

Lecture 12:

Environmental Legislation in India

Course: Environment and Politics in India

Environmental Laws

- WHERE do the laws come from?
 - Constitution of India. Part IVA (Art 51A – Fundamental Duties; Art 48A – Directive Principles of State Policy)
 - International Commitments. Beginning with UN Conference on Human Environment, Stockholm 1972
 - 42nd Constitutional Amendment, 1976

Part Four of the Constitution

- Directive Principles
- Non-Justiciable
- Guidelines for State Policy and Adjudication
- Lower to Fundamental Rights in importance
 - Welfare State (Income, Social equality)
 - Panchayats, local self-government
 - Right to education, work, public assistance
 - Humane working conditions
 - Uniform Civil Code
 - Protect forests and wildlife; historical heritage
 - Uplift SC, ST, weaker sections
 - Improve public health; child care
 - Cow Protection
- Part Four A: Fundamental Duties

Environmental Laws

TIMELINE:

- ❑ 1972: National Council for Environmental Policy and Planning (within DST)
- ❑ 1974: Central Pollution Control Board (CPCB)
- ❑ 1985: Ministry of Environment and Forests (MoEF):

MANDATE:

- Prevention and control of pollution
- Survey of flora, fauna, forests and wildlife
- Afforestation and regeneration of degraded areas
- Conservation and Protection of the environment, ensuring the welfare of animals

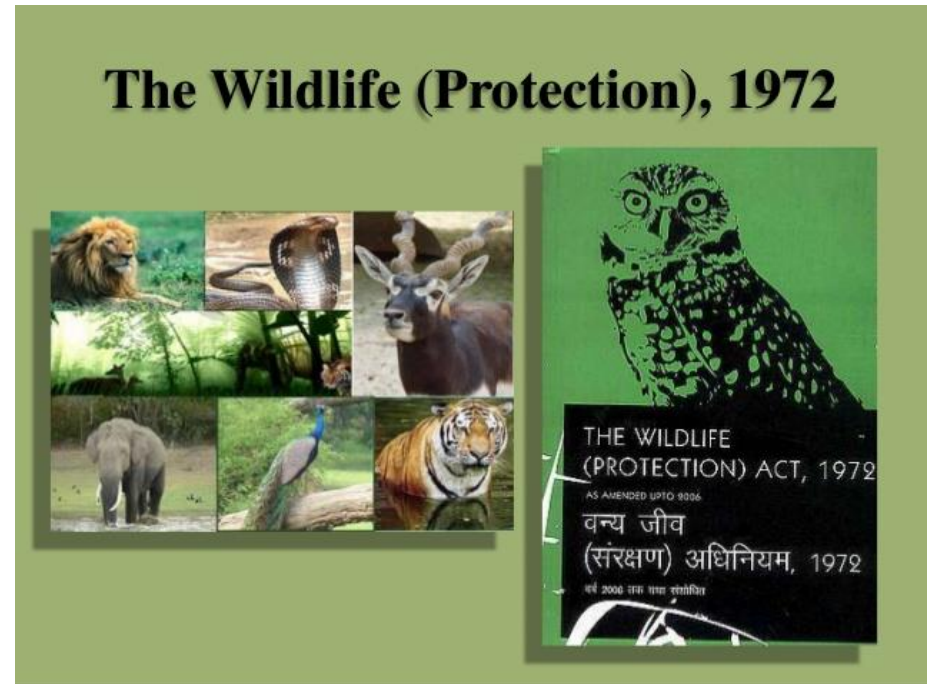
Environmental Laws

Some important ACTS:

- 1972: Wildlife Protection Act
- 1974: Water (Prevention and Control of Pollution) Act
- 1980: Forest Conservation Act
- 1981: Air (Prevention and Control of Pollution) Act
- 1986: Environment Protection Act
- 1989: Hazardous Wastes (Management and Handling) Rules
- 1991: Public Liability Insurance Act
- 2002: Biological Diversity Act
- 2010: National Green Tribunal Act
- 2011: Coastal Regulation Zone Notification

Wildlife Protection Act

- Passed in 1972
- Objectives
 - Protecting plants/wildlife/ecologically sensitive areas
 - Controlling poaching/smuggling /illegal trade
 - Setting up/management of National Parks and Wildlife sanctuaries
 - Amended in 2003 to make it more stringent
 - Various schedules with varying degrees of protection. POLITICS?



Water Act

- Passed in 1974
- Objectives
 - Prevention of water pollution
 - Establishment of 'Boards' to ensure regulation
 - Designing limits/penalties for BOD/COD
 - 1977: Water Cess Act
 - Amended in 2003
 - POLITICS? On regulations, penalties, constitution/powers of Boards

The Water (Prevention and Control of pollution) Act, 1974



Water Act, 1974



Forest Conservation Act

- Passed in 1980
- Objectives
 - Control/protection of forests
 - Preventing/controlling diversion of forests to non-forest uses
 - Indian Forest Act 1927: Decides on levies/revenues from forest produce
 - POLITICS? Permission for forest diversion. Rules over use of forest produce

The Forest (Conservation) Act of 1980



Air Act

- Passed in 1981
- Objectives
 - Control of air pollution
 - Drafting permissible limits
 - Monitoring
 - Penalties
 - POLITICS? Closure of existing units?

1996: Closure of industrial units in/around Delhi

Environment Protection Act (EPA)

- Passed in 1986
- Passed after Bhopal Gas tragedy, to fill gaps in legislation
- TWO main approaches: long term approach/planning etc., setting the template for handling immediate crisis
- Objectives
 - Umbrella Act, encompassing Air/Water/Soil/Forest etc.
 - Addressing issues that are NOT covered by other Acts
 - Wide-ranging powers, coordinating with other legislations /bodies
 - Penalties

Hazardous Wastes Act

- Passed in 1989
- Objectives
 - Controlling production/storage/use/movement of ANY hazardous substance
 - Covers Biomedical waste, e-waste, municipal solid wastes, effluents, batteries
 - POLITICS?

EXAMPLE: Asbestos

Public Liability Insurance Act

- Passed in 1991
- Objectives
 - Protection to victims of accidents
 - Decides WHO pays in case of accident, WHO insures.
 - POLITICS?

EXAMPLE: 2009 Nuclear Deal

Biological Diversity Act

- Passed in 2002
- Based on UN Convention on Biological Diversity
- Objectives
 - Allows rights of individual countries over OWN biological resources. CONTEXT? Battles over Turmeric/Basmati rice/Neem
 - Documentation of biological resources (including indigenous knowledge)
 - Conservation of biological resources
 - POLITICS?

National Green Tribunal Act

- Passed in 2010
- First dedicated ENVIRONMENTAL court
- 3rd in the world, after Australia and New Zealand
- Objectives
 - Fast-track resolution of environmental disputes
 - Over and above HC/SC
 - POLITICS?

EXAMPLE: Art of Living case

Coastal Regulation Zone Act

- Passed in 2011
- Objectives
 - River regulation AND coastal regulation
 - Livelihood security to fishing communities
 - Protection of eco-sensitive coastal zones
 - Prevention of uncontrolled construction in coastal areas
 - Preventing natural hazards
 - Addressing impacts of climate change
 - POLITICS?

EXAMPLE: Uttarakhand floods. Tourism/development versus Environment

Major Issues

Debates around law-making:

- State governments versus Union/Centre (EXAMPLES: PESA)

UNITARY

- All powers concentrated in single government
 - Centralised
 - Decentralised
 - Regionalised

FEDERAL

- Power distributed between multiple levels of government
 - Centralized
 - Decentralized
- Based on principle of shared rule plus self rule.
- Linked to democracy, sharing, diversity and the maintenance of distinctive identities
- Separation of powers-constitution

Varieties of Federations

- Federal idea can take DIFFERENT forms.
- No ONE model of federalism.
- Depends on:
 - Historical circumstances
 - Emergent demands and needs of societies
 - Nature of population, diversity and so on



Models of Federalism

- **Coming Together Model**
 - where (more or less) sovereign states come together to create a common central government to which the states surrender some of their sovereignty
 - United States
- **Holding Together Model**
 - A larger polity is subdivided into various sub-units that enjoy sovereignty over certain policy areas
 - Belgium, India
- **Putting Together Model**
 - A large unit forcefully brings together previously independent units and takes away some of their sovereignty and allows some sovereignty in certain areas
 - Former USSR, Yugoslavia

Historical Background

Why

- Strong-centre model of federation
- Federalism to suit India's needs and requirements
- Powerful central government to lead from the front: economic, political, social
- Protect India's freedom

Fear of disunity

- Partition and communal riots that followed
- Migration and influx of millions of people
- Invasion of Jammu and Kashmir
- Problem of princely states
- Danger of extremist violent groups

Other factors

- Unification of Princely states
- Goals of National Unity and Integrity, Democracy and Social and Economic development
- Balanced regional development
- Congress everywhere: One-party dominant
 - Reinforced the centralizing component
- Global circumstances

Major Issues

Debates around law-making:

- Executive versus Judiciary (Markandey Katju and Air Pollution in Delhi)

Other issues:

- Balancing various POLITICAL/ECONOMIC/SOCIAL interests

EXAMPLES: Tiger conservation *versus shikar*/tourist lobby

Water Pollution Act

- Passed in 1974
- Took FIVE years to pass after the initial draft
 - ❑ Was FIRST introduced in Parliament in December 1969
 - ❑ Got a major boost after the Stockholm 1972 conference
 - ❑ Opposition? Question of Federalism.
- ELEMENTS of the ideological/power struggles
 - Part XI of the Constitution allows DISTRIBUTION of legislative/administrative/executive powers between Centre/Union/Federal government and state governments.
 - Water: 17 in the STATE list, 56 in the UNION list. States responsible to handle water pollution.
 - Active opposition from Maharashtra.
- SOLUTION? Formation of the CPCB/SPCBs. INSTITUTIONAL distribution of powers.

Air Pollution Act

- Passed in 1981
- Took EIGHT years to pass after the initial draft
- Possible Issues?
 - ☐ Debate over Federalism
 - ☐ Debate over the extent of air pollution. 'Development' *versus* Environment?
 - ☐ Debate over WHO should pay, WHY they should pay and HOW much.

EXAMPLE: Small versus Large industries

Wildlife Protection Act

- Passed in 1972, after much back-and-forth arguments
- Problems of Federalism

“Our Fauna is already dangerously depleted. It is an asset to be cherished and conserved. In recent years, I have had to intervene more than once with the States in this matter. It is essential for the Centre to give a lead...”

– Indira Gandhi

- Local communities *versus* Wildlife Conservation.
- Industrial Forestry *versus* Wildlife Conservation.
- Contractors Lobby *versus* Wildlife Conservation.
- Dams *versus* Wildlife Conservation. EXAMPLE: Silent Valley project.
- ‘Scientific study’ of wildlife *versus* Wildlife Conservation.
- EACH declaration of a ‘NATIONAL’ Park saw much lobbying/counter-lobbying between ACTIVISTS, STATES and the CENTRE.
EXAMPLE: Dudhwa National Park and Billy Arjan Singh
- Crucial ROLE of powerful individuals and social networks.

Forest Conservation Act

- 1976: Forests AND Protection of Wild Animals and Birds were moved from the STATE to the CONCURRENT list. WHY?
- March 1980: Meeting with Conservationists. Concern over dwindling forest cover, NO discussion on any Bill/Act.
- June 1980: Draft law drafted by Samar Singh.
- October 1980: Article 123(1), Ordinance passed.
- December 1980: Bill passed.

Forest Conservation Act

Notwithstanding anything contained in any other law for the time being in force in a State, no State Government or any other authority shall make, except with the prior approval of the Central Government, any order directing –

- (i) That any reserved forest (within the meaning of the expression “reserved forest” in any law for the time being in force in that State) or any portion, thereof, shall cease to be reserved;
- (ii) That any forest land or any portion thereof may be used for non-forest purposes.

Explanation: For the purpose of this section “non-forest purpose” means breaking up or clearing of any forest land or portion thereof for any purpose other than reafforestation.

- Abstract from Draft FCA Bill