



## Green Collar Crimes & Indian Judiciary

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### **Abstract**

*Green-collar crime, which is an offence against the environment, is illegal. In the sense that the act is prohibited by national and international law, this phrase might relate to actual crime, or it can refer to amoral offence that may not be against the law. Green Collar Crimes are classified as part of the global organised criminal activities and are the fourth-largest category of organised crime worldwide. Green collar crimes vary widely in their interpretation; there is no single term for them. According to the United Nations Crime and Justice Research Centre, illegal actions that are considered to be environmental crimes include smuggling of ozone-depleting compounds, illegal trade in hazardous waste, illegal, unreported fishing, and illegal logging and commerce.*

*Many people agree that one of the most lucrative categories of international criminal activity is environmental crime. While environmental crimes are increasing, prevention efforts should also increase. Even effectively implemented criminal law seeks to discourage and typically forbid such actions. The existing rules have not been successful in reducing the rate of environmental crime for a number of reasons. Those tasked with applying these rules encounter a wide range of issues. The authorities' dual authority to serve as both counsellors and executors of these laws is subject to a number of flaws. Also, there are difficulties that the police and prosecutors encounter when examining the competence and accountability of the accused. These worries demand answers about the root causes of these important problems.*

*In this article author dealing with Indian Legal Framework on Environment and the role of Indian Judiciary on Environmental issues.*

**Key words: Environmental Protection, Types of Environmental Pollution, Judicial Response to Nature, Laws on Environment**

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## I. Introduction

*"For in the true nature of things, if we rightly consider, every green tree is far more glorious than if it were made of gold and silver." —Martin Luther King Jr.*

It is evident that environmental preservation, global warming, and climate change issues have gained prominence, both in India and other countries. In order to preserve the habitability of Earth and the survival of the human race, countries have started to recognise the need of environmental protection and have started to take action to secure it.

There are several facets to environmental policy. Despite the fact that courts have been crucial in preserving nature, policymaking is frequently complicated and information-heavy, necessitating experts and extensive research. Thus, legislators are in the greatest position to address this complex problem. In this article, we'll look at India's environmental protection framework's legal system.

### **Water (Prevention and Control of Pollution) Act 1974**

This was the first Indian environment law. It is concerned with ensuring that water bodies like lakes and rivers are not polluted. Chapter I of the Act includes definitions and this Act defines pollution as 'contamination of water or such alteration of the physical, chemical or biological properties of water or any effluent discharge that is likely to have harmful effects on water.

Chapter II and III require the constitution of Central and State Pollution Control Boards, as well as Joint Boards. Chapter IV lays down the primary responsibilities of these Boards: Creation of awareness, advising their respective governments, and enforce regulations. The State Pollution Control Board has the power to collect information and samples of effluents, grant or deny consent to any industry, association, or system, and enter and inspect any premises for any violations.

The Water Act was amended in 1988. Before the amendment, courts could only recognize actions brought by the Board. The Amendment Act now modified Section 49 and allowed citizens to bring actions under the Water Act. Further, the State Board must also make disclosures to citizens unless they violate "public interest".

### **Air (Prevention and Control of Pollution) Act 1981**

The Air Act has the object of prevention and control of air pollution. 'Air pollution is the presence of any pollutant in the atmosphere. Importantly, the Central and State Boards instituted under the Water Act have also conferred the power to regulate air pollution by the Air Act. Under Chapter III, the Board has the goal of improving the 'quality of air' and controlling air pollution. Section 19 allows the State Government to declare any area as an 'air pollution control area'. The use of fuel is prohibited in such an area. Further, Section 20 enables the State Government to give instructions to ensure standards of vehicular emission.

Under Section 21, all industrial plants require the consent of the State Board. The Board can further mandate certain conditions that have to be fulfilled. Lastly, in the same manner, as the Water Act, State Board officials have the power of entry and inspection, and sample collection under the Air Act as well.

Under the Act, the Board also has the power to issue directions, which the Government is bound to follow. These can be closure and prohibition of the industry, operation, or process, and also stoppage of electricity, water, and other services.

### **Environment (Protection) Act 1986**

The Environment Protection Act can be considered the seminal legislation on environmental protection in India. The immediate catalyst for the Act was the Bhopal Gas tragedy that occurred in 1984, which remains one of the darkest days in Indian history. This Act was intended to be a comprehensive Act that would cover all aspects of environmental protection since earlier Acts dealt with different aspects of environmental protection in isolation. The Act has an overriding effect, and under Section 3, the Central Government can take any measures it deems necessary for improving the environment and reducing pollution. Section 5 allows the government to give directions, a power similar to the one State Governments enjoy under the Air Act. Further, Section 6 empowers the Central Government to make rules to protect the environment.

A bare reading of the provisions demonstrates that the power conferred to the Central Government under this Act mirrors that of the State Governments under the Water and Air Acts. The EPA consolidates all the above provisions and grants the government the power to take any action in the interests of environmental protection.

### **Wildlife (Protection) Act 1927**

The Wildlife Protection Act was enacted with the intent of ensuring that wildlife can be properly protected, and to that end creates various authorities like the National Board for Wild Life, Wild Life Wardens, and the Central Zoo Authority, among others. The Act also allows the creation of Sanctuaries and National Parks and is a key tool in protecting wildlife. Its objective was to control poaching and smuggling. It was amended in 2003 to enhance the penalties associated with offenses.

### **Forest (Conservation) Act 1980**

The Forest Act was passed to prevent further deforestation and conserve the nation's forests. It establishes an Advisory Committee that can notify de-reservation of forests, give permission to use forest land for non-forest purposes, lease forest land, or order for clearance of any area for afforestation. This ensures the regulation of forest lands in an effective manner.

### **Public Liability Insurance Act 1991**

Section 7A of the Public Liability Insurance Act provides the government the authority to create an "Environmental Relief Fund", the funds of which can be used to provide relief to all parties who deserve relief under the scheme of Section 7. The Fund was established in 2008, and the central reason for the creation of such a Fund was the clamour for speedy compensation by the victims of the Bhopal Gas Tragedy.

### **Biological Diversity Act 2002**

The Biological Diversity Act was created with the intent of preserving the country's biodiversity. The salient feature of the Act is the creation of the National Biodiversity Authority. The Authority can grant approvals for those who intend to acquire biological knowledge or resources. There are also State Biodiversity Authorities with the power to restrict certain activities that hamper conservation. This ensures regulation that protects biodiversity resources<sup>1</sup>.

#### **The Hazardous Waste Management Regulations,**

Hazardous waste means any waste which, by reason of any of its physical, chemical, reactive, toxic, flammable, explosive or corrosive characteristics, causes danger or is likely to cause danger to health or environment, whether alone or when in contact with other wastes or substances.

There are several legislations that directly or indirectly deal with hazardous waste management. The relevant legislations are the Factories Act, 1948, the Public Liability Insurance Act, 1991, the National Environment Tribunal Act, 1995 and rules and notifications under the Environmental Act. Some of the rules dealing with hazardous waste management are discussed below:

- **Hazardous Wastes (Management, Handling and Transboundary) Rules, 2008**, brought out a guide for manufacture, storage and import of hazardous chemicals and for management of hazardous wastes.
- **Biomedical Waste (Management and Handling) Rules, 1998**, were formulated along parallel lines, for proper disposal, segregation, transport, etc, of infectious wastes.
- **Municipal Solid Wastes (Management and Handling) Rules, 2000**, aim at enabling municipalities to dispose municipal solid waste in a scientific manner.

In view of the short-comings and overlapping of some categories causing inconvenience in implementation of the Biomedical Waste (Management and Handling) Rules, 1998 as well as the Municipal Solid Wastes (Management and Handling) Rules, 2000, the Ministry of Environment, Forest and Climate Change has formulated the draft Bio-Medical Waste (Management & Handling) Rules, 2015 (Draft BMW Rules) and the draft Solid Waste Management Rules, 2015 (Draft SWM Rules) and sought comments on the draft Rules.

The Draft BMW Rules are to replace the Biomedical Waste (Management and Handling) Rules, 1998, and the Draft SWM Rules are to replace the Municipal Solid Waste (Management and Handling) Rules, 2000. The objective of the Draft BMW Rules is to enable the prescribed authorities to implement the rules more effectively, thereby, reducing the bio- medical waste generation and also for its proper treatment and disposal and to ensure environmentally sound management of these wastes, and the Draft SWM Rules aim at dealing with the management of solid waste including its segregation at source, transportation of waste, treatment and final disposal.

- **E - Waste (Management and Handling) Rules, 2011** have been notified on May 1, 2011 and came into effect from May 1, 2012, with primary objective to reduce the use of hazardous substances in electrical and electronic equipment by specifying threshold for use of hazardous material and to channelize the e-waste generated in the country for environmentally sound recycling. The Rules apply to every producer, consumer or

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<sup>1</sup><https://knowlaw.in/index.php/2021/03/09/legislative-framework-for-regulatory-mechanism-of-environmental-protection/>

bulk consumer, collection centre, dismantler and recycler of e-waste involved in the manufacture, sale, purchase and processing of electrical and electronic equipment or components as detailed in the Rules.

- **Batteries (Management & Handling) Rules, 2001** deal with the proper and effective management and handling of lead acid batteries waste. The Act requires all manufacturers, assemblers, re-conditioners, importers, dealers, auctioneers, bulk consumers, consumers, involved in manufacture, processing, sale, purchase and use of batteries or components thereof, to comply with the provisions of Batteries (Management & Handling) Rules, 2001<sup>2</sup>.

### **National Green Tribunal Act**

The NGT was established on October 18, 2010 under the National Green Tribunal Act 2010, passed by the Central Government. The stated objective of the Central Government was to provide a specialized forum for effective and speedy disposal of cases pertaining to environment protection, conservation of forests and for seeking compensation for damages caused to people or property due to violation of environmental laws or conditions specified while granting permissions.

### **Structure**

Following the enactment of the said law, the Principal Bench of the NGT has been established in the National Capital – New Delhi, with regional benches in Pune (Western Zone Bench), Bhopal (Central Zone Bench), Chennai (Southern Bench) and Kolkata (Eastern Bench). Each Bench has a specified geographical jurisdiction covering several States in a region. There is also a mechanism for circuit benches. For example, the Southern Zone bench, which is based in Chennai, can decide to have sittings in other places like Bangalore or Hyderabad. specifying jurisdiction of each bench. Provided below is a link to all NGT zonal benches, addresses & contact details.

The Chairperson of the NGT is a retired Judge of the Supreme Court, Head Quartered in Delhi. Other Judicial members are retired Judges of High Courts. Each bench of the NGT will comprise of at least one Judicial Member and one Expert Member. Expert members should have a professional qualification and a minimum of 15 years' experience in the field of environment/forest conservation and related subjects.

### **Powers**

The NGT has the power to hear all civil cases relating to environmental issues and questions that are linked to the implementation of laws listed in Schedule I of the NGT Act. These include the following:

1. The Water (Prevention and Control of Pollution) Act, 1974;
2. The Water (Prevention and Control of Pollution) Cess Act, 1977;
3. The Forest (Conservation) Act, 1980;
4. The Air (Prevention and Control of Pollution) Act, 1981;
5. The Environment (Protection) Act, 1986;
6. The Public Liability Insurance Act, 1991;
7. The Biological Diversity Act, 2002.

This means that any violations pertaining only to these laws, or any order / decision taken by the Government under these laws can be challenged before the NGT. Importantly, the NGT has not been vested with powers to hear any matter relating to the Wildlife (Protection) Act, 1972, the Indian Forest Act, 1927 and various laws enacted by States relating to forests, tree preservation etc. Therefore, specific and substantial issues related to these laws cannot be raised before the NGT. You will have to approach the State High Court or the Supreme Court through a Writ Petition (PIL) or file an Original Suit before an appropriate Civil Judge of the taluk where the project that you intend to challenge is located.

### **Procedure for filing an application or Appeal**

The NGT follows a very simple procedure to file an application seeking compensation for environmental damage or an appeal against an order or decision of the Government. The official language of the NGT is English.

For every application / appeal where no claim for compensation is involved, a fee of Rs. 1000/- is to be paid. In case where compensation is being claimed, the fee will be one percent of the amount of compensation subject to a minimum of Rs. 1000/-.

A claim for Compensation can be made for:

1. Relief/compensation to the victims of pollution and other environmental damage including accidents involving hazardous substances;
2. Restitution of property damaged;

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<sup>2</sup><https://www.mondaq.com/india/waste-management/624836/environment-laws-in-india>

3. Restitution of the environment for such areas as determined by the NGT. No application for grant of any compensation or relief or restitution of property or environment shall be entertained unless it is made within a period of five years from the date on which the cause for such compensation or relief first arose.

### **Principles of Justice adopted by NGT**

The NGT is not bound by the procedure laid down under the Code of Civil Procedure, 1908, but shall be guided by principles of natural justice. Further, NGT is also not bound by the rules of evidence as enshrined in the Indian Evidence Act, 1872. Thus, it will be relatively easier (as opposed to approaching a court) for conservation groups to present facts and issues before the NGT, including pointing out technical flaws in a project, or proposing alternatives that could minimize environmental damage but which have not been considered.

While passing Orders/decisions/awards, the NGT will apply the principles of sustainable development, the precautionary principle and the polluter pays principles. However, it must be noted that if the NGT holds that a claim is false, it can impose costs including lost benefits due to any interim injunction.

### **Review and Appeal**

Under Rule 22 of the NGT Rules, there is a provision for seeking a Review of a decision or Order of the NGT. If this fails, an NGT Order can be challenged before the Supreme Court within ninety days.<sup>3</sup>

## **LANDMARK JUDGEMENTS ON ENVIRONMENTAL PROTECTION IN INDIA**

### **Public Liability and Public Nuisance:**

**M.C. Mehta and Anr. Etc vs. Union Of India and Ors.**<sup>4</sup> explains the theory of Public Liability. This case is also known as Oleum Leakage Case. It is a landmark judgment in which the principle of Absolute Liability was put down by the Supreme Court of India. The Court believed that the support for bringing out any dangerous industry very close to the human occupancy could not be given and the industry was relocated.

The immediate case developed the **Deep Pocket Principle**. This judgment conducted the Parliament to add a new chapter to the Factory Act, 1948. The Public Liability Act was enacted and the policy for the Abatement of Pollution Control was also installed.

When the Directive Principles of State Policy has clear legal definitions then the Court will not allow Municipal Government to make fun of the Statutes by resting idly. It was determined by the Supreme Court in the **Municipal Corporation, Ratlam vs. Vardhichand**<sup>5</sup>. The case of lack of capital will be weak alibi when people in pain cry for justice. The office in charge and even the selected delegates will have to face punishment if they infringe the constitutional and other statutory directives.

### **Concept of Sustainable Development**

The Bench of Justices PN Bhagwati and Ranganath Mishra in Rural Litigation and Entitlement Kendra, Dehradun vs. State of Uttar Pradesh<sup>6</sup> presented the concept of **Sustainable Development**. An NGO described RLEK filed a case against limestone quarrying in the valley in 1987. It was declared that the hard assets of humanity are not to be consumed in one period. The natural resources should be practised with necessary consideration and attention so that environment and climate may not be interested in any severe way.

Environmental Impact Assessment. Justice Jeevan Reddy in the landmark judgment of **Indian Council for Enviro-Legal Action vs. Union of India**<sup>7</sup> believed that the financial costs of checking or mitigating damage produced by pollution should lie with the hazards which cause the pollution by choosing the **Polluter Pays Principle**.

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<sup>3</sup><https://www.conservationindia.org/resources/ngt>

<sup>4</sup>Etc 1986 SCR (1) 312

<sup>5</sup>AIR 1980 SC 1622

<sup>6</sup>AIR 1987 SC 2187

<sup>7</sup>AIR 1999 SC 1502

The Court set a time limit for the bordering states to express coastal management plans and prevented industrial or construction activity within 500 metres of the High Tide Line.

#### **Water Pollution**

The writ appeal filed by the activist advocate M.C. Mehta in the Supreme Court highlighted the abuse of the Ganga River by the dangerous industries located on its banks. Justice ES Venkataramiah gave a famous judgement in **M.C. Mehta vs. Union of India**<sup>8</sup> commanding the closure of a number of poisoning tanneries near Kanpur. In this judgment, it was mentioned that just like an industry which cannot pay minimum wages to its workers cannot be permitted to exist, a tannery which cannot set up a central treatment plant cannot be allowed to proceed to be in continuation.

#### **Air Pollution**

The pride of India and one of the miracles of the world i.e., Taj Mahal, was a challenging threat due to high toxic radiations from Mathura Refineries, Iron Foundries, Glass and other chemical industries. The acid rain was a dangerous threat to the Taj Mahal 255 other historic monuments within the Taj Trapezium. The Apex Court in **M.C. Mehta vs. Union of India**<sup>9</sup> presented its historic judgment in 1996 giving various regulations including preventing the use of coal and cake and directing the industries to Compressed Natural Gas (CNG).

#### **Environmental Awareness and Education**

The Supreme Court in **M.C. Mehta vs. Union of India**<sup>10</sup> ordered the Cinema theatres all over the country to show two slides free of cost on the environment in each show. Their permits will be eliminated if they fail to do so. The Television network in the country will give 5 to 7 minutes to televise programmes on environment aside from giving a general weekly programme on the environment.

The environment has shifted a mandatory subject up to 12th standard from academic session 1992 and University Grants Commission will also include this subject in higher classes in different Universities.

#### **Constitution and Environment:**

The 42nd Amendment to the Constitution of India appended Article 48A and 51A (g) which originates under the Directive Principle of State Policy and the Fundamental Duties respectively.

The Supreme Court of India in **Sachidanand Pandey v. State of West Bengal**<sup>11</sup> declared that the Court is obliged to carry in mind the before said articles whenever a case linked to Environmental difficulty is brought to the Court. The Article 48A declares: The State shall Endeavour to protect and improve the environment and to safeguard the forest and wildlife of the country.

The Article 51A(g) commands a duty upon every citizen of India to protect and enhance the natural environment and presents right to come before the Court for relevant relief.

The Apex Court in **Deodar Rao v. S.O. Municipal Corporation**<sup>12</sup> believed that the environmental pollution and destruction which is deliberately destroying and poisoning the environment should also be considered as amounting to a violation of Article 21 of the Indian Constitution<sup>13</sup>.

#### **Animal Welfare**

- The Hon'ble Supreme Court in prohibited Jallikattu and other animal races and fights. It was observed that the Bulls cannot be performing animals in the case of "Animal Welfare Board of India vs. A. Nagaraj and Ors. (2014) 7 SCC 547".
- The court alluded to the section 3 and section 11 of the Prevention of Cruelty to Animals Act, 1960 and declared that animal fights incited by humans are illegal, even those carried out under the guise of tradition and culture. The Court listed various recommendations and overhauled the penalties and punishment in the Prevention of Cruelty to Animals Act, 1960 to function effectively.<sup>14</sup>

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<sup>8</sup>AIR 1988 SCR (2) 538

<sup>9</sup>Taj Trapezium Case AIR 1987

<sup>10</sup>WP 860/1991

<sup>11</sup>AIR 1987 SC 1109

<sup>12</sup>AIR 1987 AP 171

<sup>13</sup><https://www.legalserviceindia.com/legal/article-3922-most-important-environmental-law-judgments-in-india.html>

<sup>14</sup><https://blog.ipleaders.in/environment-law-judgment/>

### **Pahwa Plastics**

In June 2021, the National Green Tribunal (NGT) held that industrial units that manufacture synthetic organic chemicals – specifically, formaldehyde in the state of Haryana – were required by law to obtain environmental clearance from the Union environment ministry before commencing operations. The units were also required to prepare an environment impact assessment report and conduct a public hearing before the approval is granted (or not).

In the Pahwa Plastics case, the court categorically held that “post facto approval” is permissible under the law. A plain reading of the court’s conclusion shows that its main emphasis was on the industry’s “8,000 employees” and “huge annual turnover”, that it contributes to the “economy of the country” and provides “livelihoods”.

Further, a unit not obtaining prior approval as required under the law amounts to a ‘technical irregularity’ – but according to the court, it’s a ‘technical irregularity’ even if the unit pollutes the environment. This conclusion is bound to have serious consequences on the environmental rule of law as well as on the right to life of the citizens, guaranteed under Article 21 of the Constitution.

Pahwa Plastics is also bound to have a ripple effect given the fact that, to date, courts haven’t addressed violations of environmental law as the straightforward violation of statutory laws but as an infringement of the constitutional right to clean air and water and balanced ecosystems.

This isn’t the first time the court legalised “post facto approvals”. Pahwa Plastics itself draws from the Supreme Court’s judgement in *Electrosteels Steel Ltd. of 2021*, which was also authored by Justice Banerjee<sup>15</sup>

## **II. CONCLUSION:**

The "polluter pays" and "public trust theory" are only a few examples of how India's courts have given environmental legislation new meaning and substance. More recent ones, such the "species best-interest standard," ecocentrism, and the environmental rule of law, have also been incorporated into national legislation.

The Supreme Court's decisions in particular are cited by courts all over the world for their audacious and visionary approach. In general, India serves as a brilliant example of how a country with 1.3 billion people, millions of whom live below the poverty line, is yet able to prioritise environmental rule of law and conserve its ecological resources.

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<sup>15</sup><https://thewire.in/environment/supreme-court-environmental-law-pahwa-plastics>