

Reflection on the Law and Policy on Environmental Protection in India

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Abstract

Environmental protection is the most burning issue of our times. Its importance has increased manifold due to the visible impact of global warming induced climate change on our lives. Our environment consists of biotic (flora, fauna and microbes) and abiotic components (atmosphere, water, soil, climate). Modern man has so significantly altered the natural world that scientists claim we are witnessing Sixth Mass Extinction, aptly referred to as "Anthropocene Mass Extinction". Development has come at a huge cost for environment and all life forms that exist on this planet. The latest Inter-Governmental Panel on Climate Change (IPCC)'s Sixth Assessment Report paints a grim picture of our future. For achieving sustainable development, scientists have called for immediate enactment and strict implementation of environmental laws by national governments. India has many policies and laws in place either because of its own volition or pursuant to international agreements, conventions, protocols and commitments. This paper aims to provide a brief insight into the latest scientific findings vis-à-vis environmental protection and an overview of India's legal framework in areas like wildlife protection, reducing pollution and fighting climate change.

Keywords: UNFCCC, NAPCC, Panchamrit Formula

Introduction

"Prakriti: rakshatirakshita"¹ (Nature protects if she is protected) is inscribed on the logo of Ministry of Environment, Forest and Climate Change (MoEFCC) and is ingrained in the psyche and hearts of the people of India since time immemorial. Our Shastras, Vedas, Puranas, Upanishads deal in great length with protection and respect of Nature. Like other civilizations of yore, Indian subcontinent was home to nature worshipping civilizations. In fact, the human body itself is said to be made up of five natural elements (panchbhoot)- fire (agni), water (jal), air (vayu), earth (Prithvi) and ether (Aakash).²

Devatas and Devis reside in different trees and plants which we have been worshipping and

protecting for ages.³ Mantras and shlokas are used to offer prayers to celestial bodies. This is not done only on festivals but it is a part of daily rituals in India. Atharvaveda says, "matabhoomi: putroahamprithviyya" (Earth is our mother and we are her sons). This is the ultimate personification of The Mother Earth. The emotional bond that people share with nature is reflected in the long list of environmental movements in India. Bishnoi Movement (Rajasthan, 1700s), Chipko Movement (Uttarakhand, 1973), Save Silent Valley Movement (Kerala, 1978), Appiko Movement (Karnataka, 1983) and Narmada Bachao Aandolan (Gujarat, Maharashtra, Madhya Pradesh, 1985) are prominent examples. Therefore, it will be suffice to say that Nature is not a resource to exploit for Indians but a part of their very being.

Padma awards to Smt. Tulsi Gowda, often known as the 'Encyclopedia of Forest', Smt. Laxmikutty, who is often referred to as 'Vanamuthassi', which means 'Grandmother of the Jungle' in Malayalam, Smt. Saalumarada Thimmakka, who has planted 385 banyan trees and almost 8000 other trees, are just few names from the so many who celebrate this spirit!⁴

It was aptly remarked by Mahatma Gandhi that "Earth has enough for man's need but not enough for man's greed." Population growth and increased consumption and greed have led to severe stress on Earth's natural resources.

It is apt to mention here the conclusions of the path breaking report titled "*Limits to Growth*".⁵ It can best be summarised as follows:

"If we do not control the present rate of population growth, industrialisation, food production, resource depletion, pollution etc. there will be a time very soon on this earth when the limits of this growth would be reached and the result would be very dangerous. This would inevitably lead to a sudden and uncontrollable decline in population and industrial capacity. This growth rate can be altered and ecological and economic stability can be established if the material needs of each person is satisfied and they have an equal opportunity to realise their individual human potential. They further concluded that the chances of success would be greater if the world's people start working on it, the sooner the better."

The study completes 50 years in 2022 and the findings are proving to be true.

Recent Scientific Findings

The international community took various steps to discuss environmental problems starting with the United Nations Conference on the Human Environment in Stockholm from 5th-16th June, 1972.

Thereafter, many agreements on protection of biodiversity, fighting climate change and combating pollution have been signed. A number of initiatives were started out of which the most ambitious and comprehensive is the United Nations Framework Convention on Climate Change (UNFCCC) signed

during the Earth Summit, 1992. The Intergovernmental Panel on Climate Change (IPCC) under UNFCCC brings out scientific reports called "Assessment Reports".

Few important points of our concern from this report [Sixth Assessment Report (AR6)]⁶ can be briefly be summed up as follows:-

1. After considering all the emission scenarios, it is believed that the global surface temperature will continue to increase until at least the mid-century. Global warming of 1.5°C and 2°C will be exceeded during the 21st century unless deep reductions in carbon dioxide (CO₂) and other greenhouse gas emission take place in the coming decades.
2. Many changes in the climate system will become larger in direct relation to increasing global warming. They include increase in the frequency and intensity of hot extremes, marine heat waves, heavy precipitation, and in some regions agricultural and ecological droughts; an increase in the proportion of intense tropical cyclones and reduction in Arctic Sea ice, snow cover and permafrost.
3. Many changes due to past and future greenhouse gas emissions are irreversible for centuries to millennia, especially changes in the ocean, ice sheets and global sea level.

Similarly, the World Wide Fund (Formerly World Wildlife Fund) (WWF) shows great concern on the loss of biodiversity in its Living Planet Report 2020- 'Bending the curve of biodiversity loss'.⁷ According to this report,

1. The global Living Planet Index (LPI) is continuously declining. It shows that between 1970 and 2016 an average 68% decrease have been observed in the population of mammals, birds, fish, reptiles and amphibians.
2. Since 1970, our Ecological Footprint has exceeded the Earth's rate of regeneration. The Ecological Footprint per person is a function of both total population and rates of consumption within a country. A country's consumption includes the Ecological Footprint it produces plus imports from

other countries minus exports. (Sourced from Global Footprint Network, 2020)⁸ To feed and fuel our 21st century lifestyles, we are overusing the Earth's bio capacity.

3. Our global stock of natural capital per person has declined by nearly 40% since the early 1990s, while produced capital has doubled and human capital has increased by 13%. (Data from the United Nations Environment Programme)

The Indian policy and legal framework have also evolved to deal with the above mentioned realities of environmental degradation.

"Environment" is defined in Section 2(a) of the Environment (Protection) Act, 1986. It says, "Environment includes water, air and land and the interrelationship which exists among and between water, air and land and human beings, other living creatures, plants, micro-organism and property".

Constitution of India vis-à-vis Environmental Protection

The Constitution of India is not an inert but a living document which has evolved and grown with time. The specific provisions on environmental protection in the Constitution are also the result of this evolving nature and growth potential of the fundamental law of the land. It is amongst the few Constitutions in the world that contains specific provisions on environment protection. The Preamble to our Constitution ensures socialist pattern of the society and dignity of the individual. Decent standard of living and pollution free environment is inherent in this.

The Directive Principles of State policy and the Fundamental duties explicitly enunciate the national commitment to protect and improve the environment.⁹

In pursuance of the United Nations Conference on Human Environment convened at Stockholm in 1972, the Chapter on Fundamental Duties was inserted in the Indian Constitution by the 42nd Amendment Act, 1976 which consists of only one Article 51-A. This article imposes duty on every citizen to protect environment. Article 51-A (g) says that "It shall be duty of every citizen of India

to protect and improve the natural environment including forests, lakes, rivers and wild life and to have compassion for living creatures."

In *M C Mehta v. Union of India*,¹⁰ the Supreme Court has held that under Article 51-A (g) it is the duty of the Central Government to introduce compulsory teaching of lessons for at least one hour in a week on protection and improvement of natural environment in all educational institutions of the country. It directed the Central Government to get text books written on that subject and distribute them to the educational institutions of the country free of cost. In order to rouse amongst the people the consciousness of cleanliness of environment, it suggested the desirability of organising-keep the city clean week, keep the town clean week, keep the village clean week in every city, town and village throughout India at least once in a year.

The Directive Principles of State Policy under Part-IV of the Indian Constitution are directed towards ideals of building a "Welfare State". Healthy environment is also one of the elements of Welfare State.¹¹ Article 47 provides that the State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties. The improvement of public health also includes the protection and improvement of environment without which the public health cannot be assured. Article 48 deals with organization of agriculture and animal husbandry. It directs the State to take steps to organise agriculture and animal husbandry on modern and scientific lines. In particular, it should take steps for preserving and improving the breeds and prohibiting the slaughter of cows and calves and other milch and draught cattle. Article 48-A of the Constitution says that "the State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country".¹²

In *M.C. Mehta v. Union of India*,¹³ the Supreme Court, relying on Article 48-A gave directions to the Central and the State Governments and various local bodies and Boards under the various statutes to take appropriate steps for the preservation and control of pollution of water.

The 42nd Amendment to the Indian Constitution also made certain changes in Seventh Schedule to the Constitution. Originally forest was a subject included in List II, Entry 19. Since no uniform policy was being followed by the State in respect of protection of forest, now this subject has been transferred to List III and hence now the Parliament and State Legislature both may pass legislations. Protection of wild animals and birds has also been transferred from List II, Entry 20 to List III, Entry 17-B. The 42nd Amendment Act for the first time inserted Entry 20-A in List III which deals with population control and family planning because enormous increase in population is main cause for environmental problems.

The Constitution of India under Part-III guarantees Fundamental Rights which are essential for the development of every individual and to which a person is inherently entitled by virtue of being human alone. Right to Environment is also a right without which development of individual and realisation of his or her full potential is not possible. Articles 14, 19 and 21 of this Part have been used for environmental protection.

Article 19(1) (g) of the Indian Constitution confers Fundamental Right on every citizen to practice any profession or to carry on any occupation, trade or business. This is subject to reasonable restrictions which may be placed in the interests of general public.¹⁴ A citizen cannot carry on business activity, if it causes health hazards to the society or general public.¹⁵ Thus, safeguards for environment protection are inherent in this. The Supreme Court, while deciding the matter relating to carrying on trade of liquor in *Cooverjee B. Bharucha v. Excise Commissioner, Ajmer*¹⁶ observed that if there is clash between environmental protection and right to freedom of trade and occupation, the Courts have to balance environmental interests with the Fundamental Rights to carry on any occupations.

Excessive noise creates pollution in the society. The Constitution of India under Article 19(1) (a) read with Article 21 of the constitution guarantees right to decent environment and right to live peacefully. In *P A Jacob v. The Superintendent of*

Police Kottayam,¹⁷ the Kerala High Court held that the right to speech implies the right to silence. It also implies freedom not to listen, and not to be forced to listen. The right to speech is subordinate to peace and public order. The use of a loud speaker may be incidental to the exercise of the Right to Freedom of Speech and Expression but its use is not a matter right or part of that right. Apart from a right to be let alone i.e. freedom from aural aggression, Article 21 guarantees freedom from tormenting sounds.

According to Article 21 of the Constitution, "no person shall be deprived of his life or personal liberty except according to procedure established by law". Article 21 has received liberal interpretation from time to time after the decision of the Supreme Court in *Maneka Gandhi v. Union of India*.¹⁸

Article 21 guarantees right to life, right to environment, free of danger of disease and infection is inherent in it. Right to healthy environment is important attribute of right to live with human dignity. The right to live in a healthy environment as part of Article 21 of the Constitution was first recognized in the case of *Rural Litigation and Entitlement Kendra v. State*¹⁹ (popularly known as *Dehradun Quarrying Case*). It is the first case of this kind in India, involving issues relating to environment and ecological balance in which Supreme Court directed to stop the excavation (illegal mining) under the Environment (Protection) Act, 1986. In *M.C. Mehta v. Union of India*,²⁰ the Supreme Court treated the right to live in pollution free environment as a part of Fundamental Right to Life under Article 21 of the Constitution.

Public Interest Litigation under Article 32 and 226 of the Constitution of India resulted in a wave of environmental litigations. The leading environmental cases decided by the Supreme Court include case of closure of limestone quarries in the Dehradun region (*Dehradun Quarrying case*), the installation of safeguard at a chlorine plant in Delhi (*M.C. Mehta V. Union of India*)²¹ etc. In *Vellore Citizens Welfare Forum vs. Union of India*,²² the Court observed that "the Precautionary Principle" and "the Polluter Pays Principle" are essential features of "Sustainable Development."

After 73rd and 74th Constitutional Amendment Acts of 1992, Panchayats and Municipalities have been empowered under the Constitution to take measures such as soil conservation, water management, forestry and protection of the environment and promotion of ecological aspect.

Environmental Statutes

A number of environmental and forest and wildlife related statutes have been enacted from time to time to address the challenges of environment, forest and wildlife management.

1. *The Wildlife (Protection) Act, 1972* provides protection to listed flora and fauna and establishes a network of ecologically important protected areas. It empowers the Central and State Governments to declare any area a Wildlife Sanctuary, National Park, Community Reserve or Conservation Reserve. It has six Schedules containing list of species which cannot be hunted or can be hunted only with prior permission.²³

2. *The Water (Prevention and Control of Pollution) Act, 1974*²⁴ represented India's first attempts to comprehensively deal with water pollution issues and creation of institutional setup in the country. The Act provides for the prevention and control of water pollution and for maintaining and restoring the wholesomeness of water and to provide for the establishment of Boards and to assign such Boards with powers and functions to prohibit the discharge of pollutants into water bodies beyond a given standard and for penalties for non-compliance. The Act was amended in 1988 to conform closely to the provisions of the EPA, 1986. It set up the Central Pollution Control Board (CPCB), which lays down standards for the prevention and control of water pollution. At the State level, the State Pollution Control Board (SPCB) functions under the direction of the CPCB and the State Government.

2. *The Water (Prevention and Control of Pollution) Cess Act, 1997*²⁵ provides for a levy and collection of a cess on water consumed by persons carrying on certain industries and by local authorities. It aims at augmenting the resources of Central and State boards for prevention and control of water

pollution constituted under the Water (Prevention and Control of Pollution) Act, 1974. Following this Act, the Water (Prevention and Control of Pollution) Cess Rules were formulated in 1978 for defining standards and indications for all kind of and location of meters that every consumer of water is required to install.

3. *The Air (Prevention and Control of Pollution) Act, 1981*²⁶. To implement the decisions taken at the United Nations Conference on the Human Environment held in Stockholm in June 1972, this Act provides for the prevention, control and abatement of air pollution by prohibiting the use of polluting fuels and substances, as well as by regulating appliances that give rise to air pollution. Under the Act, establishing or operating of any industrial plant in the pollution control area requires consent from SPCBs. The Board can test the air in air pollution areas and can inspect any control equipment, industrial plant or manufacturing process.

4. *The Environment (Protection) Act, 1986*²⁷ (EPA, 1986) is an umbrella legislation designed to provide a framework for the co-ordination of Central and State authorities established under the Water (Prevention and Control) Act, 1974 and Air (Prevention and Control) Act, 1981. Under this Act the Central Government is empowered to take measures necessary for the protection and improvement of environment, for laying down standards for emission or discharge of environmental pollutants, for laying down safeguards for prevention of accidents and in respect of handling of hazardous substances, requiring persons to furnish certain information, issuing direction to persons, planning nationwide pollution control programmes and coordination of the actions of various agencies and authorities under the Act etc. The Central Government may also notify rules, orders, directions, guidelines, etc. under the Act like-

- (a) Noise Pollution (Regulation and Control Rules), 2000
- (b) Ozone Depleting Substances Rules, 2005
- (c) Environmental Impact Assessment Notification, 2006

- (d) Solid Waste Management Rules, 2016
- (e) Bio-Medical Waste Management Rules, 2016
- (f) E-Waste Management Rules, 2016
- (g) Plastic Waste Management Rules, 2016
- (h) Wetland Rules, 2017

(i) Coastal Regulation Zone Notification, 2018

5. *The Public Liability Insurance Act (PLIA), 1991*²⁸ provides public liability insurance for the purpose of providing immediate relief to the persons affected by accident occurring while handling any hazardous substance and for matters connected therewith or incidental thereto. The Act makes owner liable to provide relief as specified in the Schedule of the Act. The PLIA was amended in 1992 and the Central Government was authorized to establish the Environment Relief Fund for making relief payments.

6. *The National Appellate Authority Act, 1997*²⁹ provides for the establishment of a National Environment Appellate Authority to hear appeals with respect to restriction of areas in which any industry, operations or processes shall not be carried out or shall be carried out subject to certain safeguards under the Environment (Protection) Act, 1986.

7. *The Biological Diversity Act, 2002*³⁰ provides for the conservation of biological diversity, sustainable use of its components, and fair and equitable sharing of the benefits arising out of the use of biological resources, knowledge and for matters connected therewith or incidental thereto.

9. *The Forest (Conservation) Act, 1980*³¹ was adopted to protect and conserve forests. The Act restricts the power of the State Government or other authority in respect of de-reservation of forests and use of forest land for non-forest purposes except with the prior approval of the Central Government.

10. *Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006*³² - This Act recognise and vest the forest rights and occupation in forest land in forest dwelling Scheduled Tribes and other traditional forest dwellers who have been residing in such forests

for generations but whose rights could not be recorded.

It provides a framework for recording the forest rights so vested and the nature of evidence required for such recognition and vesting in respect of forest land. The recognised rights include the responsibilities and authority for sustainable use, conservation of biodiversity and maintenance of ecological balance and thereby strengthening the conservation regime of the forests while ensuring livelihood and food security of the forest dwelling Scheduled Tribes and other traditional forest dwellers.

11. *National Green Tribunal Act, 2010*³³ establishes a National Green Tribunal (NGT) in New Delhi for effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment and giving relief and compensation for damages to persons and property and for matters connected therewith or incidental thereto. The Tribunal is a specialized body to handle environmental disputes involving multi-disciplinary issues.

Policy Framework for Environment Protection

The Indian society is a diverse developing society with varied challenges in social, economic, political, cultural and environmental arena. The national policies on environment management are given in National Forest Policy, 1988, the National Conservation Strategy and Policy Statement on Environment and Development, 1992 and the Policy Statement on Abatement of Pollution, 1992. Some sector policies such as The National Agriculture Policy, 2000, The National Population Policy, 2000 and The National Water Policy, 2002 have also contributed to the environment management.

It has been felt time and again that the natural resources play a vital role in providing livelihoods and securing life support ecological services. In this perspective a need for a comprehensive policy statement was felt in order to infuse a common approach to the various sectoral and cross-sectoral,

including fiscal approaches, to environmental management. It was felt that there is a need to review earlier objectives, policy instruments and strategies. Thus the National Environment Policy (NEP) was brought by The Ministry of Environment and Forests (MoEF) in the year 2006.

The National Environment Policy, 2006 seeks to extend the coverage, and fill in gaps that still exist, in light of present knowledge and accumulated experience. It does not displace, but builds on the earlier policies. It is also intended to be a statement of India's commitment to making a positive contribution to international efforts. It is in response to India's national commitment to a clean environment, mandated in the Constitution in Articles 48 A and 51 A (g), strengthened by judicial interpretation of Article 21. It is recognized that maintaining a healthy environment is not the state's responsibility alone, but also that of every citizen. A spirit of partnership should thus be realized throughout the spectrum of environmental management in the country.³⁴

The policy talks of Polluter Pays Principle, Doctrine of Public Trust, legal liabilities, Legislative reforms, Environment Impact Assessment (EIA), the problem of Living Modified Organisms (LMO), Coastal Regulation Zone (CRZ), the Environmentally Sensitive Zones (ESZ), desert habitats, wild life, wetlands and the role of Panchayats and women in protecting the environment.

National Action Plan on Climate Change (NAPCC), 2008 was launched by the Prime Minister of India on 30th June, 2008. It outlines a national strategy that aims to enable the country to adapt to climate change and enhance the ecological sustainability of India's development path. It stresses that maintaining a high growth rate is essential for increasing the living standards of the vast majority of the people of India and reducing their vulnerability to the impacts of climate change.³⁵

There are eight National Missions which form the core of the National Action Plan. They focus on promoting understanding of climate change, adaptation and mitigation, energy efficiency and natural resource conservation.³⁶ These national plans are

- i. National Solar Mission
- ii. National Mission for Enhanced Energy Efficiency
- iii. National Mission on Sustainable Habitat
- iv. National Water Mission
- v. National Mission for Sustaining the Himalayan Eco-system
- vi. National Mission for a Green India
- vii. National Mission for Sustainable Agriculture
- viii. National Mission on Strategic Knowledge for Climate Change³⁷

India's Nationally Determined Contributions (NDCs) under Paris Agreement, 2015 will be mainly achieved through the NAPCC:³⁸

1. To reduce the emissions intensity of its GDP by 33 to 35 percent by 2030 from 2005 level.
2. To achieve about 40 percent cumulative electric power installed capacity from non-fossil fuel based energy resources by 2030 with the help of transfer of technology and low cost international finance including from Green Climate Fund (GCF).
3. To create an additional carbon sink of 2.5 to 3 billion tonnes of CO₂ equivalent through additional forest and tree cover by 2030

In COP-26 Summit at Glasgow in November 2021, the Prime Minister of India gave the "Panchamrit" formula of India's five pledges:³⁹

1. India will reach its non-fossil energy capacity to 500 GW by 2030.
2. India will meet 50 percent of its energy requirements from renewable energy by 2030.
3. India will reduce the total projected carbon emissions by one billion tonnes from now onwards till 2030.
4. By 2030, India will reduce the carbon intensity of its economy by less than 45 percent.
5. By the year 2070, India will achieve the target of Net Zero.

Conclusion

The Government of India, in partnership with State Governments and Local Governments and

Private Sector has performed extremely well in the pursuit of its NDCs (Nationally Determined Contributions), especially increase in non-fossil fuel based energy resources, which it is destined to achieve before 2030 deadline. Schemes like FAME (Faster Adoption and Manufacturing of Hybrid and Electric Vehicles), Production Linked Incentives (PLI) and PM-KUSUM have supported India's transition to green energy.

But the increasing population growth is causing tremendous pressure on land and food availability. Desertification of agricultural land due to overuse of fertilizers in Green Revolution states is a formidable challenge. Agriculture needs to become broad based from the current preferences of crops of wheat and rice. Land use change due to urbanisation is also not getting proper policy attention. India will see more than 50% population residing in urban areas by 2050.⁴⁰

Therefore, the draft Environment Impact Assessment (EIA) 2020 should be finalised soon and implemented strictly so that lopsided development is replaced by sustainable development with rightful benefit sharing with local communities. This will greatly help reduce man-animal conflicts and preserve the last remaining unaltered natural territories.

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