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LEGAL REMEDIES FOR COMBATTING ENVIRONMENTAL POLLUTION IN INDIA: AN ANALYSIS

Aparana Sharan¹

ABSTRACT

India has numerous environmental protection regulations, however their enforcement falls short. These laws, including constitutional demands, must be implemented effectively immediately. The Indian judiciary and National Green Tribunal have done an admirable job in resolving this issue. Public Interest Litigations under Articles 48-A and 51-A[h] of the Constitution seek to hold industries and Pollution Control Boards accountable for inadequate pollution control. To improve enforcement, each Indian state should create an Adjudicatory Body comprised of legal and technological specialists. It is critical that both the government and all entities, including individuals and businesses, help to regulate and protect the environment. Article 51-A[g] of the Indian Constitution emphasizes the shared responsibility of ensuring that national growth fits with sustainable laws.

KEYWORDS

Environmental Protection, Air Pollution, Water Pollution, Public Interest Litigation, Constitution of India, National Green Tribunal and Judiciary.

INTRODUCTION

The right to a healthy environment is a fundamental principle protected by constitutions, laws, and international agreements across the globe. India, too, acknowledges and upholds this right as a legal protection.

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Today, the protection, conservation, and improvement of the environment represent paramount issues globally, including in India. The term "environment" encompasses both the physical and the biological or ecological aspects. The physical environment pertains to land, water, and air, while the biological environment relates to plants, animals, and other organisms. These two facets of the environment are interdependent and intricately connected.

In India, factors such as industrialisation, urbanisation, population explosion, over-exploitation of natural resources, disruption of natural ecological balances, and the destruction of numerous animal and plant species for economic gain have significantly contributed to environmental degradation. It is evident that the environmental depletion of one country can degrade the global environment, affecting all nations worldwide.² Environmental pollution is an international concern, and India is no exception.

CONSTITUTIONAL DIRECTIVES

Originally the Indian Constitution of 1950 did not have explicit reference to environment protection. The Stockholm Declaration of 1972 was the first major effort to conserve and protect the human environment at the international level. As a result of this Declaration, the States were required to approve legislative mandate to protect and improve the environment in concerned State. Consequently, for that reason the Indian parliament passed a historic amendment – the 42nd Constitution Amendment Act, 1976³. The amendment incorporated two significant articles i.e., Article 48A (Directive Principle of State Policy) and 51A(g) (Fundamental Duties) to protect and improve the natural environment

² Popa RD, 'Environmental Law and Policy in India. by Armin Rosencranz, Shyam Divan and Martha D. Noble. Bombay: Tripathi, 1991. Pp. XXVIII, 555. US \$15.00.' (1994) 22 International Journal of Legal Information 92

³ It came into force on 7-1-1977

including forests, lakes, river, and wildlife and to have compassion for living creatures.

The combined effect of Articles 48-A and 51-A [g] seems to place constitutional responsibility for the preservation, maintenance, and enhancement of India's natural conditions on both the "State" and the "citizen." It is the responsibility of every generation to preserve and develop India's unique natural resources in the best manner possible for future generations. The phrase "protects and improves," which appears in these Articles 48-A and 51-A[g], appears to indicate a proactive government initiative to enhance environmental quality rather than merely conserve it in its contaminated state.⁴

Furthermore, it brings forth specific amendments in the seventh schedule of the constitution. Consequently, several entries from State List II were shifted to List III, granting the Parliament the authority to enact legislation on environmental matters, including forest management, wildlife population control, family planning, etc. Such modifications are imperative to establish consistency in legal frameworks across the nation.⁵

The Supreme Court affirmed that each citizen possesses a fundamental right to experience a quality of life and living consistent with the provisions of Article 21 of the constitution. Any act that jeopardizes or diminishes the quality of life and living for the people, whether through violation or deviation from laws, is eligible for redress under Article 32 of the Constitution.⁶

⁴ Verma A, 'Law of Environment in India: Problems and Challenges in Its Enforcement' (2021) 6 Research Ambition: An International Multidisciplinary e-Journal 17

⁵ C.M. Jeriwala, "The Constitution 42nd Amendment and the Environment" in S.L. Agarwal (ed), Legal Control of Environmental Pollution (1980).

⁶ Chhetriya Pardushan Mukti Sangharsh Samiti v State of U.P. [(1990) 4 SCC 449: AIR 1990 SC 2060]

LEGISLATIVE DIRECTIVES

In 1974, the parliament introduced the first comprehensive legislation to regulate water pollution through the enactment of the **Water (Prevention and Control of Pollution) Act**. The primary objectives of this Act are the prevention and control of water pollution, along with the restoration of water quality integrity.

In 1974, the parliament introduced the first comprehensive legislation to regulate water pollution through the enactment of the **Water (Prevention, and Control of Pollution) Act**. The primary objectives of this Act are the prevention and control of water pollution, along with the restoration of water quality integrity. According to Sections 3 and 4 of the Act, provisions are made for the establishment of a Central Board and State Board dedicated to the prevention and control of water pollution. The Central Board holds the authority to advise the Central Government on water pollution matters, coordinate with state pollution control boards, initiate investigations, and research on water pollution, and formulate a comprehensive plan for water pollution control and prevention.

In 1977, the **Water (Prevention and Control of Pollution) Cess Act** with the primary objective to impose and collect a cess on the water consumption of specified industries, factories, and local authorities, was enacted. This is intended to augment the financial resources of the Central Board and State Boards established for the prevention and control of water pollution. The purpose is to generate revenue from entities contributing to pollution, ensuring they bear the costs associated with the operation and maintenance of these Boards. Industries and factories have the opportunity to avail a rebate of up to 25 percent if they establish treatment plants for sewage, trade waste, or effluent.

Air pollution poses a major threat to human health and the environment. The **Air (Prevention and Control of Pollution) Act of 1981** was formulated to tackle this critical issue in India. Key sources of air pollution include emissions from industries, vehicles, household activities, etc.

These pollutants can have severe consequences - from aggravating asthma and respiratory conditions to even impacting mental health. The Act defines air pollutants as any solid, liquid, or gas present in the air that can potentially harm people, animals, plants, or property.

The Act empowers State Governments to designate certain areas as Air Pollution Control Areas based on the severity of the problem. Industries situated in these zones need to obtain consent from pollution control authorities before starting operations. The Act also allows officials to issue directives to industrial units regarding emission norms. Non-compliance can result in heavy penalties or disruption of utilities like power and water supply.

While citizens themselves cannot take legal action against polluters under the Act, they can provide relevant data to authorities to help enforcement. The Central and State Pollution Control Boards are the key institutions responsible for prevention and control of air pollution under this law. Overall, the Air Act seeks to strongly curb air pollution through stringent compliance mechanisms, stringent penalties, and public participation. However, effective implementation remains a major challenge. Further legislative amendments and focus on ground-level execution are needed to make a tangible difference to the country's air quality. The health and well-being of our people as well as the sustainability of economic progress hinges on addressing this issue more effectively.

The **Environment (Protection) Act of 1986** seeks to safeguard and enrich the environment while preventing hazards to humans and other living beings. As an 'umbrella' legislation, it consolidates various existing environmental laws under a centralized national framework monitored by the Central Government. The Act aims to protect, improve and eliminate threats to the environment and public health from pollution or ecological damage.

The preamble outlines three key goals - protecting the environment, enhancing environmental quality and averting risks to health and property. By deterring environmental violations through penalties, it exercises control over polluters. Courts have also substantially widened its scope by making polluters liable for victim compensation and ecological restoration costs.

Effective implementation requires a balanced, multi-faceted approach considering scientific, social, and economic aspects. This involves evaluating environmental impacts, understanding people's needs, weighing development costs and benefits, and anticipating pollution hazards. The Environment Protection Act has immense significance in promoting environmental justice and sustainability despite its brevity. Its vision can be translated into positive ground outcomes through coordinated efforts across sectors in embedding ecological consciousness into development planning and public partnerships.

The **National Environment Appellate Authority Act, 1997** necessitates the establishment of a regulatory body, specifically termed as the National Environment Appellate Authority, by the Central Government. This authority is designated to adjudicate appeals related to the demarcation of areas where certain industries, operations, processes, or their categories are either permitted or restricted, contingent upon specified safeguards as outlined in the Environment (Protection) Act, 1986. The imposition of constraints on industrial activities, as

empowered by the Central Government under Section 3(1) and 3(2)(v) of the EPA, exemplifies the exercise of this authority, particularly in the regulation of industrial activities within coastal zones and ecologically sensitive regions.

The **National Green Tribunal (NGT) Act of 2010**, enacted by the Indian Parliament in accordance with Article 21, establishes a specialized fast-track court to expeditiously handle environmental cases. Aligned with India's commitment from the 1992 Rio Summit, the NGT addresses matters related to environmental protection, conservation of forests, and natural resource safeguarding, enforcing legal rights and providing relief and compensation for damages.

As the third country globally to implement such a system, the NGT replaces two prior laws—the National Environmental Tribunal Act of 1995 and the National Environment Appellate Authority Act of 1997. This dissolution led to the transfer of pending cases from the quasi-judicial National Environment Appellate Authority (NEAA) to the NGT, creating a judicial void awaiting the appointment of an additional member.

During this transition, the Ministry of Environment and Forests (MOEF) continued regulatory approvals without a judicial redressal mechanism. Supreme Court intervention compelled the MOEF to provide regular progress reports, prompting the appointment of judicial and expert members on May 5, 2011. With a broader mandate than its predecessor, the NGT adjudicates cases involving substantial environmental questions from seven laws, including air and water pollution, biodiversity, and environmental protection. As both an appellate body and possessing original jurisdiction in specific cases, the NGT can award compensation and order restitution.

Since its inception, the NGT has issued significant judgments. Notably, it adopts a liberal stance on delays, ensuring continued accessibility for those seeking justice.

IPC AND ENVIRONMENT

The Indian Penal Code of 1860 (IPC) incorporates several sections aimed at combating environmental pollution through legal sanctions. These provisions, particularly encapsulated within Chapter XIV (Sections 268-294-A) of the IPC, underscore the significance of public health, safety, and environmental integrity by criminalizing acts that endanger individual well-being through pollution.

Section 268 of the IPC elaborates on the concept of public nuisance, identifying it as an illegal act or omission that causes common injury, danger, or annoyance to the public or people residing in the vicinity, thereby infringing upon public rights. Section 268 emphasises that the utility or convenience of such an act does not excuse its nuisance value. Following this, Section 290 prescribes a penalty for public nuisance with a fine of up to Rs. 200, thereby making environmental pollution actionable under this provision, especially when it harms citizens. This includes noise pollution as a punishable offence.

In landmark cases like *Ratlam Municipality v. Vardhi Chandra* and *K Ramakrishnan v. The State of Kerala*, the courts have reinforced the principle that environmental pollutants, including noise and air pollution from cigarette smoke (which the World Health Organization reports contribute to nearly 5% of global greenhouse gas emissions), challenge social justice and public health, making such acts punishable under Section 290.

Section 277 of the IPC addresses water pollution, penalising anyone who voluntarily corrupts or fouls the water of any public spring or reservoir, rendering it unfit for public use, with imprisonment, a fine, or both. The

scope of this provision, as interpreted by Indian courts, is somewhat limited, excluding flowing bodies of water like rivers, streams, and canals unless there is clear evidence of public injury or danger.

According to Section 278, any individual who intentionally contaminates the air in such a manner that it becomes detrimental to the health of people living in a residential area, conducting business in a locality, or moving through public spaces, is subject to a penalty of up to Rs. 500.

CRPC AND ENVIRONMENT

Environmental pollution is classified as a public nuisance under Section 268 of the Indian Penal Code (IPC), 1960, which defines it as any act or omission causing annoyance or harm to the public. Unlike private nuisance, which affects a small group, public nuisance concerns the broader community. Section 290 of the IPC specifies penalties for public nuisance offenses.

The Criminal Procedure Code (CrPC) of 1973 provides the legal framework for addressing crimes in India, including public nuisance related to environmental pollution. Chapter X of the CrPC, titled "Maintenance of public order and tranquillity," encompasses Sections 133 to 144A, detailing the legal process for addressing and mitigating public nuisances. This includes air, noise, and water pollution, along with unsanitary conditions.

While the provisions under Chapter X of CrPC play a vital role in addressing public nuisance, Section 133 emerges as a central component, empowering sub-divisional magistrates, district magistrates, or other executive magistrates designated by the State Government to issue conditional orders for the removal of nuisances. This authority is triggered upon receiving information or a police officer's report regarding the existence of such nuisances. The provision grants the concerned magistrate the discretion to make the conditional order absolute if the

individual responsible for the nuisance opposes it. Importantly, any order made under Section 133 is immune from challenge in civil courts.

The application of Section 133 does not necessitate an abundance of complaints or protests against the nuisance. A mere report from a public officer or other credible information can trigger its invocation, as established in *Krishna Gopal v. The State of M.P (2016)*. In this case, a glucose factory's activities causing air and noise pollution led to a complaint, emphasizing the cumulative discomfort experienced by local residents.

Section 133 of CrPC stands independently, unaffected by other laws and statutes. Despite the existence of specialized legislation addressing public nuisances, such as the Water (Prevention and Control of Pollution) Act, 1974, Air (Prevention and Control of Pollution) Act, 1981, and the Environment (Protection) Act, 1986, the powers vested in magistrates by this section remain intact and unaltered, showcasing its enduring significance in the legal landscape.⁷

COMMON LAW AND ENVIRONMENTAL PROTECTION

a) Nuisance:

Nuisance, encompassing both Public and Private forms, pertains to the illicit disruption of land enjoyment or associated rights. In the context of Public Nuisance, the Criminal Procedure Code, 1973, facilitates legal recourse through Section 91 for relief or injunction. Magistrates, empowered by the same Code, hold the authority to restrain individuals from actions causing public nuisance. Legal precedents, as seen in *Ramlal v. Mustafabad Oil and Oil Ginning Factory*, establish liability for exceeding noise thresholds, even in the course of legal activities. It is noteworthy that the Indian Penal Code, 1860 subjects public nuisance to

⁷ 'Home' (*astrea111*) <<https://astrealegal.com/environmental-law/>> accessed 3 March 2024

punitive measures. This comprehensive legal framework within common law serves to safeguard public rights and environmental integrity.

b) Negligence:

To substantiate a claim based on negligence successfully, it is imperative to establish a direct link between the negligent act and the resulting harm. Negligence is further defined by the respondent's failure to exercise the requisite care mandated by law to prevent a public nuisance. In the legal precedent of *Naresh Dutt Tyagi v. State of Uttar Pradesh*, negligence was affirmed when fumes from pesticides permeated a neighboring property, resulting in the tragic deaths of three children and a fetus in a pregnant woman.

c) Trespass:

Trespass is legally defined as the unauthorized interference with another's property possession. Two fundamental criteria must be met to establish a trespass case: intentional interference and the direct nature of the interference.

d) Strict Liability:

The concept of strict liability, originating from *Rylands v. Fletcher*, stipulates that an individual introducing anything onto their land likely to cause harm is liable for all resulting damage if it escapes. Exceptions, such as acts of God, actions by third parties, the plaintiff's own fault, acts with the plaintiff's consent, and the natural use of the land by the defendant, are acknowledged. In the Indian context, the landmark case of *M C Mehta v. Union of India*, known as the *Oleum Gas Leak Case*, establishes strict liability for enterprises engaging in hazardous activities, with no exceptions recognized. Additionally, *Union Carbide Corporation v. Union of India* emphasizes that compensation should be directly

proportional to the magnitude of the enterprise, serving as an effective deterrent.

ENFORCEMENT OF LAWS

In recent times, India's judiciary has witnessed a surge of environmental cases - from pollution and ecological harm disputes to conflicts over resource utilization. The complexity of issues involved underscores the need for specialized environment courts with scientific expertise guiding legal deliberations.

Conventional courts are often ill-equipped to settle environmental litigations efficiently due to capacity constraints or inadequate appreciation of ecological ramifications. Prosecutions under pollution control laws rarely conclude timely mainly owing to immense pendency of cases. Additionally, orders by environmental authorities are frequently challenged by industries through prolonged legal processes spanning years. Such judicial delays enable continuance of environmental violations via interim orders.

To address these enforcement hurdles, setting up dedicated environment courts gains relevance. Recognizing the technical limitations of judicial officers in unraveling scientific intricacies, these courts are proposed to comprise a judge and ecological/scientific expert each. Initially establishing such courts at the state and national levels, district-level expansion can be explored based on specific needs.

The mandate of environment courts will encompass expeditious trials under various environmental acts as well as civil compensation claims related to ecological damage. Empowering these special courts with streamlined procedures will allow speedy adjudication and justice delivery around environmental issues. Enabling appeals from state to national to Supreme Courts will create a tiered structure prioritizing environmental jurisprudence.

In effect, specialized environment courts as envisioned can go a long way in strengthening India's environmental governance architecture. The integration of legal and domain expertise promises to bring in much needed efficiency, nuance and balance in settling India's growing environmental disputes.

CONCLUSION

India boasts over 200 environmental laws between the Central and State governments. However, the complexity of rules makes enforcement an uphill task. The sheer volume of legislation signals the urgent need to streamline policies under a consolidated green governance framework. Passing laws marks only the first step - their effectiveness hinges on widespread public commitment.

Existing regulations have fallen short of ecological goals, underscoring the need for out-of-the-box solutions. Setting up specialized Environment Courts, with judge and scientific experts, could accelerate proceedings and resolutions through defined procedures. Curbing endless case delays and appeals will promote timely justice. Beginning at state and national levels, such courts could later expand district-wise based on local needs.

Beyond courts, awakening ecological consciousness across society is key. Public Interest Litigations and Supreme Court activism on green issues showcase how legal avenues drive change. Still, voluntary civic responsibility is equally vital for smooth law implementation.

Integrating environmental literacy into mainstream culture is essential. Supreme Court directives on making green studies compulsory in schools and colleges using a graded approach will nurture future generations. Mass outreach efforts like regional language spots in cinemas and television can broaden awareness.

At the heart of it, ecological balance is everyone's duty as enshrined in our Constitution. Not just governments but each citizen and organization must embrace sustainability as a social obligation. Nurturing shared green values and actions across the societal fabric is imperative for the harmonious coexistence of people and nature.⁸

⁸ Bhullar L, 'Environmental Constitutionalism and Duties of Individuals in India' (*OUP Academic*, 23 July 2022) <<https://academic.oup.com/jel/article/34/3/399/6648946>>