



ENVIRONMENTAL PROTECTION LAWS IN INDIA: IMPLEMENTATION AND CHALLENGES

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ABSTRACT

India, like any other developing economy, has one of the most comprehensive statutory systems for environmental protection, with a strong base in the constitutional principles, a fairly thick layer of central legislation and an unusually proactive judiciary, which has, over the past four decades, made environmental protection an integral part of the fundamental right to life. In spite of that, serious air and water pollution, uncontrolled forest utilization, unscientific disposal of solid wastes and frequent industrial accidents indicate that the gap between legislated as well as implemented efforts is wide. The paper looks into that dearth in light of five thematic lenses: constitutional and legislative bedrock of Indian environmental law; the evolution of doctrine in Indian law – the precautionary principle, the polluter pays principle, the public trust doctrine and absolute liability; institutional framework of enforcement such as the State Pollution Control Boards and the National Green Tribunal; law and practice of conservation of forests, wildlife and biodiversity; and new challenges in the era of environmental change – climate change, environmental impact assessment reform and industrial pollution. On the basis of such and other, important cases that have defined Indian environmental law, this paper proposes that the primary problem of Indian environmental law is one of implementation and institutional capacity and that this requires a strengthening of regulatory agencies, enforcement of judicial mandates and balancing the development agenda with the ecological constraints.

KEYWORDS: Environmental Protection; Environment (Protection) Act, 1986; National Green Tribunal; Precautionary Principle; Polluter Pays Principle

INTRODUCTION

Environmental protection is a unique constitutional and jurisprudential issue in India. In most countries, environmental law is predominantly statutory in nature with the judiciary becoming more active and influential in Indian environmental law only after the 1980s, when the courts interpreted environmental protection as a fundamental right to life enshrined in Constitution Article 21. The results of this double-pronged approach have created a legal edifice with a rich doctrinal base of concepts such as the precautionary principle, the polluter pays principle, the public trust doctrine and the rule of absolute liability and the multi-layered central laws include the Water (Prevention and Control of Pollution) Act, 1974, the Air (Prevention and Control of Pollution) Act, 1981, the Environment (Protection) Act, 1986, the Forest (Conservation) Act, 1980 and the Wildlife (Protection) Act, 1972.



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Despite this arrangement, India remains one of the most polluted countries in the world in terms of air pollution, river pollution and forest degradation. The paradox of "widespread law" and "widespread damage to the environment" is the main issue that will be explored in this paper. The paper's working hypothesis is that Indian environmental law is more deficient in institutional capacity, the will for enforcement and the inter-agency coordination of environmental regulators and the developmental agencies of the state, than in substantive standards. Ineffectiveness of the ordinary administrative enforcement mechanisms is what has made litigation an effective mechanism of an corrective one, as in the event of the public interest litigation before the Supreme Court and the National Green Tribunal.

This paper consists of five parts. Part I discusses the constitutional and legislative provisions for India in protection of the environment. Part II follows the "doctrines" which the Supreme Court has developed to fill in the limitations of the statute, or to compensate for them. Chapter III then examines the institutional framework of implementation, including Pollution Control Boards, the National Green Tribunal and the continued problems of capacity for implementing effective enforcement. Part IV deals with the specific legal and conservation aspects of forest, wildlife and biodiversity conservation. Part V reviews emerging issues of the inadequacy of the framework in the coming decade such as climate change litigation and reform of the environmental clearance process and recurring industrial pollution. This paper concludes with a comprehensive evaluation of the implementation gap and suggests for the institutional reform (Ghosh, 2019).

1. CONSTITUTIONAL AND LEGISLATIVE FRAMEWORK FOR ENVIRONMENTAL PROTECTION

As a result of the original constitution as drafted, there was no mention of the environment in it. The 42nd amendment of 1976 on the backdrop of the 1972 Stockholm declaration introduced Article 48A and Article 51A(g) which mandate the State to take proactive steps to safeguard and improve the environment and to preserve forests, wildlife and the fundamental aspect for every citizen is to protect and improve the natural environment. Neither of these is enforceable on its own, the first being a Directive Principle and the second a Fundamental Duty, but both have been given their teeth in the teeth of Article 21.

1.1 Article 21 and the Judicial Construction of an Environmental Right

The definition of the right to a pollution-free and a wholesome environment by the Supreme Court has been the most significant doctrinal evolution in Indian environmental law to date – this means that, in the eyes of the Supreme Court, environmental claims are now not only matters of administrative grievance, but also justiciable fundamental rights claims which can be heard through the writ jurisdiction under Article 21 and Article 32 of the constitution.

Subhash Kumar v. State of Bihar: The Supreme Court ruled that the right to life guaranteed under Article 21 of the Constitution encompasses the right to enjoy pollution free water and air and that a citizen can invoke Article 32 when his right to life is being infringed by the State action or



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inaction, but only if and when there is no private or extraneous factor involved in invoking the right to life. The order made Article 21 the constitutional way for EPL to be introduced from here onwards. The Constitution of India, Article 21 (protection of life and personal liberty), read with Article 32 (right to constitutional remedies); Article 48A (Directive Principle: State shall take steps to protect and improve the environment); Article 51A(g) (Fundamental Duty of citizens: Protection of environment), added by the Constitution (Forty-Second Amendment) Act, 1976.

1.2 The Water and Air Acts: Sector-Specific Command-and-Control Regulation

The first pollution-control laws in India followed a command and control approach, creating the Central Pollution Control Boards and State Pollution Control Boards to set limits on effluents and emissions and to issue or deny permission to build and operate a polluting industry and to prosecute an industry that was not complying with the standards. The Water Act had been enacted seven years before the Air Act and established the same institutional structure, a two-tiered board of both Central and State levels.

Case: In the Ganga Pollution Case (M.C. Mehta v. Union of India), the Supreme Court had instructed the tanneries that were dumping raw effluents into the river at Kanpur to set up the primary effluent treatment plants or else they would be shut down, thus showing the willingness of the judiciary to enforce statutory consent conditions directly, when the State Pollution Control Boards had failed to take any action.

Article: Water (Prevention and Control of Pollution) Act, 1974, Sections 24-25 and Air (Prevention and Control of Pollution) Act, 1981, Sections 21-22 prohibit the use of streams for polluting load disposal and prohibit establishment and operation of industrial plants without State Board consent.

1.3 The Environment (Protection) Act, 1986 as an Umbrella Statute

The Environment (Protection) Act, 1986 was enacted in response to the Bhopal gas tragedy and was intended to be an umbrella legislation that would give the Central Government the power to take all steps necessary to protect and improve the environment, including the power to set standards for emissions and discharges, to limit areas in which industries can be sited and to give directions that override the provisions of other specific legislation in force. The subordinate legislation of the Act, particularly the Environmental Impact Assessment Notification, has emerged as the key regulatory tool for the approval of major development projects.

Case: The Supreme Court has repeatedly used the Environment (Protection) Act as the statutory basis for its wide-ranging remedial directions in situations where sectoral legislation had proven inadequate, using the provisions of the Environment (Protection) Act 1986 to issue remedial directions which go far beyond the scope of the enforcement powers that the Water and Air Acts anticipated.

Article: Environment (Protection) Act, 1986, section 3 (power of Central Government to take measures for protection and improvement of environment), section 5 (power to issue directions



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including to close, prohibit or regulate any industry, operation or process) and section 15 (penalty for contravention that extends to imprisonment of up to seven years).

This Part reveals that India's environmental laws bestow on regulators significant formal authority. However, as Parts II and III demonstrate, these formal powers and their actual application have often led to the creation of additional doctrine and, in more egregious instances, to a direct supervisory role for the judiciary over implementation.

2. JUDICIAL DOCTRINES AND THE EVOLUTION OF ENVIRONMENTAL JURISPRUDENCE

Since legislation and administration have failed to provide adequate protection of the environment, the Supreme Court has evolved its own environmental jurisprudence, which has been influenced by international environmental law as expressed in the 1992 Rio Declaration and embedded in Indian law through Article 21. Adopting the precautionary principle has shifted the burden of proof, from the objector to the regulator, who is expected to take action before the science is clear that harm has occurred (Gill, 2016). The polluter pays principle closely parallels the precautionary principle and it is a principle that states that the person or company that pollutes should pay for the remediation of the pollution (restoration of the degraded environment)—rather than the cost being socialized or borne by the state or affected community.

Two additional doctrines fill in the "judicially carved out doctrine": the rule of absolute liability of the hazardous industry, eliminating the exceptions traditionally accorded under the English common law of *Rylands v. Fletcher* and the public trust doctrine, which holds that certain natural resources are held in trust for public use and cannot be alienated to private and commercial purposes (Sands, 2003).

Case:

- The Supreme Court in *Vellore Citizens Welfare Forum v. Union of India* had found that the 'precautionary principle' and 'polluter pays' principle are integral to 'sustainable development' and, therefore, implicit in the environmental law of India under Articles 21, 47, 48A and 51A(g) of the Constitution. The Court ruled that tanneries in Tamil Nadu that discharge untreated effluents into agricultural land and waterways should be closed and that a special authority be set up to value and collect the environmental damages caused, thereby making the precautionary principle "persuasive international soft law" into "binding Indian law".
- *Indian Council for Enviro-Legal Action v. Union of India* was the case involving highly toxic untreated effluent discharged from chemical industries in Bichhri village of Rajasthan, making it unsuitable for cultivation and drinking for a long radius, where Supreme Court held that once it is determined that the activity is hazardous, the polluting industry is held liable to compensate any person for the loss suffered by it because of that activity, even if that industry took reasonable care and directed them to bear the entire burden of cleaning up the contaminated area.



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- The Supreme Court in *M C Mehta v Union of India* (in relation to a leak of oleum gas from a fertiliser plant in Delhi) established that an enterprise involved in a hazardous or inherently dangerous activity has an absolute and non-delegable duty on behalf of the community to prevent that activity from causing harm and is liable to compensate all who are affected, irrespective of the exceptions that are available under English common law negligence principles and that the quantum of compensation should be commensurate with the size and scope of the enterprise, so that it serves as a deterrent.

Article:

- The principle of the precautionary approach which was incorporated into the Indian constitutional jurisprudence through Article 21 of the Constitution of India and the Environment (Protection) Act, 1986, Section 3(2)(v) which empowers the Central Government to specify procedures and precautions for preventing accidents which would lead to environmental pollution; 1992 Rio Declaration on Environment and Development, Principle 15, (precautionary approach).
- This is in tandem with the subsequent incorporation of the principle in the National Green Tribunal Act, 2010, section 20, under which the Tribunal is directed “to apply” the principles of sustainable development, precautionary principle and polluter pays principle when making an order or decision” compare with section 5 of the Environment (Protection) Act, 1986 read with the polluter pays principle as an interpretative gloss on Article 21 of the Constitution.
- Absolute liability, as an Indian judicial doctrine independent of the English common law doctrine of *Rylands v. Fletcher* (1868); the public trust doctrine as received into Indian law from environmental jurisprudence in the United States and applied through Article 21; and the strict liability of industry in respect of hazardous substances under the Public Liability Insurance Act, 1991, which provides no-fault compensation for victims of accidents involving hazardous substances.

3. INSTITUTIONAL IMPLEMENTATION: POLLUTION CONTROL BOARDS, THE NGT and ENFORCEMENT CHALLENGES

The formal institutional framework for environmental enforcement in India has been established through the Water and Air Acts, which include the Central Pollution Control Board and the State Pollution Control Boards at the Union and State level, respectively and the National Green Tribunal which was set up in 2010 as a specialised environmental adjudicatory body.

This Part will explore the continued discrepancy between the authority of these institutions and their ability to ensure adherence to their rules.

3.1 The National Green Tribunal as a Specialised Forum

The vision behind the National Green Tribunal Act, 2010 was not only to redress the countless environmental cases that languished in the overburdened civil courts and in the Supreme Court's continuing mandamus jurisdiction but also to give speedy and effective disposal to these cases.



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The aim of the National Green Tribunal Act, 2010 was to ensure speedy and effective disposal of environmental cases which had languished in the overburdened civil courts and in the continuing jurisdiction of the Supreme Court under mandamus and to apply the precautionary and polluter pays principles to achieve the same.

Case: Almitra H. Patel v. Union of India, which involved a PIL challenging the unscientific disposal of MSW in Delhi, the Supreme Court, in conjunction with the NGT, has given directions which strictly implemented the Solid Waste Management Rules, in particular, segregation at the source and scientific treatment and disposal of solid waste and also banned open burning of waste, including landfills, throughout the country; this demonstrates how the NGT can transform and operationalize sub-ordinate regulatory directives into enforceable and monitored directions where municipal enforcement had been lacking for decades.

Article: The orders made by the NGT in the following articles: National Green Tribunal Act, 2010, section 14 (jurisdiction over civil cases involving substantial questions relating to the environment), section 15 (power to award compensation and restitution) and section 20 (duty to apply the principles of sustainable development, precautionary principle and polluter pays principle); Solid Waste Management Rules, 2016, issued under Environment (Protection) Act, 1986.

3.2 Industrial Closure and the Limits of Regulatory Enforcement

The biggest battle for the Pollution Control Boards and the Tribunal is the closure of large industrial units, whose operations generate revenues and jobs, for environmental non-compliance, as they compete with the powerful economic interests and, often, the conflicting agendas of various arms of the State.

Case: The Sterlite (Vedanta) copper smelting plant, Tuticorin, Tamil Nadu, is a case in point, where the Pollution Control Board took a decision to close the plant, which was later reviewed and set aside by the National Green Tribunal and then upheld by the Supreme Court after the plant had been closed for years on the basis of the divergent assessments of the Pollution Control Board and the National Green Tribunal and Supreme Court.

Article: Water (Prevention and Control of Pollution) Act, 1974, s.33A (power to give directions, including directions for closure) of the Act & National Green Tribunal Act, 2010, s.16 (appellate jurisdiction over orders of the State Pollution Control Boards) along with the constitutional appellate jurisdiction of the Supreme Court under Article 136.

3.3 Municipal and Local Enforcement Failures

Many of India's most serious environmental harms (such as the discharge of untreated sewage and the open burning of municipal solid waste, as well as lack of urban sanitation) are not attributable to large industry, but rather to the routine failure of local and municipal authorities to undertake the environmental obligations laid upon them by statute, which pre-date the more recent pollution-control statutes that characterize contemporary India.



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Case: In *Municipal Council, Ratlam v. Vardhich*, the Supreme Court, in a case under the Code of Criminal Procedure, had held that a municipality could not shirk its statutory responsibility to prevent public nuisance arising from open drains and poor sanitation simply because it was not financially able to do that, a principle that has been subsequently repeated in several cases where the local bodies were called to account for their duties under the environmental rules for disposal of solid waste and control of sewage.

Article: Article 133 of the Code of Criminal Procedure, 1973, which provides for conditional order of removal of public nuisance with reference to municipal environmental responsibilities; Environment (Protection) Act 1986, section 3(3) of which provides for the establishment of authorities for the purpose of exercising powers under the said Act, which includes powers in relation to local sanitation and waste management. The institutional record that has been examined in this Part indicates that the environmental enforcement challenge in India is not lack of enabling legislation, but rather lack of capacity, coordination and political economy. Boards have closure and prosecution powers which are exercised only occasionally and the Tribunal, although in some ways more agile than ordinary courts, is still reliant on the same Pollution Control Boards and state administrations as far as the actual implementation of its orders.

4. FOREST, WILDLIFE and BIODIVERSITY CONSERVATION: LAW AND IMPLEMENTATION GAPS

The forest and wildlife legal system in India predates its pollution-control laws and was a product of a different regulatory philosophy aimed at curbing diversion of forest land and regulating the hunting and trade of wildlife, not establishing emission or effluent standards. This Part explores the key forest and biodiversity conservation laws and the challenges to them in court. The Forest (Conservation) Act, 1980, laid down the requirement of prior approval of the Central Government for diversion of forest land for non-forest uses, which had been created due to the fast deforestation under the previous state level forest policy. There has been a single public interest litigation, which had been pending in the Supreme Court for quite a while, that has significantly influenced the implementation of the Act. Mineral extraction and forest or ecological conservation have been at odds at the very least since the cases of first generation environmental litigation in India, where ecological concerns have dominated even at the cost of ruining industrial and extractive activities which are otherwise legally licensed (Yadav, 2011). In addition to forest diversion, environmental jurisprudence in India has also included concerns for the protection of wildlife habitats and importantly, concerns related to the synergy between environmental degradation and cultural heritage protection, as environmental dimension of Article 21 of the Constitution has expanded beyond forest diversion.

Case:

- In *T.N. Godavarman Thirumulpad v. Union of India* (1995), the Court created the tool of ongoing mandamus to exercise supervisory powers over forest conservation across all of India,



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extended the definition of "forest" under the Forest (Conservation) Act to include forest areas as recorded in government records, regardless of whether they are government property or not and directed the establishment of Compensatory Afforestation Fund mechanisms to ensure that diversion of forest land is compensated for through afforestation somewhere else, which remains pending before the Supreme Court today and with which the Court has yet to write; in 30 years, the Court has issued directions for implementation.

- In *Rural Litigation and Entitlement v State of Uttar Pradesh*, the Supreme Court of India, in its landmark judgment as the first of its kind in environmental public interest litigation, closed down the limestone quarries held by quarrymen in the Mussoorie and Deonar hills of Doon valley in Uttar Pradesh, holding that the quarrying operations were causing irreversible damage to the environment and were in violation of the Forest (Conservation) Act of India, even though the quarrymen had statutory mining rights and ordered afforestation and rehabilitation of the quarrymen in the affected areas, thus establishing that the mining rights of the quarrymen do not override the responsibility of the state to prevent serious and irreversible environmental injury.
- In *M.C. Mehta v. Union of India*, popularly known as the Taj Trapezium Case, the Supreme Court prescribed that industries in a well-defined trapezium zone around the Taj Mahal, whose emissions of sulphur dioxide were observed as being responsible for the damage and yellowing of the monument's marble, should switch to natural gas as an alternative industrial fuel or relocate outside the zone in order to protect a cultural monument under the rubric of environmental law—using the precautionary principle and extending the pollution-control jurisprudence to interests other than the public health and ecology.

Article:

- The forest land currently under the 1980 Act, in the way it was expanded by the courts in *Godaverman*, were restricted in the forest land to which it applies by the 2023 Amendment to the forest law, but the act itself has been challenged as being capable of diluting the definition of forest set out in the *Godaverman* judgment.
- Forest (Conservation) Act, 1980, section 2 – non-forest uses of forest land; and section 3A – penalty for contravention; and Mines and Minerals (Development and Regulation) Act, 1957, as qualified by environmental clearance requirements under the Environment (Protection) Act, 1986.
- Environment (Protection) Act, 1986, section 3, for restricting the siting of industries in ecologically or culturally sensitive areas, Wildlife (Protection) Act, 1972, sections 18 and 35 (declaration of sanctuaries and national parks), in so far as this safeguards the physical surroundings of protected monuments and the Ancient Monuments and Archaeological Sites and Remains Act, 1958, insofar as it affords protection to the physical surroundings of protected monuments. The cases discussed in this Part illustrate how forest and wildlife



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conservation in India has been maintained primarily through constant judicial oversight, rather than the independent functioning of the laws themselves, undermining the structural sustainability of the institutional framework of forest and wildlife conservation in India, as legislative changes restrict the extent of judicial extensions of conservation law.

5. EMERGING CHALLENGES: CLIMATE CHANGE, EIA REFORM and INDUSTRIAL POLLUTION

This Part concludes this paper by exploring three issues that are actively reconfiguring the current state of environmental law in India in this decade: first, access to a new constitutional protection against harmful climate change impacts; second, the flawed environmental clearance process that has been the target of legal challenges; and third, the ongoing role of industrial disasters in the law of corporate accountability.

5.1 Climate Change and a New Constitutional Right

Climate change has been dealt with, if at all, by Indian courts as a part of the general Article 21 constitutional right to the environment and not as a separate right to climate change. Previously, Indian courts treated climate change as an issue of the general right to environment (Article 21) of the constitution and not a constitutional right to climate change. That all changed in a 2024 ruling which came out of an unusual disagreement over the preservation of a threatened bird species.

Case: In *M.K. Ranjitsinh v. Union of India*, the Supreme Court, in connection with a petition requesting that the critically endangered Great Indian Bustard be placed in a protected area, for the first time, held that there was a right to be free from the impact of climate change, finding this right in Articles 14 and 21 of the Constitution, while also changing its earlier interim direction to de-construct overhead transmission lines to allow further development of renewable energy infrastructure, which commentators have described as recognising an expansive new right but refusing to grant it the power to limit the renewable energy project before it.

Article: The Convention of Indian Constitution, Article 14 (right to equality before law) and Article 21 as extended in *Ranjitsinh* to recognise a right against the adverse effects of climate change; India's Nationally Determined Contributions under the Paris Agreement to the United Nations Framework Convention on Climate Change (2015) which remain primarily an executive policy rather than a domestic statute as there is no dedicated climate legislation in India.

5.2 Reform and Contestation of the Environmental Impact Assessment Process

The Environmental Impact Assessment Notification under the Environment (Protection) Act mandates that certain types of projects must obtain environmental clearance before construction or operation. Government has tried to allow "ex post facto" or retrospective clearance of projects that have already begun operations without government authorization and this has sparked ongoing litigation challenges to the mandatory nature of the prior-clearance requirement.

Case: In *Vanashakti v. Union of India*, the Supreme Court deems that an environmental impact assessment must be done before the projects are put into operation, rather than after they start and



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that such an assessment cannot serve the statutory purpose of preventing harm after it has been done to the environment, or of rewarding the non-compliance, which has implications for industries and infrastructure projects that had proceeded without environmental clearance.

Article: The Environment (Protection) Act, 1986, section 3, read with the Environmental Impact Assessment Notification, 2006 (S.O. 1533(E)) as amended, requires environmental clearance prior to the commencement of construction or expansion of specific types of projects listed in the Schedule of the notification.

5.3 Industrial Disasters and the Continuing Legacy of Corporate Accountability

The Bhopal gas tragedy of 1984, which occurred when methyl isocyanate gas leaked from a pesticide manufacturing facility, killing several thousand people and leaving many more disabled, was the baseline case in Indian law dealing with liability for hazardous industrial activity and its issues of compensation and accountability, with the unanswered questions of compensation and accountability for the tragedy continuing to shape present-day industrial pollution litigation and the design of legislation.

Case: In *Union Carbide Corporation v. Union of India*, the Supreme Court approved a settlement between the Union of India, acting on behalf of Bhopal gas tragedy victims under the Bhopal Gas Leak Disaster (Processing of Claims) Act, 1985 and Union Carbide Corporation, quantifying the settlement at USD 470 million, a figure that has been the subject of enduring criticism as grossly inadequate to the scale of death, injury and continuing environmental contamination caused by the disaster and the case continues to be cited in subsequent litigation, including proceedings concerning the environmental remediation of the abandoned factory site, as illustrating both the judiciary's early willingness to compel a negotiated resolution of mass industrial harm and the limitations of settlement-based compensation in delivering adequate accountability.

Article: The Union of India was given sole authority to represent victims in claims, brought by the enactment of the Article: Bhopal Gas Leak Disaster (Processing of Claims) Act, 1985, while in the wake of the disaster, the Public Liability Insurance Act, 1991, was enacted to ensure no-fault insurance coverage of enterprises that handle hazardous substances. The developments discussed in this Part suggest that environmental law in India could enter a new era where the climate change issue, judicial integrity in environmental clearance and the unfulfilled promises of responsibility for industrial accountability will create challenges for the sufficiency of a framework that was developed largely during the 1970s and 1980s and which could require further legislative consolidation, including potentially a dedicated climate law.

CONCLUSION

In this paper, the author has explored India's environmental protection framework from five angles constitutional and legal aspects, judicial doctrine, institutional implementation and forest and biodiversity protection and emerging challenges and argued that the main drawback of the protection framework is that its legal framework remains as strong and sophisticated as it can be,



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but the implementation of these legal standards is not so consistent. The constitutional underpinning outlined in Part I is admittedly robust compared to the standards anticipated in other countries and it has given environmental protection a fundamental status that can be safeguarded under constitutional writ jurisdiction. Each of these doctrinal innovations outlined in Part II—precautionary principle, polluter pays principle, absolute liability and the public trust doctrine—is on its own as advanced as any similarly developed doctrine anywhere in the world. However, as Part III showed, the institutions responsible for the day-to-day enforcement of this framework – in particular the State Pollution Control Boards – have frequently failed or refused to take effective action on their own and in the forest and biodiversity context explored in Part IV, three decades of ongoing judicial supervision has been a substitute for, not a catalyst for, effective administrative action.

Three conclusions follow. The first is that despite its doctrinal interest and utility, the continued use of PILs and continuing mandamus jurisdiction is an institutionally precarious building block of environmental governance that relies on the constant attention of a limited number of judges and litigants and is subject to varying results from different benches as seen in the cases of Sterlite closure. Second, environmental protection has been reworked over the past year or so by the 2023 amendment, which has made the definition of forest narrow and has been the subject of much controversy relating to environmental clearances, the granting of which is now subject to stricter safeguards. Ranjitsinh's recognition of the distinct climate right does not resolve this structural tension, as it is now more than ever that the law and the executive are readjusting environmental protection in favour of development at exactly the time it is being most vigorously protected by judicial doctrine. Third, the Bhopal settlement's legacy shows that even the most important environmental lawsuits in India have not ensured commensurate accountability or compensation, making the question of how to ensure that current remedies are working and are properly funded, enforced and honored a more difficult one that needs to be addressed in India's environmental law reform agenda. The principal takeaway for law departments, practitioners and policymakers is that, in the future, the implementation of the highly developed body of environmental law under the Indian Constitution and statutes will be more about the strengthening of the institutional frameworks, namely Pollution Control Boards, the National Green Tribunal and municipal environmental enforcement bodies, that will drive the translation of the body of law into measurable environmental outcomes on the ground.

REFERENCES

1. M.C. Mehta v. Union of India (Taj Trapezium Case), (1997) 2 SCC 353.
2. M.C. Mehta v. Union of India (Oleum Gas Leak Case), AIR 1987 SC 1086.
3. M.C. Mehta v. Kamal Nath, (1997) 1 SCC 388.
4. M.C. Mehta v. Union of India (Ganga Pollution Case), AIR 1988 SC 1037.
5. Vellore Citizens Welfare Forum v. Union of India, (1996) 5 SCC 647.



International Journal of Engineering, Science and Humanities

An international peer reviewed, refereed, open access journal

Impact Factor: 8.3 www.ijesh.com ISSN: 2250 3552

6. Indian Council for Enviro-Legal Action v. Union of India, (1996) 3 SCC 212.
7. Subhash Kumar v. State of Bihar, AIR 1991 SC 420.
8. Rural Litigation and Entitlement Kendra v. State of Uttar Pradesh, AIR 1988 SC 2187.
9. T.N. Godavarman Thirumulpad v. Union of India, (1997) 2 SCC 267 (continuing proceedings).
10. K.M. Chinnappa; T.N. Godavarman Thirumulpad v. Union of India & Ors., (2002) 10 SCC 606.
11. Municipal Council, Ratlam v. Vardhichand, AIR 1980 SC 1622.
12. Almitra H. Patel v. Union of India, (2000) 2 SCC 679 (continuing proceedings).
13. Union Carbide Corporation v. Union of India, (1989) 1 SCC 674.
14. Sterlite Industries (India) Ltd. v. Union of India, (2013) 4 SCC 575; Tamil Nadu Pollution Control Board closure order (2018) and connected NGT/Supreme Court proceedings.
15. M.K. Ranjitsinh v. Union of India, 2024 SCC OnLine SC 570.
16. Vanashakti v. Union of India, Supreme Court of India, interim order (2024) (Environmental Impact Assessment ex post facto clearance).
17. The Constitution of India, arts. 14, 21, 32, 48A, 51A(g).
18. Environment (Protection) Act, 1986, No. 29 of 1986.
19. Water (Prevention and Control of Pollution) Act, 1974, No. 6 of 1974.
20. Air (Prevention and Control of Pollution) Act, 1981, No. 14 of 1981.
21. Forest (Conservation) Act, 1980, No. 69 of 1980, as amended by the Forest (Conservation) Amendment Act, 2023.
22. Wildlife (Protection) Act, 1972, No. 53 of 1972.
23. National Green Tribunal Act, 2010, No. 19 of 2010.
24. Bhopal Gas Leak Disaster (Processing of Claims) Act, 1985, No. 21 of 1985; Public Liability Insurance Act, 1991, No. 6 of 1991.
25. Ministry of Environment, Forest and Climate Change, Environmental Impact Assessment Notification, 2006, S.O. 1533(E), as amended.