



# Jus Corpus Law Journal

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## Environment Issues: An analysis of Climate goals of India

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*The environmental issue is a serious threat which is faced by India. India is likely to face a huge challenge with respect to its Climate Goals. As India has set a target of net-zero emissions by 2070, with its steep growing emissions and growing urbanisation, the way ahead is tough. India being the world's third largest ejector of carbon dioxide (CO<sub>2</sub>), the country relies on coal and other oxide material doesn't seem to decrease. For an instance, various provisions are introduced. A few more amendments were introduced after the hazardous tragedy of 1984 (Bhopal Gas Tragedy). Even after all the amendments, there are a lot of loopholes that need to be addressed. Understanding the environmental issues and the laws revolving around the preservation of the environment is a vital step to providing a better solution.*

**Keywords:** *environment, climate, pollution.*

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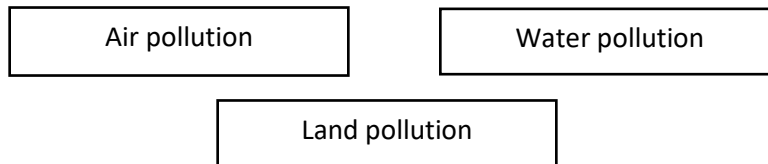
### INTRODUCTION

The development of environmental jurisprudence in India may appear the same as in other common law countries. Yet, a closer analysis shows that India has been introducing rules, acts, and regulations to meet its climate goals. India which is famously called “cultural heritage”, is facing a tough climate crisis in recent times. The main aim of this thesis is to bring out the

distinctive nature of Indian Environmental Laws by analysing the recent climate crisis goals declared at Glasgow Climate Summit.

### WHAT IS ENVIRONMENTAL POLLUTION?

Pollution is the introduction of harmful substances (contaminants) into the ecosystem. Environmental pollution is one of the serious threats to humanity. It is defined as “the contamination of the atmosphere by discharge of harmful substance to such an extent that ecological processes are affected. It is triggered by harmful materials such as toxic gaseous intoxicants and particulate matter into the atmosphere. It is mainly of three types:



### WHAT IS ENVIRONMENTAL LAW?

Environment law as an act aims to preserve the environment. It has been shaped by the principles defined in the Rio Declaration of 1992,<sup>1</sup> which is supported by the World Commission on Environment and Development.<sup>2</sup> In India, Environmental Law is mainly ruled by the Environment Protection Act of 1986.<sup>3</sup> The act is administered by Central Pollution Control Board. The decision of this act was taken at United Nation Conference held on Human Environment held in 1972. It was authorized under Article 253 of the Indian Constitution.<sup>4</sup>

### POLLUTER’S PAY PRINCIPLE

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<sup>1</sup> Rio Declaration 1992

<sup>2</sup> *Ibid*

<sup>3</sup> Environment (Protection) Act 1986

<sup>4</sup> Constitution of India, art 253

The Polluter-Pays Principle (1972)<sup>5</sup> was widely accepted as an economic principle to assign the expenses and damages of pollution control by Organisation for Economic Co-operation and Development (OECD).<sup>6</sup> Further, it was accepted under the Rio Declaration (Principle 16)<sup>7</sup> Rio Declaration, that the person who pollutes will bear the cost of the pollution caused.<sup>8</sup>

## NUISANCE AS VIOLATION OF ENVIRONMENTAL RIGHTS

The core roots of environmental law are found in common law and its principles of the nuisance. Nuisance is intrusion with the personal use and enjoyment of any person on his property rights in an unlawful manner. Nuisance is of two types:

- 1) **Public Nuisance** - Public Nuisance occurs when any conduct or act that interferes with the rights of many individuals or affects the community at large or affects the rights of the public. Under Section 268 of IPC-<sup>9</sup> A person is liable for public nuisance when the done act or the illegal omission causes danger, injury, or annoyance to the public at large.<sup>10</sup> Public Nuisance by disturbing the environment was defined in *Ram Lal vs Mustafabad Oil and Cotton Ginning (1968)*,<sup>11</sup> in which it was proclaimed that crossing of noise level beyond certain levels or certain brink value should be considered as a Public Nuisance.<sup>12</sup>
- 2) **Private Nuisance** - An action that is unreasonable and unnecessary, which causes inconvenience to the right of an individual. To determine liability under private nuisance can be decided by two factors- a) Foreseeability: Whether the act was foreseeable or could be prevented. b) Reasonableness: If the act was reasonable or sound. The act of private nuisance in the environment was led in *Overseas Tankship*

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<sup>5</sup> Law Academic, 'What is Polluter Pays Principle under The Environment Law' ([Lawnn.com](http://Lawnn.com), 8 January 2012) <[What is the Polluter Pays Principle Under The Environmental Law? \(lawnn.com\)](http://What is the Polluter Pays Principle Under The Environmental Law? (lawnn.com))> accessed 02 November 2021

<sup>6</sup> *Ibid*

<sup>7</sup> Rio Declaration 1992, principle 16

<sup>8</sup> *Ibid*

<sup>9</sup> India Penal Code 1860, s 268

<sup>10</sup> *Ibid*

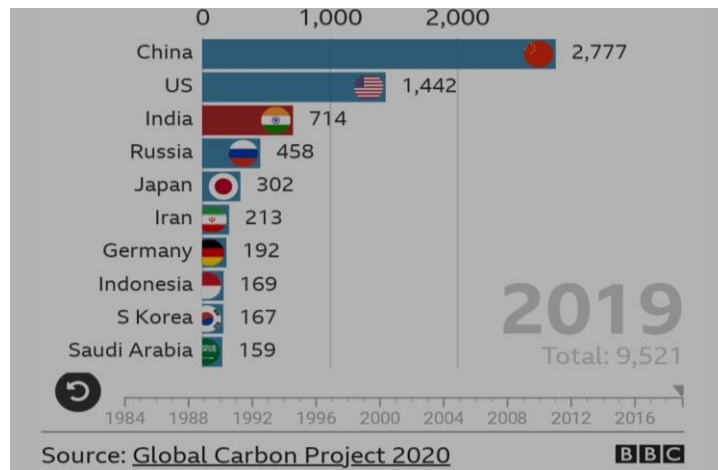
<sup>11</sup> *Ram Lal v Mustafabad Oil & Cotton Ginning (1968)* [1968] AIR P H 399

<sup>12</sup> *Ibid*

(U.K.) Ltd. vs Miller S. S. Co. Pty. (1966),<sup>13</sup> in which oil was split from the ships of the owner which led to damages to the plaintiff. It happened due to the carelessness of the owners as the act was reasonably foreseeable. The defendants were held liable for the damages.<sup>14</sup>

## THE RECENT CLIMATE CRISIS GOALS OF INDIA

In the recent Glasgow Climate Summit, India has set a target of net-zero emissions by 2070.<sup>15</sup> India, which is the world's third largest producer of carbon, after China and the United States, is highly dependent on coal and oil and its emissions are on the upward slope.<sup>16</sup>



## LEGISLATIVE DEVELOPMENT IN LAWS AFTER BHOPAL GAS TRAGEDY

Bhopal Gas Tragedy was a very life-threatening disaster of 1984, in which fatal Methyl Isocyanate Gas (MIC), escaped out from the Union Carbide factory making it the world's worst industrial disaster. The case was called Union Carbide Corporation vs Union of India,<sup>17</sup> in which UCC (Union Carbide Corporation) tried to shift the matter to UCIL (Union Carbide

<sup>13</sup> *Overseas Tankship (UK) Ltd v Miller S S Co Pty* (1966) [1966] 2 All ER 709

<sup>14</sup> *Ibid*

<sup>15</sup> BBC Reality Check, 'Climate change: Can India meet its targets?' (BBC, 2 November, 2021)

<<https://www.bbc.com/news/world-asia-india-58922398>> accessed 03 November 2021

<sup>16</sup> *Ibid*

<sup>17</sup> *Union Carbide Corporation v Union of India* [1989] SCC (2) 540

India Ltd.). The resolution was finally passed by the Supreme Court of India held UCC liable and it was made liable to pay \$470 million to the Government of India.<sup>18</sup>

After this tragedy, the Parliament passed The Environment Protection Act (E.P.A), 1986 under Article 253 of the Constitution. The act aims to strengthen the regulation on pollution control and preservation of the environment by the toxic and harmful industries. Other rules were passed as “Hazardous Waste (Management and Handling) Rules,1989,<sup>19</sup> under provisions of Section 25 of EPA,<sup>20</sup> 1986. It dealt with the management of 18 types of wastes that are produced by industries. It was notified, one who is operating the facility and producing waste is solely responsible for the handling and management of the waste and is liable for the damages occurring out of it.<sup>21</sup>

#### **THE NATIONAL GREEN TRIBUNAL ACT, 2010**

The Supreme Court led the foundation of the courts for environmental issues, passing remarks in the renowned case of MC Mehta vs Union of India.<sup>22</sup> The National Green Tribunal Act, 2010 (No. 19 of 2019) has been enacted and passed alongside an objective to set up a National Green Tribunal (NGT), for the efficacious and speedy disposal of cases.<sup>23</sup> The act received the consent of the President of India on 2 June 2010 and came into force on 18 October 2010. The act envisages establishing NGT to deal with provisions related to air, water, and land pollution, the Environment Protection Act,1986, the Forest Conservation Act, and the Biodiversity act.<sup>24</sup>

#### **THE WATER (PREVENTION AND CONTROL OF POLLUTION) ACT, 1974**

The Water Prevention and Control of Pollution Act, 1974 (Water Act)<sup>25</sup> has been passed to prevent and control Water Pollution. It further provides to establish boards to carry out the aforesaid principles set under the act. The act was first amended in 1988. The act was last

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<sup>18</sup> *Ibid*

<sup>19</sup> Hazardous Waste (Management and Handling) Rules 1989

<sup>20</sup> Environmental Protection Act 1986, s 25

<sup>21</sup> *Ibid*

<sup>22</sup> *MC Mehta v Union of India* [1987] AIR SC 965

<sup>23</sup> *Ibid*

<sup>24</sup> National Green Tribunal Act 2010

<sup>25</sup> Water (Prevention and Control of Pollution) Act 1974

amended in 2003. It was enacted in 1977 to levy cess on water consumed by the industries. Various state and national control boards were set to into prevention and administration of water pollution.<sup>26</sup>

## CONSTITUTIONAL PROVISIONS OF ENVIRONMENT LAW

**Article 48A<sup>27</sup>** - It was enacted for the protection and safeguarding of the forest areas and wildlife (flora and fauna). The article comes under the Directive Principles of State Policy.<sup>28</sup> Article 48A urges duty on each citizen of the country to protect and improve the environment.

**Article 51A (g)** - Article 51A (g)<sup>29</sup> inflicts duty on every citizen of India to protect and save the natural environment. The natural environment includes all the ecosystems such as lakes, rivers, forests, and wildlife. It is the same as Article 48A, the only difference it possesses is that it makes protection and safeguarding of the environment the legal duty of a citizen whereas, in Article 48A, it becomes the duty of states to conserve the environment.

**Article 253** - The article gives powers to the Parliament of India to make laws to implement any convention, treaty, or agreement signed by the country. Under this article, the Parliament has enacted various acts and legislations to protect and save the environment, some of them are- the Water Act 1974, Air Act 1981, and the Environment Protection Act, 1984.<sup>30</sup>

## ENVIRONMENT ISSUES IN INDIA

The entire South Asian countries are facing the threat of climate change. South Asia is home to the world's most polluted countries: India, Pakistan, Bangladesh, and Afghanistan. There are major changes in average weather conditions of India and majorly between 1947 to 1995, it has been worsened. According to the data collected by the World Bank Group, India has made progress in addressing the environmental issue, but there is a long way to address all the issues, which it faces today.

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<sup>26</sup> *Ibid*

<sup>27</sup> Constitution of India, art 48A

<sup>28</sup> *Ibid*

<sup>29</sup> Constitution of India, art 51A(g)

<sup>30</sup> *Ibid*

**Air Quality of Indian Cities** are deteriorating day by day and it is even worse than in China. The people from rural areas, and living in **poverty**, still rely on biomass for cooking. Almost two-thirds of the Indian population, are threatened by the noxious gases it produces, causing severe health issues and increasing child mortality. **Water Pollution** is also another big threat to India. Untreated sewage is directly disposed of in ponds, lakes, and rivers. This results in the consumption of contaminated water by the people of the country and further this water is used for cultivation purposes which mitigates the risk of contamination of the food supply.<sup>31</sup> With the rapid development and urbanisation, India faces major waste management issues: Almost 75% of the garbage and waste of India is disposed of without being processed.<sup>32</sup>

## ROLE OF JUDICIAL ACTIVISM

In the case of Environment litigations, “Judicial Activism” signifies the role of the judiciary in preserving appropriate remedies for the environment.<sup>33</sup> Justice V.R. Krishna Iyer held in the case of *Ratlam Municipality vs Vardhichand*,<sup>34</sup> that all the human rights are calling for the unpolluted and clean environment must be implemented irrespective of any financial constraints. A public nuisance is a threat to the social justice component of the law. The position of the Indian Judiciary in the formation of various litigation on the environment can be understood by landmark cases.

- *Municipal Council, Ratlam vs Shri Vardichand and Ors. (1980)*<sup>35</sup>

Until this case, there was no such involvement of the judiciary in making legislation considering environmental laws in India. So, it can be considered as the initial stage of judicial involvement in the making of environmental legislation. In this case, the municipality of Ratlam was instructed by Sub-divisional Magistrate to draft a plan for an improper drainage facility. It was held that shortage of funds is no excuse against the duty towards the public.

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<sup>31</sup> *Ibid*

<sup>32</sup> European Parliament Research Service, ‘India: Environment Issues’ (2019)

<[https://www.europarl.europa.eu/RegData/etudes/BRIE/2019/637920/EPRS\\_BRI\(2019\)637920\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2019/637920/EPRS_BRI(2019)637920_EN.pdf)>  
assessed 03 November 2021

<sup>33</sup> *Ibid*

<sup>34</sup> *Ratlam Municipality v Vardhichand* [1980] SC 1622

<sup>35</sup> *Ibid*

- *Rural Litigation and Entitlement Kendra vs State of Uttar Pradesh and Ors. (1985)*<sup>36</sup>

There was a sudden increase in mining in the Doon Valley, which led to various negative effects such as deforestation, loss of agricultural land, etc., which destroyed the fertility of the land and degraded the water level. The Supreme Court of India directed the closure of all the mines.<sup>37</sup> It was held that it violated the fundamental rights of the people which are promised under Article 21 of the Constitution.

- *M.C. Mehta vs Union of India, 1986 (Shriram Fertilizer Case) (Oleum Gas Leak Case)*<sup>38</sup>

A writ petition was filed under Article 32 of the Indian Constitution. There was a huge leakage of Oleum Gas occurred in Shriram Food and Fertilizer Limited, which severely affected the people living around. The 3-judge bench was set to deliver the judgement, it looked into the facts that the companies indulging in hazardous activities have a high possibility of environmental deterioration so the court referred to the absolute liability principle. It was held that the Shriram Food and Fertilizer limited was liable to pay 20lakh as damages.<sup>39</sup>

- *Indian Council for Enviro-legal Action vs Union of India (Polluter Pays Principle)*<sup>40</sup>

In this case, many unlicensed companies were creating dangerous wastes in the soil, which was affecting nearby areas. It was held that once a hazardous activity is carried out, the person carrying out such activity is liable to pay for the loss caused even though proper or reasonable care was taken while doing the activity. **The Polluter Pays Principle** was first time recognised in this case, which says polluters should not only pay for the damages caused but also for the cost incurred in the restoration of the environment.<sup>41</sup>

## SUGGESTIONS

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<sup>36</sup> *Rural Litigation & Entitlement Kendra v State of Uttar Pradesh & Ors* [1985] SCR (3) 169

<sup>37</sup> *Ibid*

<sup>38</sup> *MC Mehta v Union of India* [1987] SCR (1) 819

<sup>39</sup> *Ibid*

<sup>40</sup> *Indian Council for Enviro-legal Action v Union of India* [1996] SCC (3) 212

<sup>41</sup> *Ibid*



According to my suggestion, the judiciary should play a much more active role in addressing the enormous problems of Environment Pollution. The existing provisions and rules are not adequate to control this issue. For India to reach its climate goals, it is really important to regulate the worsening environmental conditions and apply stringent rules on the recusants.

1. Therefore, the judiciary has to play constructive rule and set out preceding ruling which sets awareness among all sections of the society.
2. Environment laws should be implemented with strict adherence to them so that there is the minimum release of toxic gases and waste.
3. Government should initiate public awareness programs related to the environment protection laws and the rights of people concerning the environment such as Article 48A, Article 253, etc.
4. The sentencing policy should be adopted along with fines or penalties.
5. Coordinated efforts should be taken among all the global states, private groups, organizations, and the public at large.

## CONCLUSION

This study concludes that the common rule is that the person can use his land or his property as he is willing to. However, this rule is subject to hindrance. The person should use his land or his property in a reasonable manner, such that it does not interfere with the right of any other individual to live in a clean environment under Article 21.<sup>42</sup> A nuisance arises out when a person unreasonably causes injury or annoyance to an individual or public at large. It has been proven by various courts judgements, that a person should continue his activity in a reasonable manner such that it doesn't cause social or private environmental harm. This research concluded a fine relationship between environmental degradation and public nuisance arising out of it. It identifies the responsibilities of the state towards the protection and conservation of the environment and describes how non-obeyance can make a state pay compensation for the losses.

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<sup>42</sup> Constitution of India, art 21