technology experts to guarantee that these laws are implemented successfully and structured. It is possible to view a concern for environmental control and protection as a desire to ensure national growth is conducted under rational and sustainable norms. It is the duty of the government and every individual, organization, community, industry, and corporation in India to ensure that the delicate ecological balance is not disrupted. The Indian Constitution affirms a fundamental and social obligation to serve one's country in Article 51-A [g].

KEYWORDS: *Obligations, Efficiently, NGT, Adjudicatory, Sustainable.*

Introduction

At the moment, the most pressing issues facing India and the rest of the world are those relating to environmental conservation, preservation, and improvement. The biological, ecological, or physical environment may be included under the umbrella term "environment. Physical environment problems include considerations for plants, animals, and other species on the one hand. On the other hand, the physical environment comprises land, water, and air concerns. The two realms of biology and physics are inseparably linked and interdependent. Environmental degradation in India may be traced back to problems such as overexploitation of natural resources, disrupted ecological imbalances, and numerous animal and plant species being destroyed for commercial reasons. Industrialization, population growth, and urbanization are all major contributing causes. Thus, one might conclude that one nation's environmental negligence contributes to the degradation of the ecosystem shared by all other countries. India is not an exception to the global pollution problem in the environment. Attempts have been made to describe the most crucial and relevant aspects of Indian environmental legislation in this short essay. In addition, the rules' implementation has been thoroughly examined and meticulously assessed. The author has made a few recommendations and suggestions in this section.

Objectives of the Study

- To emphasize that the state and its people are responsible for ensuring sustainable economic, social, and environmental development.
- To determine whether economic and industrial development can be sustained only by ensuring social and environmental protection.

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- To determine how the government of India's environmental protection measures should be designed and implemented.
- To emphasize allowing a higher quality of life, including recreational opportunities and a natural environment that can support human settlements.

Methodology

The information in this article was gathered from secondary sources. Several national and international periodicals are evaluated to obtain information, and the same has been recorded. We've gone to great lengths to make this content unique. It's a kind of qualitative research. Because we chose to examine the most recent breakthroughs and research on this issue, we used a variety of sources to compile the information for this post.

Constitutional and Legislative Functions Required

The Stockholm Declaration of 1972 was a significant step forward in protecting and maintaining the human environment. Each state was forced to provide its assent for an environmental protection and improvement measure discussed following this Declaration. In 1976, the Indian Parliament agreed to add two additional articles to the Indian Constitution as a direct consequence of this. The two most recent articles are 48A and 51A. According to the Constitution, Article 48-A mandates that the state make every effort to maintain and develop the environment and protect the nation's forests and wildlife (AMBROSE, 2017).

Similarly, Article 51–A Clause [g] puts an obligation on all citizens of India to have compassion for living beings and maintain and develop India's natural environment. Natural resources must be protected and enhanced as part of citizens' responsibility. Both the "state" and the "citizen" seem to have a constitutional commitment to protect, experience, and improve environmental conditions in India as a result of Articles 48–A and 51–A [g]. Every generation owes it to future generations to make the greatest possible use of India's natural and cultural resources in the most environmentally friendly way possible. The government seems to be actively attempting to enhance the overall quality of the environment, rather than merely protecting it in its current polluted state, by using "protects and improves" in Article 48–A and Article 51–A [g] (Saini, 2022).

Other legislation deals with the subject and the constitutional obligation to conserve and develop the environment. Forest Conservation Act of 1980, Water Prevention and Control of Pollution Act of 1974, Wildlife Protection Act of 1972, Environment [Protection] Act of 1986, Air Prevention and Control of Pollution Act of 1981 (Saini, 2022), and National Environment Tribunal are the most applicable laws for our needs. The Water [Prevention and Control of Pollution] Act of 1974 stipulates that polluted water bodies must be restored or conserved. This legislation forbids the entry of any dangerous substance into any water source, stream, or well, whether for people, animals, or the environment. A Central Pollution Control Board and a State Pollution Control Board are established by this act. Before dumping industrial waste or sewage into water sources (K. Kumar, 2017), newly established businesses must get environmental permission. Before anybody can utilize new or amended outlets for sewage and trade waste discharge into streams, wells, sewers, or land, the board must approve them. This is a requirement of the programme. The board must also allow the discharge of sewage or waste materials from businesses into a stream, well, sewer, or land (Saini, 2022).

The owners of different tanneries around Kanpur were dumping waste materials from their businesses into the Ganga River without first installing primary treatment facilities in the event of contamination of the Ganga River. It was decided by the Supreme Court of India that the financial capacity of the tannery companies should be ignored even if they are required to pay for first aid services. The court ordered that the tanneries be shut down and that no waste from the tanneries is released into the Ganga River directly or indirectly. Due to the court's order, all trade waste must be permanently treated in primary treatment facilities certified by the State Pollution Control Board. According to the Water [Prevention and Control of Pollution] Act of 1977 (Saini, 2022), certain companies, factories, and local governments must pay a water consumption tax to complement the Central Board's and State Board's funds for water pollution control. The Water [Prevention and Control of Pollution] Act was used as a guide for the new law. The idea is to make money from polluting people who have to foot the bill for these boards' upkeep and operation. Think about installing an affluent, trade waste, or sewage treatment facility by a corporation. A refund of up to 25% of the facility's cost may be available in this situation (Patel, 2022).

The Air [Prevention and Regulation of Pollution] Act of 1981 was enacted to prevent (Dave & Saga, 2018), regulate, and reduce the amount of pollution in the environment. Industries, factories, automobiles, houses with fireplaces, transit, and other activities are the leading sources of air pollution. When breathing dirty air, both the heart and lungs may suffer. Asthma and mental tension are exacerbated by air pollution, but hemoglobin in the blood is also affected, increasing crime. If the material in the atmosphere creates a risk to humans (Ahmad & Ismail, 2019), other living beings, plants, or the environment, it is prohibited to classify it as air pollution. According to the Act, no one may build or operate an industrial facility in an air pollution control zone without receiving consent from the State Board. Both new and existing plants are covered by this law. Following the Water Act, the Air Act would give the Central Pollution Control Board, and State Pollution Control Boards increased power and responsibilities. According to the Air Act, the boards' primary and most significant responsibility is to improve air quality throughout the country while limiting, avoiding, and regulating pollution. The board's approval might be conditional on adding different control and monitoring systems and increasing stack height. It is made clear that individuals who control factories and other industrial activities are not authorized to tolerate the emission of air pollutants exceeding the threshold defined by the board (Sharma, 2022).

New Delhi's Supreme Court has mandated the usage of compressed natural gas (CNG) for all kinds of public transportation, including taxis and buses. The proprietors of taxi and bus companies were the most vocal opponents. However, they have decided that CNG is more cost-effective and environmentally friendly than gasoline (*Healthy Environment*, 2020). As a result of the directions of the National Green Tribunal, the most recent government in Delhi mandated the installation of "odd and even formula" for Delhi's public transportation systems. Using this strategy, one of the days assigned for the vehicle has an odd number, while the following day scheduled for the vehicle has an even number. Because of this, the Air Act considers noise to be a pollutant that degrades the quality of the air. Noise is a term used to describe sounds that exceed a specific decibel level or create pain or annoyance (Qamar, 2018). Several factors contribute to noise pollution, such as the use of loudspeakers at weddings, religious gatherings, and other religious venues and the usage of industrial machinery and vehicles. When crackers are used during events such as celebrations, a team winning a game, and similar scenarios, noise, and air pollution are generated (Francesco Sindico, 2021). The Clean Air Act is responsible for preventing and controlling certain pollutants. Lawmakers enacted the Environmental Protection Act of 1986 to safeguard and improve the quality of our surroundings while also reducing pollution. The Bhopal Gas Disaster acted as an urgent impetus for enacting this legislation. People, other animals, plants, and microorganisms are included in the concept of "environment," which consists of the interrelationships between those three components and between those elements and other living things. The ecosystem consists of all living species, including plants and microorganisms, and their interactions with water, air, and land (Saini, 2022). This is due in part to the well-defined surroundings.

This law has given India's Central Government a significant degree of jurisdiction to take action on the formulation and implementation of statewide environmental pollution prevention, control, and reduction programme. Furthermore, it provides government agencies with many responsibilities, including establishing regulations regarding industrial locations and hazardous substances, establishing safeguards to prevent pollution incidents, and obtaining and disseminating information on environmental pollution (Chungyalpa, 2022). A fine of up to one lakh rupees or imprisonment for up to five years may be imposed for any breach of this act or any rules, orders, or directives made thereunder (P. Kumar et al., 2015). This is a comprehensive piece of law aimed at establishing a framework for the government of the United States. Coordinates the activities of several federal and state agencies, including those established by the Water Act and the Air Act. An amendment was made to the National Environment Tribunal Act, which was approved in 1995, to add a clause that mandated that any workplace accident resulting from the handling of dangerous chemicals be compensated for. The National Environment Tribunal was formed by this act to quickly, effectively, and efficiently address cases arising from events of this nature (Pathak, 1994).

Consequently, if an accident causes a person's death or injury and property or environmental damage, the company's owner is legally liable to pay damages or compensation. However, the catastrophe occurred when the victim was working with dangerous materials. A claimant who desires to seek compensation from the National Environment Tribunal may contact the tribunal.

Act of 1997 created a national environmental appeals authority to hear challenges about restrictions on regions where companies, factories, activities, or processes are not allowed to be carried out or are subject to specific safeguards under the Environment [Protection] Act of 1986 (Saini, 2022). An environmental Appellate Authority was also established to hear complaints on the limit of areas where any industries, factories, activities, or procedures shall occur. If this power is created, no civil court or other entity will have jurisdiction to consider an appeal on environmental issues. Consequently, this statute grants the authority in question. It was evident that the goal of this act was to speed up the settlement of environmental issues and difficulties in India (Saini, 2022). The Wildlife [Protection] Act was adopted in 1972 to protect wild birds, plants, and animals from extinction. This legislation makes hunting any animals or birds listed in its schedules unlawful. Specifically named plants to grow in any forest are likewise prohibited by this rule from being damaged, uprooted, plucked, or destroyed in any other way. These rules are being enforced by an animal preservation director backed by assistant directors and an animal protection chief, assisted by other wildlife wardens and their employees. Animals and distinctive flora are protected and conserved in different zones designated as sanctuaries, national parks, and other similar designations by an advisory council that advises the state government ("Handbook of Environmental Materials Management," 2019).

Forest degradation was the subject of a 1986 statute known as the Forest [Conservation] Act. Since this legislation prohibits destroying forests or using forest land for non-forest uses, the Central Government must obtain its prior approval before taking any such action (Comptroller and Audit General of India, 2010). Trees that currently exist must be protected and replanted to preserve forests. As a result, efforts to reforest must continue at a steady pace. It is a continual and interconnected process. This bill has a good reason for being passed. It must be strictly enforced for the general public's well-being in India.

The Union Government, States, the Central Pollution Control Board, and State Pollution Control Boards jointly oversee India's Water Act and Air Act. These boards have the authority to impose whatever order they see fit, including turning off or suspending water, power, or any other energy supply to the polluting facility. These bodies also can make any further recommendations that are required. Keep in mind that the federal government has similar authority under the Environment [Protection] Act. India's national government approved the Environment [Protection] Rules in 1986. These guidelines govern the emission and discharge of pollutants into the environment in India's leading industries. Cement, caustic soda, electroplating, sugar production, man-made fibers, oil refineries, cotton textiles, thermal power plants, stone crusher units, composite woolen mills, and other enterprises are among the leading industries in this field (Saini, 2022). Various organizations, including the Bureau of Indian Standards and several state pollution control agencies, have developed the standards. There are a variety of pollution-control solutions available for the same businesses. Even though the Environment (Protection) Act of 1986 gave the federal government authority to establish air, water, and soil quality standards, residents from all socioeconomic backgrounds were meant to be treated equally (Yadav, 2016). As stated in each of the distinct Pollution Control Acts, several provisions have not yet been codified despite their inclusion in the statutes. This development will harm the enforcement of laws in India. In light of this, it should come as no surprise that India does not lack environmental legislation (Verma Ashish, 2021). Enforcing these limitations and guidelines, on the other hand, has fallen short of expectations. Implementing India's environmental legislation and constitutional obligations must be rigorous, timely, and effective.

Engagement of the Judiciary

According to India's fundamental law, every Indian citizen and individual has the right to a clean environment as part of their basic rights. Indian Article 21 provides the right to life and the right to free speech. Having access to a clean, healthy, and unpolluted environment has been declared a fundamental right by the Supreme Court. Several Supreme Court environmental law rulings state that people have the right to live in a clean and healthy environment, which includes access to safe drinking water and pollution-free air. The case of Sri Ram Food and Fertilizer is significant from this perspective. In Bhopal, India, a substantial quantity of oil and gas spilled, harming many workers and members of the general public. The Supreme Court of the United States ruled that if a firm is involved in a hazardous or intrinsically risky activity, it must be held liable (Ramlogan, 2011). The discharge of a deadly gas as a consequence of engaging in this problematic and inherently dangerous activity might hurt someone by mistake. Such an event necessitates the company's complete responsibility for compensating people

harmed by the disaster. This was the Supreme Court's ruling. For this type of obligation, there is no such thing as an exception. This kind of duty is often referred to as the "totality of responsibility." There is a connection between this inquiry and the Agra Taj Mahal. According to the Supreme Court's directions and recommendations, Taj Trapezium (TTZ) enterprises and industries damaging the Taj Mahal had to either switch to natural gas or be replaced or relocated outside of Taj Trapezium. The Supreme Court was instructed to protect the Forest Department's vegetation surrounding the Taj Mahal (Saini, 2022). Agra, the Divisional Forest Officer (DFO), jumps to ensure that the plants receive enough water. According to the report's copy, orders have been granted to the Union Government to promptly pay the money without further delay and without waiting for the proposal from the Uttar Pradesh Government (Saini, 2022).

After that, the Uttar Pradesh government may handle the finance issue. The officer, however, has been directed to guarantee that plants do not die in the event of a shortage of money. It is now against the law to light up a cigarette in India. The United States Supreme Court banned smoking tobacco in public places in 2001 because it is unhealthy for both smokers and non-smokers who are forced to inhale secondhand smoke (Saini, 2022). This ban extends to the whole country. Tobacco products including cigarettes, bidis, and cigars claim the lives of more than three million Indians each year. One lakh people in India are diagnosed with lung cancer each year due to smoking. Lung cancer is the most common cancer-related cause of death, accounting for 95% of all cases (Boyd, 2012).

Consequently, society and culture stand to gain significantly from the Supreme Court's ruling. However, no one cares about this rule. There is no doubt that tobacco products like cigarettes and other smokes are readily available in public areas where smoking is prohibited, such as railway stations, bus stops, and movie theatres (Mani, 1997). Smoking is damaging to our health, and this is a massive step in the right direction toward increased public understanding.

When dynamite was used to erode slopes in the Mussoorie Mountain range of the Himalayas and hundreds of acres of limestone quarries were present, the hydrological system in the Dehradun Valley was disrupted. When the highest court in the nation issued an order to prohibit limestone mining in the hills, it noted that "it is a value that needs to be rewarded for maintaining and defending people's right to live with a minimum disruption of the natural balance." The Supreme Court has stressed protecting the general population's health. By shutting down this bone factory, the Supreme Court was making it more difficult for individuals to live their lives and adding to environmental degradation (Feris, 2020), all of which had to be addressed in the case of Subba Rao and the State of Himachal Pradesh. According to a court judgment, public health cannot be sacrificed to make a profit. To protect and preserve the local environment and keep pollution levels in check, the Supreme Court ordered a stop to all mining activities within a two-kilometer radius of Badkhal and Surajkund. These two resorts are well-liked by vacationers from all around the world. Slum-dwellers are forced to relax in the streets because of the egregious failure of local authorities to provide basic amenities like public conveniences (Saini, 2022).

The Supreme Court decided in the case of Municipal Council v. Ratlam v. Vardhichand. According to the Supreme Court, humility becomes a luxury when faced with nature's weight, and dignity is a formidable skill to achieve. This sentence makes mention of dignity. It is unacceptable for a municipal council responsible for public health to use financial ineptitude as an excuse to shirk its duties. The Supreme Court of India agreed with Wadehra's views in Almitra H. Patel v. Union of India. As the Supreme Court of India emphasized in its judgment, this historic and well-known metropolis is also one of its most polluted capitals (Saini, 2022). The authorities and the government are in charge of pollution control and environmental protection. They cannot provide a naturally clean and healthy environment for Delhi's residents. People cannot breathe because of the excessive pollution level in the surrounding air. The number of people who suffer from respiratory and throat illnesses is rising. Drinking water is sourced from this river, also used as a free dump for untreated sewage and other industrial waste. Additionally, the city is almost a rubbish dump. The sight of garbage littering the streets of Delhi is not out of the ordinary (K. Kumar, 2017).

According to a judgment by the country's top court, the authorized authorities must take the required actions to limit pollution and safeguard the environment. The growth that serves the demands of the present generation without jeopardizing future generations' capacity or ability to comprehend their own wants or aspirations is referred to as sustainability. This is what "sustainable development" implies. In its decision in the Vellore Citizens Welfare Forum v. Union of India case, India's top court went into "sustainable development." India's legal system currently incorporates this idea. Sustainable growth

relies on environmental protection and holding polluters accountable for their actions. Under the "precautionary principle," the state government must identify factors contributing to environmental degradation and design ways to reduce or remove such problems. As the country's top court said, "Now we have no trouble in considering that to save the two lakes, namely Badhkal and Surajkund, from environmental degradation, it has become vital to entirely halt the development activities around the lakes." (*Indian Institute of Ecology and Environment (IIEE)*, n.d.)

The "polluter pay principle" holds that corporations or organizations that generate pollution should be held financially liable for the damage they cause and any required remedy. The idea that polluters should pay for their actions is broadly accepted. According to the Supreme Court judgment, this means compensating people damaged by pollution and correcting environmental damage ("Handbook of Environmental Materials Management," 2019). If there is 100% accountability for any damages, the cost will likewise rise. One of the components of sustainable development is environmental cleanup.

Consequently, the polluter is accountable for the expenses of separating victims and correcting the damage done to the environment. The Supreme Court of India has played a crucial role in protecting and improving India's environmental situation, as the first study of these cases shows. Many of the court's jurisdictions have been expanded due to public interest litigation. A judge's ability to think outside the box and be creative is essential and deserves recognition.

Regulations and their Enforcers

Cases involving environmental pollution, ecological deterioration, and disagreements over natural resources have increased steadily. An Environmental Court is needed in most of these cases, and the participation of genuine scientific knowledge is essential in determining court rulings. The technical and scientific expertise necessary in these situations is relatively high. Experimentation has shown that ordinary criminal court prosecutions for violations of environmental protection laws such as the Water, Air, and Environmental [Protection] Acts are never adequate (Dave & Saga, 2018). This might be due to the overwhelming number of cases these courts handle the number of cases these courts handle, or it could be because the people in charge of handling these cases do not understand the importance of environmental concerns. Businesses have the right to dispute any order made by the authorities under the Water Act, the Air Act, or the Environment [Protection] Act. Using these methods might take a long time to get a result. Temporary orders are routinely issued during the procedure, preventing officials from guaranteeing that their requests are carried out as initially planned. There are too many delays in environmental legislation's implementation because of the National Green Tribunal, so extra unique machinery like this is needed (*Healthy Environment*, 2020).

It is also possible that the judicial authorities alone will not appreciate the situation's logical and technological components. Consequently, it is recommended that Environment Courts be established, including a judge and an expert from various areas, such as ecology and environmental law. One way to arrange it is to divide it into two levels: a state and a national level. This might be extended to the district level at some point in the future. Environmental courts, for example, may have the authority to determine criminal prosecution cases based on environmental laws and civil conditions to compensate victims of environmental damage or pollution. The courts should be able to hold fast-track sessions to get things done as soon as possible (AMBROSE, 2017). The National Environment Court may hear appeals against decisions issued by state environmental courts. The Supreme Court may also hear an appeal against a National Environment Court decision.

Conclusion

At the federal and state levels, we've passed more than 200 pieces of legislation addressing environmental issues. It is more difficult to enforce laws when there are more of them. Comprehensive and fully integrated legislation is essential to the enforcement of environmental protection regulations in India. As it is today, this is insufficient to pass the law. If these regulations are to be applied in a realistic, timely, and successful way, all members of society must have a good attitude toward them. The objectives of the Environmental Protection Laws have not been realized.

As a result, the establishment of Environment Courts comprised of a judge and two technical professionals with credentials in Environmental Science and Ecology is critical. These rules will be implemented more effectively and efficiently if this is done. These courts should be allowed to decide their cases as fast as feasible by using summary procedures. Although the courts may begin at the national and state levels, they may be able to expand their power to the district level in the future if

required. The maximum number of appeals allowed under any provision should be one to avoid prolonged legal battles. When it comes to enforcing environmental legislation, only deception and technical errors should be overlooked by courts. The court system's power has been expanded as a consequence of PIL. The Apex Court has been crucial in directing the administrative authorities regularly to improve the condition of the surrounding environment. Instead of top-down legislation, we want a cultural awakening from the ground up. Without voluntary participation, no standard can be adhered to. The public should be educated about environmental issues by seeing a slideshow on television and in movie theatres in many regional languages.

As a result, the Supreme Court has mandated that environmental studies be included in all education grades, from elementary school to college. Consciousness needs to rise to a higher level. Finally, the government and every individual, group, and organization are expected to take on conserving the environment and sustaining ecological balance without disrupting it. As stated in Article 51–A (g) of the Indian Constitution, this duty is not simply a moral one but also a social one.

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