

“Legal Provision for Environment”

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Abstract

India is a nation having a large topographic diversity and a country so full of natural beauty. The Mother Nature has created it with such loveliness that some of the most beautiful places in India are simply breathtaking. With the technological development the last few years have witnessed a phenomenal evolution infrastructure related projects that have come up India and it is a matter of pride for the country, but along with the process of development unfortunately this nation is also having a black side also i.e. problem of Environment. The need of protection and conservation of the environment is very necessary for the human beings. Legislative fight against pollution continued in independent India. Now there is a host of legislation in India aimed at protecting the environment from pollution and maintaining the ecological balance After Independence there is no specific provision in Indian constitution for the protection of environment first time in 42nd amendment 1976 two Articles were added to the constitution(Art 51A and Art 48A) and thereafter many Act has passed by the Indian Parliament for the protection and conservation of environment like The Water Act 1974, The Air Act 1981, The Environment Protection Act 1986, The Noise Pollution Rules 2000, basically these Act which is related to environment for the protection and conservation of the environment.

INTRODUCTION

The natural conditions which surround us are collectively known as Environment. It influence the health of a person a very large including mental as well physical growth. India is a land of untouched beauty and that makes it one of the most beautiful place on the earth. From the extraordinary mountains of Kashmir to the breathtaking vista of the three oceans blending at the Kanyakumari. There is a very long list of world class naturally beautiful places in India. The need for protection and conservation of environment and sustainable use of natural resources is reflected in the constitutional framework of India and also in the international commitments of India. Legislative fight against pollution continued in independent India. Now there is a host of legislation in India aimed at protecting the environment from pollution and maintaining the ecological balance. The Constitution under Part IVA (Art 51A-Fundamental Duties) casts a duty on every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for living creatures. Further, the Constitution of India under Part IV (Art 48A-Directive Principles of State Policies) stipulates that the State shall endeavor to protect and improve the environment and to safeguard the forests and wildlife of the country. And under Art 51A(g) state that it shall be the duty every citizen to protect and improve the natural

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environment including forest lakes rivers. it is one of the fundamental duties of every citizen to protect the natural assets.²

The Indian parliament has passed many Act for the protection of Environment. like **The Water(Prevention and Control of Protection) Act 1974, The Air(Prevention and Control of Pollution) Act 1981, The Environmet (Protection) Act 1986,The Noise Pollution(Regulation and Control)(Amendment)Rules 2000.**Basically these Act passed by the legislature for the protection and conservation of Environment.

ENVIRONMENT

Environment is a very broad word and it is not easy to define it. Its normal meaning is surrounding, but that is a concept related to whatever object which is surrounding us. It has been once observed by Einsten,” the environment is everything that isn’t me.²Environment which is a polycentric and multifaceted problem affecting the human existence either directly or indirectly. Everything which is surrounding us is a part of the environment and human is the best promise and the worst enemy of the environment. For the development of society industries are necessary ingredient and were industries are there pollution is inevitable there. Environment defined under the environment protection Act 1986, environment include water, air, and land and human beings other living creatures plants, microorganism.

LEGAL PROVISION REGARDING ENVIRONMENT IN INDIA

- **Environment and the Indian Constitution**

Initially, the Constitution of India had no direct provision for environmental protection. The protect and improve the environment is a constitutional mandate. It is a commitment for a country wedded to the ideas of a welfare State. The Indian Constitution contains specific provisions for environment protection under the chapters of Directive Principles of State Policy and Fundamental Duties. The absence of a specific provision in the Constitution recognizing the fundamental right to clean and wholesome environment has been set off by judicial activism in the recent times.

- **Environment Protection and fundamental duties: Article 51-A (g)**

It shall be duty of every citizen to protect the and improve the natural environment including forest, lakes, rivers, and wildlife. It is one of the fundamental duties of every citizens to protect the natural assets

Thus, protection and improvement of natural environment is the duty of the State (Article 48-A) and every citizen (Article 51- A (g)).

- **Environment Protection and Directive Principles of State Policy: Article49-A**

“The State shall endeavor to protect and improve the environment and to safeguard the forests and wildlife of the country.” The said amendment imposed a responsibility on every citizen in the form of Fundamental Duty.³

² India: Environment Laws In India, <https://www.mondaq.com/india/waste-management> (visited on 22 April 2020)

- **Environment Protection and Fundamental Right: Article 21**
“No person shall be deprived of his life and personal liberty except according procedure established by law.”
Right to life include right to pollution free environment. The Supreme Court for the first time held that the right to wholesome environment is a part of right to life and personal liberty guaranteed under Article 21 of the Constitution.
- **Writ and PIL Provision for Environment Protection: Article 32, Article 226**
Right to life include Right to Pollution free environment which is cover under Art21 of Indian constitution. It is fundamental right and whenever there is violation of fundamental right any person can approach the court for a appropriate remedy .Writ would be maintainable before High Court under Art 226 and before Supreme court Art 32 pertaining to matter of environment protection.

ENVIRONMENTAL LAWS IN INDIA

Under Art 253 Legislation for giving effect to international agreements notwithstanding anything in the foregoing provisions of this Chapter, Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body.

- **The Water (Prevention and Control of Pollution) Act 1974- :**

The Act prohibit discharge of pollutants into water and beyond a given standard and lad down penalties for non-compliance with its provisions. Under this Act, setup the Central Pollution Control Board(CPCB) which lad down the prevention and control of water pollution and, at the state level, State Pollution Control Board function under CPCB

- **The Air (Prevention and Control of Pollution) Act 1981:**

An Act to provide for the prevention, control and abatement of air pollution, for the establishment, with a view to carrying out the aforesaid purposes, of Boards, for conferring on and assigning to such Boards powers and functions relating thereto and for matters connected therewith. "air pollution" means the presence in the atmosphere of any air.⁴

- **The Environment (Protection) Act 1986:**

An Act to provide for the protection and improvement of environment and for matters connected therewith. Whereas decisions were taken at the United Nations Conference on the Human Environment held at Stockholm in June, 1972, in which India participated, to take appropriate steps for the protection and improvement of human environment; And whereas it is considered necessary further to implement the decisions aforesaid in so far as they relate to

³ T. N. Godaverma Thirumulpad Vs Union of India, (2002)10 SCC606 at 618

⁴ THE AIR (PREVENTION AND CONTROL OF POLLUTION) ACT, 1981 , Available at: <http://www.indiaenvironmentportal.org.in/files/file/air%20act%201981.pdf>., Visited on 24 April 2020

the protection and improvement of environment and the prevention of hazards to human beings, other living creatures, plants and property.⁵

▪ **THE NOISE POLLUTION (REGULATION AND CONTROL) RULES, 2000:**

Whereas the increasing ambient noise levels in public places from various sources, inter-alia, industrial activity, construction activity, fire crackers, sound producing instruments, generator sets, loud speakers, public address systems, music systems, vehicular horns and other mechanical devices have deleterious effects on human health and the psychological well being of the people; it is considered necessary to regulate and control noise producing and generating sources with the objective of maintaining the ambient air quality standards in respect of noise.⁶

▪ **The Hazardous Wastes (Management and Handling) Rules, 1989:**

Under these rule the hazardous waste, "hazardous waste" means any waste which by reason of any of its physical, chemical, reactive, toxic, flammable, explosive or corrosive characteristics causes danger or is likely to cause danger to health or environment.⁷ The main objectives of waste management are: for the protection of environment through effective waste management techniques. to protect health, well being and environment. to prevent pollution.⁷

▪ **The Municipal Solid Wastes (Management and Handling) Rules, 2000**

The Municipal Solid Wastes (Management and Handling) Rules, 2000 shall apply to every municipal authority responsible for collection, segregation, storage, transportation,, processing and disposal of municipal solid wastes.⁸ The main objective of the solid waste management system is to promote the Environment Management and Conservation.

▪ **THE INDIAN FOREST ACT, 1927:**

An Act to consolidate the law relating to forests, the transit of forest-produce and the duty leviable on timber and other forest-produce.⁹ And to protect the forest and the environment. The main objective of this draft is to empower the forest officers, by providing them appropriate equipment and weapons to protect themselves and the forest as well.

THE ROLE OF THE INDIAN JUDICIARY IN ENVIRONMENT PROTECTION

⁵ THE ENVIRONMENT (PROTECTION) ACT, 1986: file:///C:/Users/hp/Downloads/The-Environment-Protection-Act-1986.pdf Visited on 24 April 2020

⁶ THE NOISE POLLUTION (REGULATION AND CONTROL) RULES, 2000 available at: http://cpcbenvs.nic.in/noisepollution/noise_rules_2000.pdf, visited on 20 April 2020

⁷ The Hazardous Wastes (Management and Handling) Rules, 1989; Available at: <https://globalrec.org/wp-content/uploads/2014/03/Hazardous-Wastes-Management-and-Handling-Rules-1989.pdf>, visited on 21 April 2020

⁸ The Municipal Solid Wastes (Management and Handling) Rules, 2000 Available at :<http://www.indiaenvironmentportal.org.in/content/257913/the-municipal-solid-wastes-management-and-handling-rules-2000/>, visited on 23 April 2020

⁹ THE INDIAN FOREST ACT, 1927: Available at; <http://nbaindia.org/uploaded/Biodiversityindia/Legal/3.%20Indian%20forest%20act.pdf> visited on 23 April 2020

❖ Maneka Gandhi Vs Union of India:¹⁰

Supreme Court While elucidating on the importance of the right to life under Article 21, held that right to life is not confined to mere animal existence but extends to the right to live with basic human dignity. And under this case “Right to Clean Environment is a part of Right to Life & Personal liberty” under Article 21.

❖ M.C. Mehta vs. Union of India:¹¹

In 1987, in this case⁷⁴ of Oleum gas leak from a chemical industry in Delhi, the Court laid down the principle of absolute liability of hazardous/inherently dangerous industries. The Court recognizing that the right to life of the citizens was adversely affected held that: “...an enterprise which is engaged in a hazardous or inherently dangerous industry which poses a potential threat to the health and safety of persons working in the factory and residing in surrounding areas, owes an absolute and non-delegable duty to the community to ensure that no harm results to anyone on account of hazardous or inherently dangerous nature of activity which it has undertaken; the enterprise must be absolutely liable to compensate for such harm and it should be no answer to the enterprise to say that it had taken all reasonable care and that the harm occurred without any negligence on its part.

❖ M.C. Mehta vs. Kamal Nath:¹²

The Court held that the state government, by granting the lease, had breached the Doctrine of Public Trust. The Court quashed the prior approval given by the Government of India for the construction of the motel and applying the ‘polluter pays principle’, directed the company to pay compensation for the cost of restitution of the environment and ecology of the area. The Court referred to the Public Trust Doctrine and stated that the latter extends to natural resources such as rivers, forests, seashores, and the air, among other things, for the purpose of protecting the ecosystem. The approach of the Supreme Court in this case supports the view that natural environment has to be preserved for its own sake, that human beings are the trustees and governments have an obligation to preserve the same. In the context of intergenerational equity the present generations have an obligation or a duty to preserve the environment in trust so that it can be passed on to the future generation in the same or better condition than when it was received by the present generation.

❖ M.C. Mehta v. Union of India¹³

The Supreme Court held that Article 52A (g) on the Constitution of India, which imposes a fundamental duty of protecting and improving the natural environment. The Court order that:

1) It is the duty of the Central Government to direct all the educational institutions throughout India to teach at least for one hour in a week lessons relating to the protection and

¹⁰ 1978 AIR 597, 1978 SCR (2) 621

¹¹ AIR 1987 SC 1086.

¹² 1997(1) SCC 388.

¹³ 1988 AIR 1115, 1988 SCR (2) 530

the improvement of the natural environment including forests, lakes, rivers and wildlife in the first ten classes.

2) The Central Government shall get text books written for the said purpose and distribute them to the educational institutions free of cost. Children should be taught about the need for maintaining cleanliness commencing with the cleanliness of the house both inside and outside, and of the streets in which they live. Clean surroundings lead to healthy body and healthy mind. Training of teachers who teach this subject by the introduction of short term courses for such training shall also be considered. This should be done throughout India.

CONCLUSION

Legal provisions plays an important role in environmental management. The conservations and protection of environment is controlled through several national and international laws. Such laws bring awareness among people. Need for such legislation arose because of the increasing exploitation of environment.

Need for such legislation arose because of the increasing exploitation of environment. Japan has world's strictest standards for the control of water and air pollution.

Every country enacts its own laws for environmental protection and pollution control. In India there are three clauses in the constitution for the protection of the environment i.e., 47, 48A, and 51A. Important Acts on the environmental are:

- The Forest Conservation Act, 1980.
- Prevention of Air and Water Pollution Act, 1974.
- The Air Prevention and Control of Pollution Act, 1981.
- The Environmental Protection Act, 1986.

Government of India has adopted a national forest policy in 1952. It aimed at one third forest coverage of this country but this has not been achieved so far. The revised forest policy was finalized with following features:

- Maintaining Environmental Stability,
- Conservation of Natural Heritage,
- Meeting the basic needs of people,
- Maintaining relationship between forests and the tribal.