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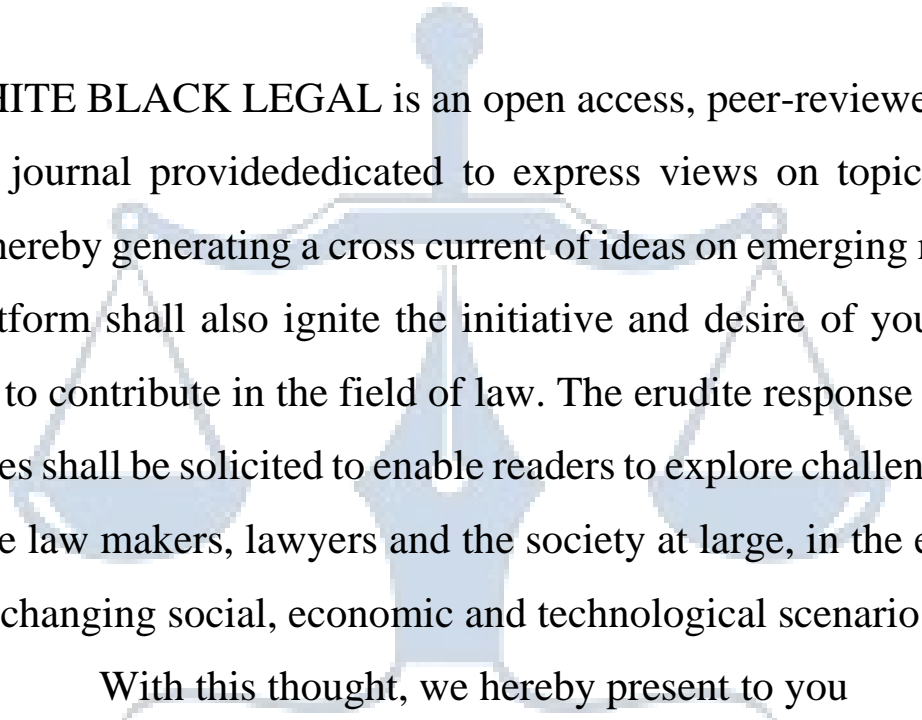


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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

W H I T E B L A C K
L E G A L

LEGAL ASPECTS OF **ENVIRONMENTAL LAW IN INDIA**

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ABSTRACT-

Over one-sixth of the world's population lives in India. However, it bears the brunt of pollution since it has a lower per capita income than the rest of the world. Pollution is one of the primary factors contributing to premature mortality and sickness worldwide. Due to the compounding effects of its large population and high levels of environmental pollution, the human cost of pollution in India is among the worst in the world. This is due to the fact that India has some of the highest levels of environmental pollution. This places India among the countries with the highest pollution levels. Part of the environmental deterioration may be attributed to the growth paradigm adopted after the country gained its independence in 1947. This paradigm was focused on extensive industrialization and resource exploitation with little regard for sustainability. Additionally, it is because since the economy was liberalized in 1991, India's environmental management, governance, and regulatory infrastructure have not been able to keep up with the country's size and rate of economic expansion. One of the contributing factors has been this failure.

Ironically, India was also one of the first countries to think about the environment when making laws and policies. The beginning of the 1970s marked the beginning of this. The federal and state environmental regulation and policy-making institutions, as well as environmental laws such as the "Environment (Protection) Act of 1986", that were established during this time are comparable in "design", "stringency", and scope to other command-and-control environmental regulatory systems that are in place in many industrialised economies today. However, a significant source of concern for environmental governance in the nation has been the widening gap between what the law says about environmental compliance and what really takes place in the field.

The negotiations are still going on, and they cover a variety of different corrective actions for regulatory deficiencies. The first thing that needs to be done in order to enhance both access to pollution information and the reliability of that information is to put a greater emphasis on

strengthening the institutions and processes that foster transparency and public disclosure on the part of pollution sources. The argument put up by proponents of this position is that it will motivate members of the general public, as well as people and organisations such as non-governmental organisations (NGOs), to put pressure on businesses and the government to improve regulatory compliance. Second, there has been an increase in the number of calls for the wider use of market-based techniques, which have been shown to be more efficient than India's traditional command-and-control approaches. Once again, the operation of such market-based regulatory systems depends on information.

Third, Judicial procedures are being mapped out to speed up the hearing of environmental disputes. The National Green Tribunal was established in 2010, and since then, India has joined the exclusive company of just three other countries worldwide with a dedicated judicial body to hear cases involving damage to the natural environment. Potentially a major advance in achieving environmental justice. However, a new viewpoint argues that a radical reappraisal is required since the standard model of economic growth is insufficient to provide sustainable development.



INTRODUCTION –

In the current decade, India's economy has become one of the world's most dynamic. Its economic strategy, which is characterised by significant exploitation and use of natural resources, has been showing a substantial increase in the gross domestic product (GDP).¹ This expansion has come at the expense of a dramatic decline in environmental quality, which has had severe repercussions for both the health of humans and the health of the ecosystem. In 2013, 1.4 million premature deaths were solely attributed to air pollution, and 7.7% of GDP was estimated to have been lost as a result (World Bank, 2016). India has also played a significant role in the global conversation about climate change due to its economy's potential to continue expanding quickly in order to feed the millions of its citizens who are still living in poverty, its energy mix's predominance of fossil fuels (coal accounts for 60% of total energy consumption), and its vulnerability to the widespread effects of climate change.²

¹Agarwal, V.K. (2005). Environmental Laws in India. Challenges for Enforcement. Vol.15, Bulletin of the National Institute of Ecology, pp. 227-238.

²Tsegai, B. G. (2015). Industrial Pollution Control and Management in Ethiopia. A case study on Almeda textile factory and Sheba leather industry in Tigrai Regional State. Ph.D. thesis, University of Warwick, p. 89.

This article explores “India’s environmental regulatory framework”. India is a particularly intriguing example for a few different reasons. At a period when both its democracy and economy were in their infancy, the nation passed environmental regulations as early as the 1970s. This was also about the same time when the majority of industrialised nations began passing environmental legislation. It has a rather complex institutional framework to ensure compliance with the many laws and regulations that it has adopted to preserve its “air”, “water”, “land”, “coastal regions”, “forests”, “biodiversity”, and “wildlife”. In addition, it has passed a number of rules and regulations to safeguard its species. Second, it is one of the very few nations in the world to have made the conservation of the environment a constitutional obligation for the state and its individual residents. Thirdly, a robust democratic governance system creates opportunities for non-state actors to engage in and influence environmental governance, which may lead to the development of potentially new institutional arrangements.³

ENVIRONMENTAL PROTECTION

Environmental law is a relatively recent area of international law. Even three years before the Stockholm conference, India made a remark in its IV Five Year Plan (1969–1974) about the incorporation of environmental considerations. The IV plan document for harmonious development acknowledged the oneness of man and nature. Such planning is only feasible on the basis of an exhaustive evaluation of environmental issues. In certain situations, early and accurate environmental advice might have aided in the design of projects and the modification of environmental impacts that result in the loss of resources. Therefore, it is vital to include environmental considerations in planning and development.

It was decided to form a government advisory council to oversee environmental planning and coordination on a national scale. Concerns about the environment were within the purview of this Committee.

India's highest courts have always recognized the inherent human right to a pristine natural setting. The judicial system, in particular, has recognized the right for close to a century already. The right to a safe and healthy environment has grown in importance as industrialization has progressed, and the Indian Constitution protects it. This fundamental right was recognized by India's highest court and highest appellate court in the 1980s. Prior to the 1980s, citizens had enjoyed this right not as a

³Agarwal. (2005), *supra*, n.1

basic right but as a right enforced by the courts under several statutes, such as the “Law of Torts”, “the Indian Penal Code”, “the Civil Procedure Code”, and “the Criminal Procedure Code”, among others. Environmental rights are seen as third-generation rights in the evolving legal system of today.

ENVIRONMENTAL REGULATORY GOVERNANCE IN INDIA: AN OVERVIEW HISTORICAL OVERVIEW –

Environmental awareness has always been an essential component of Indian civilization, permeating all aspects of its past, present, and future, including its history, culture, customs, and politics. Throughout its history, Indian ecology has been moulded by factors that are both tangible and immaterial in nature. The primary material considerations were the protection of “communal access to natural resources”, “the defence of livelihood”, and “concerns for health” and “well-being as a result of toxicity” and “degradation of the biosphere”. Non-material factors were primarily rooted in the bio-centric beliefs of natives, which attributed divine status to nature and its elements. Sacred personifications of “rivers and lakes”, “plains and mountains”, “flora and fauna” can be found in “native mythology”, “folklore”, and “the vernacular customs and practises of communities all over the country”.

This mix of things that can be seen and things that can't be seen has given rise to many grassroots environmental movements. When you look at these "environmental movements," "the thought leadership that led to them," and "the conflicts that shaped the relationship between the people, the state, and the markets in relation to the natural environment," you can better understand how environmental laws work today. In 1730, "the villagers of Khejadli" in what is now the "Jodhpur region of Rajasthan" grabbed "the Khejri (*Prosopis cineraria*) trees" to stop a royal team sent by "Maharaja Abhai Singh of Marwar" from cutting them down for lumber. In the fight that followed, 363 Bishnoi villagers gave their lives to protect the trees that they thought were holy.⁴

In 1973, in a remote Himalayan hamlet, a group of peasants inspired by the sacrifice of the “Bishnois” seized trees to prevent professional loggers from cutting them down. This movement was known as the “Chipko movement”. The “Chipko movement”, which was based on the principles of nonviolent resistance and acted as a forerunner to community-led environmental movements in modern India, was started in the 1930s. The “Chipko movement” was the oldest of

⁴Shanthakumar, S. (2007). Introduction to Environmental Law. 2nd ed. New Delhi: Wadhwa and Company. p 2

the extensively documented post-independence environmental initiatives in India, and it also embodied Gandhi's ideal of peaceful Satyagrah. 3 Chandi Prasad Bhatt and “SunderlalBahuguna”, two activists closely associated with the movement, were disciples of Gandhian ideology. Some critics said, "Gandhi's spirit rescued the Himalayan trees" and referred to him as the "unacknowledged 'patron saint' of the Indian environmental movement."

Eventually, the “Chipko movement” served as a model for others to emulate both the strategies of nonviolent civil resistance and the ideals of Gandhian environmental ethics. The majority of subsequent wars were caused by industrial growth and massive resource exploitation, which deprived local populations of their means of subsistence. Notable among them is the “Narmada BachaoAndolan” in Gujarat and Madhya Pradesh, led by environmental campaigner MedhaPatkar, which opposes the building of the “SardarSarovar project” on the Narmada River.

Prior to the 21st century, India had extensive environmental contamination. This enormous pollution of the natural environment may be ascribed in part to India's early post-independence growth aspirations. These programmes were created largely to alleviate poverty and promote economic prosperity via fast state-supported industrialisation.⁵“While Gandhi's idea of decentralised development continued to inspire environmental collective action and groups throughout this period, industrialisation gained primacy”. According to Guha and Alier (1997), "independent India's development history has been defined by a deep disregard for ecological factors."

THE INDIAN GOVERNMENT'S REGULATIONS REGARDING THE ENVIRONMENT

People used to think that environmental quality and economic growth were at odds with each other, but this has changed over the years as environmental awareness has grown. Now, people think that environmental quality and economic growth must go hand in hand. Environmentalism has always been a big part of Indian culture, so the current focus on the environment is nothing new. Indian scriptures, which are more than 3,000 years old, talk about the need to protect and use natural resources in a sustainable way. This idea is also reflected in the country's constitution, laws, policies, and international commitments.

⁵Agarwal. (2005), supra, n.1

India has made a whole set of laws and rules to protect and preserve the environment. There are important laws like the “Environment (Protection) Act of 1986” and laws about air, water, wildlife, and forests. But the goals for protecting the environment have not been met because they have not been carried out well. One reason for the bad implementation is that the people who make laws, enforce them, and run businesses don't know how to use them. To fix this, the Indian government has taken steps to improve the legal skills of lawmakers, law enforcers, business managers, law teachers, and others. By making it easier for these “groups to write”, “implement”, “enforce”, and “teach the law”, both voluntary compliance and the ability to enforce will improve.

In 1998, the Indian government set up a “Commission on Review of Administrative Law”. Based on the recommendations, all departments must propose any changes, repeals, etc., that need to be made to the Acts that apply to them. So, “the Forest Policy and Law Division of the Ministry of Environment and Forest” has started to take the steps needed to change “the Water (Prevention and Control of Pollution) Act 1974”, “the Air (Prevention and Control of Pollution) Act 1981”, and “the Environment (Protection) Act 1986”.

The legal system in India is complex, with more than 200 statutes specifically addressing environmental protection. The following are some important national legislation for the prevention and management of industrial and urban pollution:

1. “The National Green Tribunal Act of 2010⁶” is designed to accomplish the following goals:

- To resolve concerns connected to the preservation of the environment in a manner that is both efficient and effective.
- To compensate the victims, whether they be people or property, and to provide them legal recourse for the harm done to them.
- To revoke two legislative acts that were enacted by the Parliament, one in 1995 and one in 1997, respectively.
- To cope with other environmental challenges.

⁶Amirante. D. (2012). Environmental Courts in comparative perspective preliminary reflections National Green Tribunal of India: Pace Env'tl. L. Rev, Vol. 29 (2), p. 441. Available at: <https://digitalcommons.pace.edu/pelr/vol29/iss2/3/>

2. **“Water (Prevention and Control of Pollution) Act, 1974 and Rules 1975”** is designed to accomplish the following goals:

- In order to stop the contamination of water
- In order to prevent the pollution of water
- In order to appoint Central and State boards for the purposes listed above
- In order to administer appropriate punishments to those who have broken the law
- the prevention and management of water-related issues.

3. **“Air (Prevention and Control of Pollution) Act, 1981”** is designed to accomplish the following goals:

- To avoid air pollution.
- In order to reduce the pollution in the air.
- In order to exact justice on those who have broken the law.
- To deal with air issues, including the prevention and management of its pollution.

4. **“The Environment (Protection) Act, 1986”** is designed to accomplish the following goals:

- To provide more favourable circumstances for the environment
- To support all 26 of the principles that were outlined in the Stockholm statement in 1972.
- To give the central government with the authority to take stringent measures to prevent the destruction of the environment;
- To take stern precedence action against individuals who degrade the environment;

5. **“The Wildlife Protection Act, 1972”** is designed to accomplish the following goals:

- To outlaw the shooting of certain wild animals, birds, and plants;
- To establish the administration of national parks, wildlife reserves, and sanctuaries.
- To regulate the trading and commercialization of wildlife and its products.

MAJOR AMENDMENTS IN ENVIRONMENTAL LAW IN INDIA

The following are recent, significant, and significant changes to India's national environmental legislation.

This legislation has both loosened and tightened limitations.

- In 2006, the notification of Environmental Impact Assessment aided in the relaxation of infrastructure, but at the expense of mass danger. Prior to this amendment, nearly every large project required government approval in advance; however, projects that cover an area of less than 50,000 square metres do not require such permission.

- In 1996, a modification was made to the Coastal Regulations under the Environmental Protection Act. This change helped the growth of tourism in India, but it came at the expense of the environment. The government eliminated the requirement for prior government approval in order to initiate any project in coastal zones. This was done in order to facilitate the growth of the tourism industry.

The aforementioned statutes were examples of laws passed by the government that loosened restrictions, while the following are examples of revisions to laws that assisted the government in establishing appropriate rules for environmental policy.

Due to the widespread impact of this rule, individuals started respecting traffic laws and making sure their cars were equipped to minimise damage to the environment after previously being fined just Rs. 100.

The Factories Act of 1987 was a law that was urgently required after the gas disaster in Bhopal. This law introduced stringent regulations for factories, which are primarily responsible for the deterioration of the environment. The laws were drafted to be as stringent as possible in order to ensure that proper checks are kept on factories and to determine whether or not the minimum requirements are being met.

CONCLUSION: THE ROAD AHEAD

Since the implementation of economic reforms in 1991, India has seen substantial economic development; yet, this progress has been accompanied by a decline in the quality of the environment. Since the beginning of the 1980s, several pieces of environmental legislation, a multitude of rules, and an intricate institutional framework have been enacted in order to ensure compliance with the requirements. The empirical information about the efficacy of these largely CAC legislation has been few; nonetheless, the research that is available reveals only tiny areas of success. In general, however, the present regulatory system has been shown to be ineffective in reducing the negative externalities that have arisen as a result of the fast growth in the extraction

and use of resources brought about by industrialization and urbanisation.⁷ The topic of what the future may hold for “India’s environmental regulatory framework” is an important one to consider in this context. We provide a concise analysis of the possible future trends as well as some recommendations for moving ahead.

First, the tension between concerns about development and worries about the environment getting worse will continue to be one of the main points of debate about environmental regulations. The story of how environmental rules for coal-fired power plants are being put into place is a good example. About two-thirds of the electricity made in India comes from thermal power plants. “Each year, fine particulate matter (PM2.5) pollution from coal plants is thought to cause between 85,000 and 115,000 premature deaths.”⁸

In December 2015, “the MoEF and CC” established criteria for sulphur dioxide, nitrogen oxides, and mercury emissions from coal-fired power plants and gave coal-fired power stations until December 2017 to comply. No coal plant reached the criteria by the deadline, thus it was extended until 2022, despite the fact that studies indicate that reaching the rules is more beneficial to public health than the costs to industry.

This shows how economic concerns trump environmental regulations, since coal is seen as a key part of India's energy mix for the foreseeable future. This tension between the economy and the environment will continue to affect regulations.

The human race is responsible for a significant portion of the harm that has been inflicted on the globe. Despite the fact that the earth has provided humanity with everything they need, this destruction has occurred because of the inherent greed that exists in human civilization.⁹

It will take some time for people to recover, but there are methods that we can do so. However, before we can do so, we need effective law enforcement to put a stop to these kinds of actions. In order to put the deterrence principle into practise, we need to pass new laws that are severe enough. It is our responsibility to take care of the environment in the same way that it has taken care of us since the environment has been there to satisfy all of the needs that people have. The environment does not need people in order to continue existing, yet humans are necessary for the continued

⁷Tsegai, B. (2015). *supra*, n. 10,

⁸Agarwal (2005), *supra*, n.1.

⁹Shanthakumar, S. (2007). *Introduction to Environmental Law*. 2nd ed. New Delhi: Wadhwa and Company. p 2

existence of the environment.

Although there are a lot of people who think about the environment, a lot of laws, and a lot of activists in India and throughout the globe, the involvement of a very single person is what contributes to the growth or destruction of the environment. There are a lot of things we need to get done, but unless we can rescue our environment, we won't be able to get any of them done.

This COVID-19 virus is really a godsend in disguise since it has assisted the ecosystem in regenerating itself after all of the damage that people have caused all over the world. While it is true that it has caused many deaths, this is exactly the point at which we need to realise that nothing is in our control, and neither should we ever think that we can control anything.

In conclusion, I can state that any action we intend to take regarding the environment must be preceded by a thorough evaluation of all relevant factors, and must adhere to applicable principles and regulations. We can only evolve on this planet as long as life exists, and the survival of life is very dependent on the environment. If there was no environment, there would be no chance for life, and if there was no chance for life, mankind would not exist.



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