



# India's Constitutional Framework Regarding Environment Protection

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## **Abstract-**

An organization's adherence to environmental laws, rules, and other policy processes is referred to as its environmental policy. The preservation of biodiversity, waste management, ecosystem management, air and water pollution, wildlife protection, and endangered species are a few of these concerns. Governments utilise environmental policy instruments as tools to carry out their policies. Various kinds of instruments are available to governments. To promote adherence to environmental regulations, for instance, financial incentives and market-based tools like taxes and tax 52 exemptions, tradable permits, and fees can be rather successful. India's constitution is a live, breathing document that changes and expands with time. The constitution's particular environmental protection provisions are a direct outcome of the fundamental law of the land's dynamic nature and room for expansion. Our constitution's preamble guarantees both human dignity and a socialist social structure. Every citizen of India is obligated to conserve the environment, as stated in the Indian Constitution's chapter on fundamental obligations. It states that "every Indian citizen shall have a duty to have compassion for all living things and to protect and enhance the natural environment, including forests, lakes, rivers, and wild life." In an endeavour to solve environmental concerns, India has made significant efforts. In addition to establishing organisations to oversee and implement laws, it has passed strict environmental laws. Only three nations worldwide have a Green Tribunal created specifically to address environmental disputes, including India. The National Environmental Policy (NEP) acknowledges the importance of using incentives and market forces as part of the regulatory toolset.

**Key Words:** Environment, Constitution, Protection, Legislation and Tribunal.

## **Introduction:**

India, with its diverse ecosystems and rich biodiversity, stands as a testament to the intricate interplay between nature and human civilization. Recognizing the critical importance of safeguarding the environment for present and future generations, the framers of the Indian Constitution embedded principles and provisions for environmental protection within its framework. From its inception, India's constitutional framework has

evolved to prioritize environmental conservation and sustainability, reflecting the nation's commitment to harmonizing development with ecological preservation. At the heart of India's constitutional architecture lies a profound ethos of environmental stewardship, enshrined in both explicit provisions and implicit principles. This constitutional commitment to environmental protection serves as the cornerstone for a multifaceted legal and institutional framework aimed at addressing environmental challenges and promoting sustainable development across the nation.

### **Legislative Implications Relating to Environment:**

Adopted in 1950, the Indian Constitution did not address environmental issues or the prevention and management of pollution (until an amendment was made in 1976). In 1976, two new Articles (48A and 51A) were added to the Indian Constitution by the Parliament of India. The Department of Environment was founded in 1980 as a distinct ministry in India to guarantee the nation's environmental well-being. India's constitution is a dynamic document that changes and expands throughout time rather than a static one. Because of the fundamental law of the land's dynamic nature and potential for growth, the constitution includes special measures on environmental protection. Our constitution's preamble guarantees both human dignity and a socialist social structure. Every citizen of India is obligated to conserve the environment, as stated in the Indian Constitution's chapter on fundamental obligations. It states that "every Indian citizen shall have a duty to have compassion for all living creatures and to protect and improve the natural environment, including forests, lakes, rivers, and wild life." To guarantee a safe environment for the nation, the Department of Environment was founded in 1980 as a separate ministry in India. India's constitution is a live, breathing document that changes and expands with time. The constitution's particular environmental protection provisions are a direct outcome of the fundamental law of the land's dynamic nature and room for expansion.

The Indian Constitution's Directive Principles aim to establish a welfare state, with a healthy environment being one of its constituents. The provision stipulates that the State's primary responsibilities include improving public health, raising the standard of living and nutrition of its citizens, and raising the level of nutrition.<sup>1</sup>

Public health cannot be guaranteed without environmental protection and improvement, which is also included in the improvement of public health. It also covers the management of animal husbandry and agriculture.<sup>2</sup> It instructs the State to move towards organising animal husbandry and agriculture along contemporary, scientific principles. Primarily, it ought to implement measures to safeguard and enhance the breeds and forbid the killing of cows, calves, and other milch and draught livestock. In addition, the constitution states that "the state shall endeavour to protect and improve the environment and to safeguard the country's forests and wild life."<sup>3</sup> Part III of the Indian Constitution provides fundamental rights, to which every human being is naturally entitled just by virtue of being a human being. These rights are crucial for the growth

<sup>1</sup> *Id.*, art.47.

<sup>2</sup> *Id.*, art.48.

<sup>3</sup> *Id.*, art 48-A.

of every individual. The ability for an individual to grow and reach their full potential depends on their ability to realise their right to a healthy environment.<sup>4</sup>

- **The Indian Penal Code, 1960**

A public nuisance is defined as an act or omission that causes irritation or general harm to the public by the Indian Penal Code, 1960. To put it plainly, it is an act that disregards the welfare of the public and causes them harm or annoyance in the process; in contrast, a private nuisance is an act that only causes harm to a small number of people as opposed to the general public. The punishment for public annoyance is also covered by the Indian Penal Code, 1960.<sup>5</sup>

- **The Code of Criminal Procedure, 1973**

Instances of public nuisances, such as air, noise, water pollution, and unhygienic conditions, can be quickly and effectively resolved through the “maintenance of public order and tranquilly” programme. When a District Magistrate or Sub-Divisional Magistrate receives such information, they are authorised to halt the nuisance. It deals with the conditional order for the removal of the nuisance.<sup>6</sup> The Criminal Procedure Code stipulates that upon obtaining information about a nuisance or a police report, any executive magistrate, including sub-divisional and district magistrates, or any other magistrate with authority provided by the State Government, may issue a conditional order to remove the nuisance.<sup>7</sup> The concerned magistrate may decide to make the order absolute if the person causing the annoyance objects to it. In any civil court, a magistrate’s order rendered in accordance with this clause is final.

In the case of *Govind Singh v. Shanti Sarup*,<sup>8</sup> the term “nuisance” was defined very broadly, encompassing the building of structures, the removal of substances, the conduct of trade and occupancy, and the keeping or dumping of any harmful animal. It’s not necessary to have a lot of complaints or demonstrations against the annoyance in order to use this area. It can be used simply by receiving a public officer’s report or any other information judged appropriate to be used as proof. This pronouncement was made in the case of *Krishna Gopal v. The State of M.P.*,<sup>9</sup> In this case, a complaint was filed against a glucose factory for emitting steam into the atmosphere, which resulted in fly ash and noise pollution. The locals were uncomfortable as a result of all of this.

To understand the application of the section in a facile manner is to simply understand the conditions required as given in the case of *Suhel Khan Khudayar Khan v. State*,<sup>10</sup> A sanction under this clause cannot be granted unless the following requirements are met:

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<sup>4</sup> *Id.*, art. 21, 14 and 19.

<sup>5</sup> *Id.*, Section 290.

<sup>6</sup> *Id.*, Section 133.

<sup>7</sup> *Ibid.*

<sup>8</sup> AIR 1979 SC 143.

<sup>9</sup> 1986 Cr.L.J. 396.

<sup>10</sup> AIR 2009 SC 1868.

1. A public nuisance should exist, meaning that a significant number of people will be harmed (i.e., there should be a risk of harm or an impending annoyance).
2. The civil court would be an appropriate venue if it were a private dispute involving various members of the public.
3. The public interest should be in immediate risk.

In *Shaukat Hussain and Anr. v. Sheodayal Saksaina*,<sup>11</sup> A claim was made in an application that the five-horsepower cotton carding machine in the municipality of Rewa is the source of the tiny cotton particles that are blasted into the air. People were having trouble breathing, and the machine was making noise and disturbing the quiet of the community. It was noted that, in cases of urgency where the risk to the public's health and interest is taken into consideration, section 133 of the Cr PC offers an effective and timely remedy. "That the conduct of any trade or occupation, or the keeping of any goods or merchandise, is injurious to the health or physical comfort of the community, and that as a consequence such trade or occupation should be prohibited or regulated, or such goods or merchandise should be removed or the keeping thereof regulated," reads paragraph 3 of section 133(a). The general public or every person living in that area is referred to as the "community." It is undeniable that no religion preaches against praying while upsetting other people's tranquilly or advocating for using voice amplifiers or drums to beat prayers. This was noted by the Supreme Court. According to us, it is not acceptable for people to carry out other activities in a civilised society in the name of religion, annoy the elderly or sick, students, or children sleeping in the wee hours of the day, or disturb anybody else. Remembering that tiny infants in the neighbourhood have a basic right to a quiet place to sleep should not be overlooked. It is a student's right to focus on his studies while getting ready for an exam, free from needless interruptions from their neighbours. In a similar vein, the elderly and disabled have a right to some degree of appropriate quiet during their free time without the annoyance of noise pollution. Elderly, ill, those suffering from psychic problems and young children (up to age 6) are all said to be highly perceptive. Respecting their rights is also necessary. The Supreme Court noted in *Noise Pollution (V)*, In Re: 20 that noise is more than merely an annoyance. It poses a serious and immediate risk to people's health. No matter the time of day, noise can cause significant psychological and physical strain at work, home, or during play. Everyone is susceptible to this stress. These days, noise is one of the main pollutants and it negatively impacts people's health. Additionally, it offers summons or order notice services. Its only recourse is if the order is not fulfilled according to the instructions.

- **The Environment Protection Act, 1986**

"Environmental Pollution" is defined in the Environment Protection Act as any environmental contaminant present in the environment. As per the Act, any solid, liquid, or gaseous substance that is present in a concentration that has the potential to harm the environment is considered an environmental pollutant. It should be noted that by defining environmental pollution and its various components, the Environment Act sought to establish a precise definition of the term. On the other hand, this has led to ambiguities and

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<sup>11</sup> 1958 Cr. L. J. 1319.

difficulties in understanding the various terminologies employed in it. Scientists that take a comprehensive approach to the environment find fault with the definitions of "environmental pollutant" and "environmental pollution." They contend that the definition of pollution does not include substances like heat, radiation, plasma, or living things like bacteria or viruses. Heat energy is a significant contaminant because it disrupts biological processes, causes gases to dissolve, and may trigger the release of hazardous substances. Comparably, "sound" is not a material; rather, it is the result of pressure waves propagating; an excessive amount of these waves is referred to as noise pollution. The word "handling" now has a broad definition according to the Environment Act. When a material is handled, it can be manufactured, processed, treated, packaged, stored, transported, used, collected, destroyed, converted, offered for sale, transferred, or anything similar.<sup>12</sup>

- **Powers of the Central Government**

The primary feature of the Environment Act is the centralization of power in the hands of the government. The Central Government has been granted full authority to prevent, control, and mitigate environmental pollution. This authority is stated in subsection 1 of section 3, which states that the Central Government may take any action it deems appropriate or necessary to safeguard the environment, enhance its quality, and prevent, control, and mitigate environmental pollution. It lists these actions, which could be taken in relation to all or any of the following issues:

- a. Managing acts by State Government officials and other authorities under the Act, its rules, or any other law that pertains to the objectives of the Environment Act;
- b. Developing and implementing a national programme for the prevention, control, and mitigation of environmental pollution;
- c. Establishing standards for the quality of the environment in all its aspects;
- d. Establishing standards for the emission or discharge of environmental pollutants from all sources whatsoever;
- e. Establishing protocols and safeguards for the prevention of accidents that may cause environmental pollution and remedial measures for such accidents;
- f. Establishing guidelines and safety measures for the handling of hazardous materials;
- g. Analysing industrial techniques, materials, and chemicals that may pollute the environment;
- h. Carrying out and sponsoring investigations and research relating to problems of environmental pollution;

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<sup>12</sup> *Id.*, Section 2(d).

- i. The Central Government may decide to inspect any premises, plant, machinery, manufacturing processes, materials, or substances. It may also decide to establish environmental laboratories and institutes to carry out the functions entrusted to them under the Act.
- j. Establishment or recognition of environmental laboratories and institutes;
- k. Information gathering and dissemination regarding matters pertaining to environmental pollution;
- l. Preparation of manuals, codes, or guides relating to the prevention, control, and abatement of environmental pollution;
- m. Any other matters it deems necessary or expedient for the purpose

- **Environmental Impact Assessment Regulations**

The procedures for preparing and assessing environmental impact assessments are thoroughly outlined in the Environmental Impact Assessment (1995)<sup>13</sup> regulations. According to the laws, there are three types of projects or activities. The first group of projects comprises those that, due to the nature of the work or the sensitivity of the surrounding area, inherently need an environmental evaluation. The projects in the second group might need an assessment, however depending on the project's location and size, there might need to be some adjustments made. Activities or programmes that could not have a major environmental impact yet don't require an evaluation to be done fall into the third category. Part V of the Environmental Impact Assessment, Regulation 20 (4), stipulates that all projects, programmes, and activities must be evaluated in light of the need to preserve ecosystems' capacity to support life, human health, and biodiversity; Regulation 20 (5) requires proposed developers to consult with interested parties and the public when conducting an environmental impact assessment; Regulation 20 (7) allows the DOE to approve an environmental impact assessment subject to reasonable requirements for environmental reasons. Among the notices given in accordance with this Act are:

- a) The 1989 Doon Valley Notification forbids the establishment of any industry in the Doon Valley if the daily use of coal or fuel exceeds 24 MT (million tonnes).
- b) The 1991 Coastal Regulation Zone Notification, which governs operations along portions of the shore. This notice states that it is not permitted to dump ash or any other rubbish in the CRZ. The MoEF must provide approval for thermal power plants, which only include foreshore facilities for raw material transportation, cooling water intake, and outfall facilities for treated waste water/cooling water discharge.
- c) The district of Dhanu Taluka was designated as an ecologically fragile area in 1991 and the construction of power plants in the area is forbidden, according to the Dhanu Taluka Notification.
- d) The Revdanda Creek Notification (1989), which, among other things, forbids the establishment of industries in the area surrounding Revdanda Creek in accordance with its regulations.

<sup>13</sup> Government of India, Ministry of Environment, Forest and Climate Change ( Environmental Impact Assessment ,1995) available at <https://moef.gov.in/moef/division/environment-divisions/environmental-impact-assessment-eia/index.html> (Last Visited 30th April,2024).

e) The Development Projects Environmental Impact Assessment Notification (1994 and revised in 1997). In accordance with this alert:

- i) The MoEF must provide environmental clearance for any project included in Schedule I. The MoEF must additionally provide its approval for projects falling under the New Industrial Policy's delicensed category.
- ii) If a developmental project is situated in a fragile region, the MoEF must approve it regardless of whether it is covered by Schedule I.
- iii) A NOC (No Objection Certificate) from the State Forest Department and the SPCB, as well as MoEF clearance, are necessary for industrial projects over Rs 500 million in investment. If the project is located in a forested area, further requirements include obtaining a Letter of Intent (LOI) from the Ministry of Industry. Following the receipt of the NOC, the state body transforms the LOI into an industrial licence.
- iv) Procedural guidelines for the creation and management of new power plants were also outlined in the notification. Site-specific projects, like pithead thermal power plants and valley projects need two-stage permission, according to this notification. The first step grants site clearance, while the second stage grants ultimate environmental approval. For projects covered by this notification, a public hearing is now required. In order to provide local communities more openness and influence, this is a crucial step.
- v) Utilising beneficiated coal with an ash percentage no more than 34% was mandated by the Ash percentage Notification (1997), which went into effect in June 2001 and was later extended to June 2002. In addition to any thermal plant situated in an urban or sensitive area, regardless of the distance from the pithead—aside from pithead power plants—this also applies to all thermal plants located more than a thousand kilometres from the pithead.
- vi) No power plant could be established within the Taj Trapezium's designated geographic boundaries, according to the Taj Trapezium Zone Pollution (Prevention and Control) Authority's Taj Trapezium Notification (1998).
- vii) The primary goals of the 1999 fly ash notification are to preserve topsoil, safeguard the environment, and stop the dumping and disposal of fly ash released from lignite-based power plants. The most important aspect of this notice is that no one living within 50 km of a coal- or lignite-fired power station may produce clay bricks or tiles without incorporating at least 25% of ash into the soil on a weight-to-weight ratio.

- **The Batteries (Management and Handling) Rules, 2001**

The Ministry of Environment and Forests (MoEF) published The Batteries (Management and Handling) Rules, 2001 on May 16, 2001. This final rule governs the collection and recycling of all used lead-acid batteries in India because the Central Government views battery waste management as being more important than battery production. The Act covers all of India and pertains to battery management

under the Environment (Protection) Act of 1986. It is only appropriate for India to take action to stop battery waste from harming our air, water, or soil as it has become a global concern.

- **The AIR (Prevention and Control of Pollution) Act, 1981**

This Act was created to prevent, control, and mitigate air pollution. It also established Boards to carry out the aforementioned purposes, and it assigned powers and responsibilities to these Boards for matters related to these and other related subjects.

Any solid, liquid, or gaseous material, including noise that is present in the atmosphere in a concentration that has the potential to harm people, other living things, plants, property, or the environment is referred to as “air pollutant”. Any air pollutant that is present in the atmosphere is considered to be “air pollution”. According to established definitions, “emission” is any solid, liquid, or gaseous material that emerges from a chimney, duct, flue, or other outlet.<sup>14</sup>

- **The National Green Tribunal Act, 2010**

The purpose of the Act is to give victims of pollution and other environmental damage legal and administrative recourse. The National Green Tribunal (NGT)<sup>15</sup> is a specialised judicial body with experience that was created in 2010 with the purpose of ruling on environmental matters in the nation. The Tribunal was founded on the advice of the Supreme Court, the Law Commission, and India’s international law duties to create and successfully implement national environmental laws because the majority of environmental cases involve multidisciplinary issues and are best handled in specialised forums. The Tribunal’s job is to resolve disputes involving environmental protection, forest and resource protection, and the enforcement of all environmental legal claims in a timely and efficient manner. The Tribunal may grant relief to the impacted parties in the form of damages and compensation through its binding order. After being appointed, the National Green Tribunal has six months to decide matters that are brought before it. Matters pertaining to significant environmental issues fall under the purview of NGT. However, the National Green Tribunals have the advantage of encouraging solicitors to focus on environmental law, as the Tribunal is regarded as a crucial component of obtaining justice in environmental concerns. There will come a day when environmental laws focus primarily on protecting our environment.

- **Public Liability Insurance Act (PLIA), 1991**

The Act addresses insurance coverage for hazardous material-related accidents. This Act imposes liability on the owner to provide relief as detailed in the Schedule to the Act in cases when an accident causes death or injury. In 1992, the PLIA was revised, granting the Central Government the authority to create the Environmental assistance Fund and begin disbursing assistance.<sup>16</sup>

<sup>14</sup> The Air (Prevention And Control Of Pollution) Act, 1981 (Act No.14 of 1981)

<sup>15</sup> National Green Tribunal (NGT) was established on 18th October 2010 under the NGT Act of 2010.

<sup>16</sup> The Public Liability Insurance Act, 1991 ( Act No.: 6) Of 1991.



- **The Noise Pollution (Regulation and Control) (Amendment) Rules, 2010**

These regulations outline the requirements for minimising noise pollution and permit the use of public address systems or loudspeakers during night time cultural or religious events (between 10:00 p.m. and midnight). The Amendment's main characteristics are as follows:

- (i) Unless there are events that take place in enclosed places like banquet halls, community halls, auditoriums, etc., or during public crises, loudspeakers, sound systems, or amplifiers should not be used at night.
- (ii) There should be no horn use in residential areas unless it is an emergency, and construction equipment that emits sound will not be used at night.
- (iii) Noise levels at public spaces where loudspeakers or public address systems are being used should not exceed 10 dB or 75 dB of the area's ambient noise standard, whichever is less.

To sum up, the legal ramifications of environmental issues play a critical role in determining the laws, rules, and practices that protect ecosystems, slow down global warming, and conserve biodiversity. Environmental laws offer a structure for responsibility, implementation, and group efforts to tackle problems including contamination, loss of natural areas, and depletion of resources. In order to effectively safeguard and manage our planet for present and future generations, our legal frameworks must also change as our understanding of environmental concerns advances. Maintaining these legal requirements and promoting a peaceful coexistence of human activity and the environment need cooperation between governments, businesses, communities, and individuals.