

A Legal Protective Tool: Environmental Laws

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ABSTRACT

In the Constitution of India it is clearly stated that it is the duty of the state to 'protect and improve the environment and to safeguard the forests and wildlife of the country'. It imposes a duty on every citizen 'to protect and improve the natural environment including forests, lakes, rivers, and wildlife'. Reference to the environment has also been made in the Directive Principles of State Policy as well as the Fundamental Rights. The Department of Environment was established in India in 1980 to ensure a healthy environment for the country. This later became the Ministry of Environment and Forests in 1985.

1. INTRODUCTION

The constitutional provisions are backed by a number of laws – acts, rules, and notifications. The EPA (Environment Protection Act), 1986 came into force soon after the Bhopal Gas Tragedy and is considered an umbrella legislation as it fills many gaps in the existing laws. Thereafter a large number of laws came into existence as the problems began arising, for example, Handling and Management of Hazardous Waste Rules in 1989.

a) The State's responsibility with regard to environmental protection has been laid down under Article 48-A of our Constitution, which reads as follows:

“The State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country”.

b) Environmental protection is a fundamental duty of every citizen of this country under Article 51-A(g) of our Constitution which reads as follows:

“It shall be the duty of every citizen of India to protect and improve the natural environment

including forests, lakes, rivers and wildlife and to have compassion for living creatures.”

c) Article 21 of the Constitution is a fundamental right which reads as follows:

“No person shall be deprived of his life or personal liberty except according to procedure established by law.”

d) Article 48-A of the Constitution comes under Directive Principles of State Policy and Article 51 A(g) of the Constitution comes under Fundamental Duties.

e) The State's responsibility with regard to raising the level of nutrition and the standard of living and to improve public health has been laid down under Article 47 of the Constitution which reads as follows:

“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 and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.”

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h) The 42nd amendment to the Constitution was brought about in the year 1974 makes it the responsibility of the State Government to protect and improve the environment and to safeguard the forests and wildlife of the country. The latter, under Fundamental Duties, makes it the fundamental duty of every citizen to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures.

2. THE FOREST (CONSERVATION) ACT, 1980

This Act provides for the conservation of forests and regulating diversion of forestlands for non-forestry purposes. When projects falls within forestlands, prior clearance is required from relevant authorities under the Forest (Conservation) Act, 1980. State governments cannot de-reserve any forestland or authorise its use for any non-forest purposes without approval from the Central government.

3. ENVIRONMENTAL (PROTECTION) ACT, 1986

The Environment (Protection) Act, 1986 was introduced as an umbrella legislation that provides a holistic framework for the protection and improvement to the environment.

In terms of responsibilities, the Act and the associated Rules requires for obtaining environmental clearances for specific types of new / expansion projects (addressed under Environmental Impact Assessment Notification, 1994) and for submission of an environmental statement to the State Pollution Control Board annually. Environmental clearance is not applicable to hydro projects also.

4. AIR (PREVENTION AND CONTROL OF POLLUTION) ACT 1981

The objective of this Act is 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.

Decisions were taken at the United Nations Conference on the Human Environment held in Stockholm in 5th June 1972, in which India participated, to take appropriate steps for the preservation of the natural resources of the earth which, among other things, includes the preservation of the quality of air and control of air pollution.

Therefore, it is considered necessary to implement the decisions foresaid in so far as they relate to the preservation of the quality of air and control of air pollution.

5. WATER (PREVENTION & CONTROL) ACT 1974

The objectives of the Water (Prevention and Control of Pollution) Act are to provide for the Prevention and Control of Water Pollution and the maintenance or restoration of the wholesomeness of water for the establishment, with a view to carrying out the purposes aforesaid, of Boards for the prevention and control of water pollution, for conferring on and assigning to such Boards powers and functions relating thereto and for matters connected therewith.

6. WILDLIFE PROTECTION ACT, 1972

According to the Wildlife Protection Act, 1972 “wildlife” includes any animal, bees, butterflies, crustacea, fish and moths; and aquatic or land vegetation which forms part of any habitat. In accordance with Wildlife (Protection) Amendment Act, 2002 “no alternation of boundaries / National Park / Sanctuary shall be made by the State Govt. except on recommendation of the National Board for Wildlife (NBWL)”. Further, in terms of Supreme Court Order dated 13.11.2000 the State Govts have to seek prior permission of Supreme Court before

submitting the proposal for diversion of forest land in National Park sanctuaries.

7. THE BIOLOGICAL DIVERSITY ACT, 2002

The Ministry of Environment and Forests has enacted the Biological Diversity Act, 2002 under the United Nations Convention on Biological Diversity signed at Rio de Janeiro on the 5th day of June, 1992 of which India is also a party. This Act is to “provide 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.” As per the provision of act certain areas, which are rich in biodiversity and encompasses unique and representative ecosystems are identified and designated as biosphere reserve to facilitate its conservation.

8. HAZARDOUS WASTES (MANAGEMENT AND HANDLING) AMENDMENT RULES, 2003

These Rules classify used mineral oil as hazardous waste under the Hazardous Waste (Management & Handling) Rules, 2003 that requires proper handling and disposal. Organisation will seek authorisation for disposal of hazardous waste from concerned State Pollution Control Boards (SPCB) as and when required.

9. OZONE DEPLETING SUBSTANCES (REGULATION AND CONTROL) RULES, 2000

MoEF vide its notification dt. 17th July, 2000 under the section of 6, 8 and 25 of the Environment (Protection) Act, 1986 has notified rules for regulation/ control of Ozone Depleting Substances (ODS) under Montreal Protocol. As per the notification certain control and regulation has been imposed on manufacturing, import, export, and use of these compounds.

10. CONCLUSION

From the above study, it is essential to follow the aforesaid an judicials to prevent Global Warming & Climate Changes impacts which will have dire consequences to harm the livelihood on the Earth Planet. The excessive use to transport become a source of producing highest order of CO₂ in the atmosphere and greatly responsible for Global Warming issues that is causing disaster, hurricane, tsunami, sea level rise, snow fall, draught and human hazards.

ACKNOWLEDGEMENT

The authors are grateful to the authorities of the Kashi Institute of Technology, Varanasi for rendering their support and help for the completion of this work.

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