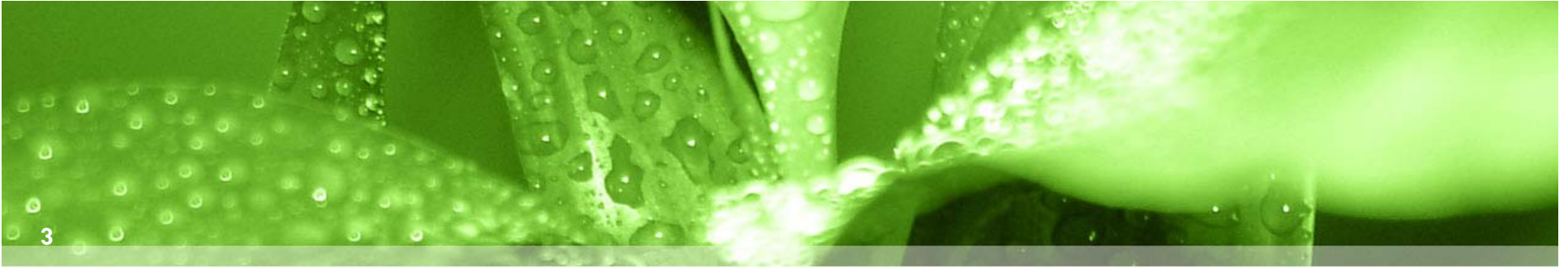


**Environmental Policy In India  
and the Role of Judiciary  
in Imparting Environmental Justice**

## ■ Stockholm Conference, 1972

- “Are not poverty and need the greatest polluters?... How can we speak to those who live in villages and slums about keeping the oceans, the rivers and the air clean when their own lives are contaminated at the source?”
- Smt. Indira Gandhi





## □ Bhopal gas tragedy

- *“Social transformation occurs only when thinking humanity remains capable of suffering and the suffering humanity begins to think.”*



# *Environmental Policy In India*

## **During the British Reign in India:**

- **Shore Nuisance (Bombay and Kolaba) Act, 1853**
- **The Indian Penal Code, 1860**
- **The Indian Easements Act, 1882**
- **The Fisheries Act, 1897**
- **The Factories Act, 1897**
- **The Bengal Smoke Nuisance Act, 1905**
- **The Bombay Smoke Nuisance Act, 1912**
- **The Elephant's Preservation Act, 1879**
- **Wild Birds and Animals Protection Act, 1912**

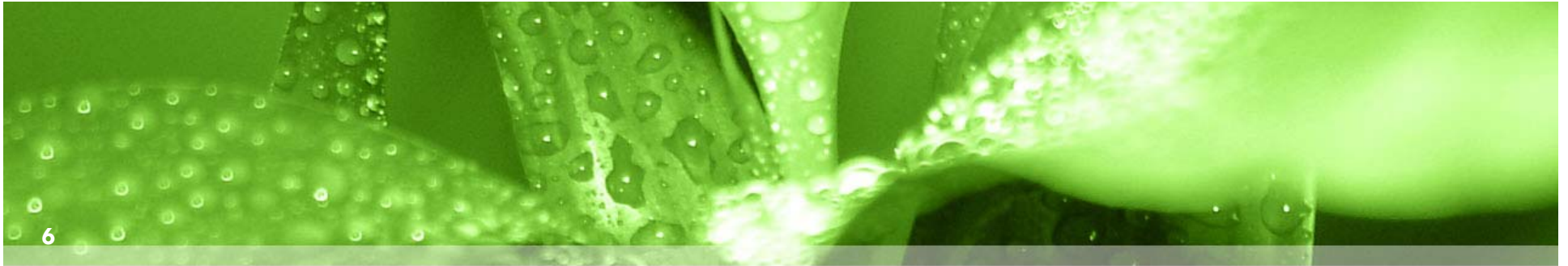


# *Environmental Policy In India*

## **Modern India**

➤ **National Council for Environmental Policy and Planning was set up in 1972 which was later evolved into Ministry of Environment and Forests (MoEF) in 1985.**

➤ **MoEF and the pollution control boards (CPCB i.e. Central Pollution Control Board and SPCBs i.e. State Pollution Control Boards) together form the regulatory and administrative core of the sector.**



## ***Environmental Policy In India***

- **The Policy Statement for Abatement of Pollution and the National Conservation Strategy and Policy Statement on Environment and Development were brought out by the MoEF in 1992.**
- **The EAP (Environmental Action Programme) was formulated in 1993 with the objective of improving environmental services and integrating environmental considerations into development programmes.**



# *Environmental Policy In India*

## **National Environment Policy, 2006**

- **It the first initiative in strategy-formulation for environmental protection in a comprehensive manner.**
- **It undertakes a diagnosis of the causative factors of land degradation with a view to flagging the remedial measures required in this direction.**
- **It recognizes that the relevant fiscal, tariffs and sectoral policies need to take explicit account of their unintentional impacts on land degradation.**

## *Constitutional Framework*

- **Article 21 - Fundamental Rights**
- **Article 48A - Directive Principles of State Policy**
- **Article 51A(g) - Fundamental Duties**



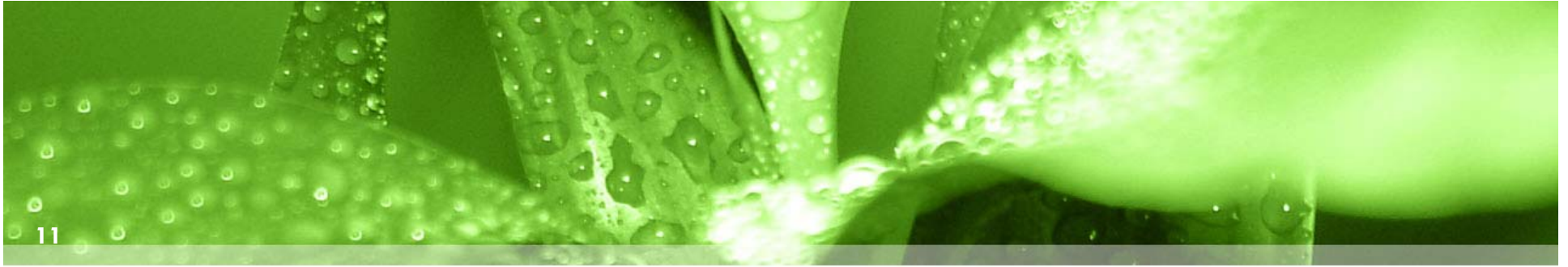


# *Legislative Framework*

- *Water (Prevention and Control of Pollution) Act, 1974*
- *Water (Prevention and Control of Pollution) Cess Act, 1977*
- *Air (Prevention and Control of Pollution) Act, 1981*
- *Atomic Energy Act of 1982*
- *Motor Vehicles Act ,1988*
- *The Wildlife (Protection) Act, 1972*
- *The Forest (Conservation) Act, 1980*
- *Environment (Protection) Act, 1986 (EPA)*
- *The National Environment Appellate Authority Act, 1997*
- *Public Liability Insurance Act (PLIA), 1991*
- *National Environment Tribunal Act, 1995*

## *Environment Impact Assessment (EIA)*

There are two types of EIA models- the statutory model which makes the assessment of impact compulsory under an enacted law, or a delegated legislation, and the administrative model under which an administration exercises its discretion to find out whether an impact study is necessary. Till 1992, India was following the administrative model of EIA.



## ***Environment Impact Assessment (EIA) (contd.)***

**On 27<sup>th</sup> January, 1994 a notification was issued dealing with mandatory EIA. The notification requires project proponent to submit an EIA report, and environment management plan, details of the public hearing and a project report to the impact assessment agency for clearance, further review by a committee of experts in certain cases. By the amendment in the year 1997, public hearing was made compulsory before impact assessment was finalized.**



## ***Role of Judiciary in Imparting Environmental Justice***

- **The Judiciary has come up with the “judge-driven implementation” of environmental administration in India.**
- **It has isolated specific environmental law principles upon interpretation of Indian Statutes and Constitution.**
- **Public Interest Litigations (PILs) which is the result of the relaxation of the *locus standi* rules by the judiciary, is the characteristic feature of the environmental litigation in India.**



## *Role of Judiciary in Imparting Environmental Justice*

- Disputes relating to environment are treated as cases related to violation of fundamental rights, rather than claims under law of torts.
- It has been held that the Supreme Court and the High Courts can be directly approached under Article 32 and Article 226 of the Constitution of India in case of matters relating to environment.

## ***Role of Judiciary in Imparting Environmental Justice (Contd.)***

- **The orders of the Supreme Court and the High Courts cover a wide range of areas including air, water, solid waste, hazardous wastes, forests, mining activities, and architectural treasures.**
- **Policy Statements of the government, which otherwise are not enforceable in Courts, have been used as aids by the Judges for interpreting environmental statutes and for spelling out obligations of the Government.**



## *Doctrines Evolved by Courts:*

### **Public Trust Doctrine:**

- **M.C.Mehta v. Kamal Nath, (1996) 1 SCC 38:** *In a case where an attempt was made to divert flow of a river for augmenting facilities at a motel, it was held that State and its instrumentalities as trustees have a duty to protect and preserve natural resources.*
- **MI Builders Pvt. Ltd. v. Radhey Shyam Sahu, AIR 1996 SC 2468:** *a city development authority was asked to dismantle an underground market built beneath a garden of historical importance.*

## *Doctrines Evolved by Courts:*

### **Precautionary Principle:**

➤ **Vellore Citizens Welfare Forum v. UOI, AIR 1996 SC 2718:** *The principle was adopted to check pollution of underground water caused by tanneries in Tamil Nadu.*

➤ **Narmada Bachao Andolan v. UOI, AIR 2000 SC 375:** *The Supreme Court held that the precautionary principle could not be applied to the decision for building a dam whose gains and losses were predictable and certain.*





## *Doctrines Evolved by Courts:*

### **Polluter Pays Principle:**

*The object of this principle is to make the polluter liable for the compensation to the victims as also for the cost of restoring of environmental degradation.*

➤ **Vellore Citizens Welfare Forum v. UOI, AIR 1996 SC 2718:** *It was held that the precautionary principle and the polluter pays principle are part of environmental law of the country.*

## *Doctrines Evolved by Courts:*

### **Absolute Liability Principle:**

- **M. C. Mehta v. UOI, AIR 1987 SC 1086 (Oleum Gas Leak Case):** *The principle was adopted to compensate victims of pollution caused by inherently dangerous industries.*
- **Narmada Bacho Andolan v. UOI, AIR 2000 SC 375:** *The Supreme Court held that the precautionary principle could not be applied to the decision for building a dam whose gains and losses were predictable and certain.*



## *Doctrines Evolved by Courts:*

### **Sustainable Development:**

➤ **M.C. Mehta v. UOI, AIR 1997 SC 734 (Taj Trapezium Case):** *while taking note of the disastrous effects that the emissions from the Mathura Oil Refinery had on the Taj Mahal, the Supreme Court applied the principle of sustainable development to the case, and apart from passing various directions, stepped in to execute and supervise the resultant actions.*

➤ **State of Himachal Pradesh v. Ganesh Wood Products, AIR 1996 SC 149,** *the Supreme Court invalidated forest based industry, recognizing the principle of inter-generational equity and sustainable development.*

## *Contribution of the Delhi High Court*

➤ In a PIL pending before the Delhi High Court challenging the development of the common wealth games site on the riverbed and floodplain of the Yamuna, a Bench of two Judges hearing the matter, personally visited the site recently to see as to how much of the riverbed and floodplain had been acquired to build the Games Village, so that an appropriate order could be passed in the case and the infrastructural needs could be balanced with the environmental concerns.

## ***Contribution of the Delhi High Court***

- **Directions have been passed by the High Court in various PILs for clearing the river Yamuna of all encroachments and for demolition of the slums on its banks.**
- **In *Enkay Plastics Pvt. Ltd. Vs. Union of India (UOI) and Ors.*, 2000(56)DRJ828, the High Court upheld the order of the Delhi Pollution Control Committee for closure of certain polluting industries, and held that the direction of close down the industry which is creating air pollution in residential areas.**



## ***Contribution of the Delhi High Court***

➤ **In the case of *Vimal Bhai v. UOI & Ors.*, (W.P.(C) 17682/2005, W.P.(C) 17683/2005, W.P.(C) 17684/2005 decided on 29.5.2005), the Union of India and all its concerned functionaries were directed to take requisite steps for clearing the proposals related to the appointment of the Chairman of the Appellate Authority and other Technical Members and reconstitute the Authority within 45 days, under the National Environment Appellate Authority Act, 1997.**



# Legislative Developments

## The National Green Tribunal Act, 2010

The Tribunal shall, while passing any order or decision or award, apply the principles of sustainable development, the precautionary principle and the polluter pays principle.

**THE ACTIVIST IS NOT THE  
MAN WHO SAYS THE RIVER  
IS DIRTY. THE ACTIVIST IS  
THE MAN WHO CLEANS UP  
THE RIVER**

**~ROSS PEROT**