
ANALYSING INDIA'S LACKADAISICAL APPROACH TO THE ENVIRONMENT FROM POST-INDEPENDENCE TO THE CONTEMPORARY ERA

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ABSTRACT

The right to life includes the right to clean air and water as per the mandates of the Constitution and deliberation of the Supreme Court of India. India is a unique country, exhibiting a sharp contrast between its ancient and contemporary approaches towards environment policy. In the past, Indian society lived in harmony with the environment, whereas post-industrial era demonstrates an anthropocentric approach. A nation's true test of commitment on environment protection can effectively be tested in the post-industrial world where man has a capacity to choose between sustainability or recklessness on his environment. In the initial decades of post-independence, the environment related issues didn't find its place either in the Constitution or in the political consciousness. The legal regime relating to environment emerges as a reactionary measure in India, due to the lack of long-term sustainable vision of the past. India's quest for environmental laws, commenced with the Stockholm Conference, 1972, attended by Indira Gandhi, the then Prime Minister of India. It was Stockholm's impetus which resulted in the enactment of Article 48-A or Article 51A (g) under the Constitution of India and the subsequent laws for prevention and control of Air Pollution and Water Pollution under the Ministry of Environment. Similarly, domestic tragedies like Bhopal gas incident and Oleum gas leakage forced Indian policy makers to enact legislations like the Environment (Protection) Act, 1986. This paper deals with three analyses India's approach to environment protection in the post-independent era. The third part traces the evolution of India's environmental policies in the LPG (Liberalised, Privatised and Globalised) regime along with the contemporary trends vis-à-vis environment in India. The paper concludes by suggesting shifts in India's approach from anthropocentric to eco-centric and calls for a democratisation of environment policy in India. This paper has been divided into three parts, the first part discusses the absence of any direct provision in the constitution adopted by the Constituent Assembly, the second part sheds light on the delay in establishing PCBs and the Environment Ministry in the

Independent India and also highlights the contemporary approach and future trends for the protection of global environment and emerging challenges for the sustainable development of the environment.

Keywords: Constitution, anthropocentric approach, environmental protection, impetus, democratisation of environment.

1. Introduction

In the recent times, Indian cities have appeared in the list of most polluted cities in the world. In a recently published report¹, India is declared as the third most polluted country in the world with its 42 cities making it among the 50 world's most polluted cities². In another report, Delhi has been declared as the world's most polluted capital city. Similarly, the rivers in India are considered the most polluted rivers on the earth with more than half of its rivers having pollution threshold beyond the prescribed limit³. For a country like India which claims to have a legacy of living in congruence with nature and which in the contemporary era is the fifth largest economy of the world; the fact that India lies behind many poor African and Asian countries in term of environment is something that cannot be comprehended by ordinary prudence. Being the fifth largest economy, it is quite disconcerting for India to be ranked so poor in the environment index because India cannot take the plea of lacking resources to combat pollution.

But whenever we are criticized for being negligent and reckless towards the environment, we Indians take refuge in ideals of ancient India's practices where we lived in harmony with nature. Some of us criticize the British Empire for plundering our environment. However, for a country which has been independent for the last seven decades, it is unfair to blame the foreign rule for this mess precisely because much of the deterioration took place in the recent past (*post-independence*). The kind of 'machine-might' that humans possess these days was quite unimaginable in the 1940s when Britishers left India. The harsh reality that needs to be acknowledged by society and the polity of our country is that we are bothered least about our environment and there is a scheme in the madness. The mess that we have right now is quite

¹ IQAIR, <https://www.iqair.com/in-en/world-most-polluted-cities>, (Accessed on 16th August, 2024)

² Webdesk, E. (2024) *India 3rd most polluted country in the world, IQAir finds; 42 cities in top 50 are Indian*, THE INDIAN EXPRESS, <https://indianexpress.com/article/india/india-3rd-most-polluted-country-rankings-top-50-cities-9221968> (Accessed on: 24 July 2024).

³ Zumbish, W. *Watered down: Almost half of India's rivers still remain polluted; here is why*, DOWN TO EARTH (July 18, 2023, 3:45 AM), <https://www.downtoearth.org.in/water/watered-down-almost-half-of-india-s-rivers-still-remain-polluted-here-is-why-90690> (Accessed on: 24 July 2024).

historical and institutional. In this paper, we shall see that right from independence, India has been relatively indifferent towards environmental protection.

For the sake of convenience, this paper has been divided into three parts – the first part talks about the absence of any direct provision in the constitution adopted by the Constituent Assembly, the second part sheds light on the delay in establishing pollution control boards and the environment ministry in Independent India. The third part traces the evolution of India's environmental policies in the LPG (Liberalised, Privatised and Globalised) regime along with the contemporary trends vis a vis environment in India.

2. The Constitution and the Environment: A Missing Link

The Constitution of any country is not an ordinary document. It is key to understand the mind of the founding fathers or mothers of any nation. When India got independence and decided to frame its constitution, it took almost three years with around 395 articles adopted initially. India, which boasts of having drafted one of the detailed constitutions along with non-binding Directive Principles of State Policy, it is rather surprising that 'environment' was not given any importance during the drafting stage. Upon close analysis of the policy of independent India, we find that environment and environment protection was never the primary concern of our successive regimes, right from the time of the first elected government under the prime ministership of Jawaharlal Nehru. It is ironic that the word 'environment' was completely missing from the entire constitution. There was not a single direct reference to environment or environment protection. However, some scholars have argued that constitutional provisions under Article 47 and Article 48 are indirectly related to the environment⁴. While it holds certain truth, an in-depth analysis of the Constituent Assembly Debate (CAD), suggests otherwise. Article 47, inherently focused on providing better nutrition, public health and the standard of living of the masses. In Article 48, the intent of the constitution makers was the protection of cattle and prohibition of its slaughter⁵. This absence of direct provisions related to the

⁴ Siddharth Sharma & Suhas K. Hosamani, *An Overview Of Environmental Jurisprudence In India*, REV. 155, XXXX, V NLIU L. (2016), <https://nliulawreview.nliu.ac.in/wp-content/uploads/2022/01/Volume-V-Issue-II-155-167.pdf>

⁵ *Organisation of agriculture and animal husbandry*, CONSTITUTION OF INDIA, <https://www.constitutionofindia.net/articles/article-48-organisation-of-agriculture-and-animal-husbandry/>, Accessed on 16th August, 2024

environment led Prof. Upendra Bakshi to declare it as 'the environmentally blind constitution'.⁶

3. The Stockholm Conference and the 42nd Amendment

Inspired by the Swedish diplomacy on the protection of the environment, popularly known as the 'Swedish Initiative'⁷ and the United Nations, the world leaders met in Stockholm, in the year 1972 to find ways to maintain a balance between development and environment. India was represented by then Prime Minister, Mrs. Indira Gandhi. In her famous speech, Mrs Gandhi referred to ancient India's practice of living in harmony with nature and referred to the edicts of Ashoka which mentions that a king's duty is not only to protect fellow human beings but goes beyond it and mandates the king to preserve animal life and forest trees⁸.

But in her entire speech, Mrs Gandhi could not refer to a single document from the post-independent era which talks about the environment and its protection⁹. Perhaps, it is this realisation that has forced her to bring 'environment' under the ambit of the Indian Constitution. Thus, Articles 48-A and 51 A-(g) which directly talk about environmental protection were inserted through the infamous 42nd constitutional amendment, during a national emergency¹⁰. This delayed but imminent constitutional amendment was impelled by the Stockholm Conference, 1972. It is also true that Mrs Gandhi participated in the said conference but with a different agenda. Instead of focusing on the environment at the Conference, her speech underlined the theme that global awareness of the environment should not become a stumbling block in the development of third-world countries. In other words, she was there to advocate for industrial development and not for environmental protection¹¹.

4. Establishment of Pollution Control Boards

It is disappointing to note that in the initial 25 years post-independence, India did not have any

⁶ Baxi, Upendra, *The Future of Human Rights* (2008; online edn, OXFORD ACADEMIC, 18 Oct. 2012), <https://doi.org/10.1093/acprof:oso/9780195690439.001.0001>, accessed 19 July 2024.

⁷ Paglia, E. *The Swedish initiative and the 1972 Stockholm Conference: the decisive role of science diplomacy in the emergence of global environmental governance*. *HUMANIT SOC SCI COMMUN* 8, 2 (2021). <https://doi.org/10.1057/s41599-020-00681-x>

⁸ DTE Staff, *Down To Earth, Looking Back at Stockholm 1972: What Indira Gandhi Said Half a Century Ago on Man & Environment*, DOWN TO EARTH (May 29, 2022, 11:33 PM), <https://www.downtoearth.org.in/environment/looking-back-at-stockholm-1972-what-indira-gandhi-said-half-a-century-ago-on-man-environment-83060> (Accessed: 24 July 2024)

⁹ Id at 4

¹⁰ INDIA CONST. art. 269, amended by The Constitution (42nd Amendment) Act, 1976.

¹¹ RAO, M. (2022) 'A TWAIL Perspective on Loss and Damage from Climate Change: Reflections from Indira Gandhi's Speech at Stockholm', *ASIAN JOURNAL OF INTERNATIONAL LAW*, 12(1), pp. 63–81. doi:10.1017/S204425132200006

Central or State Pollution Control Boards.¹² It was only in the year 1974 when the Water (Prevention And Control Of Pollution) Act, 1974 (hereinafter the Water Act) led to the establishment of central and state pollution control boards.¹³ Interestingly, seven years later, another significant central legislation The Air (Prevention And Control Of Pollution) Act, 1981 (hereinafter the Water Act) was enacted to prevent and control air pollution. The Air Act laid the responsibility on its predecessor, and stated that the pollution control board constituted under the Water Act will continue to be the supervising authority for the protection of air pollution too. By doing so, it downplayed the fact that both water and air pollution require completely different expertise¹⁴. Instead, a separate entity should have been established under the Air Act for the effective implementation of the Act.

Notably, section 3(2)(a) of the Water Act, mandates that the Chairman of the Central Pollution Control Board should be '*a person having special knowledge or practical experience in respect of matters relating to environmental protection or a person having knowledge and experience in administering institutions dealing with the environment matters*', yet in the last five decades, no chairman was able to streamline the Board's functioning the way TN Seshan is remembered for doing the same with the Election Commission.

5. 'Environment' in Election Manifesto & Establishment of Environment Ministry

Election as a phenomenon and election manifesto as a document reflects the dominant discourse of the time. 'Environment' as an independent subject was missing in the election manifesto of the political parties in the first three decades of the independence. It is quite ironic to note that the issue of 'Environment' found an independent reference for the first time in the Congress party's manifesto during the Lok Sabha election, 1984 wherein the party realised that the principle of sustainable development is the way forward¹⁵.

The Congress party realised that a reckless path to development *sans* environmental care would be disastrous in the long run. Prior, the 'Environment' as an issue, was absent from the political consciousness of the parties reflecting an indifferent attitude of our political establishments

¹² Jacob B Koshy, *What are the changes in the new Water Act*, THE HINDU (February 11, 2024), <https://www.thehindu.com/sci-tech/energy-and-environment/what-are-the-changes-in-the-new-water-act/article67832268.ece>. (Accessed: 24 July 2024)

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

¹⁴ The Air (Prevention and Control of Pollution) Act, 1981, §§ 3-4, No. 14, Acts of Parliament, 1981 (India).

¹⁵ DTE Staff (1996) *A hand in every pie*, DOWN TO EARTH. Available at: <https://www.downtoearth.org.in/environment/a-hand-in-every-pie-25910> (Accessed: 25 July 2024).

towards the environment in the post-independent era.

It is equally noteworthy that India till the year 1985 did not have a separate ministry for the environment. The issue of the environment was earlier looked after under the Union Ministry of Science. In 1980, the Indian Government constituted a committee under the chairpersonship of Narayan Datt Tiwari, then deputy head of the Planning Commission. The committee gave a host of recommendations on environmental law and policy. A major recommendation of the Committee was the establishment of a separate department to deal with environmental policies. Subsequently, the union government formed the Department of Environment in 1980 and eventually established the Ministry of Environment and Forest in 1985. This delayed establishment of the Environment Ministry shows India's lacklustre approach to its environmental cause as it took 38 years for the policymakers to realise that our country needs a separate environment ministry.

This Ministry was occupied by the likes of Rajiv Gandhi, Rajesh Pilot, Menaka Gandhi, Atal Bihari Vajpeyi, and Manmohan Singh, yet none of them could leave a remarkable legacy. On three occasions, this Ministry was under the portfolio of the then Prime Ministers (Rajiv Gandhi, Atal Bihari Vajpayee and Manmohan Singh), but even during those times, the respective Prime Ministers failed to bring any institutional changes in the composition and functioning of the ministry¹⁶

The environment ministry has been a 'rubber stamp' for the cabinet, giving its nod to every project. Arguably, the only Minister who made some noise and endeavoured to make the environment ministry a truly meaningful one was Jayaram Ramesh, who occupied the office for a short while during UPA-II and tried to make such institutional changes vis à vis environmental governance in India. He also faced resistance from his colleagues and was eventually removed from the office¹⁷.

6. Bhopal Gas Tragedy and Enactment of Environment Protection Act, 1985

Unlike the Air Act and the Water Act, which were enacted to fulfil India's international

¹⁶ Lyla Bavadam, *India at 75: Timeline: Environment*, FRONTLINE. (25th August, 2022, 18:00) Available at: <https://frontline.thehindu.com/environment/india-at-75-timeline-environment-75-years-of-independence/article65728154.ece> (Accessed: 25 July 2024).

¹⁷ Ravi Shankar, *Earthmover* (2010) INDIA TODAY. Aug 29, 2010 22:34 IST, Available at: <https://www.indiatoday.in/magazine/environment/story/20100830-earthmover-743853-2010-08-20> (Accessed: 25 July 2024).

commitments under the Stockholm Conference, the Environment Protection Act of 1986 was driven by domestic pressures following the Bhopal Gas Tragedy. 1984. Rather than being a comprehensive framework for environmental protection, the Act was more of a reactive measure in response to the strong scrutiny the central government faced after it failed to prevent what has been termed an 'invited tragedy.' Despite numerous warnings and reports highlighting the lack of adequate safety measures at the Union Carbide factory, these concerns were largely ignored, ultimately leading to the disaster.

The response of the Indian state—executive bodies, the judiciary, and even the legal fraternity after the tragedy is equally troubling. Even after 40 years, the victims are still waiting for justice. The company's owner managed to evade personal criminal liability, allegedly with the help of government officials. Notably, Advocate Fali S. Nariman, who represented Union Carbide's owner, skilfully navigated the legal system to secure a favourable outcome for his client in India's Supreme Court.

7. LPG and its Impact on Environment

The Era of the early 1990s saw two major developments - one was the collapse of the USSR and the second was the Rio Convention in the year 1992. India was also forced to liberalize its economy. The Liberalisation, Privatization, and Globalisation (LPG) regime had significant effects on India's environmental policies. Since the primary objective of these reforms was rapid economic growth which led to giving priority to urbanization, infrastructure expansion and establishment of industries with high pollution potential; all these eclipsed environmental concerns. To attract foreign investment, environmental regulations were often compromised. For example, the provisions relating to the Environment Impact Assessment (EIA) were either diluted or poorly enforced. The LPG also introduced a 'Market-Oriented Approach' where environmental policies were increasingly decided by market mechanisms. From then onwards, we see an increasing deterioration of environmental policies. It is quite deplorable that in the LPG era, the Indian policymakers unfathomably talked about the dilution of environmental provisions on the premise of improving India's ranking on the 'ease of doing business index.'

8. Environment Impact Assessment Policy of India

The Environment Impact Assessment (EIA), the way it is carried out in India is one of the instances through which emphasis on rapid development bypassing the environmental concerns

can be seen. The law is designed in such a way that it defies common sense. According to the EIA policy of the Government of India, the very establishment which is going to set up any factory in any eco-sensitive zone is the same company which is supposed to carry out EIA for the project and submit the same to the Environment Ministry for getting the clearance for the project. The system has become so focused on appeasing corporations that even a former environment minister, Jairam Ramesh, publicly acknowledged, 'Environment clearance in India is a joke, I admit it in public.' The reason for his assertion was very important to note. It was precisely because the arrangement was such that the company which was proposing a factory in any eco-sensitive area was the same company which was tasked with the preparation of environment impact assessment - a clear case of conflict of interest. Jairam Ramesh wanted the Environment Impact Assessment to be conducted by a third independent party having no interest

As discussed before in this paper, the Environment Ministry of India was occupied by some heavyweight leaders, there have also been instances when this office was occupied by the then Prime Minister himself but none succeeded in leaving a mark on the organisational structure and functioning of the Ministry. Jairam Ramesh, in his short tenure, blocked many projects, especially projects by big mining giants like Vedanta (Odisha) for which he had to face opposition from his colleagues in Manmohan Singh's cabinet¹⁸. There were intense conflicts as the bloc supporting the corporates used to put on the Environment Ministry to get the clearance. Jairam Ramesh also tried to bring an institutional reform vis a vis the way 'Environment Assessment' was done during his time. The 'Environment Assessment' during his time required that the company which was supposed to set up any mining or other factory in any sensitive area is the same company which is supposed to make the 'Environment Assessment' report which is submitted to the Environment Ministry to get the clearance. It violated the natural principle of not being the judge in his case.

9. *Ex post facto* Environmental Clearances: Role of Judiciary

In a country where the executive seems to be quite complacent vis a vis environmental governance, people expect the judiciary to rise to the occasion and guide the nation towards the constitutional commitment of ensuring sustainable development. But, unfortunately, the

¹⁸ Bureau, *Environment assessment is a joke, says Jairam; wants 3rd party eia* (2011) BUSINESSLINE, 29th March 2011, 11:34 PM, Available at: <https://www.thehindubusinessline.com/economy/policy/environment-assessment-is-a-joke-says-jairam-wants-3rd-party-eia/article64154611.ece> (Accessed: 25 July 2024).

role of the judiciary is far from being satisfactory and there are instances of judges joining MNCs as board members post-retirement¹⁹. This post-retirement appointment of judges as board members of the MNCs undermines the court's independence and brings the judgments and orders pronounced by them into scrutiny.

In the previous section, we have discussed the irrational way of doing EIA, designed by the executive i.e. the Government of India. When the executive is appearing so reckless, it is the most appropriate time for the Judiciary to step in and do the needful. There have been inconsistent approaches and judgements on environmental issues. For instance, initially while dealing with the question of whether a retrospective clearance can be given to an establishment, the SC bench led by Justice Madan Lokur and Deepak Gupta gave a very reasoned judgement in **Common Cause v. Union of India**²⁰. The bench rightly observed, '*the concept of an ex post facto or a retrospective EC is completely alien to environmental jurisprudence because it can be detrimental to the environment and could lead to irreparable degradation of the environment*'. Here the court focused on the intrinsic value of the environment and ecology vehemently came down to the flawed process of Environmental Clearance.

However, on multiple occasions, the court has decided to ignore this fundamental logic to overlook the absence of prior consent. There have been multiple instances where the court was willing to condone the non-compliance with the law and grant remedies to polluting industries, one way or the other. For instance, in **Electrotherm (India) Limited v Patel Vipulkumar Ramjibhai**²¹, a steel plant undertaking received the Environmental Clearance without conducting a public hearing. When the same was challenged before the National Green Tribunal (NGT), the tribunal very rightly held that clearance was invalid and ordered the closing of the steel plant. On appeal to the Supreme Court, the court reversed the judgement of the NGT and observed, '*considering the peculiar facts of the case, the interest of justice would be sub-served if that part of the decision exempting public consultation / public hearing is set aside and the matter is relegated back to the concerned Authorities to effectuate public consultation / public hearing*'.

¹⁹ ARUNDHATI ROY, *Scandal in The Palace* (2017) OUTLOOK INDIA, 13th November, 2017, 05:44 PM Available at: <https://www.outlookindia.com/national/scandal-in-the-palace-news-235689> (Accessed: 25 July 2024).

²⁰ Common Cause vs Union of India (2017) 9 SCC 499

²¹ Electrotherm (India) Limited v. Patel Vipulkumar Ramjibhai, (2016) 9 SCC 300.

Similarly, while dealing with **D Swamy vs Karnataka State Pollution Control Board**²², the Court ruled that ex post facto environment clearance can be acceptable. In this case, a bio-medical treatment facility was established and run without an environmental clearance. The Supreme Court went on to signal last week that complying with the requirements of environmental law was optional.

Thus, when it comes to Environment Impact Assessment in India, we have an executive who makes such rules defying the principles of natural justice and the undertaking which is proposing the establishment is asked to conduct an EIA and submit a report to get approval by the Ministry. And we have a Judiciary which has quite often signalled that EIA is optional or the same can be given afterwards.

10. Conclusion and the Way Forward

From post-independence to the contemporary era, environmental law and policy have been marred with continuous friction, reckless industrial development and environmental protection. Eventually, this friction was overpowered by the interest in industrial development. From the lack of a direct reference to the environment in the original constitution to the subpar performance of regulatory agencies and ministries, India's environmental policies have frequently been reactive rather than proactive. This tendency has not only delayed necessary measures but has also jeopardized the integrity of the environment for future generations.

The historical context demonstrates that India's environmental carelessness is profoundly embedded in the country's political and economic interests. The post-independence era, which was driven by an emphasis on industrialisation and economic growth, ignored environmental issues. This trend was obvious in the late establishment of pollution control boards and the Ministry of Environment, which, once constituted, frequently served as rubber stamps for development projects rather than protectors of environmental integrity.

The Liberalization, Privatization, and Globalization (LPG) reforms of the 1990s further exacerbated the situation. The drive for rapid economic growth led to the dilution of environmental regulations, with policies increasingly shaped by market mechanisms rather than ecological imperatives. The environment became a secondary consideration,

²² D Swamy v. Karnataka State Pollution Control Board, (2017) 11 SCC 307.

overshadowed by the need to attract foreign investment and improve rankings in indices like the "Ease of Doing Business." The repercussions of this approach are evident in the deteriorating quality of air, water, and soil, as well as the frequent conflicts between industrial projects and local communities.

Despite the establishment of legal frameworks such as the Environment Protection Act of 1986, the enforcement of these laws has been inconsistent and often ineffective. The Bhopal Gas Tragedy, a defining moment in India's environmental history, exposed the inadequacies of the state in protecting its citizens and the environment from industrial hazards. The judiciary, which should have played a more assertive role in enforcing environmental laws, has also faltered at times, granting *ex post facto* environmental clearances that undermine the very essence of environmental jurisprudence.

Moreover, the political discourse in India has largely ignored environmental issues. While there have been sporadic mentions in election manifestos and policy documents, these have rarely translated into sustained action. The lack of a robust political movement centred on environmental concerns is a glaring gap in Indian democracy. The limited tenure of leaders like Jairam Ramesh, who attempted to reform the Ministry of Environment, further illustrates the systemic resistance to change within the political establishment.

Looking ahead, India must recalibrate its approach to environmental governance. This involves not only strengthening legal and regulatory frameworks but also fostering a political and social culture that prioritizes environmental sustainability. Public awareness and activism must be heightened to ensure that environmental issues become central to the political agenda. Additionally, the judiciary must adopt a more stringent stance in enforcing environmental laws, ensuring that the principles of sustainable development are upheld.

In conclusion, India's journey towards environmental sustainability is fraught with challenges, but it is not without hope. The current state of environmental governance reflects a need for a paradigm shift, where development and environmental protection are viewed not as opposing forces, but as complementary objectives. Only through a concerted effort across all levels of society—government, judiciary, civil society, and the private sector—can India hope to overcome its environmental challenges and secure a sustainable future for its citizens.