

# ENVIRONMENTAL PROTECTION AND LAW IN INDIA

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**Abstract :** Keeping in mind the emerging problems at the national as well as global levels, the Environmental Protection Act has been enacted to ensure the safety and quality of the environment. There were many environmental protection laws in India even before independence. But the emphasis was on implementing a fully developed framework after the United Nations Conference on Human Environment (Stockholm). The Stockholm Conference of 1972 attracted the attention of the Government of India towards environmental protection. Following this conference, the National Council for Environmental Policy and Planning was established in 1972 within the Department of Science and Technology to establish a regulatory body to look after the environment and related issues. This council was later developed into a full-fledged Ministry of Environment and Forests (MoEF), which was established in 1985, which is today the highest administrative body in the country to regulate environmental protection and formulate a regulatory framework. Since the 1970s, many environmental legislations have been introduced. Today in India, the Ministry of Environment and Forests, the Central Pollution Control Board and the State Pollution Control Board together make laws in the area.

**Keywords :** Environmental law, Environmental legislations, Environmental Protection Act, Constitutional Amendment, Pollution.

## INTRODUCTION

The history of environmental law in India is 125 years old. The first law was passed in 1894, which had laws governing air pollution. Presently, environmental protection is a complex problem and a challenge for the whole world. Today's increasing pollution has become a curse for the entire human race. Apart from humans, forests and wildlife are affected by pollution. For this reason, special emphasis is being laid on the protection of environment in the constitution and many laws have also been enacted from time to time to deal with this problem.

Not only India, the entire world is affected by this deteriorating nature of the environment. Developing and underdeveloped countries are more affected by this problem, because one is not able to get rid of this crisis easily because of their relatively heavy population, secondly economic lack, third illiteracy or low education. The general public sought protection from administration and then from law in the name of progress. In the name of progress, the administration itself was associated with the causes of this problem. Therefore, he could not do anything. Yes, the law gave relief. The learned judges and jurists benefited the public from wherever they found something in law for the benefit of the common citizen. Even finding them in the interest of the constitution of India constitution and used them.

There were some laws made in the British era to provide protection to the environment, but after independence, the 40th constitutional amendment in the Indian constitution was an important step in this direction. According to its Article 48A, the government will make efforts to protect and improve the Amendment of the country and to protect the forests and wildlife. According to Act 51A (G) of the 42nd Constitution, every citizen of India shall have a duty to protect and improve the natural environment, which includes forests, lakes, rivers and wildlife, and be kind to the animals. . The Ministry of Environment was established in 1980 by the Government of India.

According to the United Nations Convention on the Stock Environment of the United Nations in June 1972, 'Man is both the creator and craftsman of his environment, which gives him physical stability and facilitates intellectual, moral, social and spiritual development.' In this long and painful reversal journey of mankind on this planet, such a situation has come, when by rapid expansion of science and technology, man has acquired the ability to transform his environment in a way. Many legal provisions have been made for environmental management, whose main roles are -

- The law punishes a person who damages the environment.
- The law provides compensation to the victim.
- The law prohibits increasing pressure on the person's environment.
- The law makes the environmental protection policy in action.
- The law also transforms development policy into action.

## **NEED FOR ENVIRONMENT LAW (LEGISLATION)**

In fact, the common citizen felt only to fulfill the basic requirements for daily life, their purity, to prevent and prevent pollution and to improve the deformed environment.

Different types of environmental problems have emerged in the recent past (recent times) which have become a threat to human happiness and prosperity. An essential aspect of environmental problems is that their impact is not limited only to the area of the source but also extends to far-flung areas.

Effective laws are needed to prevent environmental misuse and degradation. Effective laws are needed to protect the evil people, forest mafia groups, poachers, polluters and excessive exploitation of environmental resources. Pollution is a factor that does not care about political walls and legal boundaries. So we can say that environmental problems are basically global, not just local. Therefore, for the prevention of such problems, environmental law is not only necessary at the national level but also at the international level. So, many laws were made in the previous years to protect the environment and prevent pollution.

## **LEGAL STATUS OF ENVIRONMENT LAW**

To protect the environment from pollution, many countries in the world have enacted laws to regulate various types of pollution as well as to reduce the adverse effects of pollution. The main objective of environmental law is to keep the major gift of the environment free from pollution. Natural resources (plants, animals, rivers) are worshiped here due to Indian society being of religious tendency. For this reason, laws were not enacted to protect the environment in ancient times, but a large number of laws were made to protect the environment from the last century.

## **CONSTITUTIONAL PROVISIONS OF ENVIRONMENT LAW**

The Indian Constitution is the first constitution in the world, which has specific provisions for the environment. The Preamble of the Indian Constitution ensures that our country is based on the concept of socialist society, where the state gives priority to social problems over the individual. The basic goal of socialism is to provide a comfortable standard of living to all, which is possible only in a pollution-free environment.

The 42nd Amendment to Article-51A of the Indian Constitution gives the protection and improvement of the environment a fundamental duty.

## **POLLUTION CONTROL LAW (LEGISLATION)**

Over time, industrialization, urbanization and population growth have steadily reduced the quality of the environment. In the context of effective control and pollution in this lack of quality of environment, the government has made several laws and rules from time to time which are as follows –

- Indian Forest Act, 1927
- Wildlife Protection Act 1972
- The Water (Prevention and Control of Pollution) Act, 1974
- The Air (Prevention and Control of Pollution) Act, 1981
- Forest Protection Act, 1980
- Environment (Protection) Act, 1986
- Hazardous Waste Handling and Management Act, 1989
- Public Liability Insurance Act 1991
- Biodiversity Act, 2002
- Wildlife (Protection) Amendment Act, 2002
- The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006
- National Green Authority Act, 2010
- Noise Pollution Act, etc.

In India, the above laws related to environment have been formulated from time to time, but today environmental pollution has become so widespread in the country that it is very important to understand its importance. Some of these important environmental protection laws and rules, which are described in detail below –

### **National Green Authority Act, 2010**

A National Green Tribunal (National Green Tribunal) has been established in India by the National Green Authority Act, 2010. Effective of matters relating to environmental protection and conservation of forests and other natural resources, including enforcing legal rights related to the environment under this Act and providing assistance and compensation for the loss of persons and property or related to or related to it And the National Green Tribunal was established for speedy settlement. The Act received the assent of the President of India on 2 June 2010, and was approved by the Central Government in notification no. S.O. 2569 (E) dated 18 October 2010, entered into force. The enforcement of the National Green Authority Act, 2010 resulted in the repeal of the National Environment Authority Act, 1995 and the National

Environmental Appellate Authority Act, 1997. Thus the National Green Tribunal provides for assistance for the effective and expeditious disposal of matters relating to environmental protection and conservation of forests and other natural resources, including the enforcement of any legal rights relating to the environment and relief and compensation for damages.

#### **The Water (Prevention and Control of Pollution) Act, 1974**

Due to the growth of industries and the increasing trend of urbanization, the problem of pollution of river and rivers became very important and important. For this reason the Water Pollution Prevention and Control Act, 1974 was enacted for the prevention and control of water pollution and to maintain or restore the completeness of water in the country. The Act established an institutional structure to ensure clean water supply by taking measures to prevent water pollution. The Act established a Central Pollution Control Board and the State Pollution Control Boards. The Act prohibits the discharge (above the prescribed standard) of pollutants in water bodies, and the person who does not comply is given the prescribed penalty. The law empowers the powers of the Pollution Control Board to implement the provisions of the Act properly.

Apart from this, the Water (Prevention and Control of Pollution) Cess Act, 1977 is also another important law, which governs certain types of industrial activities. It is an act to collect cess on water consumed by individuals running certain industries and local authorities with a view to increasing the resources. This Cess Act has been constituted under the Water (Prevention and Control of Pollution) Act, 1974 for the purpose of augmenting the resources of the Central Board and State Boards for the prevention and control of water pollution. The act was last amended in 2003.

#### **The Air (Prevention and Control of Pollution) Act, 1981**

In order to implement the decisions taken at the United Nations Convention on Human Environment in Stockholm in June 1972, Parliament enacted a nationwide air law. The main objective of this law is to improve air quality and prevent and control and reduce air pollution in the country.

The Act was enacted to prevent the continuous air pollution in the environment due to increasing industrialization. It is an act for the prevention, control, elimination of air pollution and the establishment of boards at the Central and State levels with a view to fulfilling the aforesaid objectives. The Act primarily provides for the regulation and control of the level of smoke and dirt emanating from motor vehicles and other factories. The Act is helpful in curbing the use of polluting fuels and substances as well as reducing air pollution by regulating devices that promote air pollution. These Air Act empowers the State Government, after consultation with the State Pollution Control Board, to declare any area or areas as air pollution control zones or areas. Under the Act, the establishment or operation of any industrial plant in a pollution control area requires consent from the State Pollution Control Board. The State Pollution Control Board is expected to test the air in air pollution control areas and inspect pollution control equipment and manufacturing processes.

#### **Environmental Protection Act, 1986**

The Environmental Protection Act, 1986 was promulgated for the protection and improvement of the environment. The Act sets out a framework for the study, planning and implementation of the long-term requirements of environmental protection and provides for a quick and adequate response to situations that harm the environment. It is a vast act that was created to provide a framework for the coordination of central and state authorities established under the Water Act, 1974 and the Air Act. It includes the interconnection of water, air and land, which exist between water, air and land, humans, other living beings, plants, micro-organisms and property. Under this Act, the Central Government can also make rules and regulations to administer environmental pollution. From time to time, the Central Government issues a notification under the Environment Act or guidelines for matters under the Environment Act to protect ecologically sensitive areas. In the event of violation of any rules or instructions under the Environmental Protection Act or the said Act, the penalty is also included. If any such violation occurs, the violator faces imprisonment up to five years or a fine of up to Rs 1,00,000.

#### **Wildlife Protection Act, 1972**

In 1972, Parliament passed the Wildlife Law (Rescue). In this law, the State Wildlife Advisory Board, control of hunting of wild animals and birds, establishment of wildlife-rich sanctuaries and national parks, control of trade in wild animals, animal production etc. and legal punishment for violation of law. Schedule I of the law includes harming the range of endangered organisms, restrictions all over India. The following categories are governed by the license. Animals of prey, especially those who need protection (Schedule IV). Some categories such as pests can be hunted without any restriction (Schedule II). Some species are classified in the category of Vermin, which can be hunted without any restriction. Wildlife protectors and their officials take care of this law. An amendment to this law in 1982 allowed the capture and transport of wild animals for the purpose of scientific operation of livestock.

In India, there is a partner in the compromise of international trade of endangered trees and plants categories. According to Convention of International Trade in Endangered Species (CITES, 1976) agreement, the must be in accordance with the terms written in this agreement. Government of India has also started conservation schemes for some of the following endangered categories. Hangal (1970), Sher (1972), Cheetah (1973), Crocodile (1974), Brown buck (1981) and Elephant (1991-92).

### **Forest Protection Act, 1980**

The first Forest Act (law) was passed in 1927. It is one of the many colonial laws still in existence. There were three reasons for passing it - strengthening of laws related to forests, transportation of wildlife and taxation of wood and other wild materials. Subsequently, in 1980, the Forest (Conservation) Act was passed to amend the earlier law of 1927. The law of 1927 covers four categories of forests, including protected forests, village forests, private forests and reserved forests.

The state has the right to sell the material released from these forests by giving forest land or idle land as reserved forest status. Felling of unauthorized trees in reserved forests, grazing of animals and hunting is completely reserved and for violation of this rule, either a fine or a jail is imposed. The reserved forests that have been given to the rural community are known as village forests.

State governments have been authorized to accord the status of protected forests to forests and have the right to prohibit cutting, quarrying and removal of forest material from these forests. These protected forests are protected through regulations, licenses (by taking licenses) and legal lawsuits. Forest officers and their employees are governed by the Forest Law. Fearing the shortage of India's wildlife and the environmental damage it caused, the Central Government passed the Forest (Conservation) Act in 1986. According to this rule, the diversion of the wealth of these forests for non-forestry purposes should be done with the full permission of the Central Government. The Advisory Commission made under this law advises the Center on these approvals.

### **Biological Diversity Act (Law) 2000**

A good knowledge of India's abundance of biological resources and local knowledge related to it is available. The operation of any assistive device to achieve the objective of distributing parallel benefits to the convention is a major challenge. To achieve this objective, the Act on Biological Diversity was formulated after a detailed discussion. The purpose of this law is to control the achievement of biological resources, so that there can be equal distribution of profits generated from their use. The Biological Diversity Bill, which was proposed in Parliament on 15 May 2000, was sent to the Committee on Science, Technology, Environment and Forests of Parliament for inspection, etc.

After the examination of the witnesses and the evidence, it was passed by the Standing Committee with some amendments. Based on the suggestions given by this commission, the Cabinet approved the government proposal. The Biological Diversity Bill 2002 was passed by the Lok Sabha on 2 December 2002 and the Rajya Sabha on 11 December 2002.

### **Hazardous Waste Management Rules**

Hazardous waste refers to any waste that causes danger or poses a threat to health and the environment due to its physical, chemical, reactive, toxic, flammable, explosive or corrosive characteristics.

There are several legislations that directly or indirectly deal with hazardous waste management. The laws related to it are Factories Act, 1948 Public Liability Insurance Act, 1991 and National Environment Authority Act, 1995. Apart from these, there are rules under the Environment Act related to it. Some of the rules dealing with hazardous waste management are given below:

- (i) **Hazardous Wastes (Management) Handling and Trans-boundary Rules, 2008** : Under this rule, a guide is prepared for the manufacture, storage, importation and management of hazardous wastes of hazardous chemicals.
- (ii) **Biomedical Waste (Management and Handling) Rules** : It was designed for the proper disposal, segregation, transportation, etc. of infectious waste.
- (iii) **Urban Solid Waste (Management and Handling) Rules, 2000** : Its purpose is to enable municipalities to dispose of municipal solid waste in a scientific manner.
- (iv) **The E-waste (Management and Handling) Rules, 2011** : The rule have been notified on May 1, 2011 and came into effect from May 1, 2012, with primary objective to reduce the use of hazardous substances in electrical and electronic equipment by specifying threshold for use of hazardous material and to channelize the e-waste generated in the country for environmentally sound recycling. The Rules apply to every producer, consumer or bulk consumer, collection centre, dismantler and recycler of e-waste involved in the manufacture, sale, purchase and processing of electrical and electronic equipment or components as detailed in the Rules.

- (v) **Battery (Management and Handling) Rules, 2001** : This rule makes proper and effective management of lead acid batteries for handling waste.

## MAJOR CONSTITUTIONAL PROVISIONS AND JUDGMENT OF SUPREME COURT

According to Article 21 of the Constitution, no person shall be deprived of life and personal freedom except by the obligations established by law. After the Supreme Court's decision in 1978 in *Maneka Gandhi v. Union of India*, Article 21 has been interpreted in a liberal way from time to time. This article gives the fundamental right to live life and includes the right to the environment, the right to freedom from the risk of diseases and infections.

The right to a healthy environment is an important feature of the right to live a human life with dignity. The right to live in a healthy environment was recognized for the first time under Article 21 of the constitution when the case of *Rural Litigation and Entitlement Center v. State* (known as Dehradun mine case) came up in 1988. This was the first case of its kind in the country, in which the Supreme Court had given directions to stop mining (illegal mining) in this case under the Environment (Protection) Act 1986 keeping in view the issues related to environment and environmental balance.

Earlier in 1987, *M.C. In Mehta v. Union of India*, the Supreme Court considered the right to live in a pollution-free environment as a fundamental right to live under Article 21 of the Constitution of India.

Article 19 (1) and Article 21 of the Indian Constitution gives every citizen the right to live a better environment and peaceful life. In 1993 *In Jacob v. Kottayam Superintendent of Police*, the Kerala High Court had clarified that freedom of expression given under this Article in the Indian Constitution does not allow any citizen to play loud loudspeakers and other noisy devices etc.

Article 19 (1) (h) of the Indian Constitution gives every citizen the right to do any kind of business, business etc. as per his choice, but it also has some restrictions. No citizen can do any such work which has any adverse effect on the health of society and people. Environmental protection is enshrined in this Article of the Constitution.

In *Subhash Kumar v. State of Bihar* it has been determined that the right to use pollution free water and air is covered under the 'right to life' provided in Article 21 and Article 32 is to protect every citizen from pollution of water and air.

In the case of *Kovarji B. Bharucha v. Excise Commissioner, Ajmer* (1954), the Supreme Court had clarified that wherever there would be any conflict between environmental protection and the right to do business, the court should make a decision by striking a balance between environmental interests and the right to choose business.

Public interest litigation under Articles 32 and 226 of the Constitution of India is the result of a section of petitions related to the environment. The Supreme Court has given many unprecedented and public interest decisions regarding environment. The Supreme Court has said that it is possible to move forward on the path of development only by keeping precautions before to protect the environment and keep the environment pure.

There are more than 200 laws in the country for environmental protection. These laws are openly violated and that is why India comes under the category of most polluted countries in the world. Protection of environment and nature is a legal issue, but to keep it clean and protected for the most part, it is necessary to make collective efforts by necessary understanding and harmony among all the components of the society.

Human is an important and influential component of the environment. It does not exist outside of the environment, because it was created due to many components of the environment and its actions are affected by many factors. Human is also an important consumer of the environment. New ecological problems are arising due to rapidly increasing population, culture of indulgence, excessive exploitation of natural resources, war, nuclear testing, industrial development etc. Letting these problems not arise should be the main objective of mankind. Human can achieve the highest achievements of his moral, economic and social development only when he will use the natural wealth judiciously.

## CONCLUSION

Environmental protection is an integral part of our cultural values and traditions. But man has created many problems due to his stupidity, among which environmental pollution is also one. To curb this, environmental protection can be made effective only when the constitutional provisions related to protecting the environment to increase people's participation in it as well as to develop environmental awareness, environmental education and make people sensitive to the environment.

Our policies reflect India's initiative in environmental protection. But despite all the environmental bills, the environment in India remains very serious. Therefore, it can definitely be said that it is possible to

effectively control pollution only through legal efforts and mutual efforts to ensure the participation of the general public.

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