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# **ENVIRONMENTAL POLLUTION AND** **INDIA'S ENVIRONMENTAL LAWS**

*Authored By- Manish Tripathi*

## **ABSTRACT**

This paper examines the evolution of environmental policies and laws in India and the incidents or influences that defined the course of these policies. Environmental degradation in India has been caused by various social, economic, institutional and technological factors. Rapidly growing population, urbanization and industrial activities have all resulted in considerable deterioration in the quality and sustainability of the environment. In the early years of Independence there was no precise environmental policy and not much attempts were made to frame any specific policy or law for the protection of environment. However, the concern for environmental protection was reflected in the national planning process and forest policy. Environmentalism is not a fixed concept, instead it's always evolving and changing keeping in mind the difficulties faced in the past. This also applies to Indian environmentalism, which has developed and changed throughout the years. There is a rapid evolution in the Indian legislations after independence as the need and concern regarding environmental protection and preservation arose.

## **INTRODUCTION**

India employs a range of regulatory instruments to preserve and protect its natural resources. It was the first country to insert an amendment into its Constitution thereby allowing the State to protect and improve the environment for safeguarding public health, forests and wild life. In the last forty years, International Environmental law has rapidly evolved simultaneously with the increase in environmental risks. Before the late 19th Century, there was no appreciation for the idea that ecosystems and other important natural resources should be made the subject of legal protection. Before the 1960s, environmental law had no discrete domestic and international statute of its own. Even in the 1970s, there were only a few multilateral agreements related to environmental law, and most countries lacked a law dedicated to the environment. India has had a long history of environmentalism with the passage and

codification of Acts such as the Indian Penal Code of 1860, The Indian Easements Act of 1882, The Fisheries Act of 1897, The Bengal Smoke Nuisance Act of 1905, The Indian Motor Vehicle Act, The Factories Act, The Indian Forest Act, The Mines and Minerals (Regulation and Development) Act, etc.

with the advent of the 21st-century environment preservation became integrated with a nation's overall development and therefore with major advancements in the fields of public health, resources conservation and legal actions against pollution damage Environmental Law got the initial push. As of now, there are hundreds of environmental agreements and conventions and every country now have its environmental statutes. Here in this article, we would be analyzing the evolution of India's environmental law and how it came into its present form, but first, it is important to know what is environmental pollution, its causes and why a law dedicated to the preservation of the environment is important.

## ENVIRONMENTAL POLLUTION

Environmental pollution is when human activities introduce contaminants in the environment, thereby leading to the disruption of the routine processes, causing irreversible changes in the environment. The agents causing pollution are called pollutants. Pollutants are substances occurring in nature or created because of extraneous human activities. Pollutants are divided into two categories- Biodegradable and Non-biodegradable. Pollutants can also be forms of energies let out in the environment. The presence of a substance in the environment which can be harmful to human beings, plants or animals is what we call as a pollutant and this occurrence is called environmental pollution. Based on the pollutants and the pollution caused in the components of the environment, the environmental pollution may be classified as follows:

**A) Air Pollution-** Air pollution is the introduction into the atmosphere of chemicals, particles, or biological materials that cause discomfort, disease, or death to humans, damage to other living organisms such as food crops, natural environment or built environment. The major sources of air pollution are industrial, domestic and vehicular emissions. The most common air pollutants in urban areas include Sulphur dioxide (SO<sub>2</sub>), Nitrogen oxides (NO & NO<sub>2</sub>), Carbon monoxide (CO), etc. Apart from this, the gases discharged from refrigerators, air conditioners etc. are responsible for depletion of the Ozone layer. Global warming too has become a major issue as a result of environmental pollution that the world needs to cope up with.

**B) Water Pollution-** Water pollution is the contamination of water bodies. Water pollution occurs when pollutants are discharged directly or indirectly into water bodies without adequately treating the pollutants to remove harmful compounds.

**C) Noise Pollution-** 'Noise' is any unwanted sound that disrupts environmental equilibrium. Noise is measured in decibels. A major source of 'noise' is by motor vehicles, aircrafts, fire-crackers, sirens, loud speakers and machinery. Noise pollution has harmful effects on the environment, humans and animals. Some adverse effects of noise pollution include Cardio-vascular health effects, Increase in stress level, hearing impairment, etc. The source of most outdoor noise worldwide is mainly construction and transportation systems, including noise from motor vehicles, noise from aircrafts, and noise from trains and engines.

**D) Radioactive Pollution-** Radioactive pollution is caused once the radioactive matter is allowed to contaminate the atmosphere. A key reason for radioactive pollution is breached at atomic energy plants, which may lead to leakages of radioactive matter into the surroundings. As atomic energy becomes an enormous variety to fossil fuels, this risk will increase. other causes include chemical spills and scientific experiments involving radiation not being conducted with the right care.

**E) Thermal Pollution-** The emission of heated liquid (wastewater produced from industries, steel factories, power plants, etc.) changes a natural water body's temperature. Thermal Pollution is one of the types of pollution that affects the environment and living organisms. A common cause of thermal Pollution is water utilization as a coolant by industrial manufacturers and power plants. The change in temperature decreases the oxygen supply and this in turn affects the Flora and fauna of the surrounding area. An unexpected increase in the water temperature causes reproductive issues, and hot water may decrease the fertility of some organisms and other species may endure congenital disabilities or may lay distorted eggs.

**F) Soil pollution-** The area of fertile land is deteriorating every passing day by the use of chemicals for gaining better produce. The use of pesticides and insecticides removes all the compounds of nitrogen from the soil thus making it highly unfit for the plants to get nutrients from. Deforestation, mining and waste release from industries also depletes the soil and this

will inhibit the growth of plants and the soil will end up being eroded. The growth of cities in India has used soil as a sink for perpetually greater amounts of municipal waste. Cities like Bangalore & Chennai, famously called the IT hubs of the country are facing a grave issue of large amount of e-waste piled in the dump yards. Large amount of land is wasted as dumping grounds both within and at the outskirts of cities. These dumping grounds can be seen treated as pastures for cattle which can result in numerous health hazards.

## CAUSES OF ENVIRONMENTAL POLLUTION

1) **Industrial waste-** The chemical waste from industries contaminates the water to such an extent that there have been instances wherein some regions of the world, people suffer from specific diseases due to the presence of contaminated water around them. The inappropriate disposal of industrial wastes has become a source of both water and soil pollution. The chemical wastes from the various industries can cause pollution to rivers, lakes, seas and also to soil and air through the release of fumes.

2) **Vehicles-** Though the use of vehicles has benefited us in a larger way, the emissions from the vehicles have led to a massive increase in air pollution. The exponential growth in the number of vehicles on the roads has only aided the emission of smoke that when released spreads and eventually mixes with the air that we breathe. The smoke of these various vehicles is quite harmful and is the primary cause of air pollution.

3) **Rapid urbanization-** The rapid rate of urbanization and also industrialization are major causes of environmental pollution because of the harm and death they bring to plant which causes harm to animals, humans and the ecosystem.

4) **Agricultural Wastes-** Due to the ever-growing population, the demand for agricultural products has increased manifold. This has led to the rampant use of pesticides and chemicals in order to increase the productivity. However, this practice has its share of effects on the environment.

## FUNCTION OF ENVIRONMENT LAW

Environmental Law is the product of a value system that seeks to redefine mankind's relationship to nature. The essential idea behind it is to induce humans to act for the service of the environment they live in, and thus pay their homage to the Mother Nature. The basic purpose of environmental law is to change the outlook of people and induce in them a mindset for sustainable development.

Environmental Laws seeks to build up a relationship between humans and the natural system they live in. It seeks to reverse a long run disregard of our natural resources which has led to serious degradation and exploitation of the same. It was always in our human history that we have exploited our environment and its resources and have never given a thought to mitigate this exploitation. Environmental law is an answer to these environmental degradations and adverse exploitations. Therefore, it could be concurred that environmental law is necessary because it is only through statutes dedicated to environmental law that we can reverse the long history of unrestrained material development that has led to environmental degradation.

## **ENVIRONMENTAL POLICIES AND LAWS IN ANCIENT INDIA**

In the ancient India, protection and cleaning up of environment was the essence of the Vedic culture. The conservation of the environment formed an ardent article of faith, reflected in the daily lives of the people and also enshrined in myth folklore, art, culture and religion. Environmental awareness can be said to have existed even in the pre-Vedic Indian valley Civilization which flourished in northern India about 5,000 years ago. This is evident from the archaeological evidence gathered from Harappa and Mohenjo-Daro which were the prominent cities of the civilization. Their awareness about hygiene and sanitation is evident from their constructions of ventilated houses, orderly streets, numerous wells, bath rooms, public baths and covered underground drains.

An appraisal of the historical background to environmental protection in India would indicate that forests & wildlife were considered as vital ingredients of the global system. Here, the entire scheme of environmental preservation was essentially duty-based. In this sense, the ancient Indian society accepted the protection of the environment because they thought it was their

duty to do so. It's pretty evident that they were conscious of the adverse environmental effects caused by deforestation and extinction of animal species.

## **ENVIRONMENTAL POLICIES AND LAWS IN BRITISH INDIA**

During 1860, Britain had emerged as the world leader in deforestation, devastation its own woods and the forest of Ireland, South Africa and north eastern United States to draw timber for shipbuilding, iron-smelting and farming. In the early nineteenth century, the Raj carried out a fierce onslaught on the sub continent's forests. The revenue orientation of the colonial land policy also worked towards the denunciation of forests.

The imperial forest department was formed in 1864, with the help of experts from Germany, the country which was at the time the leading European nation in forest management. The first inspector-general of forests, Dietrich Brandish, had been a botanist and had a task of checking the deforestation and forging legal mechanism to assert and safeguard state's control over the forests. There were some laws enacted by the Britishers to protect the flora and fauna of India, but they had a narrow purpose and limited territorial reach. Some of the early efforts include the enactment of the shore nuisance (Bombay and Kolaba) Act of 1853 and the oriental gas company Act of 1857. The Indian Penal Code in 1860, imposed a fine on a person who voluntarily fouls the water of any public spring or reservoir. In addition, the code penalized negligent acts with poisonous substances that endangered life, caused injury or gave rise to public nuisances. Laws aimed at controlling air pollution were the Bengal smoke nuisance act of 1905 and the Bombay smoke nuisance act of 1912. In the field of wildlife protection, early legislation was limited to specific areas and particular species, thereby aiming at the conservation of biodiversity. Although critics point out that the British enacted these legislations, not with the object of protecting the environment but with the aim of earning revenue for themselves, it should be regarded as the first step towards the scientific and effective conservation of natural resources.

## **ENVIRONMENTAL POLICIES AND LAWS IN POST-INDEPENDENT INDIA**

The Indian Constitution is among the few in the world that contains specific provisions on environmental protection. The right to live in a clean and healthy environment is not a recent invention of the higher judiciary in India. The right has been recognized by the legal system and the judiciary in particular for over a century or so. The only difference in the enjoyment of the right to live in a clean and healthy environment today is that it has attained the status of a fundamental right the violation of which, the Constitution of India will not permit.

Environmental values or rights may be constitutionalized either explicitly by amending the constitution or implicitly by interpreting the existing constitutional language to include environmental protection. Immediately after the Stockholm Declaration, there was a growing trend in national legal systems to give constitutional status to environmental protection. India followed in the pursuit by amending the Constitution to include environment specific provisions in 1976. The birth of right to environment was the direct result of an inclusion these additional provisions.

The Indian Supreme Court, being one of the most active judiciaries in the world, also created a landmark in the quest of international judicial activism by developing the concept of right to healthy environment as a part of right to life under Art 21 of our Constitution. Art 21 reads as follows:

“No person can be deprived of his life and personal liberty except according to the procedure established by law”.

With a view to protecting and improving the environment, different legislations have been made and different regulations and rules have been issued. The Government of India, through its Ministry of Environment and Forests is administering has enacted nationwide comprehensive laws. The Supreme Court has laid down that the "Precautionary principle" and the "Polluter Pays Principle" are essential features of "sustainable development". These concepts are part of Environment Law of the country.

The "Precautionary Principle" establishes that a lack of information does not justify the absence of management measures. On the contrary, management measures should be established in order to maintain the conservation of the resources. The assumptions and methods used for the determination of the scientific basis of the management should be presented.

### **The essentials of the precautionary principle are as follows:**

- (i) Environmental measures- by the state government and the statutory authorities- must anticipate, prevent and attack the causes of environment degradation.
- (ii) When there are threats of serious and irreversible damage, lack of scientific certainty should not be used as a reason for postponing measure to prevent environmental degradation.
- (iii) The “Onus of Proof” is on the actor or the developer/industrialist to show that his action is environmentally benign.
- (iv) Precautionary duties must not only be triggered by the suspicion of concrete danger but also by concern or risk potential.

## **IMPORTANT LEGISLATIONS ENACTED**

1) **The Wild Life (Protection) Act, 1972-** This Act was enacted under the provisions of Article 252 to prevent the decline of wild animals and birds. It prohibits the poaching of certain animals except for the purpose of education or scientific research. In respect of certain wild animals, license is made a prerequisite for their hunting. It provides that a State Government may declare any area to be a sanctuary or as a national park if it considers that such area is of adequate ecological, faunal, floral, geomorphological, natural or zoological significance for protecting, propagating or developing wild life or its environment.

2) **The Water (Prevention and Control of Pollution) Act, 1974-** The first important environmental law enacted by Parliament is the Water (Prevention and Control of Pollution) Act, 1974. As water is a state subject and as 12 States had passed the enabling resolutions, the Government of India, in pursuance of clause 19 of Article 252, passed this legislation<sup>5</sup>. It defines pollution as such contamination of water or such alteration of the physical, chemical or biological properties of water of such discharge of any sewage or trade effluent or of any other liquid, gaseous or solid substance into water (whether directly or indirectly) as may, or it is likely to create a nuisance or rend such water harmful or injurious to public health or safety, or

to domestic, commercial, industrial, agricultural or other legitimate uses, or to the life and health of animals or of aquatic organisms.

3) **Forest (Conservation) Act, 1980-** This act was passed to prevent deforestation, which results in ecological imbalance and environmental deterioration. It prevents even the State Governments and any other authority deserve a forest which is already reserved. It prohibits forestland to be used for non-forest purposes, except with the prior approval of the Central Government.

4) **The Air (Prevention and Control of Pollution) Act, 1981-** this act was enacted to provide for the prevention, control and abatement of air pollution in India. It is a specialized piece of legislation which was enacted to take appropriate steps for the preservation of natural resources of the earth, which among other things include the preservation of the quality of air and control of air pollution.

5) **The National Environment Tribunal Act 1995-** The aim of the act is to provide for strict liability for damages arising out of any accident occurring while handling any hazardous substance and for the establishment of a National Environment Tribunal for effective and expeditious disposal of cases arising from such accident, with a view to giving relief and compensation or damages to persons, property and the environment and for matters connected therewith or incidental thereto.

6) **Noise Pollution (Regulation and Control) Rules, 2000-** This Rule aims at controlling noise levels in public places from various sources, inter-alia, industrial Activity, construction Activity, generator sets, loud speakers, public address systems, music systems, vehicular horns and other mechanical devices having deleterious effects on human health and the psychological well-being of the people. The objective of the Rule is to regulate and control noise producing and generating sources with the objective of maintaining the ambient air quality standards in respect of noise. These rules have been laid down by the government to reduce environmental noise pollution. Certain standards, such as the ambient air quality standards, have been set by the government.

## **BHOPAL GAS LEAK TRAGEDY**

The Bhopal Gas Leak is the worst environmental disaster in our history. This disaster occurred on December 12, 1984 at the Union Carbide India Limited (UCIL), a pesticide-manufacturing factory in Bhopal, India, and was caused by a leak of methyl isocyanate gas (MIC) and other lethal gases from the plant. The gas cloud emanating from this leak contained nearly 15 metric tons of MIC and spread over the densely populated Bhopal city.

The gas leak killed at least 4,000 people immediately and caused health complications for at least 50,000 inhabitants with some agencies reporting a figure of 500,000. These health complications have resulted in the death of more than 15,000 people over the last two decades while a large number (estimated at 100,000) still suffers from the effects of the gas leak, with ten people dying every year. Even before the gas leak, the area surrounding the plant was used for depositing toxic chemicals and this led to the abandoning of wells in the vicinity of the plant in 1982. During the leak, nearly 27 tons of MIC gas escaped into the air and spread over the heavily populated city of Bhopal, spreading over a 30 square mile area.

Even today, the location and its environment are still polluted with thousands of tons of poisonous material, these have found their way into water systems that are used by the local population. The population around the UCIL plant still suffers from various diseases not common among persons living in other nearby areas.

The Bhopal gas leak disaster (Processing of Claims) Act, 1985 was passed by parliament to ensure that the claims arising out of the Bhopal disaster were dealt with speedily, effectively, equitably and to the best advantage of the claimants.

## **CONCLUSION**

There has been a paradigm shift over the concept of right to environment since the last three decades, primarily after a series of global cooperative initiatives. In India, the concern for environmental protection has not only been raised to the status of fundamental law of the land, but it is also wedded with human rights approach and it is now well established that, it is the basic human right of every individual to live in pollution free environment with full human dignity. When the economy is being liberalized and globalized, the environmental policy must also change. As the resources are limited and the Central, State and local Governments face severe budget constraints, cost benefit analysis of environmental laws and regulations should be made mandatory. Nowadays, protection of the environment is very important as the world is moving into a new era without considering any of the major problems of pollution with rapid

The Courts in India too have played a distinguishing role in gradually enlarging the scope of a qualitative living by applying various issues of environmental protection and the Supreme Court of India, apart from being environmentally friendly, has given birth to a wide range of doctrines and principles have in turn been adopted and implemented throughout the country.

