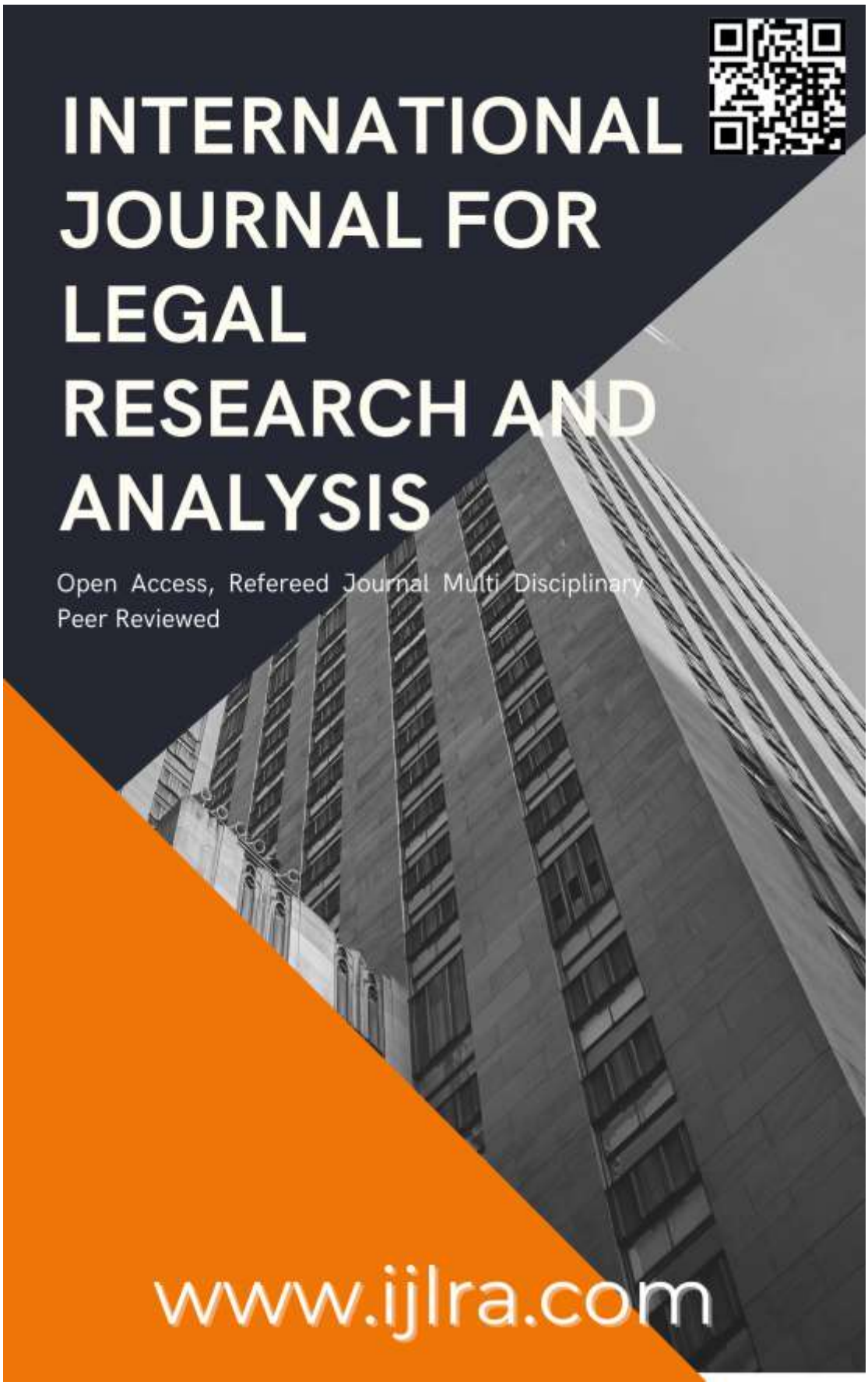

VOLUME 3 • ISSUE 8 • NOVEMBER 2026

DISCLAIMER

No part of this publication may be reproduced, stored, transmitted, or distributed in any form or by any means, whether electronic, mechanical, photocopying, recording, or otherwise, without prior written permission of the Managing Editor of the International Journal for Legal Research & Analysis (IJLRA).

The views, opinions, interpretations, and conclusions expressed in the articles published in this journal are solely those of the respective authors. They do not necessarily reflect the views of the Editorial Board, Editors, Reviewers, Advisors, or the Publisher of IJLRA.

Although every reasonable effort has been made to ensure the accuracy, authenticity, and proper citation of the content published in this journal, neither the Editorial Board nor IJLRA shall be held liable or responsible, in any manner whatsoever, for any loss, damage, or consequence arising from the use, reliance upon, or interpretation of the information contained in this publication.

The content published herein is intended solely for academic and informational purposes and shall not be construed as legal advice or professional opinion.

Copyright © International Journal for Legal Research & Analysis. All rights reserved.

ABOUT US

The International Journal for Legal Research & Analysis (IJLRA) (ISSN: 2582-6433) is a peer-reviewed, academic, online journal published on a monthly basis. The journal aims to provide a comprehensive and interactive platform for the publication of original and high-quality legal research.

IJLRA publishes Short Articles, Long Articles, Research Papers, Case Comments, Book Reviews, Essays, and interdisciplinary studies in the field of law and allied disciplines. The journal seeks to promote critical analysis and informed discourse on contemporary legal, social, and policy issues.

The primary objective of IJLRA is to enhance academic engagement and scholarly dialogue among law students, researchers, academicians, legal professionals, and members of the Bar and Bench. The journal endeavours to establish itself as a credible and widely cited academic publication through the publication of original, well-researched, and analytically sound contributions.

IJLRA welcomes submissions from all branches of law, provided the work is original, unpublished, and submitted in accordance with the prescribed submission guidelines. All manuscripts are subject to a rigorous peer-review process to ensure academic quality, originality, and relevance.

Through its publications, the International Journal for Legal Research & Analysis aspires to contribute meaningfully to legal scholarship and the development of law as an instrument of justice and social progress.

PUBLICATION ETHICS, COPYRIGHT & AUTHOR RESPONSIBILITY STATEMENT

The International Journal for Legal Research and Analysis (IJLRA) is committed to upholding the highest standards of publication ethics and academic integrity. All manuscripts submitted to the journal must be original, unpublished, and free from plagiarism, data fabrication, falsification, or any form of unethical research or publication practice.

Authors are solely responsible for the accuracy, originality, legality, and ethical compliance of their work and must ensure that all sources are properly cited and that necessary permissions for any third-party copyrighted material have been duly obtained prior to submission. Copyright in all published articles vests with IJLRA, unless otherwise expressly stated, and authors grant the journal the irrevocable right to publish, reproduce, distribute, and archive their work in print and electronic formats.

The views and opinions expressed in the articles are those of the authors alone and do not reflect the views of the Editors, Editorial Board, Reviewers, or Publisher. IJLRA shall not be liable for any loss, damage, claim, or legal consequence arising from the use, reliance upon, or interpretation of the content published.

By submitting a manuscript, the author(s) agree to fully indemnify and hold harmless the journal, its Editor-in-Chief, Editors, Editorial Board, Reviewers, Advisors, Publisher, and Management against any claims, liabilities, or legal proceedings arising out of plagiarism, copyright infringement, defamation, breach of confidentiality, or violation of third-party rights.

The journal reserves the absolute right to reject, withdraw, retract, or remove any manuscript or published article in case of ethical or legal violations, without incurring any liability.

RESEARCH ARTICLE

EPA At 40: Still As Effective?

N. Vidya • Amar Gupta

Delhi Court

adv.vidya12@gmail.com

— • —

'Don't be naughty at forty' is a phrase often reiterated, in humour. Yet dive deeper and what gets revealed is an entrenched philosophy. Turning forty is a milestone of sorts – there is an inherent expectation of maturity, restraint and responsibility. This expectation extends to both humans and statutes.

When a statute turns forty, it is time to revisit it to examine its efficacy and gauge the same on the foundation of present.

This is exactly what this article aims to achieve by scrutinising the effectiveness of the Environment Protection Act, 1986 (EPA) against the backdrop of modern environmental crisis like e-waste, microplastics and climate change, and suggesting institutional and legislative reforms required, if any.

The EPA was brought on the statute books under the umbrella of Article 48A and 51A(g). Both these articles were inserted in the Constitution of India vide its forty-second amendment in the year 1976. While the former burdens the State with the onus of protecting and improving the environment and safeguarding the forests and wildlife, the latter declares that it is the duty of every citizen 'to protect and improve natural environment.'[1]

Yet while the EPA has successfully laid down a comprehensive regulatory foundation and enabled proactive judicial activism, its enforcement efficacy has been severely compromised by institutional fragmentation, lack of independent statutory autonomy, and a recent shift toward dilution of penal liability, rendering it inadequate for contemporary climate crises without systemic structural reform.

EVOLUTION

While environmental degradation has found more voices now, recognition of the same occurred at the Stockholm Conference in June 1972, when, 'to defend and improve the human environment for present and future generations'[2], global leaders came together for the first time keeping the environment at the nucleus. This happened because 'the growing evidence of man-made harm in many regions of the earth' were beginning to be visible like 'dangerous levels of pollution in water, air, earth and living beings; major and undesirable disturbances to the ecological balance of the biosphere; destruction and depletion of irreplaceable resources; and gross deficiencies, harmful to the physical, mental and social health of man, in the man-made environment, particularly in the living and working environment.'[3]

---

[1] 42nd Constitutional Amendment, 1972. Text available at https://indiankanoon.org/doc/50073852/ Last accessed 16 September 2026.

[2] Report of the United Nations Conference on the Human Environment, *Declaration on the United Nations Conference on the Human Environment* (A/CONF.48/14/Rev.1, Stockholm 1972) Ch 1. Text available at <https://docs.un.org/en/A/CONF.48/14/Rev.1> Last accessed 16 September 2026.

[3] Ibid.

India participated in the Stockholm Conference and 'strongly voiced the environmental concerns.'[4] While the Water (Prevention and Control of Pollution) Act, 1974[5] and the Air (Prevention and Control of Pollution) Act, 1981,[6] existed, it was realised that a comprehensive enactment was needed to secure the loopholes as well as address the areas left unaddressed by the forementioned statutes.

Unfortunately, it was not before a disaster struck that the administration woke.

03.12.1984 will always be remembered as the worst day in Indian history when 40 tonnes of methyl-isocyanate (MIC) escaped from the Union Carbide Corporation plant in Bhopal and mixed with the air, killing around 25,000 and irreversibly affecting about 500,000 people. Offspring of those affected still face the aftermath of the event with many born with deformities and chronic illness.[7] The abandoned factory site continues to suffer from severe groundwater contamination[8] - even 42 years after what is termed as the 'worst industrial disaster mankind ever witnessed.'

Thus, was born the umbrella legislation for the environment – the Environment (Protection) Act - that has been in force since 19.11.1986.

EXPANSION

The Judiciary has circumvented the Fundamental right (Article 21) with State duty (Article 48A) and Citizen duty (Article 51A(g)) to expand the environmental jurisprudence in India.

Be it the Rural Litigation & Entitlement Kendra v State of U.P.[9], Vellore Citizens' Welfare Forum v. Union of India[10] or the slew of M.C. Mehta cases[11], the Apex Court has reiterated fundamental environmental jurisprudential principles like the Precautionary Principle (PP) and Polluter Pays Principle (PPP) as well as introduced the concept of Absolute Liability.

The old adage - a stitch in time saves nine – is the foundation of the Precautionary Principle (PP). 'In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.'[12] Simply put, the authorities, under the PP, are bound to act BEFORE the harm actually occurs. Rather than the public declaring that a developmental activity is causing harm, the developer needs to prove that the

---

[4] Statement of Objects and Reasons, The Environment (Protection) Act, 1986.

[5] In force since 23rd March 1974.

[6] In force since 16th May 1981.

[7] '40 years after Bhopal toxic gas leak, suffering continues' (25 September 2024)< https://hsph.harvard.edu/news/40-years-after-bhopal-toxic-gas-leak-suffering-continues/> Last accessed 17 September 2026.

[8] Ref. What Happened, *The Bhopal Medical Appeal* https://www.bhopal.org/continuing-disaster/the-bhopal-gas-disaster/union-carbides-disaster/ Last accessed 17 September 2026.

[9] 1985 (2) SCC 431. Full text available at https://indiankanoon.org/doc/1949293/ Last accessed 24 September 2026.

[10] (1996) 5 SCC 647. Full text available at https://indiankanoon.org/doc/1934103/ Last accessed 24 September 2026.

[11] M.C. Mehta v Union of India [(1987) 1 SCC 395] – Oleum Gas Leak case; M. C. Mehta v Union of India [(1988) 1 SCC 471] and [(1997) 2 SCC 411)] – Ganga Pollution and Kanpur Tanneries case; M.C. Mehta v Union of India [(1997) 2 SCC 353] – Taj Trapezium case; M.C. Mehta v Union of India [(1998) 6 SCC 63] – Delhi Vehicular Pollution case; M.C. Mehta v Union of India [(1992) 1 SCC 358] – Environmental Education case; M.C. Mehta v Union of India [(1996) 3 SCC 779] – Delhi Ridge Protection case; M.C. Mehta v Union of India [(1993) 1 SCC 471] – Coastal Zone Management case, amongst others.

[12] Principle 15, Rio Declaration on Environment and Development, 1992.

proposed project is environmentally safe. 'The onus of proof is on the actor or the developer/industrialist to show that his action is environmentally benign.'[13] After all, it is always better to err on the side of caution than run the risk of irreversible harm.

The Polluter Pays Principle (PPP),[14] on the other hand, functions on the premise that 'once the activity carried on is inherently dangerous or hazardous, the person carrying on such activity is liable to make good the loss caused to any other person by such activity irrespective of the fact whether he took reasonable care while carrying on his activity.'[15] 'One who pollutes the environment must pay to reverse the damage caused by his acts.'[16] However, while PPP is undoubtedly a settled principle of law, its application remains elusive, due to the implicit defaults in the said principle, analysed a little later.

Nonetheless, the PPP also derives its veracity from the Absolute Liability concept, as enshrined by the Hon'ble Supreme Court in the Oleum Gas leak case.[17] In this case, the Supreme Court of India authored the concept of absolute liability wherein an industrialist is liable for any and every damage whatsoever once (s)he has an inherently dangerous or hazardous substance on his/her land. This is a step ahead from the ideal of 'strict liability' where the English court, in the case of *Rylands vs Fletcher*[18] declared that in the event of a non-natural use of land, the dangerous thing 'must have escaped' and caused damage to the neighbour. Few exceptions[19] are permitted in the strict liability ideal whereas absolutely no exception is entertained in the absolute liability.

This is evident of the Indian judicial mindset that aims to balance development with minimal harm to the environment. It is this precise thought that led to the evolution of the National Green Tribunal in India, making it the third country in the world[20] to have an exclusive specialised forum to deal with matters pertaining to the environment. The NGT has been effective in India since 18.10.2010, vide its parent statute, i.e., the National Green Tribunal Act, 2010. The forum is the appellate authority for overseeing the grant of Environment Clearances (ECs) granted under Section 3 of the EPA.[21] The NGT is also authorised to award compensation, order restitution of damaged environments, and levy substantial fines against corporate violators and government entities.[22] Further, keeping in mind the uniqueness of the nature of dispute that the statutory body has to deal with, while the forum is empowered with relevant provisions of the Code of Civil

---

[13] Ibid 10.

[14] *Cf.* Guiding Principles Concerning the International Economic Aspects of Environmental Policies, OECD, 1972. Also Read Principle 16, Rio Declaration on Environment and Development, 1992.

[15] Indian Council for Enviro-Legal Action v Union of India [(1996) 3 SCC 212]. Full text available at https://indiankanoon.org/doc/1818014/ Last accessed on 27 September 2026.

[16] M.C. Mehta v Kamalnath [(1997) 1 SCC 388]. Full text available at https://indiankanoon.org/doc/1514672/ Last accessed on 27 September 2026.

[17] Ibid 11. Full text available at < https://indiankanoon.org/doc/1486949/> Last accessed 27 September 2026.

[18] [1868] UKHL 1.

[19] Act of God, Consent or Fault of Plaintiff (person filing the case) and Act of Third Party.

[20] After Australia and New Zealand. As on date, many countries have dedicated forums for dealing with matters pertaining to environment like Kenya, Brazil, Chile, Sweden.

[21] Gare Palma Sector-II Coal Mine (Chhattisgarh), Ganeshkhind High Rise Project (Pune), 39-Storey High-Rise near DU (Delhi), Luxury High-Rise Projects by Godrej & Wonder Projects (Bengaluru), SIPCOT Industrial Estate Project (Tamil Nadu), JSW Group Mega Steel Project (Odisha) are just few examples where the NGT has revoked, quashed or suspended the ECs granted.

[22] *Rf.* Sections 15 and 17, NGT Act, 2010.

Procedure, it is however not bound by the same; rather it is guided by the principles of natural justice.[23] Finally, the NGT has *suo-motu* powers, i.e., it can, on its own, take cognisance of issues, irrespective of whether it is brought to the notice of the NGT formally by way of petition or not.[24]

Thus, India's environment jurisprudence has grown exponentially thanks to the proactive nature of the Judiciary.

FOUR DECADAL GROWTH YEARS OF DELEGATED LEGISLATION

Over four decades of being in force, the legal, institutional, and enforcement architecture of the EPA has undergone significant evolutionary phases.

The Legislature did not merely notify the EPA, but 19.11.1986 marked the birth of the Environment (Protection) Rules too. 'For the purposes of protecting and improving the quality of the environment and preventing and abating environmental pollution, the standards for emission or discharge of environment pollutants from the industries, operations or processes'[25] are espoused in Schedules I to IV of the said Rules.

In furtherance of the above, key delegated instruments have been introduced, notably the Manufacture, Storage and Import of Hazardous Chemicals Rules, 1989, the Noise Pollution (Regulation and Control) Rules, 2000, the Battery Waste Management Rules, 2022, the Wetlands (Conservation and Management) Rules, 2017, the E-Waste (Management) Rules, 2016, the Plastic Waste Management Rules, 2016, the Solid Waste Management Rules, 2016, the Commission for Air Quality Management in National Capital Region and Adjoining Areas Act, 2021, amongst many other.

Nonetheless, the most important of these delegated instruments is the landmark Environment Impact Assessment (EIA) Notification, 2006[26] making prior environmental clearance mandatory for specific categories of industrial and developmental projects. The Notification, through its Item 4 read with Item 7, divides the projects into Category 'A' and Category 'B1' and 'B2'.[27] The said division of the project is based on the 'spatial extent of the potential impacts in human health and natural and manmade resources.'[28] While those in Category 'A' need mandatory EC from the Expert Appraisal Committee (EAC) constituted by the Central Government, the Category 'B1' projects need compulsory EC from the State Expert Appraisal Committee (SEAC) constituted by the State Government vide the State Environment Impact Assessment Authority (SEIAA). However, 'in the absence of a duly constituted SEIAA or SEAC, a Category 'B' project shall be treated as a Category 'A' project.'[29]

The Notification expressly provides for the stages to be followed while giving prior ECs for new projects, through its Item 7. These are – Screening (only for Category 'B' projects), Scoping, Public Consultation and Appraisal.

---

[23] Read Section 19, NGT Act, 2010.

[24] *Municipal Corporation of Gr. Mumbai vs Ankita Sinha* [AIRONLINE 2021 SC 861]

[25] Rule 3, The Environment (Protection) Rules, 1986.

[26] Text available at <https://environmentclearance.nic.in/writereaddata/EIA_notifications/2006_09_14_EIA.pdf> Last Accessed 21 October 2026.

[27] Projects falling in Category 'B2' do not require EIA report.

[28] Item 4(i), EIA Notification, 2006.

[29] Item 4(iii), EIA Notification, 2006.

Screening entails, as the name suggests, scrutiny of the proposed project 'for determining whether or not the project or activity requires further environmental studies.'[30] Scoping refers to the process by which the EAC/SEAC determine and address all relevant environmental concerns for the preparation of the EIA report. The Public Consultation is the most pivotal aspect of the said Notification wherein those likely to be directly affected by the proposed project are spoken with 'with a view to taking into account all the material concerns in the project or activity design as appropriate.'[31] The Public Consultation must mandatorily have both a public hearing, conducted by the State Pollution Control Board,[32] at the site or in its vicinity for ascertaining concerns of the local people as well as obtain responses in writing form other plausible stakeholders too. The final leg is the appraisal which involves the detailed scrutiny of the application by the EAC/SEAC followed by reasoned recommendations to the regulatory authority concerned either for grant or rejection of prior EC.

PROBLEM WITH ENFORCEMENT

The first and foremost is the legal definition of 'polluter' which dictates that it is someone who directly or indirectly damages the environment or creates conditions related to such damage.[33] The issue with this sweeping definition is that it is so expansive that almost every common man, irrespective of gender, caste, community, age etc., is bound to get covered by it. Any and every person who throws or has ever thrown garbage anywhere except designated area would effectively fall under the ambit of this definition.

Second, the PPP works towards compensating the affected. Effectively, and practically, this is done by the Courts through compensation from state funds, thereby meaning that the affected are being paid the same money that they paid in the form of taxes. Ideally, the compensation should be from the personal pockets of the errant officers who gave the go-ahead to projects without verifying its environmental efficacy, as well as the project proponent. Contrariwise, the OECD had visualised the PPP as the costs of pollution prevention and control measures being reflected in the costs of goods and services which causes pollution in production and/or consumption.[34]

Third, the EIA Notification, 2006 creates committees of experts to work at the ground level in the form of EAC and SEAC, while the Regulatory Authority, i.e., the MoEF&CC (at the Centre) and the SEIAA (in States), remains the protected fort of the non-experts, who have the final say in the matter relating to issuing the EC. Further, a prior EC granted to a specific project may be transferred to another legal person, merely on an application and a 'no objection' from the transferor, by the concerned regulatory authority, on the same terms and conditions under which the prior EC was given, without any reference to the EAC/SEAC[35]. What if the legal person lacks the requisite infrastructure or manpower to carry the designated project forward? Moreover, there are absolutely no penal consequences for furnishing wrong misleading information. In the event the same is found, the EC granted will simply be cancelled or the application rejected, as deemed proper by the regulatory authority[36].

---

[30] Item 7(i).I, EIA Notification, 2006.

[31] Item 7(i).III, EIA Notification, 2006.

[32] Or the Union Territory Pollution Control Committee, as the case may be.

[33] Ibid 14.

[34] Ibid 14.

[35] Item 11, EIA Notification, 2006.

[36] Item 8(vi), EIA Notification, 2006.

Fourth, the Pollution Control Boards, birthed by the Water Act, 1974[37] have been conferred with enforcement powers under the EPA, when the edict explicitly provides, through Section 3(3), for creation of a dedicated authority, akin to the US EPA. Adding to this woe, the proliferation of specialized environmental bodies created under or alongside the EPA - such as the National Green Tribunal (NGT), State Environmental Impact Assessment Authorities (SEIAAs), and various Coastal Zone Management Authorities (CZMAs) - has fragmented the regulatory domain. The Executive interference is real with the not only the heads of the PCBs being appointed by the respective governments, who lack the in-depth knowledge and experience of the field, but also remaining in office till pleasure of the respective governments. As with all government departments, the PCBs too remain expertly understaffed with an inadequate presence, especially within states. This makes physical inspections and routine compliance audits impossible.

Last, while the intent to replace penal consequences with civil monetary penalties, was to speed up enforcement, effectiveness depends heavily on whether boards receive adequate legal capacity to assess fines impartially and avoid capture by powerful commercial interests. However, the greatest paradox is the fact that the PCBs rely heavily on state budgetary allocations which are collected through the Consent to Establish (CTE) and Consent to Operate (CTO) licences given to the project proponents, who are to be monitored objectively, rationally and independently by the former.

GAPS AND CHALLENGES

While proponents frame the “reforms”, espoused in the Jan Vishwas Act, as essential modernisations that streamline regulatory efficiency and promote economic growth, critics highlight structural flaws that risk transforming environmental protection into a paid license to pollute.

First, removal of criminal deterrence leads to project proponents incorporating fines as predictable and manageable cost of doing business. Second, removing those at the top of the hierarchy in a corporation from the ambit of criminal liability dilutes personal deterrence, resulting in a carefree attitude of the corporations since monetary penalties become part and parcel of expenses. And third, fixing a ceiling on the amount of fine that may be extracted from corporations, when weighed against the colossal damage the environment faces due to the project, is sheer offset.

Nonetheless, the baseline of the issue remains that modern environmental issues are being adjudicated against the archaic definition of both environment and environmental pollution construed by the lawmakers in the eighties, when the environment itself was far contrary to what it is now. Relying on a 1980s pollution-control statute to govern 21st-century systemic decarbonisation creates a pronounced regulatory vacuum. Across the three critical pillars, i.e., climate change litigation, carbon markets, and renewable energy transitions, the EPA’s textual silence has forced courts, regulators, and parallel ministries to construct ad-hoc workarounds. The judiciary, in fact, in cases like M.K. Ranjitsinh vs Union of India[38], has categorically recognised the ‘right to be free from the adverse effects of climate change’ as a distinct facet under Article 21 – Right to life.

[37] Read Statement of Objects and Reasons, The Water (Prevention and Control of Pollution) Act, 1974.

[38] 2024 INSC 280 Full Text available at https://indiankanoon.org/doc/128036238/ Accessed 15 November 2026.

It is also noteworthy that the National Green Tribunal Act, 2010, is statutorily authorised to only deal with issues arising under seven scheduled enactments[39], keeping other environment related laws outside the periphery of the environmental tribunal, like the Wildlife Protection Act, 1972, Indian Forest Act, 1927, Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006,[40] as well as similar acts enacted by the states. Due to this underlying functional boundary of the NGT, cases challenging the macro level climate inaction,[41] fall outside the jurisdiction of the NGT which views climate policy as an executive prerogative rather than a statutory breach of the EPA, forcing the litigants to knock the doors of the already overburdened Apex Court; not to mention this also defeats the purpose of creating the tribunal which was to reduce the burden on the Supreme Court.

What this also leads to is the fact that litigants challenge, for example, deforestation projects, not for violating carbon limits but for flawed cumulative impact assessments or procedural non-compliance. Additionally, due to absence of a specific climate act, climate considerations enter litigation tangentially through the EIA.

Nevertheless, an interesting challenge of this legislative juggernaut is the 'green vs green' tussle. While solar parks, wind farms and green hydrogen infrastructure are exempted from the rigorous environmental clearance processes as they are classified as "green", the EPA lacks guardrails to regulate land-use conflict, arid-zone habitat fragmentation, or battery/solar e-waste. This came up in the Ranjitsinh case before the Apex Court where overhead high voltage transmission lines for solar and wind projects in Rajasthan and Gujarat threatened the Great Indian Bustard (GIB). Since the EPA provided no statutory balancing test, the judiciary had to step in to mandate undergrounding/rerouting committees.

The energy transition phase that India is going through, turning majority of both public and private vehicles electric, is regulated vide the Electricity Act, operating outside the mandate of EPA. Consequently, the EPA contains zero statutory provisions for decommissioning fossil-fuel assets, rehabilitating coal-dependent regions, or enforcing binding "Just Transition" standards.

WAY FORWARD

There is not even an iota of doubt that the climate governance as deemed mandatory now is not tenable under a statute drafted in 1986 in line with the then existing climate. The Supreme Court in *Lafarge Umiam Mining Pvt. Ltd. v. Union of India*[42] stated that "the Central Government should appoint a National Regulator for appraising projects, enforcing environmental conditions for approvals and to impose penalties on polluters." However, this "National Regulator" needs to be free from executive control. The apex team of this National Regulator needs to be appointed by a team consisting of Head of Government, Leader of Opposition, Chief Justice of India and subject matter experts. However, the opportunity for appointment should not be placed on a platter as post-retirement benefit. Non-renewable fixed contractual tenures shall prove to be beneficial.

Funding for this National Regulatory body ("NRB" hereinafter) may be made available through a distinct Environment Protection Fund created under the Consolidated Fund of India. This Environment Protection Fund may be supplemented by statutory green cess revenues, environmental compensation

[39] Read Section 2(2), NGT Act, 2010.

[40] Colloquially known as the Forest Rights Act or the FRA.

[41] For example, Ridhima Pandey v Union of India (Civil Appeal No. 388 of 2021).

[42] 2011 (7) SCC 338.

penalties, and processing fees, thereby eliminating reliance on annual ministerial budget approvals. Further, while the MoEF&CC needs to retain the duties related with policy formulation, international conventions and treaty negotiations, as well as legislative drafting, the administrative and regulatory related work, i.e., licensing, EIA appraisals, compliance monitoring and enforcement policies, be 'handed over' to the NRB. The NRB, to be truly effective, also needs to be empowered with authority to issue binding stop-work orders, revoke clearances, attach bank accounts, and levy deterrent administrative penalties based on the PPP without needing prior ministerial sanction. Statutory appeals against orders passed by this NRB may lie with the NGT.

The Pollution Control Boards may be restructured (and renamed) as the Environment Protection Authorities, functioning as the right-hand of the NRB. Additionally, an Indian Environment Services cadre (different from the existing Indian Forest Services) be established by the Public Services Commission, thereby enabling the restructured bodies to be filled with subject matter experts.

The overhauled EPA needs to include modern environmental pollutants and define the same such as microplastics, nano-materials, Per- and Polyfluoroalkyl Substances (PFAS / "forever chemicals"), endocrine disruptors, and pharmaceutical/antimicrobial waste. Codification is also suggested for judiciary-birthed terms like 'Public Trust Doctrine, Precautionary Principle, Polluter Pays Principle, and Intergenerational Equity'. Edict protection is also the need of the hour for urban commons, wetlands, floodplains, and groundwater recharge zones as they are not real estate, rather real heritage of our planet, and hence deserve greater and primordial protection.

The EIA, which functions now as a subsidiary of the EPA, may be transformed as a core statutory schedule to prevent dilution of its safeguards through executive office memoranda. Cumulative impact assessments may also be mandated under the EIA/EPA for projects proposed in fragile ecosystems.

Lastly, the "reformatory" Jan Vishwas Act needs to scrap the civil liabilities, but instead of reinstating the old uniform criminal penalties, a graded, turnover-linked penalty framework needs to be brought into force, to ensure deterrence stays in true sense of the term. Moreover, strict criminal liability and piercing of the corporate veil is required for wilful non-compliance, data falsification, repeat offenses, and gross negligence causing severe ecological damage or loss of life.

CONCLUSION

Viewing the urgency of the matter at hand, it needs to be understood that while the EPA has played its role erstwhile, the present situation cannot be tackled effectively unless the edict is overhauled. Yet, to eliminate regulatory fragmentation and forum shopping, the Parliament should use this overhaul to harmonize or subsume overlapping provisions of the Water (Prevention and Control of Pollution) Act, 1974, and the Air (Prevention and Control of Pollution) Act, 1981, into a unified National Environmental Management & Protection Code, while ensuring seamless statutory alignment with the Forest (Conservation) Act, Wildlife (Protection) Act, and the National Green Tribunal Act, 2010.

.