

An Evaluation on international environmental law in the context of India: A proposed Methodology

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Abstract

In India, environmental preservation has been a priority from the country's earliest days, which is why it has been included in its constitution. In addition, our nation has a long history of environmental stewardship, which is why environmental preservation was given the highest priority at all levels of government, and our constitution's authors kept this in mind while drafting the document. It was a constitutional responsibility of the government and citizenry to recognise environmental issues. According to the preamble of our constitution, our nation is built on "socialist" society, where the state gives more attention to the issues of society than the concerns of individuals. Environmental pollution has arisen as one of the most pressing societal issues, and as such, the state is required to meet the core goal of socialism, which is to provide a high quality of life for all citizens while also preventing pollution from harming the environment. According to the Preamble, social, economic, and political justice are among the many important freedoms and rights that the people of India enjoy. Environmental justice is part of the concept of justice. However, the term "environment" here might be interpreted to imply "environmental justice," which is a distinct concept. While addressing the country's macroeconomic or socio-political situation, we might include environmental issues. Matters must be discussed in order to avoid misunderstandings.

Keyword-Environmental Protection, Judiciary's Role, Constitutional aspects, control of environmental pollution, Research Methodology

1.1 Introduction

In the post-independence period of India, environmental conservation was not a priority because of the need for economic expansion and political upheavals. Post-independence, the focus was on creating new markets, industries, and employment for the people. The Bhopal Gas catastrophe, however, led to environmental preservation being a top focus. In the wake of this disaster, the scope of environmental legislation in the nation expands and judicial action also rises. One of the most lucrative kinds of international criminal enterprise, environmental crimes are well-known. The number of environmental crimes is on the increase, and we must do all we can to stem this tide [1]. Even the most basic elements of criminal law are intended to deter such behaviour. Existing legislation has not been effective in reducing environmental crime for a variety of reasons. Those who are charged with enforcing these laws encounter several challenges. The officer's dual duty as counsellor and executor of these laws has a number of flaws that need to be addressed. Prosecutors and police are also confronted with a number of challenges when determining whether or not an accusation has validity and meritocracy. An investigation into the root causes of these basic challenges is what these concerns demand. Regulation, basic principles, and customary rules that characterise the environmental effect of human activities are addressed by these laws [2]. In order to enforce these rules, environmental contamination is the primary focus. They provide environmental impact assessments and research on the depletion of our natural resources and the subsequent need to protect them for future generations. Air and water pollution and quality, sustainable development, waste management; precautionary measures;

contamination cleaning (Contaminant cleanup), safety in dumping, and dealing with the dumping of chemical substances; and areas involving public trust are covered by our environmental laws in India. They are, however, significantly more complicated to execute because of the interplay of social, political, and economic variables in resolving major environmental repercussions [3]. The growth of environmental jurisprudence and judicial judgement in the nation is largely due to the establishment of these rights and principles in environmental law. This framework has been put in place to define the constitutional, legislative, and common law obligations of different public and private organisations. Laws, loopholes, enforcement, and the hurdles and restrictions they encounter are critical for improving environmental governance in the nation in the face of the country's ever-increasing deterioration in environmental quality.

At the global level, environmental law is a relatively recent area of jurisprudence. Prior to Stockholm, India's IV Five Year Plan (1969– 1974) made a point of include environmental concerns in its development plans, even three years before the Stockholm conference. Toward harmonious development, the IV plan document "acknowledged the oneness of nature and man." Only by thoroughly examining environmental issues can such planning be accomplished. In a number of cases, early and adequate environmental advice might have aided in project design and in reducing detrimental environmental impacts that result in resource waste. Because of this, it is essential to include environmental concerns into the design and development process. 4 Government officials have created a national committee on environmental planning and coordination. The Committee's focus was on environmental issues. 5 Indian courts have long recognised that people have the right to live in a clean and safe environment [4]. The legal system, and the courts in particular, have recognised this privilege for well over a century. Even though it is a basic human right in today's industrialised world, India's Constitution refuses to recognise a breach of this fundamental right. This right was recognised as a fundamental one by the Indian High Court and Supreme Court in the late 1980s. Although this right was not a fundamental right until the 1980s, it has been enforced by courts under several statutes, including Law of Torts and Indian Penal Code. Environmental rights are now seen as third-generation rights in today's rapidly expanding legal world.

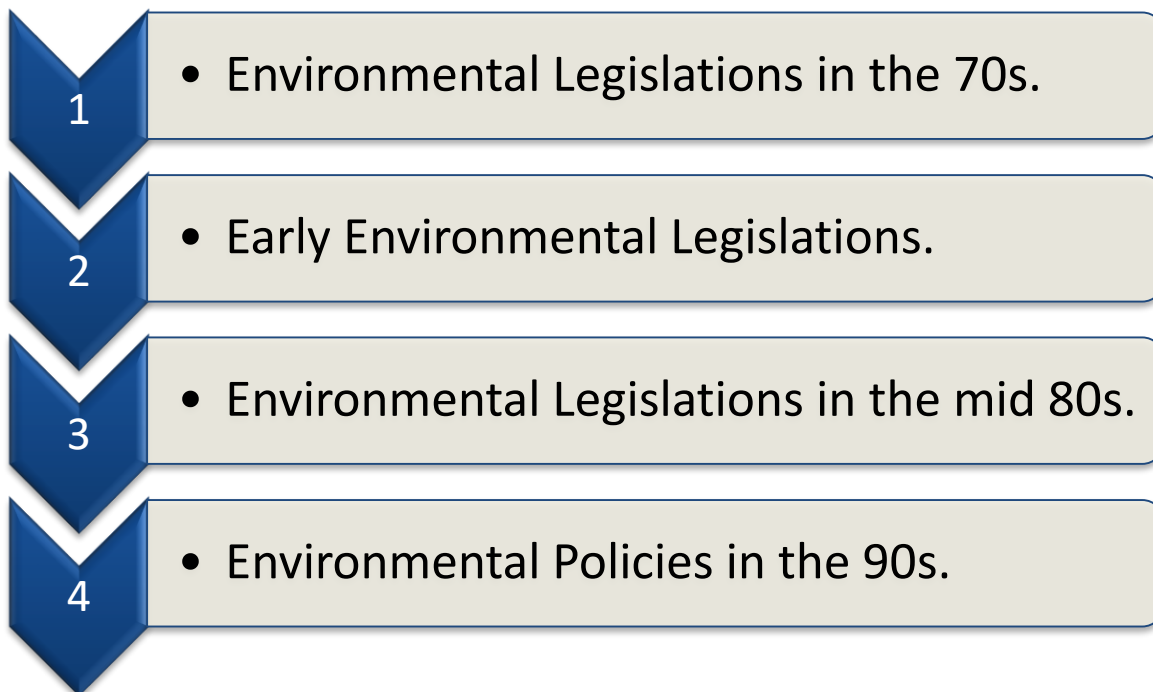


Fig 1.1 Environmental Legislation in India

1.2 Research Methodology

The goal of this strategy is to talk about the issues that were predicted and the efforts you took to avoid them. In the event that there are any problems, you must explain how they were dealt with or why they didn't have an impact on your comprehension of the solution. Despite the halt of a qualitative study, we have set pleasant research aims. As a rule, the results of subjective inquiry can't be quantified or tested, making it ideal for

exceptional cases. One of the most important advantages of this approach is that it gives a complete representation and anatomical anatomy of a study issue. Our study will employ a qualitative technique, and we will also use primary and secondary data, as well as give a sequential step for new research.

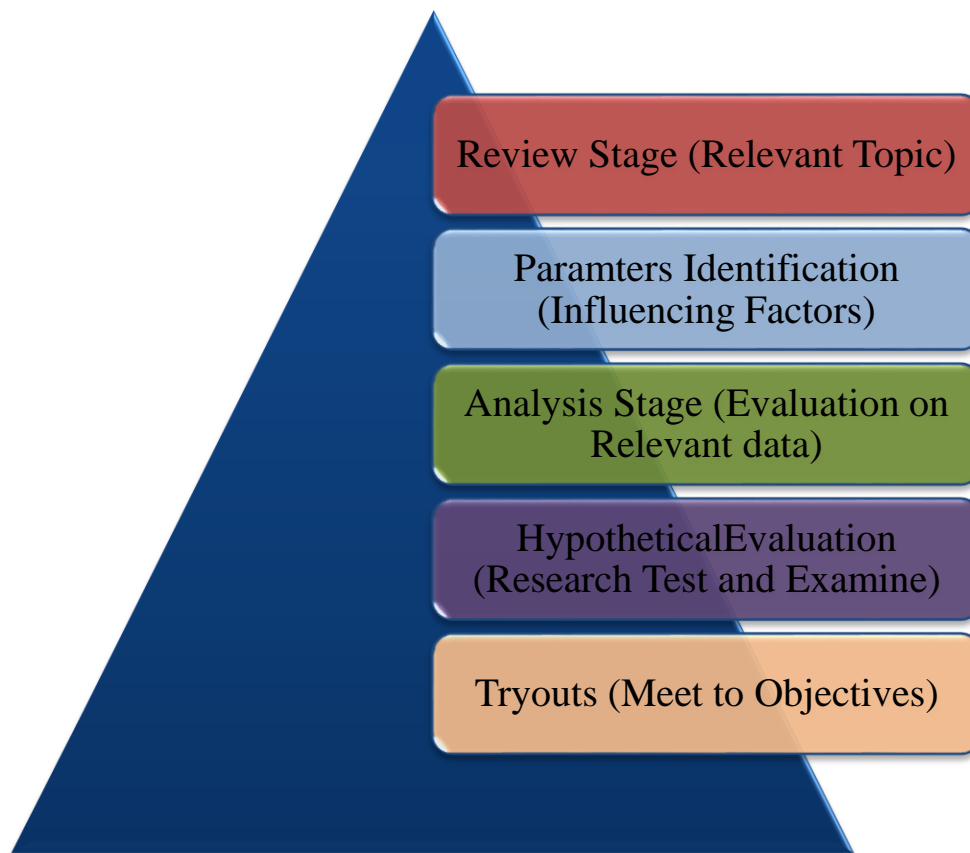


Fig 1.2 Research Steps

1.2.1 Hypothesis

A hypothesis is a preliminary conjecture that provides enough information to be tested or disproved. As a result, it confines the scholar's scope of study, and he or she relies only on previous research. The suppositions may be true, but they must be verified and tested in order to reach a result in accordance with the stated goals. The scholar has his or her own thoughts about the present study project.

- The rise in pollution levels will affect the life and the fundamental right of living.
- The Supreme Court of India has its guidelines which have perfectly balanced between environment protection and its assessment.
- There is no dearth of laws related to environment protection on national as well as on international level but the implementation of laws is something that requires attention.
- The environment protection act of 1986 has not been effective in curbing the pollution.
- Various acts can be put in place for understanding the reasons of environment protection.
- Due to large population of India, the environment protection act of 1986 does not fit adequately any more.
- Assessment criteria of implementation of environmental protection laws.
- Environmental sustainability affect valuation

1.3 Research Objective

The objectives of this work have been summarized below for better understanding:

- To highlight the impact of environmental pollution on the lives of human beings.
- To identify law ensuring Environment protection in India.
- To assess the implementation of laws towards Environment protection control – Failure cases.
- To evaluate the Indian Environment Protection laws as compose the United Nation Laws.
- To suggest amendment in Indian environment protection laws for making Environment protection control enhancement in environmental sustainability.
- To study the Constitutional Provisions related to the Environment conservation and protection
- To review the national and international laws of environment protection and ecology conservation.
- To trace the history of balancing the ecology and Indian ethos.
- To appraise various Policies and contribution of United Nations Organization with regard to protection of environment.
- To analyses and comparative study of Supreme Court of India on Environmental issues.

1.4 Constitutional aspects of environmental law

The Indian Constitution, which is the highest legislation in the nation, demonstrates a strong concern in the preservation of the natural world. The essential purpose of socialism is to ensure a reasonable level of life for all people, which is only achievable in an environment that is free of pollution, and the Preamble to the Constitution proclaims that the State is under a responsibility to meet this fundamental aim of socialism. Therefore, in order to create a society based on the socialist model, it is impossible to ignore the vital importance of protecting the environment[5]. The basic rights of Indian citizens are outlined in Section III of the Constitution. In addition, these rights are enforceable in a legitimate legal proceeding (Art. 32). Several Supreme Court rulings have concluded that a natural environment must be maintained in order to put any value on human life at all. Many times, the Supreme Court has said that "rights under Article 21 are fundamental and include the right to enjoy pollution-free water and air for the full enjoyment of life," which includes "right to life." Article 21 of the constitution protects the "right to life," which was the basis for the court's decision. The court has already made similar determination in prior cases. Additional to this, it said that "if anything endangers or affects that quality of life in violation of laws, a citizen has the right to use Article 32 for eliminating the pollution of water or air, which may be damaging to the quality of life [6, 10]." Article 32 of the Constitution grants citizens the right to seek relief from contamination of water or air that might have a negative impact on their well-being. Under Article 32, citizens have the right to file a complaint to have water or air pollution, which might harm their quality of life, remedied. Article 47 of Part IV of the Indian Constitution, which is devoted to establishing the Directive Principles of State Policy, discusses environmental preservation. It mandates that the state work toward raising the general population's level of life and enhancing their overall wellbeing. In order for the state to achieve this constitutional purpose, it is important for the state to ensure an environment that is free of pollution. The Constitution (42nd Amendment) Act, 1976 is the piece of legislation responsible for putting these clauses into the Indian Constitution. According to Article 48-A of the Directive Principles, which was subsequently added to the document, it is the responsibility of the government to protect the environment, including the forests and the animals. According to the section of the Constitution titled "Fundamental Duties," it is the responsibility of each and every person to look after and protect the natural environment.

1.5 Statutory control of environmental pollution

One of the most important laws regarding the environment is the Water (Prevention and Control of Pollution) Act, which was passed in 1974 and was the first legislation of its sort passed following the Stockholm Conference. It makes provisions for "the prevention and control of wholesomeness of water," as well as for the establishment of and the granting of suitable authorities onto Pollution Control Board, which was formed for the purpose of attaining the above-mentioned specified goal[9]. As a direct result of the Stockholm Conference, legislation known as the Air (Prevention and Control of Pollution) Act, 1981 was passed into law. It was adopted with the intention of taking necessary actions for the protection of natural resources of the planet, which among other things include the preservation of air quality and the management of air pollution [7]. This was the motivation for the enactment of this law. This act was passed into law with the intention of ensuring that suitable measures be taken to ensure the conservation of the natural resources of the planet. The

Act contains defining language that makes an attempt to include all forms of air pollution, including noise, under its scope. This is one of the goals of the legislation. Following the tragic event that took place in Bhopal in 1986, the Parliament of the United Kingdom felt compelled to address any and all environmental issues. As a result, they enacted a novel piece of legislation in the form of the Environment (Protection) Act, which they named after the year. Therefore, the government is in charge of defining safety regulations, such as how hazardous waste should be handled, as well as overseeing pollution-related investigations and research, as well as setting up labs to gather data [11]. It was hoped that by passing this bill, environmental degradation might be addressed more comprehensively, rather than via a piecemeal or sectoral approach. There were no unforeseen effects because of this.

1.6 Judicial approach towards environmental protection

According to Professor Upendra Baxi, a vocal supporter of India's legal activism, the "Supreme Court of India" has often taken on the role of the "Supreme Court for Indians." It has actively contributed to the strengthening of the constitutionally guaranteed basic rights by virtue of the powers assigned to the judiciary and its involvement. In addition, the Stockholm Conference on Human Environment, 1972, helped enhance India's environmental legislation framework and was a driving force behind the passage of the 42nd Constitutional Amendment Act, 1972. Stockholm Conference on Human Environment, 1972 Article 51A(g) of the Constitution adds new responsibilities for the state and people in the area of environmental protection (Article 48A). Legally, Articles 51A(g) and 48A, which are both enabling in nature, are not legally obligatory, but courts have often construed these articles as so. As a result, the courts have utilised these clauses to establish and build a basic right to the environment as part of Article 21's right to life. For example, the Supreme Court often referred to the 1986 ILO Asbestos Convention and 1948's Universal Declaration of Human Rights in Asbestos Industries Case¹². The court in this case dealt with problems connected to asbestos-related worker health dangers^[8]. The court ruled that such employees' access to health care falls within article 21's definition of a basic right and provided specific instructions to the relevant authorities. When it comes to wetlands, India is obligated to protect them because of its membership in the Ramsar Convention on Wetland, which was signed by India in 1971.

1.7 Power of Central Government to take actions to preserve and enhance environment:

The central government has the authority to take any actions necessary or expedient to safeguard and improve the quality of the environment and prevent, regulate, and abate environmental contamination, as long as they are consistent with this act. Without limiting the extent of paragraph (1), such measures may include: To the extent that this clause allows for different emission or discharge standards to be established for different sources based on factors such as pollution quality or composition, it restricts the areas in which certain industries, operations, or processes can operate without restriction or with safeguards in place, and it establishes.

1.8 Conclusion

This list demonstrates that there are a number of laws that have been passed to address environmental problems. The implementation of these rules has become much more challenging as a direct result of this. We need a system that is not only well-integrated but also takes a holistic approach and produces satisfactory results. In terms of how well it has adhered to the standards that were established, the judicial implementation system has a spotty track record of performance. Complex external influences have an effect on the implementation, but institutions also have internal weaknesses, such as the inconsistent use of implementation mechanisms by the courts. These institutional weaknesses require stronger legal justifications and greater integration with regulatory frameworks that are already in place. By implementing criminal responsibility, which would not only save time but also act as a deterrent, it is conceivable to successfully address all of these problems and find a solution to them all. If people breach the law, they will be held responsible for their conduct, including whatever contribution they may have made to the degradation of the environment.

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