

**INTERNATIONAL JOURNAL OF LEGAL
SCIENCE AND INNOVATION**
[ISSN 2581-9453]

Volume 6 | Issue 4

2024

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India's Climate Change Legislation: A Critical Analysis

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ABSTRACT

Global warming is glaring problem of the modern world. Since nature has endowed Earth with a clean and healthy climate, having an uncontaminated environment is a fundamental and basic human right. However, India's rapid population growth, modernization, poverty, new innovations, and other factors have significantly affected the physical and chemical makeup of the environment, leading to the problem of global warming. This is because natural resources have been misused and overused. Environmental issues are now major concerns in many regions of the country, hence finding a balance between economic development and the natural environment is crucial. In India, attempts have been undertaken recently to manage the environment in a sustainable way. Since 1972, numerous national initiatives have been implemented through the enactment of various national laws with the aim of mitigating the effects of global warming. This research explores the legal mechanisms employed by India

to combat climate change, with a focus on the key statutes, policies, and regulatory frameworks established to mitigate greenhouse gas emissions and promote sustainability. Furthermore, the paper highlights the significance of judicial activism and public interest litigation in advancing environmental protection objectives, citing landmark cases where courts have intervened to ensure compliance with environmental laws and hold polluters accountable. While significant progress has been made, ongoing efforts are essential to effectively mitigate climate change impacts and safeguard the planet for future generations.

Keywords: *Climate Change, Environment, Global Warming, Legal framework, Sustainable Development.*

I. INTRODUCTION

A healthy environment is a fundamental human right, as nature has bestowed upon Earth a clean and salubrious climate. However, the physical and chemical properties have been drastically changed by the overuse, abuse, and misuse of natural resources. One important feature of climate change is global warming, which is primarily occurred by the accumulation of greenhouse gases in the atmosphere. Natural factors include ocean currents, volcanoes,

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continental drift, and earth's tilt, increase global warming, as demonstrated by historical scientific records, which are regarded as natural phenomena. The quality of life is seriously threatened today due to environmental degradation. Many anthropogenic activities, such as industrial activities, modern agricultural practices, urbanization, etc., were brought about by the advancement of science and technology. Natural resources are being depleted and forests are being destroyed by development activities like mining, agriculture, and industrial operations. In rural areas for agricultural practices there is extensive use of pesticides, fertilizers, improper irrigation techniques, etc. harming the fertility of the soil. The primary source of urban vehicular pollution is the greenhouse effect. The government establishes a number of laws, policies, and programs. International legislation designed to control global warming has been in place since 1972 in an effort to shield the environment from the damaging effects of human activity. Following the Stockholm Declaration in 1972, India started the first phase of its legislative process.

II. GLOBAL WARMING

When heat from solar radiation is trapped by gasses from various human activities, such as the burning of fossil fuels, the Earth's atmosphere's average temperature gradually rises over time, a phenomenon known as global warming. According to their relative contributions, the main natural greenhouse gases are as follows: water vapor, carbon dioxide, methane and ozone. Rising sea levels, more frequent and severe weather events, and a detrimental effect on ecosystem dynamics have all been caused by this. One of the most significant challenges of our day is global warming, which poses a tremendous threat to the world and its inhabitants.

(A) Causes and Contributing Factors

India's rapid development and growing population contribute significantly to global greenhouse gas emissions. The country mainly relies on coal for electricity generation, leading to high CO₂ emissions. Additionally, issues like agriculture, deforestation, and inefficient energy consumption worsen the situation. In India, the repercussion of global warming are severe and widespread.

(B) The consequences of global warming in India

a. Increased Temperature²

Global warming has caused the mean temperature in India to rise, leading to various impacts

² M Balasubramanian and V Dhulasi Birundha, "Climate Change and Its Impact on India", (Mar. 10, 2024), <https://krishi.icar.gov.in/jspui/bitstream/123456789/32647/1/Impact%20of%20regional%20climate%20change%20over%20India.pdf>.

on water resources, agriculture, and public health. This includes increased crop yields, heat-related illnesses, and water scarcity due to more intense and frequent heat waves.

b. Changing Rainfall Patterns

Climate change has also caused unpredictable monsoon seasons and shifting rainfall patterns in India, resulting in intense rainfall, floods, droughts, and disruption of the delicate balance of the monsoon system. These changes have significant effects on water availability, agriculture, and socioeconomic development in the country.

c. Rising Sea Levels³

Global warming is causing sea levels to rise, threatening India's vast coastline with increased erosion and powerful cyclones. Coastal areas are especially vulnerable to these effects, posing risks to infrastructure, ecology, and people.

d. Biodiversity Loss

Additionally, biodiversity in India is being threatened as shifting temperature patterns disrupt ecosystems, causing loss of habitat for many plant and animal species, including rare and endangered ones.

III. EXISTING LEGAL FRAMEWORK

Since global warming impacts everyone, it is actually a difficult phenomenon. And it will only get worse due to an increase in population, cars, industries, and human activity worldwide. NGOs and governments are attempting to stop climate change from getting worse. India's consistent climate agreements and initiatives have made it a leader in mitigating and controlling the negative effects of climate change. In India, global warming is primarily regulated through a blend of national laws, policies, and regulations.

(A) Constitution of India

The Indian Constitution has addressed environmental pollution by incorporating provisions for environmental protection. Although the term 'environment' is not explicitly mentioned, the Constitution has evolved to include laws related to environmental protection, particularly since the 1970s. Judicial interpretations have reinforced this, allowing for the creation of environmental legislation. Article 253 grants Parliament the authority to enact laws.

a. Fundamental Rights

A nation's development must include environmental protection, and fundamental rights—such

³ Id.

as the freedom of life and personal liberty guaranteed by Article 21 of the Indian Constitution—are essential to this goal. Courts have ruled on numerous occasions to protect the environment under this fundamental right. The Supreme Court said that "human health is an inalienable part of Article 21 and is governed by the accepted environment principles"⁴. According to the court's ruling to conduct business in a way that endangers the health of the whole community and to profit at the expense of public health is not tolerable⁵. The High Court ordered the relocation of the air and environmental pollution-producing business from a densely populated area to a safer location for the environment⁶. Initially, there is evidence that the right to life encompasses a clean and healthy environment as stipulated in Article 21⁷.

b. Fundamental Duties

Article 51 A of the Constitution (Forty-Second Amendment) Act, 1976 introduced ten essential duties for citizens, including a responsibility to protect the environment and show kindness to all living beings. Upholding one's constitutionally granted rights is a duty for every Indian citizen.

c. Directive Principles of State Policies

Environmental protection provisions were implicit in the Constitution prior to the 42nd Amendment Act of 1976. An additional Article 48 A was new to the Constitution in 1976 by the 42nd Amendment Act, which states that the state will make an effort to protect and improve the nation's forests, animals, and environment. The Court ruled that protecting the environment is not only the responsibility of the citizenry, but also of the State and all of its branches, including the judiciary⁸. In the CNG case, the Court also noted that the State was required by Articles 39(e), 47, and 48A to ensure public health, safeguard the environment, and improve human health⁹.

(B) Indian Environment Laws

While many environmental legal provisions are in place to prevent and control the causes of global warming, there are no specific legal provisions addressing the issue directly. However, there are environmental-related legal provisions in other statutes additionally to those that are specific to the environment.

⁴ Research Foundation for Science Technology National Resource Policy v. Union of India, 1999(1) SCC 233.

⁵ Abhilash Textile v. Rajkot Municipal Corporation, AIR. 1998 Guj.57.

⁶ A.P. Gunnies Merchants Association, Hyderabad v. Government of A.P., AIR 2001 AP 453.

⁷ Rural Litigation and Entitlement Kendra v. State of U.P, AIR 1988 SC 2187.

⁸ T. Damodhar Rao v. S.O. Municipal Corporation, Hyderabad, AIR 1987 AP 171.

⁹ M.C. Mehta v. Union of India, (2002) 4 SCC 356.

a. Environment (Protection) Act, 1986¹⁰

An "umbrella" law, the Act's purpose is to give the federal government a framework for coordinating the efforts of the many federal and state agencies that the Water and Air Acts establish. Enacted to safeguard and enhance the quality of the environment and to prevent, control, and mitigate environmental pollution, the Act gives the Central Government the authority to implement any and all measures that it deems appropriate or necessary.

b. The Water (Prevention and Control of Pollution) Act, 1974¹¹

To attain its purpose Pollution Control Boards¹² at State and federal levels and interstate level were created to impose standards and prevent the untreated discharge of domestic and industrial pollutants into water bodies. The Boards in State grant the Consent for Establishment for new factories and the Consent for Operation for factories that are already operational.

c. Air (Prevention and Control of Pollution) Act, 1981¹³

This creative legislation permits the State to manage the air contamination emission standard. The Act gives the State the authority to examine all factories, control equipment, and manufacturing processes. Additionally, it gives the State the authority to control air pollution by taking the necessary measures. Without fulfilling the conditions outlined in this act, no industry is able to operate.

d. Forest Conservation Act, 1980

All forests were declared government reserves, following the enactment of this legislation. The act also stipulates that if any forest that is reserved gets put to non-forest uses, compensatory measures must be taken. The function of its enactment was to preserve and safeguard India's forest resources.

e. Energy Conservation Act, 2001

It provides a regulatory foundation for energy efficiency by guaranteeing that consumers only obtain energy-efficient equipment and by offering a complete structure for power development.

f. Wildlife Protection Act, 2002

There are three primary goals of the act. The first is to establish unified wildlife laws.

¹⁰(Mar. 8, 2024), <https://www.bareactslive.com/ACA/ACT528.HTML>.

¹¹(Mar. 8, 2024), [https://indiankanoon.org/doc/867156/#:~:text=\(1\)Subject%20to%20the%20provisions,land%3B%20or%20\(b\)n](https://indiankanoon.org/doc/867156/#:~:text=(1)Subject%20to%20the%20provisions,land%3B%20or%20(b)n)o.

¹²The Water (Prevention and Control of Pollution) Act, 1974, § 3, 4, and 13, No. 6, Acts of Parliament, 1974 (India).

¹³(Mar. 2, 2024), https://www.indiacode.nic.in/bitstream/123456789/1389/1/Prevwater1981__41.pdf.

Establishing a arrangement of national parks and wildlife sanctuaries is the next stage. The management of the illicit wildlife trade and the goods it generates is the third phase.

g. National Green Tribunal Act, 2010¹⁴

In order to guarantee the prompt and effective handling of cases related to environmental safety, the National Green Tribunal was established and the act was passed. These tribunals are also able to hear disputes with significant environmental concerns.

h. Ozone Depleting Substances (Regulation and Control) Rules, 2000

A complete lay down of guidelines for managing and overseeing the production and utilization of ODS in India Ozone rules are framed. Under these regulations, all individuals or entities involved in the production or consumption of Ozone Depleting Substances must register with the designated authorities as outlined in the Rules.

i. Biological Diversity Act, 2002

Its implementation aimed to preserve and responsibly utilize the nation's biodiversity. The goal of achieving the equitable sharing of India's biodiversity is aided by this act. Under the Act, "National Biodiversity Authority" (NBA¹⁵), "State Biodiversity Board" (SBB¹⁶), and "Biodiversity Management Committee's" (BMC¹⁷) have been established.

IV. JUDICIARY'S FUNCTION IN ENVIRONMENTAL PROTECTION

By interpreting the law, the Sustainable development and environmental protection have benefited greatly from the work of the Indian courts. India's judiciary has added a brand-new body of "environmental jurisprudence"¹⁸. By incorporating several principles of sustainable development into its decisions, the court encourages responsible behaviour, accountability and a balance between economic development and environmental preservation.

(A) Doctrine and Principles Evolved by the Judiciary

Significant turning points in the growth of Indian environmental law occurred with the introduction and implementation of the environmental protection doctrines in the legal system.

a. Public Trust Doctrine

¹⁴ (Jan. 28, 2024), https://greentribunal.gov.in/sites/default/files/act_rules/National_Green_Tribunal_Act,_2010.pdf.

¹⁵ The Biological Diversity Act, 2002 § 8-21, No. 18, Acts of Parliament, 2002 (India).

¹⁶ Id. at § 22-25.

¹⁷ Id. at § 41.

¹⁸ *People United for Better Living in Calcutta v. State of W.B.*, AIR 1993 Cal.215 at 228.

In *M.C. Mehta v. Kamal Nath*¹⁹, the Supreme Court of India used this theory to address an environmental issue for the first time. According to the Supreme Court, the tenet that certain resources like the air, sea, and forests are so essential to society as a whole that the public trust notion is based on private ownership, it would be strange to surrender them to private ownership. This doctrine assures the management and preservation of these resources in the public interest.

b. Doctrine of Sustainable Development

Financial stability and industrialization are the essentials to a society's advancement. However, industrialization runs counter to the scheme of protecting the environment. There are two competing interests here, and resolving them is a significant task for the judicial system. In *Vellore Citizens Welfare Forum v. Union of India*²⁰, the Court opined, the traditional idea that development and ecology are mutually exclusive is no longer acceptable, sustainable development is the solution. The court in *Rural Litigation and Entitlement Kendra v. State of UP*²¹, emphasized that natural resources should not be exhausted in a single generation because they are long-term assets of humanity. To conserve and improve the environment, in addition to keep the health of the present and future generations the Apex Court decided that the non-CNG buses had to be phased out and replaced with CNG buses²².

c. Polluter Pays Principle

The fundamental idea is that anyone who pollutes the environment is accountable for paying for both the pollution and its removal. This principle is based on the notion that people who harm the environment should be held responsible for undoing the damage, rather than on placing blame. It is consistent with the goal of restoring environmental harm. The Apex Court has confirmed that the polluter pays principle is a crucial component of sustainable development²³.

d. Precautionary Principle

According to the precautionary principle, if scientific research indicates a risk, society has an obligation to safeguard the public against harm of any type. In *Vijayanagar Education Trust v. Karnataka State Pollution Control Board, Karnataka*²⁴, the precautionary theory is now a fundamental component of the Constitution's mandate for environmental protection and

¹⁹ (1997) 1 SCC 388.

²⁰ AIR 1996 SC 2715.

²¹ AIR 1988 SC 2187 .

²² M.C. Mehta v. Union of India, AIR 2002 SC 1696.

²³ Vellore Citizen's Welfare Forum v. Union of India, AIR 1996 SC 2715.

²⁴ AIR 2002 Kant 123.

enhancement, as acknowledged by the Karnataka High Court.

e. Doctrine of absolute liability

The doctrine states that those who pollute the environment have no defense. In *Union Carbide Corporation v/s Union of India*²⁵, it was ruled that companies dealing with dangerous activities must accurately label their products without any exceptions.

(B) Case Studies on Successful Legal Interventions

Examining actual instances of legal actions taken in India to address global warming and their successful results is the goal. Analyzing case studies is important for understanding how effective legal measures are in addressing climate change issues.

Case Study 1: The Delhi Smog Case

An illustrative case study is the legal response to the severe air pollution crisis in Delhi. In 2016, the city faced extensive smog, impacting the health of residents. Legal measures were implemented to tackle the issue, such as the "Odd-Even" rule, which limited private vehicle use on alternate days based on license plate numbers. This policy aimed to decrease vehicular emissions and enhance air quality, enforced through penalties for those who did not comply. Consequently, there was a significant drop in pollution levels, highlighting the success of legal interventions in addressing air pollution.

Case Study 2: The Solar Power Policy

India has also made great progress in promoting renewable energy sources so that the production of greenhouse gases can be reduced. The 2009 introduction of the Gujarat Solar Power Policy serves as one prime example. Through a number of incentives, such as tax breaks and subsidies, this policy promoted the growth of solar power projects. Additionally, it introduced net-metering regulations, which created a legal framework for the purchase and sale of solar power. The policy promoted the quick expansion of solar power generation in Gujarat, which decreased greenhouse gas emissions and increased the use of renewable energy sources.

Case Study 3: The Plastic Waste Management Rules

In response to the pollution and changes seen in climate which are caused by plastic waste, the Indian government implemented the "Plastic Waste Management Rules, 2016"²⁶. These regulations aim to control the production, use, and discarding of plastic materials in order to reduce their harmful impact on the environment. The rules include provisions for extended

²⁵ AIR 1990 SC 273.

²⁶ (Mar. 12, 2024), https://www.hspcb.org.in/content/laws/pwm/PWM_Rules.pdf.

producer responsibility, recycling programs, and penalties for noncompliance. Due to these regulations, there has been less plastic pollution and better management of plastic waste, which has improved efforts to combat global warming.

V. CONCLUSION AND SUGGESTIONS

Environmental laws are designed to keep the natural world safe from pollution and damage brought about by human endeavors like farming and industry. With greenhouse gases like CO₂ and methane rising due to human activity, global warming is a serious concern. By lowering air quality, pollution from land and water also causes global warming. Regulations on air, water, and land pollution are required in order to effectively combat global warming. Several gaps in the current environmental legislation need to be fixed, including:

1. Despite the significance of land in the environment, the definition of land pollution is absent from the laws and how this hinders effective regulation and enforcement. Land must be protected by law through the development of comprehensive land protection laws with clear definitions, standards, and enforcement mechanisms in order to fight alteration in the Earth's weather patterns and temperatures brought on by urbanization and other activities.

2. The Biodiversity Act's mandate for community consultation is not being properly implemented, which results in arbitrary decisions and insufficient safeguards for living resources and cultural heritage. Develop detailed guidelines for community consultation processes, including eligibility criteria for participants, methods of consultation (meetings, surveys, etc.), and mechanisms for incorporating feedback into decision-making.

3. Fines are typically imposed on environmental offenders, but these are ineffective deterrents. To guarantee compliance, it is advised to impose mandatory imprisonment. The prospect of imprisonment can act as a powerful deterrent, potentially discouraging individuals and corporations from engaging in harmful environmental practices.

4. Despite lacking dustbins for appropriate waste disposal, many tourist destinations declare themselves to be plastic-free zones. The public and authorities lack waste management knowledge that undermines the credibility of such initiatives. By conducting extensive awareness campaigns to educate both locals and tourists about the importance of waste management and the harmful effects of plastic pollution as well as by promoting behavioral changes through incentives, rewards, and penalties for littering and improper waste disposal.

5. Since there are no regulations governing the ownership or use of vehicles, vehicular pollution is the primary cause of air pollution in cities. The use of public transportation is

inadequate and improperly regulated. Enforce strict regulations for vehicle registration, including mandatory emission tests and periodic inspections. Prioritize safety and reliability to build public trust in public transportation.
