

# Enforcement Challenges and Legal Implications of Environmental Regulations

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**Abstract - India is now struggling with a number of severe environmental concerns that put the country's development as well as its future possibilities in jeopardy. The natural environment of India has been severely damaged as a result of unchecked human activity, and the resulting ecological problems are stifling the country's capacity for social progress. The study demonstrates how a backdrop of extreme poverty, decreasing land area, increasing air pollution, decreasing water resources, the extinction of native species of flora and fauna, and the disappearance of native species of flora and fauna all work against the good development of Indians and the nation as a whole. It places a primary emphasis on preserving the natural equilibrium that exists between human existence and the surrounding environment as its primary goal. This is an absolute requirement for the growth of all life, including human life. The primary contribution that this article will make is to offer assistance to the government agencies that are responsible for fostering environmental awareness among Indian residents.**

**Keywords - Enforcement, Challenges, Environmental, Regulations, Legal, Implications**

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## INTRODUCTION

Humanity's culture changed as civilization advanced, becoming one that put more value on material items. His main objective had been to amass ever-increasing money for himself during his whole life. This led to the development of new technologies and scientific advancements, both of which paved the way for the commercialization of natural resources. The rapid and unchecked growth of industry has led to the development of potentially hazardous environmental conditions. As a direct result of both the Second World War and the ensuing industrial catastrophe, there was a significant increase in the number of poisons discharged into the global environment. People began to see that the very survival of man would be in peril if this attitude continued. The fundamental cause of this ecological catastrophe, according to the pertinent studies, is the concept and value that individuals should develop ties with their environments and lives. India is now coping with a variety of severe environmental issues that jeopardise the nation's development and future prospects<sup>3</sup>. India's ecosystem is in a state of disorder as a result of unrestrained human activity, and this ecological situation is impeding social progress in the nation. According to the research, a backdrop of extreme poverty hinders the positive advancement of Indians and the country as a whole. A decrease in the amount of land, a rise in air pollution, a depletion of water resources, a loss of native species of flora and fauna, and other causes are also highlighted in the research.

The Indian government has established a legal and institutional framework for the environment in order to handle these issues within the wider context of India's development plan and the laws and norms that govern international relations. The constitution of India makes it clearly clear that it is the state's duty to "protect and improve the environment as well as to safeguard the forests and wildlife of the country." It makes the protection and development of the natural environment, which includes the forests, lakes, rivers, and wildlife that inhabit them, everyone's duty. The Fundamental Environment Rights also refer to the environment in addition to the Fundamental Rights and Directive Principles of State Policy.

## Principles of Jurisprudence Regarding Environmental Protection

It is well recognised that maintaining the natural environment successfully is crucial to the successful completion of any real estate development. They are both two sides of the same coin, but they see it from different angles. The relationship between laws governing resource preservation and land use has received a lot of attention in recent years. This issue was raised since it has recently received a lot of attention. More international treaties are presently being created in order to achieve plans for environmental protection on a global and regional scale and to advance towards reaching sustainable development goals. There are reasons to believe

that governments and other players within them will try to live up to their international obligations as a direct result of the World Summit on Property Development. Several variables contribute to the maintenance of these assumptions. In fact, environmental protection measures and sustainable development goals are starting to be formally accepted by international courts and tribunals, and the principles that support these organisations are increasingly being cited in cases before national courts and tribunals around the world. Additionally, environmental protection measures and sustainable development goals are starting to be formally accepted by international courts and tribunals.

Particularly "soft-regulation instruments" like declarations and global statements have shown to be quite effective in the process of creating certain standards, which are now beginning to show their persuasive power. This is because people believe these "instruments" to be "softer" than laws. These standards can help resolve disputes pertaining to sustainable development and make it easier to fairly integrate laws and regulations where international environmental, social, and financial regulation intersect. In other words, they have the potential to contribute to improving the world. The 2002 New Delhi Declaration on the Principles of International Law Related to Environmental Safety and Sustainable Improvement was published by the International Law Association Committee on the Legal Aspects of Sustainable Development in 2002 after ten years of observation and discussion. This declaration is made accessible to the public by the International Law Association Committee on Legal Aspects of Sustainable Development.

### 1. Fundamental Rights and Preamble :

A genuine objective is articulated in the Preamble of the Indian Constitution, which is followed by a guarantee of the Right to Equality in the language of Article 14. The text of Article 14 will be discussed when it has been completed. It is possible to incorporate a provision in Article 19 that defines freedom of speech, and this is something that may be done with recordings. As a direct consequence of this fact, the Constitution of India includes provisions that ensure the preservation of an individual's right to life and liberty. The concept of "Life" encompasses a great deal of diverse aspects, some of which include safety and privacy, a place to reside, a healthy atmosphere, and access to food and drink, for the purpose of maintaining both one's body and one's soul at the same time. These aspects are discussed in the Preamble, the Chapter on Fundamental Rights, the Chapter on Fundamental Duties, and the Directive Principles of State Policy, respectively. Article 21 of the Constitution contains a clause quite similar to this one. knowledge that the phrase "Life" refers to more than just animal life and that it encompasses the right to a dignified existence is essential to having a complete comprehension of Article 21. This knowledge is necessary because the term "Life" refers to more than just animal life. It includes everything that endows

a man's life with significance, wholeness, and the impression that it was one that was genuinely deserving of being lived. When discussing the breadth and depth of individual basic rights, the fundamental problem that lies at the heart of this predicament may be brought up once more as a potential point of contention in the course of the conversation. At this juncture, it is crucial to emphasise that safeguarding the environment and people's health are two of the four cornerstones of Article 21, as well as the fact that it is imperative that these areas be safeguarded. In accordance with Article 32 of the Constitution of India, certain rights have the potential to be enforced.

In the years that immediately followed India's independence, environmental protection was not the government's primary concern. This was largely attributable to the fact that the country was focused on fostering economic development and was experiencing significant political upheaval at the time. After the nation attained its independence, the primary focus shifted to the development of new commercial centres and manufacturing sectors in order to increase the number of available jobs for the local inhabitants. However, as a result of the Bhopal Gas tragedy, environmental protection has become a primary concern. Both the breadth of the nation's environmental legislation and the severity of legal action have increased as a direct result of this event.

### The doctrine of public trust

In addition to incorporating the idea of public trust into its corpus of jurisprudence, the legal system in India is primarily predicated on the common law as its primary theoretical base. Even though the state is responsible for the preservation of natural resources, such resources must be made available to the general public in order for anybody to make use of them and they cannot be privatised under any circumstances. The laws of the state oblige the state to protect the natural resources that fall within its jurisdiction. *M.C. Mehta v. Kamal Nath* was the first case in India to apply this legal theory to an environmental problem. The case was heard by the Supreme Court of India, which is the highest court in the country. According to the Supreme Court, the concept of public trust is predicated primarily on the assumption that some resources, such as air, sea waters, and forests, are so important to the people as a whole that it would be illogical to subject them to private ownership. Examples of these types of resources include air pollution and deforestation. The following is an illustration of one of these resources:

### Polluter Pays Principle

The provision of appropriate compensation to victims of pollution and environmental dangers was an important problem that nations whose economies were moving in the direction of industrialization needed to resolve. These nations' economies were on the path to becoming more industrialised. Early

on, in Europe, when that continent was being haunted by a new ghost, namely that of unparalleled pollution, the sensible notion that the polluter should be obliged to pay for the harm that he creates was developed. This concept was developed at a time when Europe was being afflicted by a new ghost, namely that of unmatched pollution.

### **The Criminal Procedure Code, 1973**

Environmental contamination is considered to be a public nuisance according to Part B of the Criminal Procedure Code of 1973 (CrPC). The term "nuisance" has a somewhat broad definition under Section 133 of the Criminal Procedure Code. This definition pertains to actions such as erecting structures, disposing of garbage, doing commerce, and engaging in vocations. According to this provision, the court has the authority to issue a conditional order for the removal of the nuisance.<sup>1</sup> In the event that the instructions are disobeyed, the court has the authority to impose penalties in accordance with Section 188 of the Indian Penal Code. These penalties may include a fine of up to one thousand rupees and/or imprisonment for up to six months, depending on the severity of the offence.

### **Need for protection and conservation of environment and sustainable use of natural resource**

Both the Constitution of India and India's international commitments acknowledge the necessity of environmental preservation, conservation, and the use of renewable resources in a sustainable manner. According to Part IVA of the Constitution (Article 51A-Fundamental Duties), every Indian citizen is obligated to have compassion for all living things, as well as a responsibility to protect and improve the natural environment, which includes forests, lakes, rivers, and animals. In addition, every Indian citizen is responsible for preserving and improving the natural environment. In addition, the Indian Constitution's Part IV (Article 48A-Directive Principles of State Policies) stipulates that the state is obligated to make every effort to preserve the nation's forests and wildlife as well as to safeguard and promote the environment. This provision may be found under the heading "Directive Principles of State Policies."

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

The Air (Prevention and Control of Pollution) Act of 1981 (also known as the "Air Act") established boards at both the government and state levels to carry out the aforementioned tasks in addition to the prevention, control, and reduction of air pollution.

Under the authority of the Air Act, rules concerning the quality of ambient air were drafted in order to solve the problems produced by air pollution. The goal of the Air Act is to minimise air pollution by making it illegal to use polluting fuels and chemicals and by enforcing

laws on equipment that contributes to air pollution. In accordance with the provisions of the Air Act, the State Government possesses the authority to designate any site or places within the State as air pollution control areas, following consultation with the SPCBs. According to the Act, the SPCBs are required to give their approval before any industrial facility in the pollution control region can be built or put into operation. In areas where air pollution is being controlled, SPCBs are also obliged to inspect the processes of production, the machinery used to control pollution, and the quality of the air there.

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

The Water Act of 1974, also known as the Water Pollution Prevention and Control Act, was enacted in order to address water pollution prevention and control in addition to preserving or restoring the wholesomeness of the nation's water supply. In addition to facilitating the accomplishment of the goals outlined above, it makes it possible for Boards to be established for the purpose of preventing and mitigating water pollution. The Water Act includes provisions for the imposition of fines for violations and prohibits the discharge of pollutants into water bodies in excess of a certain threshold. Under the authority granted by the Water Act, the federal government formed the CPCB with the purpose of formulating policies and procedures for the control and mitigation of water pollution. At the state level, SPCBs do their business under the watchful eye of both the CPCB and the respective state government.

The Water (Prevention and Control of Pollution) Cess Act was enacted in 1977, and it further established the levying and collection of a cess on water that is utilised by individuals who are involved in particular industrial activities. The Central Board and State Boards for the Prevention and Control of Water Pollution, which were created in line with the 1974 Water (Prevention and Control of Pollution Act), collect this cess in order to complement the funds that are available to them for the prevention and control of water pollution. The Act was most recently modified in the year 2003.

### **The Environment Protection Act, 1986**

The Environment Protection Act of 1986 (often known as the "Environment Act") tackles both the preservation and enhancement of the environment. The Environment Protection Act establishes a structure for conducting research, arranging information, and putting into action standards for the long-term protection of the environment. In addition to this, it establishes a structure for the timely and adequate response to environmental risks. It is a comprehensive piece of legislation that was enacted in order to provide a framework for the cooperation of federal and state agencies that were first formed by the Water Act and the Air Act of 1974. The term

"environment" is given a somewhat broad definition under the Environment Act's section 2(a), which can be found here. It examines the interactions that land and water have with humans, other living things, plants, animals, and microbes, as well as with property.

### **An assessment of the legal and regulatory framework for environmental protection in India**

The above explanation makes it abundantly evident how broad the network of environmental rules is; but, it also raises doubts regarding the degree to which they are effectively implemented. One of the explanations that is commonly brought up is the pervasive command and control component of the environmental system. In addition to this, the laws usually take an all-or-nothing posture and do not take into account the seriousness of the violation. There is no financial incentive to reduce discharges to levels that are below the legal limits, and the amount of the penalty is always the same.

Recently, a few initiatives have attempted to overcome these difficulties by taking various approaches. A Policy Statement for Abatement of Pollution was issued by the Indian government in 1992, just prior to the summit in Rio, and it said that market-based approaches to pollution management will be taken into account. It was reported that economic mechanisms will be looked into in order to "internalise" the costs of pollution, "stimulate the transition from curative to preventative interventions," and "conserve resources, most notably water." The Ministry of Environment and Forest (MoEF) created a task force in 1995 to evaluate market-based mechanisms. The group's findings strongly endorsed the use of market-based mechanisms for the reduction of industrial pollution. The principles of command and control have been complemented with a range of financial incentives to encourage certain behaviours. Allowances for depreciation, exemptions from the payment of excise or customs duty, and the design of lenient loan terms are some examples of the types of incentives that may be provided to encourage the use of environmentally friendly technologies. Another element that is readily apparent is the change in emphasis away from treating pollution at its final destination and towards treating it where it originates. The use of remote sensing and geographic information systems has become more important throughout the course of time for both the management of natural resources and the protection of the environment.

### **OBJECTIVES OF THE STUDY**

1. To study on Principles of Jurisprudence Regarding Environmental Protection
2. To study on assessment of the legal and regulatory framework for environmental protection in India

### **RESEARCH METHOD**

The majority of the investigation is doctrinal in nature, and it is founded on reputable sources of information, such as the legislative and regulatory framework for environmental protection in India and the issues that they face.

Both primary and secondary sources were utilised in the process of compiling the information sources for the study literature. Data are obtained through reports, judgements, and legislation through a number of libraries, government agencies, and commercial entities. After the data are gathered, they are critically examined, and conclusions are created from the data.

### **DATA ANALYSIS**

#### **Power of Central Government to take measures to protect and improve environment:**

Subject to the provisions of this Act, the central government shall have the ability to take any and all measures that it deems necessary or suitable to protect and improve the quality of the environment, as well as to prevent, regulate, and mitigate environmental pollution. This authority shall be used in accordance with the provisions of this Act.

These measures may particularly address any or all of the following difficulties, without restricting the breadth of the requirements of paragraph (1): coordination of activities taken by state governments, officers, and other authorities in accordance with this act, the regulations adopted under it, or any other legislation now in effect that is linked to the goals of this act; the formulation and execution of a national programme for

With the proviso that, in accordance with this clause, various emission or discharge criteria may be established for different sources with regard to the quality or composition of the emissions or discharges of environmental pollutants from such sources; The establishment of procedures and safeguards for the prevention of accidents that may cause environmental pollution and remedial measures for such accidents; the establishment of procedures and safeguards for the handling of hazardous substances; the examination of such manufacturing processes, operations, and processes; and the restriction of areas in which any industries, operations, or processes or class of industries, operations, or processes shall not be carried out or shall be carried out subject to certain safeguards.

**The National Environment Appellate Authority Act, 1997:** A national environmental appellate authority was established in accordance with the Environment (Protection) Act of 1986 in order to hear appeals regarding the restriction of areas in which any industry operation or process, or class of industry, operation, or process, could not carry out or would be permitted to do so with certain safeguards.



The purpose of this authority is to ensure that the environment is protected in the most effective manner possible.

**Factories Act, 1948 and its Amendment in 1987:**

The Act includes a comprehensive list of 29 industries that engage in hazardous processes. These are defined as processes or activities in which, in the absence of additional precautions, the raw materials used therein or the intermediate or completed products, by-products, wastes, or effluents would:

- i. Significantly harm the health of those involved. ii. Significantly harm the environment.
- ii. Contribute to the pollution of the environment in general

**Public Liability Insurance Act (PLIA), 1991:** The PLIA was amended in 1992, and as a result, the federal government received authorization to establish an environmental relief fund and to distribute funds from that fund as compensation for damages.

**National Environment Tribunal Act, 1995:** In order to provide relief and compensation for damages to people, property, and the environment as well as for matters related to or incidental to such accidents, the act provided strict liability for damages resulting from any accident occurring while handling any hazardous substance and for the establishment of a national environment tribunal. These provisions were made in order to fulfil the goals of the act, which were to provide relief and compensation for damages, as well as for matters related to or incidental to such accidents.

Professor Upendra Baxi asserts that in addition to being referred to as the "Supreme Court of India," which has repeatedly supported judicial activism in India, the court has also been termed the "Supreme Court for Indians." Both of these names pertain to the same institution. In other words, the Supreme Court of India The judicial branch, because of the work it does and the authority that is delegated to it, has made a substantial contribution to the consolidation of the fundamental freedoms and rights provided by the Constitution. In addition, the 42nd Constitutional Amendment Act was ratified as a result of the 1972 Stockholm Conference on Human Environment. This conference was held in Stockholm, Sweden. This move may be directly attributed to the efforts that were made during the conference to enhance the environmental legal system in India. As a result of this change, certain environmental obligations have been assigned to both the state (in accordance with Article 48A) and the people (in accordance with Article 51A(g)).

In spite of the fact that Articles 48A and 51(A)(g) of the Constitution are, by their very nature, of a permissive character rather than of a legally required one, the Indian courts have frequently read them as if they

were legally obligatory. In addition, these terms have been utilised by the judicial system to create a fundamental right to the environment as a component of a mandatory right to life based on Article 21. In the case of Asbestos Industries Case No. 12, the Supreme Court of the United States cited a number of international laws, including the Asbestos Convention of the International Labour Organisation from 1986, the Universal Declaration of Human Rights from 1948, and the International Covenant on Economic, Social, and Cultural Rights from 1966. In this particular instance, the court addressed concerns over the dangers to employees' health posed by the use of asbestos in their places of employment. Following the court's conclusion that the employees' right to health should be considered a fundamental right in accordance with article 21, the court issued directives to the relevant agencies in order to put its ruling into effect. The Ramsar Convention on Wetlands was ratified by India in 1971, and the High Court of Calcutta declared in a case referred to as the Calcutta Wetland Case that India had a responsibility to work towards the preservation of wetland regions. Both of these events took place after the Ramsar Convention on Wetlands was ratified.

Justice and the Environment is the name of the book that C.M. Jariwala penned in 2004 and had published under his name. This book gives in-depth information on the procedures used by courts when environmental disputes are brought before them. It offers details on the many different kinds of petitioners, defendants, and contested topics. This goal can be attained by increasing awareness of the time and resources necessary to administer environmental justice and by disseminating information about the resources required by the legal system. This book brings to light individuals who were not previously recognised but who, over the course of time, have either favourably or badly affected efforts to preserve the environment. The decisions made by the Indian court are dissected in great detail in order to demonstrate both the court's strengths and faults, as well as the effects those decisions have on the surrounding environment. The purpose of this research is to investigate the many aspects of the judicial system in India and identify its strong and weak points. The United States Constitution, which had previously been quiet on environmental issues, now adopts updated environmental concepts and a perspective that is more relevant to the current world as a direct result of judicial activism.

Concerns relating to the environment in India (2008) R. Uma Maheshwari is the source of this information. It is difficult to discover books on the environment that track these issues through history; as a consequence, this book fills a hole in the existing body of knowledge. With the exception of the writings of individuals such as Ramachandra Guha, Madhav Gadgil, and the editor of this collection, it is

uncommon to find books on the environment. This book is an excellent resource for readers who are not specialists in these domains but are interested in learning about a wide variety of perspectives on the topics discussed in this book. It is an essential resource for businesses that are dealing with these problems but who seldom, if ever, consult historical materials. This book devotes a sizeable portion of its content to an analysis of the Narmada Bachao Andolan, which is without a doubt India's longest-running dispute about dams and relocation. However, there is not a single comment that adequately addresses the current situation of the Sardar Sarovar project. The knowledge presented in this book that is regarded as being the "most recent" on the subject dates back to the year 2001. It would have been beneficial to highlight the lengthy arguments that took place inside the movement, the divides that emerged, as well as the transition from "anti-dam" to "rehabilitation and resettlement." Another contentious construction project, the Polavaram dam, ought to have been included in the plan. If this one single multipurpose project is allowed to move forward, more than 276 villages and more than three lakh people would be displaced from their homes; the vast majority of those displaced will be tribal and dalit people.

Environmental Law and Policy was published by Aruna Venkat in 2011 and was available. This book provides a comprehensive explanation of the many aspects of environmental legislation that may be found in India. It examines the Indian Constitutional, Legislative, Administrative, and Judicial Strategies that Have Shaped the Indian Environmental Jurisprudence in the perspective of the many worldwide attempts to control pollution and protect the global environment. These endeavours may be found in the setting of the Indian Environmental Jurisprudence. This is done in the context of the several international activities that are now underway to lower pollution levels and safeguard the environment around the globe. The constitutional framework that has been constructed in order to safeguard and protect the environment in India is talked about in this article. When seen in this light, the book presents an in-depth overview of India's administrative and judicial structure, in addition to the most recent advancements in this field. The book's in-depth study of the imaginative judicial enforcement of the constitutional and legislative prescriptions, as represented in the catena of court opinions, including the most recent one, constitutes the most notable and significant component of the whole body of work. It is also the section that stands out the most. In addition to this, it is the characteristic that stands out the most.

### Current Situation and Key Challenges

**Compliance Monitoring:** According to the legislation, any facility that contributes to pollution is needed to get a permission (permits) to establish (CTE) and a consent to operate (CTO) from a particular SPCB. According to a Notification issued by the MOEF in September 2006 and based on an environmental impact assessment (EIA) report, a Prior Environmental

Clearance (from the CPCB for Category A or from an SPCB for Category B) is also required for certain new industrial projects/activities or those planning major notifications. This clearance must come from either the CPCB or an SPCB, depending on the category. SPCBs are tasked with a number of important responsibilities, one of which is monitoring and inspection. The frequency of on-site inspections to guarantee compliance is determined both by the size of the industry (which is based on the total amount of capital expenditure) and the possibility for pollution (which is color-coded as red, orange, or green). In line with the national Environmental (protection) Rules of 1986, each polluting plant is obligated to prepare an environmental statement at the end of each fiscal year. This is to be done in compliance with the national Environmental (protection) Rules.

Nevertheless, this enforcement response has been demonstrated to be ineffective due to the fact that trial and appellate courts are overburdened, processes are time-consuming, and the resources available to state boards are stretched thin. PCBs engage in a variety of activities to assist industry in achieving compliance, some of which are as follows:

- 1) Organising training and technical assistance;
- 2) Developing industry-specific reports outlining problems;
- 3) Assessing compliance; and
- 4) Developing preventive and control options; distributing the charter on corporate responsibility for environmental protection in the 17 categories of highly polluting industries, which seek voluntary compliance beyond the required standards;

Assessing compliance; and 4) developing preventive and control options;

Efforts are currently being made to increase environmental compliance in India, and economic mechanisms are supporting these efforts. The primary economic tactics are a reimbursement on water cessation fees, bank guarantees, subsidies for pollution control equipment, and several other financial incentives.

### CONCLUSION

Environmental pollution places the human race in a precarious position because of the threat it poses to the human race's capacity to live on Earth. These environmental problems are not confined to the borders of any single nation and instead affect people in every region of the globe. Concerns regarding the maintenance and defence of the ecosystem all over the world have been brought to light as a result of the widespread deterioration of the environment. As a direct consequence of this, there are currently initiatives underway to increase environmental consciousness among the general

people. Education has the potential to raise a person's awareness of the environment as well as their comprehension of the problems facing the environment. The principles, rules, case law, regulations, standards, resolutions, and other papers that are now in existence combine to build up a huge and complicated system of paper and authorities that are delegated to certain bodies or persons. One is compelled to wonder how much of India's resources, wealth, energy, and intellect will be spent on this task of regulation and control when it is taken into consideration that the existing legislation is, however, also evidently very insufficient to deal with the situation, and that much more may be required. One is forced to question how much of India's resources, wealth, energy, and intelligence will be spent on this work.

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