

Navigating Environmental Law: A Comprehensive Guide to Indian Legal Landscape

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Abstract

India possesses a robust framework of environmental protection laws; however, the enforcement of these regulations has been inadequate. There is an immediate necessity for effective, efficient, and well-structured implementation of both the Constitutional provisions and other environmental laws in the country. The proactive and innovative contributions of the Indian Judiciary and the National Green Tribunal (NGT) have been noteworthy and commendable during this period. In line with Articles 48-A and 51-A(h) of the Indian Constitution, numerous Public Interest Litigations have been filed in the Supreme Court against various industries for their insufficient pollution control measures, as well as against Pollution Control Boards to compel them to adopt appropriate actions for pollution management in India. To ensure the effective and organized enforcement of these laws, it is essential to establish an Adjudicatory Body in each state, comprising both legal and technical experts. The commitment to regulating and safeguarding the environment reflects a desire for national development to progress in accordance with sustainable practices. The responsibility of protecting the environment and maintaining ecological balance in India is a collective obligation that must be embraced by the government, individuals, associations, societies, industries, and corporations alike. This duty is not only a social imperative but also a fundamental responsibility outlined in Article 51-A(g) of the Indian Constitution.

Keywords: Environmental Protection, Environmental Law, Public Interest Litigation, Constitution of India

1. Introduction

The Indian judiciary, especially at the higher levels, deserves commendation for its significant strides in environmental protection. It is fair to assert that the evolution of environmental law in India is closely linked to the advancement of the judicial system within the nation. As a diverse sub-continental nation with a vast array of cultural, economic, and ethnic backgrounds, and facing the challenges of the world's second-largest population—many of whom live in poverty and lack education—India encounters unique governance issues. The Constitution, which was established by the people upon gaining independence, guarantees a wide range of fundamental rights; however, achieving these rights has proven to be a complex endeavor. Various political developments have positioned the courts as the last line of defense for the rights and freedoms of citizens. The period following the emergency, particularly during the

1980s, marked a time of judicial activism, coinciding with notable advancements in environmental law. The perspective shifted from viewing environmental violations merely as criminal acts or civil wrongs to recognizing environmental issues as integral to the fundamental rights outlined in the Constitution.

2. Conspectus of constitutional provisions and legislation

The Indian Constitution explicitly emphasizes the importance of environmental protection and enhancement. Article 48A, found within the Directive Principles of State Policy in Chapter IV, mandates the State to safeguard and improve the environment, as well as to protect the nation's forests and wildlife. Additionally, Article 51A(g) imposes a responsibility on every citizen to contribute to the protection and improvement of the environment. While these provisions are not directly enforceable in a court, an active judiciary has interpreted them in conjunction with fundamental rights, which are legally enforceable. The Supreme Court has determined that the right to life under Article 21 extends beyond mere survival, encompassing the right to a pollution-free environment. Articles 32 and 226 allow for the issuance of prerogative and other writs to provide remedies. Article 32 permits individuals to approach the Supreme Court directly for violations of fundamental rights, while Article 226 grants High Courts the authority to issue writs for breaches of fundamental or other legal rights. Furthermore, judicial decisions have broadened the principle of locus standi, enabling greater protection against environmental harm.

The Environment Protection Act of 1986 stands as a pivotal piece of legislation in the realm of environmental law. Established in response to the Bhopal Gas Tragedy, this Act addresses a wide array of environmental concerns. It defines 'environment' to encompass water, air, land, and the intricate relationships among these elements, as well as their connections to humans, other living organisms, plants, microorganisms, and property. The Act grants the central government the authority to implement necessary measures aimed at safeguarding and enhancing environmental quality, as well as preventing, controlling, and mitigating pollution. As a comprehensive legislative framework, it empowers the central government to establish new emission standards, regulate industrial locations, create protocols for managing hazardous materials, ensure protection against pollution-related accidents, and generally gather and share information on environmental pollution.

The common law doctrine of 'nuisance' provides a legal framework for pursuing actions related to environmental infringements. The Code of Civil Procedure 1908 (CPC), the Indian Penal Code 1860 (IPC), and the Code of Criminal Procedure 1973 (CrPC) include specific provisions addressing public nuisance. According to Section 91 of the CPC, multiple individuals are permitted to file a lawsuit for a public nuisance that impacts or has the potential to impact the community. In response to the Bhopal Gas Tragedy, the Central Government introduced the Bhopal Gas Leak Disaster (Processing of Claims) Act 1985, which grants it the exclusive authority to represent the claims of victims in parens patriae lawsuits. The Supreme Court affirmed the constitutionality of this legislation in the case of Charan Lal Sahu v Union of India. Additionally, public nuisance is classified as an offense under the IPC, with various provisions addressing different forms of nuisance that result in public harm.

The Criminal Procedure Code (CrPC) under Section 133 grants magistrates the authority to address public nuisances of an environmental nature. Additionally, Sections 142 and 144 enable magistrates to take prompt action to avert serious danger or injury. The Ratlam case of 1980 stands as a significant precedent in utilizing this provision as an effective means to enforce the responsibilities of local authorities. This case focused on the local body's obligation to provide drainage facilities to residents.

The Supreme Court dismissed the council's claim of financial incapacity to deliver these services, asserting that "decency and dignity are non-negotiable facets of human rights and are a first charge on the local self-governing bodies." Prior to this ruling, in the case of Govind Singh v. Shanti Swaroop, the Supreme Court addressed the nuisance caused by smoke from a bakery, emphasizing that the issue transcends individual rights and pertains to the health, safety, and convenience of the broader public.

The Air Act and the Water Act establish a regulatory framework for controlling pollutant discharges through a licensing and permit system. These regulations are overseen by Central and State Boards specifically created for this purpose. Non-compliance with the standards set forth in these laws can result in penalties, including the potential closure of an industry or facility. Additionally, the Water Cess Act imposes a charge on water consumption, which is utilized to support the enforcement of the Water Act's provisions. Notably, the Act offers a 70 percent rebate on the cess for those who install effluent treatment systems. The Indian Forest Act of 1927 and the Forest (Conservation) Act of 1980 are also significant pieces of legislation. The latter requires the Central Government's approval for actions such as de-reserving a protected forest, utilizing forest land for non-forest activities, or assigning forest land, as well as addressing reforestation concerns. Other relevant laws include the Wild Life Protection Act of 1972, the Atomic Energy Act of 1962, and the Factories Act of 1948.

Additionally, there are regulations established under the Environment Protection Act, including the Hazardous Wastes (Management and Handling) Rules of 1989 and the Hazardous Micro-organisms Rules of 1989. These regulations govern the manufacture, use, import, export, and storage of hazardous micro-organisms and genetically engineered cells. Furthermore, the Public Liability Insurance Act of 1991 and the National Environment Tribunal Act of 1995 are also relevant. The Public Liability Insurance Act mandates that installations dealing with hazardous substances maintain public liability insurance to ensure minimum compensation for victims. The Environment Tribunal Act introduces strict liability for damages resulting from accidents related to hazardous substances. This Act empowers the Central Government to create a national tribunal and its branches to conduct inquiries and issue awards deemed 'just.' Recently, a Supreme Court ruling has allowed courts to refer scientific and technical aspects of environmental issues, as outlined in Articles 32 and 226 of the Constitution, to specialized authorities.

3. Public interest litigation and environment law

A notable aspect of the evolution of environmental law in India is that significant advancements have often been driven by non-governmental organizations and socially conscious individuals. As previously mentioned, the judiciary took on a more proactive role during the 1980s, introducing innovative methods of justice delivery. The courts addressed the constraints of the traditional adversarial system by broadening the principle of locus standi. In the landmark SP Gupta case, the Supreme Court ruled that any member of the public acting in good faith has the right to initiate legal action for redress when a public wrong or injury is inflicted by the state. Importantly, the court stated that such individuals could represent those who have suffered harm but are unable to approach the courts due to challenges such as poverty or social and economic difficulties. This broadened interpretation of locus standi has been widely utilized by environmental advocates and individuals seeking justice against environmental harm, leveraging Articles 32 and 226 of the Constitution.

It is important to recognize that the broadening of locus standi, which allows any member of the public to approach the court in defense of public interest, is not without its drawbacks. Courts have consistently

expressed their disapproval of actions that lack genuine intent. The Supreme Court clearly articulated in the ChhetriyaPardushan case that such actions should only be initiated by individuals who are genuinely concerned about the welfare of society or the community. This legal tool must be employed by the court with significant caution and discretion. While it is the court's responsibility to uphold fundamental rights, it is equally important to prevent the misuse of this mechanism. In a more recent ruling in the Raunq International case, the Supreme Court determined that if a public interest litigation leads to the suspension of a developmental project and is later found to be insincere, the petitioner may be required to pay substantial costs. Thus, it is evident that although public interest litigation has a wide scope, the courts are vigilant in ensuring it is not exploited.

4. March of the Law

A significant portion of the legal framework in this domain can be credited to the innovative interpretations of the higher courts, especially the Supreme Court. Initially, the rulings that recognized a pollution-free environment as a fundamental right were not clearly articulated. In a case involving limestone quarries in the Doon Valley, which led to soil erosion, deforestation, and various environmental issues, the Supreme Court affirmed that individuals possess the right to live in a healthy environment with minimal disruption to ecological balance. Subsequently, the court emphasized the fundamental responsibility of citizens to protect the environment. It was during the Bhopal Gas Leak case that the Supreme Court explicitly stated that the right to a pollution-free environment is encompassed within the right to life as outlined in Article.

The Kamalnath case is noteworthy for its application of the public trust doctrine. The court addressed the ecological harm resulting from the artificial alteration of a river within forested areas to enhance a motel's facilities. In its ruling, the Supreme Court emphasized the obligation to restore the environment and ecology, stating: "Our legal framework, rooted in English common law, incorporates the public trust doctrine into its jurisprudence. The state acts as the trustee of all natural resources, which are inherently intended for public use and enjoyment. The general public benefits from resources such as the seashore, flowing waters, air, forests, and ecologically sensitive lands. As a trustee, the state has a legal obligation to safeguard these natural resources, which cannot be transformed into private property."

Certain judicial decisions have transcended the conventional framework of strict liability, establishing 'absolute liability' for industries that cause pollution. In the Oleum Gas Leak case, the Supreme Court addressed the incident involving oleum gas leakage that resulted in fatalities and injuries. Despite imposing rigorous conditions for the industry's resumption, the court determined that the industry bore absolute liability for the pollution it generated. The court emphasized the necessity to develop new principles and establish norms that effectively address the challenges posed by a highly industrialized economy. Furthermore, the court stated that when an enterprise engages in activities that are hazardous and inherently dangerous, it is strictly and absolutely liable to compensate anyone harmed by accidents arising from such activities, including the release of toxic gas. Subsequently, in the Indian Council for Enviro-Legal Action case, the Supreme Court reiterated this principle, asserting that when an activity is inherently dangerous, the individual or entity responsible is liable for any resulting harm, regardless of the precautions taken. This ruling marked the first application of the 'polluter pays' principle, referencing the Rome Declaration.

It is evident that Indian courts have not allowed themselves to be limited by the procedural constraints of existing laws. They have actively ordered the relocation of industries from residential zones and

mandated the establishment of funds to support remedial and rehabilitation efforts for affected communities. Additionally, the courts have prohibited any hazardous activities. On numerous occasions, they have required the installation of effluent treatment plants within specified timelines as a prerequisite for the resumption of operations by hazardous industries. In alignment with the principles of public interest litigation, the courts frequently seek and depend on reports from expert organizations to assess the actual impact of the activities in question. The Supreme Court has even taken the initiative to create 'green benches' in both the Supreme Court and various High Courts across the nation, specifically to address environmental cases.

5. Conclusion

The development of environmental law, particularly with an emphasis on human rights, has led to the recognition of the third generation right to development on an international scale. In India, the legal framework has progressed to enhance the quality of life for individuals. This distinctive method of interpreting and applying fundamental rights alongside the Directive Principles of State Policy and Fundamental Duties to provide meaningful relief is noteworthy. While some purists may view this as a departure from traditional legal standards, the current demands of society necessitate such adaptations. As we enter the new millennium and experience globalization across various sectors, pressing challenges arise. Fields such as biotechnology are advancing rapidly, requiring legal systems worldwide to swiftly adjust to these developments. The proactive stance of Indian courts in offering substantial relief and remedies to its citizens, who represent a significant portion of the global population and inhabit unique ecosystems, serves as a commendable model for others to consider and implement.

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