

A REFERENCE TO THE ECOLOGICAL LEGISLATIONS AND GOVERNMENTAL ACTIONS FOR THE PROTECTION AND CONSERVATION OF ENVIRONMENT AND BIODIVERSITY IN INDIA.

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ABSTRACT

Environmentalism is not a fixed concept. It is always evolving and is influenced by its context. This also applies to Indian environmentalism. The concept of environmentalism has developed and changed throughout the years. There is a rapid evolution in the Indian legislation on the environment after independence. We can see environmental laws even from ancient times which include Buddhism and Jainism rules. The legacy of these ancient laws continues to the medieval and British era and the coming of modern legislations on environmental laws in India. A great sense of concern has been shown by the legislature and even the Indian judiciary regarding the environment with its landmark judgements. Some of the important landmark legislations are:-

1. Policy and Laws in Ancient India (500 BC-1638 AD)
2. Policy and Laws in Medieval India (1638-1800 AD)
3. Shore Nuisance (Bombay and Kolaba) Act, 1853
4. The Merchant Shipping Act of 1858
5. The Indian Fisheries Act, 1897
6. The Bengal Smoke Nuisance Act of 1905
7. Bombay Smoke Nuisance Act of 1912
8. Wild Birds and Animals Protection Act, 1912
9. Indian Forest Act, 1927
10. Wild life protection act, 1972
11. Prevention of Cruelty to Animals Act 1960
12. Forest (Conservation) Act, 1980
13. The Water (Prevention and Control of Pollution) Act, 1974

14. The Air (Prevention and Control of Pollution) Act, 1981
15. The Environment (Protection) Act, 1986
16. The Public Liability Insurance Act, 1991
17. The Biological Diversity Act, 2002
18. The Water (Prevention and Control of Pollution) Cess Act, 1977
19. Ganga Action Plan, 1986
20. National Water Policy
21. Coastal Regulation Zone
22. Godavari Water Disputes Tribunal
23. Interstate River Water Disputes Act
24. Krishna Water Disputes Tribunal
25. National Green Tribunal Act

The Hon'ble Supreme Court through its various judgements also held that the right to life includes right to clean environment, drinking water and pollution free atmosphere. These judgments include the famous Taj Mahal Case, Dehradun Valley Case, Smoking in Public Places Case, Pollution in Delhi Case, Sri Ram Food and Fertilizer Case, Public Health Case, Public Park Case and several landmark judgments on Sustainable development. The policies regarding the environment has changed very rapidly through legislations as well as the judicial interpretations but still there is need of further growth and development in this regard. The environmental protection legislation in many countries is not effective like in the case of India. The regulations are only effective if they are properly enforced. The proper enforcement of these laws were not done in India as of now. Because of the huge population of India there have been enormous demands placed on the environment and these regulations are not efficient in dealing with the current scenario.

Keywords: *Environment, Legislation, Pollution,*

INTRODUCTION

India is a great country that has such a diverse environment for it. If we do not try to protect the environment, we will face severe challenges due to the extent of pollution and exploitation that we put on mother nature.

THE SHORE NUISANCES ACT of 1853

The Shore Nuisances Act was British Legislation to remove the unnecessary obstructions and encroachments in the Islands of Bombay under Bombay presidency. The Act was made to make navigation of ships coming and going out of Bombay Harbour more safe¹. The Act was one of the earliest legislations on the environment.

The Indian Fisheries Act of 1897

The Indian Fisheries Act was a British legislation. The Act was to make necessary legislation for the regulation of fisheries in India. The Indian Fisheries Act banned the use of equipment like engine, net, cage, and other traps made of stationary. The Act also prohibited fishing in private waters. According to the Act, Killing of fish for commercial purposes with explosives, poison or other harmful ways in inland waters and on coastal areas were banned

Bengal Smoke Nuisance Act of 1905

The Bengal Smoke Nuisance Act of 1905 was one of the earliest legislation for prevention of air pollution in British India. The law was formed in 1905 in Bengal. It was for the maintenance of air quality. The legislation was made to reduce the atmospheric smoke created from furnaces and fireplaces of factories and commercial centres in the city. The Act was a British measure for the

¹ The Bombay Harbour was one of the busiest ports at that time was severely hampered by illegal encroachments,

preservation of whiteness of Victoria Memorial Hall² which was decreasing due to the biological changes happening due to the exposure of these low quality smoke from the cities commercial centres. .

Bombay Smoke Nuisance Act of 1912

The Bombay Smoke Nuisance Act of 1912 was the second of such kinds of law in India for the control of air pollution. The Act traces its descendance from the Bengal Smoke Nuisance Act of 1905. The Act was meant to control the rising level of smoke and air pollutants from the commercial centres in the city of Bombay.

THE INDIAN FOREST ACT OF 1927

The Indian Forest Act of 1927 is one of the greatest Indian Legislations of great importance. The Indian Forest Act of 1927 was formulated to regulate the establishment of Reserved Forest, Protected Forest and Village Forest. It also tells us what is a forest offence, what all activities are prohibited in a Reserved Forest as well as describes and codifies the penalties for offenders. The Act also describes the procedure to be followed for declaring an area included in different forest categorizes. It also regulate the movements of forest products³ and the taxes upon it. The Indian Forest Act was modified and was succeeded by a more ecologically oriented National Forest Policy of 1988.

The Wild Birds And Animals Protection Act of 1912

The Wild Birds And Animals Protection Act of 1912 was one of the foremost civil legislations in India for the protection of wild animals and birds. The Act was enacted to increase the survivability

² The British were more enthusiastic in protecting the famous Victoria Memorial Hall than the environment and the atmosphere of kolkata city.

³ The British established the regulation not only for the protection of forests but also for getting more revenue collection from the forest areas.

of wild life animals and birds endangered by hunting, poaching and other exploitative moves by human beings. The Wild Birds And Animals Act of 1912 came into effect as a way to create certain regulations and arrangements for the protection and preservation of certain wild birds and animals within a scheduled list.

THE PREVENTION OF CRUELTY TO ANIMALS ACT OF 1960

The Prevention Of Cruelty To Animals Act of 1960 was an Indian Government act. It was designed to prevent the torture of animals. The Animal Welfare Board of India was established by this act for the purpose of protection and welfare of animals from torture and unnatural exploitation by people. This Act is one of the most significant legislations by Government of India for the protection and welfare of animals from the unnecessary torture of people awarding punishment for the offenders who violate this law.

The Forest Conservation Act of 1980

The Forest Conservation Act of 1980 was a Government of India Act made for the conservation of forests. The Act was one of the most significant legislations made in India. It was a more restrictive regulation for the conservation of forest products and forest lands helping in the building of a more ecological friendly environment. The Act was amended later in the year in the year 1988 and 1992. The purpose of the legislation was to conserve forest from deforestation as well as to improve the quality and living standards of the people living near to reserved forest regions. According to the latest amendments made to the law in 1992 we can say that the more rigid and restrictive regulations were relaxed and made more diluted for certain purposes like research study. The amendment diluted the regulations that led to some activities in the forest lands with some restrictions like no cutting trees or few and limited cutting of trees with advanced prior permission of the Central Government.

Water Prevention and Control of Pollution Act of 1974.

The Water Prevention and Control of Pollution Act of 1974 is a Government Of India legislation for the prevention and prohibition of polluting⁴ and decreasing the pollution of water resources in India. The guidance for the legislation of this act was the inspiration that our public policy makers got from the Indian Constitution. The Act came for the legislation Indian Parliament due to the unchecked and indiscriminate polluting of water resources by the industrial units and through other interventions by people. The act was designed to curb the water pollution by any nature. The Act put direct prohibition on industrial plants on putting sewage, industrial waste or anything that will render the water resources useless, harmful or dangerous to public domain or to any allied business that uses the water.

Air Prevention and Control of Pollution Act of 1981.

The Air Prevention and Control of Pollution Act of 1981 is one of the greatest environmental laws that was formulated in independent India. The Government of India designed the act to reduce and prohibit the increasing amount of air pollution and air pollutants in India to decrease the declining air quality in the nation's atmosphere. One of the most significant aftermath of this law was the establishment of The Central Pollution Control Board. The law and the Board reduces and tries to minimise the points of air pollution as well as the structures that increase the air pollution like chimneys and others.

Environment Protection Act of 1986

The Environment Protection Act of 1986 was one of the important legislation by the Government Of India on an integrated law that protects and covers the three categories of our

⁴ Water pollution is one of the most dangerous problems that we face . Without proper legislation and implementation of these laws we cannot overcome them.

ecology⁵.(land,air,water) The Environment Protection Act of 1986 protects the environment from the contamination of environmental pollutants of any means leading to the damage of the environment and any living beings. The act focuses on reducing environmental degradation due to hazards of pollutants thrown as waste by people and to curb the over exploitation of mother nature without the concern for environment and ecological after effects.

Public Liability Insurance Act of 1991

One of the most important Indian Government legislation on the basis of Humanitarian Grounds was The Public Liability Insurance Act of 1991.The Act promised insurance coverage and an emergency contingency fund that have to be given to the affected or victimised people immediately after the accident or incident had happened.

GANGA ACTION PLAN

The Ganga action plan was the brainchild of Former Indian PM Rajeev Gandhi. The Action Plan was launched in 1986. The central motive of this Ganga Action Plan was a total clean up for Ganga River that will help the river to regenerate itself to the good old days where there were no problems from pollution that hindered her path nor stinked her flow to the sea. The Plan was to reduce the pollution that pollutes the river like from the use of agricultural pesticides, insecticides, as well as from other sources like open human defecation, industrial wastes, plastic wastes, sewage wastes,cattle wallowing spiritual activities like throwing the unburnt and half burnt human bodies into the river for attaining moksha, massive baths of millions of people together as part of festivals and spiritual and devotional activities.

⁵ Environmental Protection Act of 1986 is one of the greatest legislation that happened in Indian Environmental History that it provided a multi domain law for the protection of environment in a wider aspect.

National Water Policy

The National Water Policy of India is one of the most important and contemporarily significant moves or a policy adopted by the Central Government Of India. National Water Policy of India is a Government Of India public policy formulated by the Ministry of Water Resources to enable the country for the efficient management of the water resources it has. The National Water Policy came into effect in 1987 and was updated in the course of time in 2002 and later in 2012. The formulation of National Water Policy is so significant for India as the nation is massively overcrowded and overpopulated with many regions consisting of high and very high population density areas with a major disadvantage of having mere 4% of global water resources with an overwhelming 18% of global population living in this country⁶. Millions of Indian people are still lacking quality and quantity water for their basic needs and even do not have opportunity for drinking purposes.

National Water Policy 2012

The National Water Policy of 2012 is one of the most controversial public policies of the India Government. It was one of the the first public policies of the Central Government that deviated from the decades old policies and activities of good and protective attitude and responsibility towards nature, ecology and environment. According to the new National Water Policy of 2012 water was not going to be recognised as a gift of nature any more and was astonishingly labeled as a market commodity and a new era started in India that began to see and treat water as an economic or market good for sale. The Ministry of Water Resources declined the controversies in their tactical move by claiming that The National Water Policy will help for water conservation as well as for optimum use. The National Water Policy of 2012 is somewhat a dilution of decades old Government stand of Environment First Policy as it does not allow polluter pay the fine or to face the consequences and the situation changed to there will be no consequences going to happen

⁶ The country is known for the water scarcity it faces. If we don't act now it's already been late to arrange supplementary arrangements for solving the water scarcity.

even if the polluter pollutes the water resources if they have an affluent water treatment source for them. According to general public view and opinion the new National Water Policy of 2012 does not even focus or even pay attention for decreasing water pollution or doesn't have any recommendations for use of water for commercial application especially on the most important groundwater use.

Coastal Regulation Zone

The Coastal Regulation Zone is an important step taken by the Government Of India to protect the shores of the country. The coastal Regulation Zone was established under the after effect of the legislations passed under Environment Protection Act of 1986. The Coastal Regulation Zone has its provisions designed to regulate the human activities upto 500 m from shores of sea and rivers as well as from the banks of creeks, lagoons, estuaries and backwater. The Coastal Regulation Zone has its restrictions imposed on any type of construction or expansion along the 4 categories of Coastal Regulation Zones⁷.

Coastal Regulation Zone 1:- The coastal regulation zone 1 consists of the most ecologically sensitive and valuable regions. The protection of these places are valuable, necessary and essential in the healthy keeping of the ecosystem in the coastal areas.

Coastal Regulation Zone 2:- The coastal regulation zone 2 consists of urbanized regions adjacent to the shore.

Coastal Regulation Zone 3:- The coastal regulation zone 3 consists of both rural and urbanized regions which do not include in crz1 and crz2. The only activities allowed in such kind of areas is agriculture and some of the public facilities which are deemed essential are also allowed in this zone.

⁷ Coastal Regulation Zones are one of the most important actions from the Government Of India for the protection of our coasts that it effectively blocks the encroachment activities of illegal dwellers for constructions and industrial purposes.

Coastal Regulation Zone 4:- The coastal regulation zone 4 covers the aquatic region that extends up to the territorial limits of the country. Some non injurious activities like Fishing and some other related activities are allowed in this zone with a mandatory and compulsory requirement of no waste should be disposed of in this zone.

Interstate River Water Disputes Act

The Interstate River Water Disputes Act of 1956 is a Government Of India Act that was under the inspiration and guidance got from the Article 262 of the Indian Constitution. India is a country with a huge population dependent on rivers and river valleys which will naturally lead to disputes and confrontations between the states within the Indian Union for the ownership, water allocation, and management of water from these inter state rivers and river valleys. It is at this junction the Interstate River Water Disputes Act become important and traces its significance still now. The Interstate River Water Dispute Act was passed on the eve of the Indian State reorganization. The Act was passed to resolve the water disputes that would arise in the use, control and distribution of interstate rivers and river valleys. The Act gives the responsibility to handle the situation to the Central government of India to mediate in such conflicts⁸. The Act was modified several times which led to several amendments of the most recent took place in 2002.

National Green Tribunal (NGT)

The National Green Tribunal is a judicial body specialized for the efficient and fast delivery of justice or remedy related to any matters on the environment including environmental protection, conservation of forests and other natural resources. The body was established under the guidance of and as a result of The National Green Tribunal Act of 2010. The Act is a descendant of and draws its inspiration from the Indian constitution's Article 21.

⁸ The Interstate water dispute act is one of the most important legislation in India. But it is very time consuming and not effective in various situations and may be unacceptable for some of the parties involved.

The National Green Tribunal is a dedicated and expertised judicial body established to reduce the rush of cases related to the environmental problems and such public Interest Litigations in High Courts and Supreme Courts. The most important and significant feature and characteristics of the National Green Tribunal is, It is compulsory to take the final call of decision in any cases or matters within 6 months of time.

Structure Of National Green Tribunal

The National Green Tribunal was established with a desire for fast and speedy operations and accessibility for the common public. By this reason even though the National Green Tribunal is centered around its headquarters in New Delhi it has 4 regions Benches with regional jurisdiction. The National Green Tribunal is headed by a retired Supreme Court Judge as its Chairman and other members of the Tribunal are/ must be the Judges of State High Courts. In order to get expert opinions in the subject matters each of the 4 regional benches of the National Green Tribunal should consist of a minimum one expert Member apart from the one Judicial member it have. The National Green Tribunal has an excellent requirement of qualification for the expert members that the member should have an excellent quality in the professional qualifications and should have a minimum of 15 years of expertise in the field that consists of environmental protection, forest conservation and other related environmental subjects.

The Biological Diversity Act Of 2002

The Biological Diversity Act of 2002 is an Indian Act by the Government of India for the preservation and conservation of India's biological diversity. The objectives of The Biological Diversity Act of 2002 was to meet the mandatory obligations under the Convention on Biological Diversity in which India was a signatory. The Biodiversity of India is so important as it consist of various flora, fauna and other organisms as part of an ecology and has been identified under this

Biological Diversity Act⁹. The Act led to the establishment of The National Biodiversity Authority of India which is a statutory autonomous body working under the guidance of Union Ministry of Environment and Forests. The National Biodiversity Authority is headquartered in Chennai. The NBA is established to plan and execute the regulations mentioned under The Biological Diversity Act.

Critical Analysis On The Environmental Laws And Legislations In India

The legislation made by the Government Of India in the Environmental protection and Conservation of Ecology is so much important in the evolution of attitude and paying attention from the public policy makers. India started its legislation on environmental matters from the era of British India and had inherited most laws on environment from the colonial structure itself. Even though there were several legislation on environmental and ecological matters after the independence, the establishment of the “National Committee on Environmental Planning and Coordination” in 1972 turned out to be a milestone of the environmental management in India. The most important reason for this kind of assessment is that while we deal with several kinds of environmental issues like sewage disposal, sanitation, public health, environmental protection and ecological conservation, we don't have a proper control system at the central, state or in the intergovernmental level. The wind of change began with the 24th UN General Assembly as it decided to arrange a conference for the assessment of the human environment in 1972 which led to the establishment of NCEPC as the highest advisory body controlling all activities related to environmental protection and ecological conservation helping us to create a General Command Centre for all activities on environment and ecological matters.

Indian Constitution And Its Laws For Environmental Protection.

⁹ The Biological Diversity Act is one of the latest and most important legislation by the central government of India that covers multiple domains of the environment.

The Indian Constitution over the course of time has become a manuscript containing great contributions and philosophies for the preservation and conservation of our Environment and Ecology as how it is gifted by mother nature. The most important of the constitutional laws related to the environment and ecological protection and conservation is the 42nd Constitutional Amendment. Even though the careful analysis of our Indian Constitution sheds some light on the early attempts in our Indian Constitution for the environmental and ecological protection through the Fundamental Rights and through the Directive Principles of State Policy. The Article 21, Article 262, Article 39(b), Article 47, Article 48 and as well as Article 49 are among the foremost sections of Indian Constitution that appears for the Constitutional Mandate on the Environmental and Ecological Protection and Conservation. The Directive Principles and as well as the Fundamental Rights try to impose a duty of responsibility on the State jointly and separately to generate an atmosphere in the nation for the healthy life of its citizens and for the maintaining of a warm, healthy and diverse environment and ecology as same and safe as the old one that we get to enjoy.

Conclusion

India is a very large country. The Biodiversity and Ecology it has is a very diverse one. The natural requirements of resources we want and the availability is very different and difficult that prompts the people to exploit nature as much as they could. This causes a great imbalance in nature. We should be careful in this aspect as the imbalance will destabilise the equilibrium that mother nature has created. This will create several problems and crises that we have to manage and go through. The international events like stockholm conference led to massive change in the concept and attitude of several central governments in several countries which led to the development of awareness in these countries about the need of environmental protection and ecological conservation¹⁰. In India the Courts have played a great and distinguished role in solving several issues of environmental protection and helped to get a certain amount of attention for ecological conservation from the public policy makers.

¹⁰ The level of ecological conservation's awareness in India is not the best suited for the needs of India's declining ecological situation. We have to spread ecological awareness around India and have to get the support of people for the conservation of ecology and environment in India.

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