

Industrial Pollution – Legal Framework in India

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Introduction

India has a long-standing commitment to environmental preservation. A multitude of ancient taboos were established with the purpose of conserving the natural environment. Tree felling was forbidden. Rivers were appeased. The mountains were revered, while the clouds and rain were regarded as divine entities. The sun, moon, planets, and animals were revered as gods. Ceremonial prayer was performed to acknowledge the arrival of seasons and climatic changes. The taboos and interdicts that prohibited the disturbance of the natural environment were social norms that had greater validity in enforcing communal regulations than the local norms.

Upon examining historical literature, one will discover compelling proof that the culture of ancient times placed a greater emphasis on environmental preservation than our contemporary society. It was the moral obligation of every person in the community to save the environment. The individuals venerated the natural thing. In ancient times, the trees, water, land, and animals had significant prominence. For instance, specific penalties were mandated for inflicting harm to vegetation.

The historical and political dynamics of our nation precipitated substantial population displacements and migrations. The woods experienced extensive deforestation, resulting in significant land degradation and even desertification in some regions due to excessive resource use. The recognition of the need for comprehensive legislation to safeguard natural resources and the environment emerged throughout the 19th century.

Priorities in Law about the Environment Prior to Independence

In 1860, the first Law Commission of India included a section in the Indian Penal Code addressing the issue of public disturbance. Chapter 14 of the Code 1, which pertains to Public Nuisance, was specifically implemented with the primary objective of preserving and ensuring the protection of the environment. Section 269 prohibited actions that might lead to the transmission of any hazardous illness. Section 277 of the law outlawed the contamination of the water in public tanks and rivers, while section 278 criminalised the act of creating a harmful atmosphere. These clauses of the IPC were components of the overarching legal framework. Subsequently, a series of laws were implemented with particular objectives and concentration, which directly or indirectly led to the establishment of environmental safeguards. The Indian Police Act, 1861 has a provision to restrict noise, while the North Canal and Drainage Act, 1873 was enacted to regulate water pollution. It would be helpful to include a couple more Acts as particular examples in this context.

The Indian Penal Code, 1860, has laws that are relevant to the environment. These provisions may be summarised as follows:

In the Civil Procedure Code of 1908, there is a provision that allows two or more individuals to seek the prescribed remedies for the elimination of nuisances by obtaining permission from the court and applying to the District Judge. In the event of a public nuisance or any other wrongful act that impacts or is likely to impact the general public, a lawsuit can be initiated in order to obtain a declaration, injunction, or any other suitable remedy, as deemed appropriate based on the specific circumstances of the case. This lawsuit can be filed by either a) the Advocate-General, or b) two or more individuals, with the permission of the Court, even if these individuals have not suffered any specific harm as a result of the public nuisance or wrongful act.

The Indian Forest Act of 1927, albeit reflecting practises from the pre-independence period, is still in effect. This Act amalgamates, with slight modifications, the provisions of the Indian Forest Act of 1878 and its subsequent amending Acts.

The 1927 Act addresses four distinct classifications of forests: reserve forest, village forest, protected forest, and non-government (private) forest. A state has the authority to designate forest areas or unused lands as reserved forest, and has the option to sell the resources obtained from these woods. Engaging in unauthorised activities such as cutting down trees, mining, allowing animals to graze, or hunting in protected forests is subject to penalties including fines,

jail, or both. local woods refer to the reserved woodlands that have been designated for a certain local community. State governments have the authority to identify and preserve forests, and they may also restrict activities such as tree cutting, quarrying, and the removal of forest products from these forests. Protected forests are conserved by the implementation of regulations, permits, and legal actions.

Forest officials, who have the authority, enforce the Forest Act by requiring witnesses to appear, requesting the submission of documents, issuing search warrants, and gathering evidence during investigations into forest violations. Such evidence is permissible in a magistrate court.

The Motor Vehicles Act of 1939: The central law allows the States to create regulations pertaining to the reduction of vehicle noise, the prohibition of carrying equipment or materials During the pre-independence period, several laws were enacted to regulate air and water pollution and address issues related to public nuisance. Upon reviewing the chronology of events, it becomes evident that, with few exceptions, there was a notable lack of legal recourse against individuals or entities responsible for pollution. Legislation continued to be passed long after the country gained independence.

After-Independence Environment Laws

After India attained its independence, phrases such as "Industrialise or perish" and others of a similar kind became familiar statements. Growth, increasing production, and profits were the watchwords that were used in the process of economic planning. It became abundantly evident, after a great deal of discussion, that growth may have far-reaching negative implications if it was not made equitable and ecologically conscientious.

After the country gained its independence, a number of statutes were passed, each of which addressed a different aspect of environmental concerns. They are as follows:

In order to prevent the adulteration of food, the Act of 1954: in order to prevent the adulteration of food, to put precautions in place. When an item or meal is regarded to be contaminated, there are a number of different scenarios that are discussed. The establishment of a centralised food laboratory is required by law. Moreover, it incorporates an analysis of food as well as fundamental rules that are associated with food.

River Boards Act of 1956: Act of 1956 Concerning, In accordance with the provisions of this act, River Boards are to be established in order to supervise the management and development of rivers that run across several states. The prevention of water pollution, the regulation of soil erosion, the promotion of afforestation, and the conservation of water resources are some of the tasks that need to be completed.

There are certain states that have passed their own specific laws in order to address the problem of water resource pollution. In an effort to reduce the amount of pollution that was found in the river, the state of Orissa passed a law in the year 1953. As a consequence of this, the Maharashtra Prevention of Water Pollution Act, 1969 was enacted in the state of Maharashtra, which is located in India and is characterised by its high population density and industrialization. In contrast to the Orissa Act, which solely applies to rivers, this Act encompasses not only rivers but also waterways, inland water, ocean streams, and tidal waterways to the degree that the State Government specifies.

Congressional Act of 1962 Relating to Atomic Energy: The Atomic Energy Act of 1962 and the Radiation Protection Rules of 1971 are the two pieces of legislation that govern the regulation of nuclear energy and radioactive substances by India. According to the Act, the Central Government is responsible for a number of specific obligations, including the avoidance of radiation hazards, the protection of the general public and workers who work with radioactive materials, and the disposal of radioactive waste. The Centre is responsible for carrying out nuclear research, producing and transporting radioactive materials, as well as producing and distributing atomic energy and nuclear-generated electricity. These activities are within the scope of the Centre.

The federal government of India has the apparently infinite ability to withhold information from the general public that it judges to be "restricted information." As a result, the nuclear operations of India are kept a secret by the government. This includes any information that has

not been published regarding the location, quality, quantity, processing, acquisition, and disposal of radioactive materials. Additionally, this includes information regarding the theory, design, construction, and operation of nuclear reactors and industrial plants that generate radioactive materials, as well as any information that is associated with nuclear research.

Act of 1968 Concerning Insecticides: One of the objectives of this legislation is to reduce the amount of pollution caused by pesticides. It is a need that the Board be established in order to provide direction about the reduction of pesticide contamination. Within the scope of the Act, licencing regulations are established for the manufacturing and distribution of pesticides. Those violations that are subject to criminal prosecution in accordance with the Act.

The Merchant Shipping (Amendments) Act, 1970 was passed into law specifically for the purpose of controlling and preventing oil pollution of the ocean. It is of the utmost significance on a worldwide scale.

Article 252 (1) of the Constitution granted eleven states the authority to make enabling resolutions, which ultimately led to the passage of the Wild Life Act 1972 by Parliament. This act was enacted in order to protect wild animals. It is planned that a State Wild Life Advisory Board will be created, that the hunting of wild animals and birds will be controlled, that national parks and sanctuaries will be constructed, and that the trafficking in wild animals and animal products would be regulated in accordance with the Act. In 1962, the Act was revised to add provisions that empowered the scientific management of animal populations by the transportation and capture of wild animals. These provisions were included in the Act.

The following are parts of the Criminal Procedure Code from 1973: This Act addresses the issue of removing nuisances that are seen by the general public. Under the provisions of this article, an Executive Magistrate has the authority to impose a restraining order in order to eliminate a public nuisance if the company or profession in question poses a threat to the physical or mental health of the community. "14" The legislation provides protection for wild animals and birds in their natural habitat. The Act makes it illegal to shoot wild animals and contributes to the protection of the environment's flora and fauna communities. Additionally, it is of great aid in the maintenance, development, and conservation of natural species, which is of great importance in the interest of environmental and ecological preservation.

Water Pollution Prevention and Control Act of 1974

Water is a vital need for almost all organisms, including humans. Given its direct consumption, it is crucial that it be purified and suitable for drinking. The majority of Indian communities lack a proper water supply, hence relying on rivers, ponds, and wells for their drinking water needs. The water sources in India are extensively contaminated. The pollution levels in the Ganga River, which is revered and believed to have purifying properties, have reached a point where its water is unsuitable for human consumption. Given the escalating levels of pollution, it became imperative to enact legislation to address the issue.

The legislatures of twelve states issued resolutions urging the Parliament to enact a legislation to prevent and control water pollution. Consequently, in accordance with the requirements of Article 252 of the Constitution, the Parliament approved the Water (Prevention and Control of Pollution) Act, 1974.

This legislation pertains to the water found in both natural watercourses and underground sources. Streams include several types of water bodies, such as rivers, water courses (both flowing and sometimes dry), inland water (both natural and man-made), underground water, and sea or tidal water as specified.

To carry out the requirements of this Act, it establishes a Central Pollution Control Board and State Pollution Control Boards. Seventeen The Central Government and State Governments establish these Boards by choosing a Chairman and Members who possess specialised or practical knowledge in the subject, together with representatives from designated interests. Additionally, a full-time Secretary is appointed.

The 1977 Act for the Prevention and Control of Pollution

The Water Cess Act was enacted to assist in financing the expenditures of the Central and State Water Boards. The legislation establishes financial incentives for the mitigation of pollution and mandates that local authorities and certain specified sectors bear a cess (tax) for their use

of water resources. The generated income is used for the execution of the Water Act. The Central Government disburses funds to the Central Board and the states, after deducting collecting charges, to support the implementation of the Water Act. In order to promote the investment of capital in pollution management, the Act provides a 70 percent refund of the relevant fee to a polluter who installs effluent treatment equipment.

A law passed in 1980 to protect forests

In order to halt the increasing deforestation and the subsequent environmental deterioration, the Parliament passed the Forest (Conservation) Act in 1980. The Act underwent further amendments in 1988. This legislation monitors and regulates the process of deforestation in forests, as well as the conversion of forest land for non-forest activities. The Central Government must provide prior consent for any State Government or other authority to declassify a reserve forest or any part of it as non-forest.

The Air Pollution Prevention and Control Act of 1981

Air is vital for all living organisms and is a fundamental need for the continuation of life. If the location we visit temporarily has contaminated water, one might bring portable water along to prevent consuming the polluted water. However, it is impossible to refrain from inhaling the air at one's current location. In metropolitan areas, autos, factories, and the current breakdown of the electric supply system contribute significantly to air pollution. This Act was enacted in response to the resolutions made at the United Nations Conference on Human Environment, which took place in Stockholm in June 1972. Article 253 of the Constitution grants the Parliament the authority to enact legislation on any matter in order to implement a treaty, agreement, or decision made at any international conference that this country is a part of, regardless of whether it is included in List I or List III of the Seventh Schedule.

This Act imposes liability on the person in control of the premises and the person in possession of the substance for complying with the provisions, rules, directions, or orders issued under the Act.

The 1986 Environmental Protection Act

The subsequent significant law pertaining to this matter is the comprehensive legislation known as the Environment (Protection) Act, 1986. This act grants the central government specific authority to achieve the objectives of the environmental legislation.

The Environment (Protection) Act is a comprehensive piece of legislation that applies to the whole territory of India. The legislation was enacted in March 1986 and became effective on November 19, 1986. In the case of *M.C. Mehta v. Kamal Nath*¹⁴, the Supreme Court noted that the Industrial Revolution led people to believe that nature and its resources were infinite and could be replenished indefinitely. The unregulated expansion of industries resulted in the production of large quantities of industrial waste, causing disruption to the delicate ecological equilibrium via the contamination of the atmosphere and water sources. Consequently, this had a catastrophic impact on biodiversity. In 1972, the United Nations convened the Conference on Human Environment in Stockholm. Following the adoption of resolutions at various levels, legislation was created to safeguard the worsening state of the environment. In India, the legislature passed three laws: the Water (Prevention and Control of Pollution) Act, 1974; the Air (Prevention and Control of Pollution) Act, 1981; and the Environment (Protection) Act of 1986. The Acts have established regulations to implement their requirements.

Article 48-A of the Constitution mandates that the state's courts have a constitutional duty to safeguard and enhance the environment, which encompasses forests and animals. Fifteen The Court further elucidated that the state must adhere to this rule in order to ensure the implementation of social and economic fairness. In order to implement Article 48-A, the Indian Parliament enacted the Environment (Protection) Act.

Law of Public Liability Insurance, 1991

Serious industrial accidents involving the handling of hazardous chemicals have happened in India and elsewhere despite the use of several protective measures. General laws such as the Workman's Compensation Act of 1923 and the Employees State Insurance Act of 1948 protect workers of hazardous installations, but after an accident involving hazardous substance

handling, citizens of this country had to wait for expensive and time-consuming litigation to get quick relief.

The Indian government passed the Public Liability Insurance Act in 1991 to address the issue promptly. Owners are now legally responsible for paying victims of any harm they cause under the doctrine of "no fault liability," and this legislation also mandates insurance for units that deal with hazardous chemicals. The original objective of this rule was to include both potentially harmful and risky pursuits. Although the policy provides some short-term relief to legitimate complaints, it does not excuse the polluting or risk-creating unit owner from paying full compensation in the event that he is proven guilty.

Each year, every officer directly responsible for handling hazardous chemicals, as well as owners, partners, managers, etc., must renew their insurance coverage in accordance with this Act. The primary idea behind this legislation is that the party bringing the claim or victim to justice does not have to prove or plead that the demise or harm was caused by someone else's carelessness, negligence, or fault. This legislation has very harsh punishments.

Section 4 (4) of the National Environment Tribunal Act states that the Tribunal has the same jurisdiction authority as the Collector in respect of matters specified in the Public Liability Insurance Act, 1991. This means that the provisions of that Act, which refer to the Collector, can be interpreted as including the Tribunal. The applications were originally meant to be moved before the Collector.

Conclusions

The primary goal of this act is to create Boards and provide them specific powers and responsibilities in order to prevent and regulate Water Pollution. This is done with the ultimate aim of preserving and restoring the purity of the water. The Central and State Pollution Control Boards were constituted accordingly, with the requirement that they consist of a full-time Chairman and Secretary, both of whom had specialised expertise in Environmental Science. In addition to them, it is necessary for them to include individuals from related sectors and their interests for a shorter period of time. Whenever an activity causing pollution or concerns involves two or more states, a Joint Board will be established to address the issues. The powers and duties of the Central Board are as follows: Section 16 of the Act, as outlined, addresses the responsibilities of the Central Board in the following manner:

- Provide recommendations to the Central Government about any issue pertaining to the prevention and management of water pollution.
- Facilitate the coordination of operations among the State Boards and arbitrate conflicts that arise between them.
- Offer technical support and counsel to the State Boards, conduct and fund inquiries and studies pertaining to issues of water contamination and the mitigation, regulation, or reduction of water pollution.
- The Central Board is responsible for specifying the terms and conditions for planning and organising the training of individuals involved or about to be involved in initiatives aimed at preventing, controlling, or reducing water pollution.
- Utilise mass media to coordinate a comprehensive initiative focused on the prevention and management of water pollution.
- The individual is expected to carry out the designated tasks of any State Board as outlined in an order issued under sub-section (2) of Section 18.

References

1. Desh Bandhu and E. Chauhan (ed.). Current Trends in Indian Environment (New Delhi, Today and Tomorrow Publishers, 1977).
2. Dr. Madabhushi Sridhar, (2009), Environmental Empowerment, Asia Law House, Hyderabad -95.
3. Dr. N. M. Swami (2003, 3rd Ed.), Law Relating to Environmental Pollution and Protection, Asia Law House.
4. Dr. N. Maheshwara Swamy (2005), Textbook on Environmental Law, Asia Law House, Hyderabad.
5. Environment, Biodiversity and Conservation (Prof. M.A. Khan), Allahabad Publishing

6. G. R. Chhatwal (1998), Encyclopedia and Environmental Energy Resources, Amnol Publication Pvt. Ltd., New Delhi-110002.
7. H.M. Robert and J.H. Collins (2007), Handbook of Energy Conservation, CBS Publishers and Distributors, Bangalore.
8. Indian Journal of Environmental Law, Center for Environmental Law Education, Research and National Law School of India University.
9. J.S. Singh and D. Gopal (ed.) Glimpses of Ecology (Jaipur Indian Scientific Publishers, 1978).
10. Lai's Commentaries on Water and Air Pollution And Environment (Protection) Laws, 4th Edition Vo. I, M.C. Mehta, Delhi Law House, 2000
11. P.K. Gupta, (2001), Methods in Environmental Analysis Water, Soil and Aid, Agrobios, Joghpur.

