

Pollution, Environment & Biodiversity Conservation Laws

SUDEEP SIR'S ENVIRONMENT CLASS

National Environmental Legislations

- Our constitution, originally, **did not** contain any direct provision regarding the protection of natural environment.
- However, after the **United Nations Conference on Human Environment**, held in **Stockholm** in 1972, Indian constitution was amended to include protection of the environment as a constitutional mandate.
- Environment related legislation came very late in 1972 with **Wild Life Protection Act 1971**.
- The **forty second amendment** Clause (g) to **Article 51A** of the Indian constitution made it a **fundamental duty** →
- *“It shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wild life and have compassion for living creatures.”*
- **Directive Principles** of State Policy → **Article 48A** states *“The State shall endeavor to protect and improve the environment and to safeguard the forests and wildlife of the country”*.

Pollution Related Acts

The Water (Prevention and Control of Pollution) Act of 1974 and Amendment, 1988

- The main objective of this act is to provide prevention and control of water pollution.
- Some important provisions of this Act are given below:
- The Act vests regulatory authority in **State Pollution Control Boards** to establish and enforce effluent standards for factories.
- A **Central Pollution Control Board** performs the same functions for Union Territories and formulate policies and **coordinates** activities of different State Boards.
- The Act grants power to SPCB and CPCB to test equipment and to take the sample for the purpose of analysis.
- Prior to its amendment in 1988, enforcement under the Act was achieved through criminal prosecutions initiated by the Boards.
- The 1988 amendment act empowered SPCB and CPCB to close a defaulting industrial plant.

The Water (Prevention and Control of Pollution) Cess Act of 1977

- The Water Cess Act was passed to generate financial resources to meet expenses of the Central and State Pollution Boards.
- The Act creates **economic incentives** for pollution control and requires local authorities and certain designated industries to pay a cess (tax) for water effluent discharge.
- The **Central Government**, after deducting the expenses of collection, pays the central board and the states such sums, as it seems necessary.
- To encourage capital investment in pollution control, the Act gives a polluter a 70% rebate of the applicable cess upon installing effluent treatment equipment.

The Air (Prevention and Control of Pollution) Act of 1981 and amendment, 1987

- To implement the decisions taken at the **United Nations Conference on the Human Environment** held at Stockholm in June 1972, Parliament enacted the nationwide Air Act.
- The main objectives of this Act are to improve the quality of air and to prevent, control and abate air pollution in the country.
- Important provisions of this Act are given below:
- The Air Act's framework is **similar** to that of the Water Act of 1974.
- The Air Act expanded the authority of the central and state boards established under the Water Act, to include air pollution control.
- Under the Air Act, all industries operating within designated air pollution control areas must obtain a "consent" (**permit**) from the **State Boards**.
- Notably, the 1987 amendment introduced a citizen's suit provision into the Air Act and extended the Act to include **noise pollution**.

Environment and Biodiversity Related Acts

- The most important legislation in this category is The Environment (Protection) Act of 1986.

Environment (Protection) Act of 1986

- In the wake of the **Bhopal tragedy**, the government of India enacted the Environment (Protection) Act of 1986.
- The purpose of the Act is to implement the decisions of the **United Nations Conference on the Human Environment** of 1972, in so far as they relate to the protection and improvement of the human environment and the prevention of hazards to human beings, other living creatures, plants and property.

The main provisions of this Act are given below

- The Act empowers the **center** to “take all such measures as it deems necessary”.
- By virtue of this Act, **Central Government** has armed itself with considerable powers which include,

- coordination of action by state,
- planning and execution of nationwide programmes,
- laying down environmental quality standards, especially those governing emission or discharge of environmental pollutants,
- placing restriction on the location of industries and so on.
- authority to issue direct orders, included orders to close, prohibit or regulate any industry.
- power of entry for examination, testing of equipment and other purposes and power to analyze the sample of air, water, soil or any other substance from any place.

Wild Life (Protection) Act of 1972 and Amendment, 1982

- In 1972, Parliament enacted the Wild Life Act (Protection) Act.
- The Wild Life Act provides for state wildlife advisory boards, regulations for hunting wild animals and birds, establishment of sanctuaries and national parks, regulations for trade in wild animals, animal products and trophies, and judicially imposed penalties for violating the Act.
- Harming **endangered** species listed in **Schedule 1** of the Act is prohibited throughout India.
- **Hunting species, like those requiring special protection (Schedule II), big game (Schedule III), and small game (Schedule IV), is regulated through licensing.**
- A few species classified as **vermin (Schedule V)**, may be hunted without restrictions.
- Wildlife wardens and their staff administer the act.
- An amendment to the Act in 1982, introduced a provision permitting the capture and transportation of wild animals for the scientific management of animal population.

Forest (Conservation) Act of 1980

- First Forest Act was enacted in 1927.
- Alarmed at India's rapid deforestation and resulting environmental degradation, Centre Government enacted the Forest (Conservation) Act in 1980.
- It was enacted to consolidate the law related to forest, the transit of forest produce and the duty leviable on timber and other forest produce.
- Forest officers and their staff administer the Forest Act.
- Under the provisions of this Act, prior approval of the Central Government is required for diversion of forestlands for non-forest purposes.
- An Advisory Committee constituted under the Act advises the Centre on these approvals.
- The Act deals with the 4 categories of the forests, namely reserved forests, village forests, protected forests and private forests.

The Scheduled Tribes And Other Traditional Forest Dwellers (Recognition Of Forest Rights) Act, 2006

- Forest Rights Act, 2006 provides for the restitution of deprived forest rights across India.
- The Act provides scope of integrating conservation and livelihood rights of the people.

FRA is tool

- To empower and strengthen the local self-governance
- To address the livelihood security of the people
- To address the issues of Conservation and management of the Natural Resources and conservation governance of India.
- **For the first time Forest Rights Act recognizes and secures Community Rights** in addition to their individual rights.
- Right to protect, regenerate or conserve or manage any community forest resource which the communities have been traditionally protecting and conserving for sustainable use.
- Right to intellectual property and traditional knowledge related to biodiversity and cultural diversity
- Rights of displaced communities & Rights over developmental activities

Salient Features

- Nodal Agency for the implementation is Ministry of Tribal Affairs (MoTA).
- This Act is applicable for Tribal and Other Traditional Forest Dwelling Communities.
- The Act provides for recognition of forest rights of **other traditional forest dwellers** provided they have for at least three generations prior to 13.12.2005 primarily resided in and have depended on the forests for bonafide livelihood needs.
- The maximum limit of the recognizing rights on forest land is **4 ha**.
- **National Parks** and **Sanctuaries** have been included along with Reserve Forest, Protected Forests for the recognition of Rights.
- The Act recognizes the right of ownership access to collect, use, and dispose of minor forest produce by tribals.
- Minor forest produce includes all non-timber forest produce of plant origin, including bamboo, brush wood, stumps, cane, tussar, cocoons, honey, wax, lac, leaves, medicinal plants and herbs, roots, tubers and the like.
- The rights conferred under the Act shall be heritable but not alienable or transferable.
- As per the Act, the **Gram Sabha** has been designated as the competent authority for initiating the process of determining the nature and extent of individual or community forest rights.



National Green Tribunal Act, 2010

- Act of the Parliament of India which enables creation of **NGT** to handle the expeditious disposal of **the cases pertaining to environmental issues**.
- It was enacted under India's constitutional provision of **Article 21**, which assures the citizens of India the **right to a healthy environment**.
- The specialized architecture of the NGT will facilitate **fast track resolution of environmental cases** and provide a boost to the implementation of many sustainable development measures.
- NGT is mandated to dispose the cases within **6 months** of their respective appeals.

Origin

- During the Rio de Janeiro summit of United Nations Conference on Environment and Development in June 1992, India vowed the participating states to provide **judicial and administrative remedies** for the victims of the pollutants and other environmental damage.

Members

- The sanctioned strength of the tribunal is currently 10 expert members and 10 judicial members although the act allows for up to 20 of each.
- The Chairman of the tribunal who is the administrative head of the tribunal also serves as a judicial member.

- Every bench of tribunal must consist of at least one expert member and one judicial member.
- The Chairman of the tribunal is required to be a **serving or retired Chief Justice of a High Court or a judge of the Supreme Court of India**. Benches of NGT
- With its principal bench at New Delhi, the Tribunal has several other benches.
- Its Western Zone Bench is situated in Pune, Central Zone Bench in Bhopal, Eastern Bench in Kolkata while the Southern Bench is situated in Chennai. These zonal benches exercise jurisdiction over a specified geographical territory covering more than one state in any given zone.

Notable orders

- Ban on 10 yr old Diesel vehicles at Delhi NCR.
- NGT cleared three-day World Culture Festival (Art of Living) on the floodplains of the Yamuna in March but imposed a fine of Rs 5 crore as an interim compensation.