



**THE TAMIL NADU  
Dr. AMBEDKAR LAW UNIVERSITY  
CHENNAI**



**STUDY MATERIAL  
L.L.B. (HONS). DEGREE COURSE  
THIRD YEAR**

**“ENVIRONMENTAL LAW”**

**WORK SUBMITTED TO  
THE DIRECTOR, SOEL**

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## **PREFACE**

Good human should be friend of all living things. Human race had forgotten justice to nature. Nature gives no rewards or punishments but always consequences are experienced. Past four decades attempts are on to stop damage to the natural environment. With increasing complexity in the environment, climate change and increasing global temperature the entire globe is trying to run with Sustainable Development. In this aspect Law plays a major role, this body of law has drawn inspiration.

The Syllabus for the subject is framed from basics of introduction to Environment, ecology, ecosystem, history of Environmental Jurisprudence. Also it covers wide range of national and international environmental legal regime concerning pollution control laws, Disaster, Resources conservation and Animal Welfare Laws. This facilitates students for easy understanding of the subject and also importance of the subject is increasing in present day. This study material helps students with an insight into the subject and the key topics dealt under it. Apart from this material there are numerous books, international articles relevant to the subject. To get more comprehensive idea of the subject the student is encouraged to read the international instruments, articles, legislative enactments and judicial pronouncements.

I wish to extend my grateful thanks for giving me such a wonderful opportunity of bringing this Environmental law course material to The Tamil Nadu Dr.Ambedkar Law University, Chennai.

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## **ENVIRONMENTAL LAW INCLUDING ANIMAL WELFARE LAWS**

**Objective:** The objective of the course is to make environmental law familiar to the students by understanding all dimensions of the subject. The contribution of Constitution and Constitutional Courts by recognizing the right to wholesome environment as a fundamental human right with the aid of Public Interest Litigation and principles environmental law are also explored. It is necessary to explore the laws enacted by the Union and State Governments by incorporating the international commitment under the various conventions and declarations. The Policies and Strategies of the Governments also focused

**UNIT - I : Introduction :**Introduction to Ecosystem - Environment and Environmental Law – Factors responsible for environmental Pollution – Socio and Economic Impacts of Environmental Pollution – History of environmental protection in India Constitutional Obligation on Environmental Protection – Civil Society and Environmental Management.

**UNIT - II: International Environmental Law** Fundamental Principles of Environmental Law - Role of United Nations – Multilateral Environmental Agreements - Stockholm Declaration on Human Environment, 1972 – United Nations Environment Programme – Nairobi Declaration, 1982 - Brundtland Report, 1987 - Rio Declaration on Environment and Development, 1992 – Agenda 21 – United Nations Commission on Sustainable Development – Climate Change Convention and Protocol – Convention On Biological Diversity - Johannesburg Summit on Sustainable Development 2002 – Rio +20.

**UNIT - III : Pollution Control Laws :**Water (Prevention and Control of Pollution) Act, 1974 – Air (Prevention and Control of Pollution) Act, 1981 – Environment (Protection) Act, 1981 – Power of Central Government to make environmental Rules – Rules relating to Management of Hazardous, Plastic Waste, Bio-Medical Waste, E-Waste, Municipal Solid Wastes and Batteries – Noise Pollution Rules, 2000 – Environmental Impact Assessment – Coastal Regulation Zone Notification – Disaster Management Act, 2005.

**UNIT - IV: Resource Conservation and Animal Welfare Laws :** Indian Forest Act, 1927 – Wildlife Protection Act, 1972 – Forest Conservation Act, 1980 – Biological Diversity Act, 2002 - Prevention of Cruelty to Animals Act, 1960 - Chennai Metropolitan Area Groundwater (Regulation) Act, 1987 – Rain Water Harvesting – Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 - Role of Local Bodies.

## **UNIT - V: Remedies for Environmental Pollution**

Common Law Remedies/Remedies under Law of Tort – Penal Remedies – Indian Penal Code and Code of Criminal Procedure – Remedies under Constitutional Law – Writs – Public Interest Litigation - Public Liability Insurance Act, 1991 – The National Green Tribunal Act, 2010.

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## UNIT I

### **Introduction**

#### ***(A)INTRODUCTION to Ecosystem; Environment and Ecology:***

We have forgotten how to be good guests, how to walk lightly on the earth as its other creatures do. –Barbara Ward

The above said words clearly shows that human's interaction towards nature is diminish in the past few decades. Environmental pollution, destruction, increase in sea level, failure of monsoon has seriously threatened human life and health. There has been a thrust on the protection of environment world over. The proper balance of ecosystem is the need of the hour. The only solution to tackle the existing problem is sustainable development. The object of environmental law is to preserve the flora and fauna, water, air and the entire planet. Unit I give basic understanding, awareness about the environment problem, the sustained effort put towards protecting and preserving environment.

#### ***(B)WHAT IS THE DIFFERENCE BETWEEN Ecology, Environment and Ecosystem?***

**Ecology:** Ecology- Etymology is oikos+ logy. Oikos means house or dwelling Ecology is the study of relationships and interactions of living organisms with other living organisms and its surrounding environment. Thus it is the study of house of an organism. Thus there are 3 things that we study in ecology-

1. living organisms
2. Relationship & interactions with other organisms.
3. Relationship & interactions with surrounding environment. It means how it responds to climate, soil, topography, water availability and atmosphere.

**Environment:** The etymology of Environment: *Environ* means *around*. It is a Latin term. It has two components biotic and abiotic. Biotic includes –relating to life, surrounding plant & animal communities and microorganisms. Abiotic includes- soil, sunlight, topography, water, atmosphere, nutrients (i.e) physical and chemical aspects of organisms. Environment could virtually include anything and everything.

Environment is difficult to define. The *Environment Protection Act 1986 section 2(a)* defines environment as Environment includes water, air, and land and the inter-relationship which exists among and between water, air and land, and human beings, other living creatures, plants, micro-organism and property”.

**Ecosystem:** Ecosystem is a functional unit. It includes environment (biotic+ abiotic) and ecology (how living organisms interact with each other and the environment). Thus Ecosystem= Ecology+ Environment. Under Biodiversity convention Ecosystem is means: *a dynamic complex of plant, animal and micro-organism communities and their non-living environment interacting as a functional unit.* Transformation of energy and biochemical cycling are best example.

**(C) Factors responsible for Environmental Problems and Pollution:** Human activities directly or indirectly affect the environment adversely. Domestic sewage, effluents from tanneries contains many harmful chemicals, stone crush, usage of automobile are few examples. Pollution means addition of undesirable material into the environment as a result of human activities. The agents which cause environmental pollution are called *pollutants*

*Factors of environmental pollution are:*The most striking reason of the environmental degradation and hence global environmental crisis is the fact deteriorating relationship between man arid environment because of rapid rate of exploitation of natural resources, technological development and industrial expansion. The rate of environmental change and resultant environmental degradation caused by human activities has been so fast and widespread. The impact of man on environment through his economic activities are varied and highly complex as the transformation or modification of one natural condition and process leads to a series of change in the biotic and abiotic components of the environment.

*Main Factors behind the environmental pollution and problems are:*

- (i) The increase in urbanization due to population pressure presents additional soil-erosion problems. The industrial runoff has also contributed a lot in polluting topsoil and regular disposal of waste effluent leaches to soil and degrades it not only making land barren but also pollutes groundwater.
- (ii) The increase in urbanization due to population pressure presents additional soil-erosion problems. The industrial runoff has also contributed a lot in polluting



topsoil and regular disposal of waste effluent leaches to soil and degrades it not only making land barren but also pollutes groundwater.

- (iii) Mineral exploitation practices and strip mining for minerals. gas and coal reserves lays waste thousands of acres of land each year, denuding the Earth and subjecting the mined area to widespread erosion problems. Soil erosion not only despoils the Earth for farming and other uses, but also increases the suspended-solids load of the waterway
- (iv) Excessive use of chemicals such as pesticides, insecticides and fertilizers
- (v) Polychlorinated biphenyls (PCBs) are completely man-made products common in manufacturing processes and equipment, including coolants, transformers, capacitors and motors.
- (vi) The accidental oil spills and leakage from cargo oil tankers, tanker trucks and pipelines pollute soil in the sense that the fertility status of the land becomes greatly compromised after an oil spill.
- (vii) Detergents are excessively used in industries and household as cleaning agents. The amount of disposed detergents in waste water is increasing day by day. This waste water when discharged in rivers or sea greatly affects aquatic life.
- (viii) Usage of heavy amount of fungicides
- (ix) Usage of pesticides, insecticides
- (x) Usage of CFC's released from refrigerators, air-conditioners, deodorants and insect repellents and cause severe damage to the Earth's environment. This gas has slowly damaged the atmosphere and depleted the ozone layer leading to global warming.
- (xi) Emission of different pollutants from automobile and smoke from burning wood, dung and cigarettes is also harmful to the environment causing a lot of damage to man and the atmosphere.
- (xii) Deforestation
- (xiii) Rapid industrial development
- (xiv) Urbanization
- (xv) Poverty contributes equally to both – population growth and environmental pollution. The poor usually have low life expectancy, high infant mortality, and higher incidence of disablement and higher consumption of natural resources in the form of food, fodder and fuel. Unhygienic and insanitary conditions are

another by-product of poverty affecting human health. Poverty reduces people's capacity to use resources in a sustainable manner; it intensifies pressure on the environment.”

***(D) Socio and Economic impacts of Environmental Pollution:***

1. The solution to tamp out carbon monoxide emissions from coal burning power plants was and still is to use radioactive power plants. While this does cut down on gas emissions significantly, there is **radioactive waste** which causes various cancers to bloom in major cities and small towns all around while destroying ecosystems entirely.
2. Global temperature has risen. This is causing rampant weather issues around the planet.
3. Heavy monetary investment in cleaning operation of rivers, lakes, ponds, estuaries, coastal waters and chlorination treatment of drinking water. Costs of water pollution are huge and enormous.
4. Losses due to damage of crops and vegetation.
5. Investment loss in control of air pollution.
6. Increase of cost of artificial illumination.
7. Cost of repair and damage to buildings and other structures.
8. Increased cost of cleaning.

***(E) HISTORY OF ENVIRONMENTAL LAW IN INDIA:*** India had a vivid history. Aryans said to be the one of earliest civilisation of the world. Then Harappa and Mohenjo-Daro civilization, to the country occupied by Mughals and finally more than 200 years India was completely colonized and dominated by England. So based on these dominations the rules, regulations were kept each phase to the desire of the rulers and administrators.

***Ancient India:*** The term Environment in Sanskrit mean Pasyavaran, literally meaning “Pari-aavaran” means external covering or a thing encircling or encompassing human existence. Indian viewpoint or Hindu philosophy viewed man and environment as part and whole of same thing. The below lines are from Rigveda. Through this prayer they created harmony between man, nature and energies.

**“May there be peace in Heaven.**

**May there be peace in sky**

**May there be peace on earth**

**May there be peace in the water**

**May there be peace in plants**

**May there be peace in trees**

**May there be peace in Gods**

**May there be peace in all**

**May there be peace, real peace, be mine”**

Vedic period recognises five elements as natural elements as Panchamahabhut for stavan, means for worshipping purpose. Natural elements are: Earth, water, fire Air,sky. The same is insisted by guru Granth sahib ji in Sikh religion that human beings are composed of these basic elements. Our ancestors worshipped earth and rivers as mothers: Vishnupathi Namastubhayampadsparschhamsav may means before placing feet on earth; the rishi seeks the forgiveness of mother earth.

Parikrama means Hindus from time immemorial take a journey round the river Narmada as a pilgrimage. Also in Ishopanishad there is a saying “That a selfish man over utilizing the resources of nature to satisfy his own ever increasing needs is a thief because using resources beyond one’s needs would result in utilization of resources to which others have a right”.

The Yajna or sacrificial fire, help in purifying air. The importance of yajna explained in Yajurveda, when butter and firewood are dropped in yajna, it dissolves them to their precisely and it settled in atmosphere and thereby it purifies atmosphere. The importance of yajna was given by Samaveda, Manusmirti, ShriBhagwat Gita where in Bhagwat Gita- rains are brought through yajna.

Atharveda: Where the purity and quality of water discussed. Also sages and rishi chants: “What of thee I dig out let that quickly grow over let me not hit thy vital or thy heart” which means one can take from earth and atmosphere only so much one puts back to them. This is the most important present day principle sustainable development.

Protection of wildlife and domestic cattle were given priority. Cattle were meant to adorn ceremony but not for sacrifice.

Manusmriti, Mahabharata, Padmapurna says that cruelty towards animals has been condemned.

In yajurveda respect for every form of life living as well as non-living, consumption be based on tyaga, it extreme exploitation of natural resources born on greed and profit be avoided, one's duty should be perform to avoid conflict disharmony and imbalance in the ecosystem.

Bhagavat Gita Lord Krishna speaks about eternal truth or Sanatan Dharma: He compares world to a banyan tree which has unlimited branches under which a species of animals, humans and life live. The other environment safeguarding and high priority concepts: Do not cut trees, they remove pollution (Rigveda), Do not disturb sky and do not pollute atmosphere (Yajurveda), Resources are given to mankind for their living, destruction of forest is taken as destruction of states and reforestation an act of rebuilding the state and advancing its welfare. Protection of animals is considered a sacred duty.

King Ashoka practised Buddhism, issued 7 pillar edicts in one of which states 26 years after my coronation various animals were declared to be protected- parrots, mainas, ruddygeese, wild ducks, bats, queen ants, terrapins, boneless fish, fish, tortoise, pocupines, squirrels, deer, bulls, wild asses, wild pigeons, domestic pigeons and all four footed creatures that are neither useful nor edible". Both Buddhism, Jainism preaches simplicity, non-violence, it also teaches man should not overexploit natural resources too.

Christians are baptized in water. All religions preach the same that there should be good harmony with nature. Through baptism in water Christians realizes that it is sign of purification. In June 1972 Stockholm Declaration Pope Paul IV in his message stated the "environment and resources are for everyone; they are inalienable property of everyone and there does not exist over this universal property discretionary sovereignty exempting from responsibility towards humanity of today and tomorrow".

The Holy *Koran* says everything created by water. Where Allah considersto be owner of land and mankind is trustee or guardian whereas other living creatures are beneficiaries.

**Medieval India:** Medieval India was the emergence of Islamic rule. They were known for their lavish architecture, heritage sites. Mughals didn't codify much law for environment. They made laws for hunting. Lack of laws affected forest conservation.

***British India:*** Though British passed so many environmental laws, it was not very powerful. They exploited India's natural resource with profit motive. Their laws regulated forest, water pollution and wildlife issues. The greatest exploitation of any natural resources in India was forest. In one or other way British hardly helped save our environment. The laws passed by them were: the shore Nuisance Act 1853, Orient Gas Company Act 1857, The Indian Forest Act 1927, The Indian Ports Act 1908, and The Explosive Act 1908.

***(F) CONSTITUTIONAL OBLIGATION ON ENVIRONMENTAL PROTECTION:***

Without a natural congenial environment human existence is not possible on earth. The natural environment has helped in development of various civilizations in past. The developmental process throughout the world has been accelerated very fast resulting into environmental degradation. India is not an exception in this regard. Though intensity and range of environmental movements in independent India is increasing, our fathers of the Indian constitution did not show their concern towards the need for providing environment strategies in our fundamental laws. It is evident from our original constitution, where one cannot find the use of the word 'environment' in any of the 395 Articles or schedules. It is only in 1976 that constitutional environmentalism became clearly pronounced with the enactment of the Constitution (42<sup>nd</sup> Amendment) Act 1976.

The modification was carried only after the Stockholm Declaration adopted by the International Conference on Human Environment in 1972. The 42<sup>nd</sup> amendment inserted Article 48-A and 51A (g), in the form of Directive Principles of state policy and Fundamental Duties respectively. This shows the constitutional recognition of importance of environment. After this in India the importance of environment protection has been raised to the status of fundamental law of land along with human rights approach. In this aspect there were various Supreme Court judgments. Apart from these the apex court has held that the essential feature of sustainable development such as precautionary principle and polluter pays principle are part of environmental law of country.

**Federal System of Government:** India has adopted a federal system in which the governmental power is shared between the Union or Central Government and the State Government. Part XI of the constitution Article 245 to 263 regulates administrative and legislative relations between the union and states. Article 246 divides the subject areas of legislation between union and states. This division is based on 3 lists namely Union list, State

list and Concurrent list which are being given in VII Schedule. The Union List contains 97 subjects. The subjects are Atomic energy and mineral resources, defence, UNO, participation and implementing the decisions in international conferences, treaties and agreements with foreign countries, inter-state transportation, shipping, major ports, regulation of air traffic, industries, the control of which by the Union is in the public interest, regulation and development of oilfields and mineral oil resources, regulation and development of inter-state rivers and fishing. Thus, the subjects which have inter-territorial environmental impact, are under the legislative jurisdiction of the Parliament so that they are better regulated by uniform national laws.

The State List contains 66 subject-matters over which the state legislatures of different states have the exclusive power of legislation subject to their territorial limitation. The subjects include public health, sanitation, hospitals and dispensaries, agriculture, ponds, water supply, irrigation and drainage. Thus the subject-matters, the environmental impact of which is local, are left to be tackled at the local levels.

The concurrent List contains 52 subject areas over which both Parliament and state legislature, of different states have the jurisdiction to make laws. The subjects mentioned in the concurrent list are protection of wild animals and birds, forests, population control and family planning, minor ports, factories and boilers. These are to be tackled by both centre and state.

Article 254 removes the inconsistency which may arise between the laws made by the parliament and the laws made by the legislature of the different states. It provides that when a central law conflicts with the state law on a subject-matter mentioned in the concurrent list, the central law shall prevail if it has received the assent of the President under Article 254.

*Environmental Impact Assessment:* Under the federal system, the Central Government controls the finances largely. When an industrial project is allocated to a particular state, it may have some environmental impact in that state and thus it may be opposed by the environment and planning department of the state concerned. On the other hand the Central Government may threaten to withdraw the project from the State if its implementation is opposed and resulting into a conflict between development and environment. This conflict is being taken care of by the Environmental Impact Assessment (EIA) which is an effort to anticipate measure and weigh the socio-economic and eco system changes that may result

from the proposed project. In India, the need for EIA has been recognized even by the planning commission by the Seventh Five Year Plan.

*International Environmental Agreements and India's Obligations:* India is under an obligation to translate the contents and decisions of International Conferences, treaties and agreements into the stream of national law. Article 51 provides that "the State shall endeavour to foster respect for international law and treaty obligations in the dealings of organized people with one another".

Article 253 of the Constitution specifically empowers the Parliament "to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body". The subject matters over which the parliament can make laws are "participation in the international conferences, associations and other bodies and implementing of decisions made there at" and "entering into treaties and agreements with foreign countries and implementing of treaties, agreements and conventions with foreign countries". In view of the broad language used in Article 253 as also in entries 13 and 14 in Union List, the parliament has very wide power of legislation including the subjects mentioned in the State List provided those issues are addressed at any international conferences, association or other body or it is the implementation of any international treaty, agreement or convention.

The first consequence of the broad provisions on the environment protection in view of Article 253 read with Entries no. 13 and 14 of the Union List is that, the Parliament can pass any law on environment protection and the same cannot be questioned before the courts on the ground that the Parliament lacked legislative competence.

Secondly, in India the Parliament has made use of this power to enact the Air (Prevention and Control of Pollution) Act of 1981 and the Environment (Protection) Act of 1986. The Preamble of these laws state that these Acts were enacted to implement the decisions reached at the United Nations Conference on Human Environment held at Stockholm in 1972.

In *People's Union for Civil Liberties v. Union of India* the Supreme Court held that the provisions of the International Covenant, which elucidates and go to effectuate the fundamental rights guaranteed by our constitution, can certainly be relied upon by courts as facets of those fundamental rights and hence, enforceable as such.

In *Vellore Citizens Welfare Forum v. Union of India* the Supreme Court held that it is almost an accepted proposition of law that the rules of customary International Law which are not contrary to the Municipal Law shall be deemed to have been incorporated in the domestic law and shall be followed by the courts of law.

· *Duties of the Citizen Towards Environmental Protection* : Prior to the Forty-Second Amendment, the Fundamental Law of the land attached more importance on rights. The makers of the Constitution were concerned about the moral and natural rights. The intention behind it was that the citizens and the State would shoulder the responsibility to protect the Constitutional order as their moral duty. As the time passes the citizens became conscious about their rights and thereby neglected their duties. Rights and duties are very important elements of Law. They correlated to each other in such a way that one cannot be conceived without the other. A right is always against someone upon whom they correlative duty is imposed. The Constitution (Forty-Second Amendment) Act, 1976 added a new part IV-A dealing with “Fundamental Duties” in the Constitution of India Article 51-A (g) specially deals with fundamental duty with respect to environment that: “It shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wild life and to have compassion for living creatures”. Article 51-A (g) refers to the fundamental duty of every citizen to protect and improve “natural environment”. But in the present days the pollution is caused not only by exploiting the “natural environment” but otherwise also. Nature has given us the gift of pollution free environment. The fundamental duty imposed on every citizen is not only to “protect” the environment from any kind of pollution but also to “improve” the environment quality if it has been polluted. So it is the duty of every citizen to preserve the environment in the same way as nature has gifted it to all of us.

In *Rural Litigation and Entitlement Kendra v. State of UP* Justice R.N. Mishra opined that “preservation of the environment and keeping the ecological balance unaffected is a task which not only the government but also every citizen must undertake. It is a social obligation and let us remind every Indian citizen that it is his fundamental duty as enshrined in Article 51-A(g) of the Constitution”.

In *Kinkari Devi v. State* Justice P.D. Desai remarked: “There is both a constitutional pointer to the state and a constitutional duty of the citizens not only to protect but also to improve the environment and to preserve and safeguard the forest, the flora and fauna, the rivers and the



lakes and all other water resources of the country. The neglect or failure to abide by the pointer or to perform the duty is nothing short of betrayal of the fundamental law which the state and indeed the every Indian is bound to uphold and maintain”.

In *L. K. Koolwal v. State of Rajasthan and Ors* Mr.L.K.Koolwal moved the High Court under Article 226 and highlighted that the Municipality has failed to discharge its “primary duty” resulting in the acute sanitation problem in Jaipur which is hazardous to the life of the citizens of Jaipur. The Court explained the true scope of Article 51-A in the following words: “We can call Article 51-A ordinarily as the duty of the citizens, but in fact it is the right of the citizens as it creates the right in favour of the citizens to move to the court to see that the State performs its duties faithfully and the obligatory and primary duties are performed in accordance with the law of the land. Omissions or commissions are brought to the notice of the court by the citizen and thus, Article 51-A gives a right to the citizens to move the court for the enforcement of the duty cast on the state, instrumentalities, agencies, departments, local bodies and statutory authorities created under the particular law of the state.

*M.C.Mehta v. State of Orissa*, the court pointed out that “right and duty co-exists. There cannot be any right without any duty and there cannot be any duty without any right”. Insanitation leads slow poisoning and adversely affects the life of the citizens and hence it falls within the purview of Article 21 of the constitution. It is the duty of the every citizen to see that rights which he has acquired under the constitution are fulfilled.

*Ratlam Municipality v. Vardhichand* , The Court directed the Municipality to remove dirt, filth etc., from the city within the period of six months. The Court made it clear that it is not the duty of the court to see whether the funds are available or not. It is the duty of the administration and municipal council to see that primary duties are fulfilled. The Court concluded the judgment by observing that, “If the Legislature or the State government feels that the law enacted by them cannot be implemented then the Legislature has the liberty to scrap it, but which remains on the statutory books will have to be implemented, particularly when it relates to primary duty.

In *Goa Foundation v. State of Goa*, the Bombay High Court examined the question of locus standi from the premises of the fundamental duties under the constitution of India. In this case the petitioner was a society registered under the law relating to registration of societies and their members were citizens of India having fundamental duty under Article 51-

A to protect and improve the natural environment including forests, lakes, rivers and wild life and to have compassion for living creatures. The question before the Court was whether such a society also has the same duty. The Court answered this question in affirmative and held that such a society also has the same duty. On the basis of this the petitioner society was held to have a locus standi to move to the Court to prevent ecological degradation, to formulate and implement programme for rehabilitation of environment and to restore ecological balance.

In *Sitaram Chhaparia v. State of Bihar* public interest litigation was filed by five persons, residents of a locality seeking directions from the court for closure of tyre retreading plant in the residential area as the said industry was emitting carbon-di-oxide gas and other obnoxious gases from its furnaces causing harm to the environment of the locality. The Patna High Court held that protecting the environment is now a fundamental duty under Article 51-A of the Constitution and accordingly the respondents were directed to wind up their industry and the State respondents were obliged to ensure that.

As regard the duty contained in Article 51-A(g) of the Constitution in *Abhilash Textiles v. Rajkot Municipal Corporation* has held that notices asking the petitioner to stop discharging the effluents from the factory on public road or drainage having natural environment on the pain of closing the factory will be valid.

*Duties of the State Towards Environmental Protection:*

Article 47 of the Constitution which reads: "The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medical purposes of intoxicating drinks and drugs which are injurious to health". The basic principle embodied in the Article very clearly denies the statement to some of the learned authors that initially our Constitution was environmentally blind and environment as a subject has been left out of the Constitution. Article 47 calls upon the State to perform the basic duty to look after the health of the citizen and also take necessary and effective steps to improve their standard of living and also raise the level of nutrition. Improvement of public health forms the core of environment because due to various environmental hazards it is the health of the general people which comes under severe threat. In order to protect the health the framers of the Constitution gave

emphasis on the improvement of public health which is more vital for the existence of the mankind. In the present times several factors account for the pollution hazards which is going beyond control. The pollution of water and air spoils the nature very well and affect our health. Therefore, taking into consideration, the Constitution very aptly recognized the right to health and casts a responsibility upon the State making it obligatory to work for improving the health of the citizens.

In *Talcher Swasthya Surakshya Parishadv. Chairman-Cum-MD Mohanadi Coal Fields Ltd., and Others*<sup>39</sup> it was alleged that due to the operation of the collieries in the Talcher area, the people of Talcher town and nearby areas have been affected as there is no pure air to breathe and pure water to drink. They are forced to inhale such air being exposed to dust and effluent material and also are forced to take contaminated water which has become unsuitable for drinking purposes due to such dust and effluent articles. It was also alleged that due to extraction done from underneath the ground surface, land is becoming loose and there have been several instances of seepage of water and subsidence of earth, thereby endangering human life and property. In this case the High Court observed that: "It is needless to say that all concerned, i.e., the governments, the government agency like the Pollution Control Board, the coal-mines owners operating in the area have to ensure that at the altar of industrial development, environment and consequentially health of the people do not get sacrificed. It is the function of the Pollution Control Board to ensure that the rigid guidelines required to be followed in the matter of air and water pollution. Statistics may not always reflect the correct state of affairs. In the maze of figures, let welfare of people is not lost". The Pollution Control Board was directed to take strict steps after determining consequences of such pollution and see that there is no reoccurrence. It was further directed by the Court that, "for industrial development, the people should not become ill on account of collapse of buildings, surface erosion and water pollution

In *Hamid Khan v. State of Madhyapradesh* it was held that there was a gross negligence on the part of the state government in not taking proper measure before supplying drinking water from hand-pumps which has resulted in colossal damage to the people. the Court held that the State was responsible and has failed to discharge its primary responsibility. With the objective of affording better protection to the environment, the Constitution was amended in the year 1976 and a new Article 48-A was inserted into the Constitution which reads: "The State shall endeavour to protect and improve the environment

and safeguard the forests and wild life of the country". This Article used the word 'Environment' in a wider sense which affects all the living being and influences the conditions of their lives. Water and air are among such important factors which mould the life of the citizens. Billions of years have passed and the society is still dependant on water and also will continue to do so, thus proving the necessity and vitality of water for the existence of the mankind. Hence, it becomes the pious duty and responsibility of the State to protect the water and water resources as well as whole environment from all activities. So if we construe the Article, this necessarily requires the State not only to adopt the protectionist policy but also to provide for the improvement of the environment.

Article 48-A further provides "to safeguard the forests and wild life". This is an important provision as the environment is greatly influenced by forests and wild life. The forests in particular has a direct relation with water pollution as the forest is responsible for natural rain which protects against pollution to a great extent and again by maintaining a balance, it constitutes an important safeguard against atmosphere pollution. In this way the forests contribute a lot in protecting the pollution of water. In India, the judicial attitude in protecting and improving the environment provides a testimony of the fact that, directive principles are not mere "guiding principles" of policy but they have to be given effect to.

In *Shri. Sachidanand Pandey v. State of West Bengal* the Supreme Court pointed out that whenever a problem of ecology is brought before the court, the court is bound to bear in mind Articles 48-A and 51-A (g) of the Constitution, the Court further observed: "When the Court is called upon to give effect to the directive principles and the fundamental duty, the court is not to shrug its shoulders and say that priorities are a matter of policy. The least the Court may do is to examine whether appropriate consideration are borne in mind and irrelevancies excluded. In appropriate cases, the Court may go further, but how much further must depend on the circumstances of the case. The Court may always give necessary directions. However, the Court will not attempt to nicely balance relevant considerations. When the question involves nice balancing of relevant considerations, the court may feel justified in resigning itself to acceptance of the decision of the concerned authority".

In *T. Damodhar Rao. V. S. O Municipal Corporation, Hyderabad* the court pointed out that in view of Articles 48-A and 51-A(g), it is clear that protection of environment is not only the duty of every citizen but it is also the "obligation" of the State and all other State organs including courts. In *M.C. Mehta v. Union of India* the court observed that Articles-

39I, 47 and 48-A by themselves and collectively casts a duty on the State to secure the health of the people, improve public health and protect and improve environment.

The cumulative effect of Articles 48-A and 51-A(g) appears to be that the 'State' as much as the 'Citizens' both are now under a constitutional obligation to conserve, preserve, protect and improve the environment.

*Environmental Protection and Right to Life*: Article 21 of the Constitution which reads:

“No person shall be deprived of his life or personal liberty except according to procedure established by Law”. The right to life as guaranteed by Article 21 of the Constitution is basic human right and the concept of right to life and personal liberty have been transformed into positive rights by active judicial interpretation. A new era ushered in the post *Maneka* period the concept of right to life witnessed new developments and new dimensions were added to the interpretation of fundamental rights embodied in Article 21. Prior to this all the fundamental rights guaranteed in Part III of the Constitution were considered too negative in nature and imposing only negative obligation on the State. For the first time, thus Supreme Court transformed these rights into positive rights and imposed an affirmative duty on the State to enforce it. This view of the Supreme Court was also reflected in *Francis Carolie Mulhinv. Administrator Union Territory of Delhi* where Justice Bhagawati observed that “the right to life enshrined in Article 21 cannot be restricted to mere animal existence. It means something more than just physical survival”. Further he added: “Right to life includes the right to life with human dignity and that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter over the head and facilities for writing and expressing oneself in diverse forms with fellow human beings. Of course, the magnitude and contents of the components of this right would depend upon the extent of the economic development of the country but it must, in any view of the matter include the right to basic necessities of life”.

Again the Apex Court in *Chameli Singh v. State of UP* held that the need for a decent and civilized life includes the right to food, water and a decent environment. In the same sentiment the Court was of the opinion that: “In any organized society, the right to live as human being is not ensured by meeting only the animal need of men. It is secured only when he is assured of all facilities to develop himself and is freed from restrictions which inhibit his growth. All human rights are designed to achieve this subject. The right to live guaranteed

in any civilized society implies the right to food, water, decent environment, education, medical care and shelter. These are basic human rights known to any civilized society. All civil, political, social and cultural rights enshrined in the Universal Declaration on Human Rights or Convention or under the Constitution of India cannot be exercised without these human rights”.

Observing the stand taken by the Apex Court and considering the relation between fundamental rights and environmental protection, it was pointed out by Shyam Divan and Armin Rosencranz as: “Encouraged by an atmosphere of freedom and articulation in the aftermath of the emergency, Supreme Court entered one of its most creative periods. Specially, the court fortified and expanded the fundamental rights enshrined in Part III of the Constitution. In the process, the boundaries of the Fundamental right to life and personal liberty guaranteed in Article 21 were expanded to include environmental protection

*Right to Livelihood and Environment* :The judiciary has further broadened the scope and ambit of Article 21 and now “right to life” includes the “right to livelihood”. The right to earn livelihood is also considered as a part of right to life under Article 21 of the Constitution. This broad interpretation of the right to life is very helpful in checking the governmental action which has an environmental impact that threatens the poor people of their livelihood by dislocating them from their place of living or otherwise depriving them of their livelihood. The right to livelihood as a part of right to life under Article 21 was recognised by the Supreme Court in *Sodan Singh v. N.D.M.C., A hamadabad Municipal Corporation v. Nawab Khan GulabKhan, Ramesh Chanderv. ImtiazKhan, and Olga Tellisv. Bombay Municipal Corporation* in this case the petitioners, a journalist and two pavement dwellers challenged the governmental scheme by which the pavement dwellers were being removed from the Bombay pavements. The main argument advanced on behalf of the petitioners were that evicting a pavement dweller or slum dweller from his habitat amounts to depriving him of his right to livelihood. It was further argued that no person can be deprived of his life except according to the procedure established by law which has to be “just, fair and reasonable”. The petitioners also contended that the State is under an obligation to provide citizens the necessities of life and in appropriate cases the Courts have the power to issue orders directing the State by affirmative action. The court observes:“If the right to livelihood is not treated as a part of the constitutional right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation. Such

deprivation would not only denude the life of its effective content and meaningfulness but it would make life impossible to live". The court further directed the Municipal Corporation to provide alternate sites or accommodation to slum and pavement dwellers within reasonable distance of their original sites and to earnestly pursue housing scheme for the poor and to provide basic amenities to slum dwellers. In *K.Chandru v. State of T.N*<sup>78</sup> the Supreme Court held that if the government plans the construction of a large dam or any other project without making proper environmental impact assessment and resulting in the displacement of persons from their habitat, thereby depriving them of their livelihood, then that action can be declared as unconstitutional being violative of Article 21 of the Constitution. The procedure of displacing the people from their habitat can be called "just, fair and reasonable" only when they are provided with suitable alternative sites with all basic amenities of life. When there is any conflict between environment and development, the question to be considered in the larger dimensions of national complexities is that, on the one hand for the national progress and growth, the construction of dams, thermal power plants and exploitation of natural resources are a must. On the other hand, these actions may infringe the fundamental rights of the people in the area where that project is undertaken. Judiciary in India has been very cautious in reconciling the environmental interests with the developmental process and avoiding any kind of conflict between the two. In *Banwasi Seva Ashram v. State of U.P.* the main grievance of the petitioner was that *Adivasis* and other backward people (tribal forest dweller) were using forest as their habitat and means of livelihood. Part of the land was declared reserved forest and in respect of other part acquisition proceedings were initiated as the government had decided that a Super Thermal Plant of the National Thermal Power Corporation Ltd., (NTPC) was to be located there. The Supreme Court gave directions safeguarding and protecting the interests of the *Adivasis* and backward people who were being ousted from their forestland by NTPC. The Court permitted the acquisition of land only after NTPC agreed to provide certain facilities to the ousted forest dwellers, that "it is common knowledge that *Adivasis* and other backward people living within the jungle used the forest area as their habitat and for generations. They had been using jungles around for collecting the requirements for their livelihood, fruits, vegetables, fodder, flowers, timber, animals by way of sport and fuel wood. At the same time the Court highlighted that for industrial growth as also for provisions of improved living facilities there is a great demand in this country for energy such as electricity". In *Karjan Jalasay Y.A.S.A.S. Samitiv. State of Gujarat*<sup>80</sup> the Supreme Court also passed the interim orders under Article 32 requiring the

state agencies to resettle and rehabilitate the tribal people who were being displaced by dams. In *Pradeep Krishenv. Union of India*<sup>81</sup> the Madhya Pradesh Government issued an order permitting collection of tend leaves from sanctuaries and national parks by villagers / tribal living around the boundaries thereof with the object of maintenance of their traditional rights including the right to livelihood. This order was challenged by public interest litigation for the protection of ecology, environment and wild life in sanctuaries and national parks. The Supreme Court in the circumstances of this case refused to squash the order and held that if one of the reasons for shrinkage of the forest cover is entry of these villagers/tribal urgent steps must be taken to prevent any destruction or damage to the environment, wild life, *flora* and *fauna*. The Supreme Court in the above case protected the right to livelihood of the tribal on the one hand and showed its concern for the protection of the ecology on the other hand. In *Animal and Environmental Legal Defence Fund v. Union of India* the petitioner, an association of lawyers and other persons who were concerned with the protection of environment, filed a public interest litigation challenging the order of the chief Wildlife Warden, Forest Department, granting 305 fishing permits to tribal villagers formerly residing within the National Park area for fishing in the reservoir situated in the heart of the National Park. The Supreme Court once again showed its concern for the right to livelihood of the tribal villagers and observed that it could have been more desirable, had the tribal's been provided with suitable fishing areas outside the National Park or if land had been given to them for cultivation. In *M.C. Mehta v. Union of India*<sup>83</sup> public interest litigation was filed to protect Delhi from the environmental pollution caused by hazardous/noxious/heavy/ large industries operating in Delhi. The Court held that such industries are liable to be shifted /relocated to other towns of National Capital Region (NCR) as provided under the Master plan for Delhi Perspective 2001. The Court directed 168 industries, which were identified as such to stop functioning/operating in the city of Delhi and they could shift or relocate themselves to any other industrial estate in NCR. The Supreme Court in order to mitigate the hardship to the employees of such industries due to their closure/shifting/ relocation specified the rights and benefits to which workmen employed in these 168 industries were entitled on relocation/shifting of these industries. Subsequently, the Supreme Court has also issued the package of compensation for workmen employed in industries which are not relocating/ shifting or closing down as per earlier directions of the Supreme Court. Thus, the Supreme Court protected the right to livelihood of the workmen and tried to balance the industrial development and environment protection. In *M.C.Mehtav. Union of India*<sup>85</sup> (popularly



known as *Tajmahal case*) the Supreme Court once again followed the path of sustainable development and directed that the industries operating in *Taj Trapezium Zone (TTZ)* using coke/coal as industrial fuel must stop functioning and they could relocate to the alternate site provided under the Agra Master Plan. In this case also the Supreme Court specified the rights and benefits to which the workmen of such industries were entitled and thus, protected their right to livelihood and followed the guiding principle of sustainable development. From the various decisions of the Supreme Court it is evident that development is not antithetical to environment. However, thoughtless development can cause avoidable harm to the environment as well as it deprives the people of their right to livelihood.

*The right to know Environment:* It is also implicit in Article 19(1) (a) and it has a close link with Article 21 of the Constitution particularly in environmental matters where the secret government decision may affect health, life and livelihood of the people. The right to know or access to information is the basic right for which the people of democratic country like India aspire for. Secrecy erodes the legitimacy of elected governments. On the other hand, the right to know strengthens the participatory democracy. The right to know plays a very important role in environmental matters. Any governmental plan of construction of dam or information of the proposed location of nuclear power stations or thermal power plants and hazardous industries, which directly affect the lives and health of the people of that area, must be widely published. The Judiciary has broadened the scope of the right to know in *S. P. Gupta v. Union of India* the Supreme Court recognized the right to know to be implicit in the right to free speech and expression. The Supreme Court observed: "This is the new democratic culture of an open society towards which every liberal democracy is moving and our country should be no exception. The concept of open government is the direct emanation from the right to know which seems to be implicit in Article-19(1) (a). Therefore, disclosures of information in regard to the functioning of the government must be the rule and secrecy exception justified only where the strictest requirements of public interest so demands". In *L.K. Koolwal. v. State* the Rajasthan High Court held that a citizen has a right to know about the activities of the State, the instrumentalities, the departments and agencies of the State. The Court further held that, "the State can impose and should impose reasonable restrictions in the matter like other fundamental rights where it affects the national security and other matter affecting the nation's integrity. But this right is limited and particularly in the matter of sanitation and other allied matter every citizen has a right to know how the state is

functioning and why the state is withholding such information in such matters”. In *R.P. Ltd., v. Proprietors, Indian Express Newspapers, Bombay Pvt. Ltd.*, the Supreme Court held that “we must remember that the people at large have a right to know in order to be able to take part in a participatory development in the industrial life and democracy. Right to know is a basic right to which citizen of a free country aspires in the broadening horizon on the right to life in this age on our land under Article 21 of the Constitution”. In *F.B. Taraporawalav. Bayer India Ltd.*, where the question before the court was regarding the relocation/shifting of chemical industries from the populated area of Thane in Mumbai, the Court felt that it has neither the expertise nor in possession of various information which was required to decide one way or the other so far as the question of relocation is concerned. The Court also directed the Constitution of an “authority” under section 3(3) of the Environment (Protection) Act, 1986, which was required to examine the entire matter. Such an authority would have power to examine and know various aspects of development and environment protection and take action accordingly. In *Research Foundation for Science Technology and Natural Resource Policy v. Union of India* the Supreme Court has stated that the right to information and community participation necessary for protection of environment and human health is an inalienable part of Article 21 and is governed by the accepted environment principles. Accordingly, the government and the authorities have to motivate the public participation by formulating necessary programmes.

Article 19(1) (g) guarantees all citizens the right “to practice any profession or to carry on any occupation, trade or business”. This right of the citizens is not absolute. It is subject to Article 19(6) under which “reasonable restrictions in the “interest of the general public” can be imposed. Thus, environmental interest from the hazards of any trade or business can be protected. The Gujarat High Court in *Abhilash Textiles v. Rajkot Municipal Corporation* made clear that, ‘the petitioners cannot be allowed to reap profit at the cost of public health’. In this case petitioners conducting the business of dyeing and printing works in Rajkot area were discharging dirty water from the factory on the public road and in public drains without purifying the same, thereby causing damage to the public health. The petitioners claimed that they were carrying on the business for the last 20 to 25 years and the industry was providing employment to twenty to thirty thousand families. Notice to close would be very harsh as they would be compelled to close down the factory and would also be violative of Article 19(1) (g). The Court held that one cannot carry on the business in the

manner by which the business activity becomes a health hazard to the entire society. By discharge of effluent water on public road or in public drainage system the entire environment of the locality gets polluted. No citizen can assert his right to carry on business without any regard to the fundamental duty under Article 51-A (g) to protect and improve the natural environment. The Court further directed that if the petitioners wish to carry on the business then they must provide for purification plant before discharging the effluents on public roads or in public drainage system. The petitioner had no right under Article 19(1) (g) to carry on business without complying with the Municipal Law and other environmental statutes.

In *M.C. Mehta v. Union of India* where tanneries were discharging effluents from their factories in the holy river Ganga resulting in water pollution and not setting up a primary treatment plant in spite of being asked to do for several years. It was held that, an order directing them to stop working their tanneries should be passed as effluent discharge from tanneries is ten times noxious when compared with the domestic sewage water which flow in to the river and the court passed the following order: “We are, therefore, issuing the directions for the closure of those tanneries which have failed to take minimum steps required for the primary treatment of industrial effluent. We are conscious that closure of tanneries may bring unemployment, loss of revenue, but life, health and ecology have greater importance to the people”. In *M.C. Mehta v. Union of India* the Supreme Court directed that certain industries which were not showing any progress regarding the installation of the air pollution controlling system in compliance with the Supreme Courts earlier order, should be closed. In this case the Supreme Court did not refer Article 19 (1) (g) however it is implied that while passing the order it had in its mind Article 19 (1) (g) read with Article 19 (6) and 21 of the Constitution.

In *Burrabazar Fire Works Dealers' Association v. Commissioner of Police, Calcutta* the Court held that Article 19(1) (g) of the Constitution of India does not guarantee the fundamental right to carry on trade or business which creates pollution or which takes away that community's safety, health and peace. The Court of the view that there is no inherent or fundamental right in a citizen to manufacture, sell and deal with fireworks which will create sound beyond permissible limits and which will generate pollution which would endanger health and public order. A citizen or people cannot be made a captive listener to hear the tremendous sound caused by bursting out from noisy fireworks.

In *Ashwin Jajal v. Municipal Corporation of Greater Mumbai* public interest litigation was filed by a resident against the municipal corporation seeking direction to prohibit the display of illuminated advertisements by use of neon lights in residential areas and also to revoke the permission granted to the respondents for display of advertisements on the buildings. It was argued that the neon light sign boards created environmental and health hazards and were of nuisance value as the bright light is deterrent to peaceful sleep. On the other hand, the respondents said that they have fundamental right under Article 19 (1) (g) to have free trade. The court held that keeping in view the environmental and health hazard and nuisance value it is always open to the authorities to regulate the advertisement in a reasonable manner to the extent permissible and this does not result in the violation of fundamental right of free trade. In *Obayya Pujariv. Member Secretary, K S P C B, Bangalore* the Court held that a licence in favour of stone crushing units does not confer on them absolute rights to carry on commercial activities of trade or occupation without limitation. The rights are subject to reasonable restrictions and can be regulated by Court direction as are necessary for controlling pollution from such units. In *A.P. Gunnies Merchants Association, Hyderabad v. Government of A.P.* the High Court held that, the right to carry on business in old and used gunny bags is not absolute. The trade carried on involving activity of dusting and cleaning of gunny bags creates air and environmental pollution. Hence, the direction given by the State Government to shift the business from the thickly populated area to environmental safer place is valid and not violative of Article 19(1) (g) of the Constitution.

#### ***(G). CIVIL SOCIETY AND ENVIRONMENTAL MANAGEMENT:***

The concept of Environmental Resource Management requires a large scale participation of the people. The government alone cannot bridge the existing gap in the awareness and education of the masses regarding environmental issues caused by the relentless pursuit of material progress at the cost of environmental degradation. In order to educate the people and to increase the awareness various sources are need to be exploited like media, non-governmental organisation, social movements, educational institutions.

Classification of social movements/voluntary organisations:

The social movements reflecting largely their historical evolution can be divided into six groups:

- Relief and welfare agencies- NGO's which provide relief and welfare measures

- **Technological innovation organizations-** NGO's which operate their own projects to pioneer new improved approaches to problems and which tend to remain specialised in their chosen field
- **Public Service Contractors:** These NGO's are contracted to implement components of official programmes because it is felt that their size and flexibility would help them perform the tasks more effectively than Government departments.
- **Popular development Agencies:** These NGO's concentrate on self-help, social development, and grass roots democracy
- **Grassroots Development organisations:** Locally based NGO's whose members are the poor and oppressed themselves and which attempt to shape a popular development processes. They often receive support from PDA's though many receive no external funding at all.
- **Advocacy groups and networks:** These are organization which have no field projects but exist primarily for education and lobbying.

**Stages involved in Building grassroots/social movements:**

The exciting phenomenon in the NGO sector over the last two decade has been the birth, growth and maturing of grassroots organization almost in all the developing countries. Some have emerged from self-help projects, which sought sustainability by investing control in the people. Others are entirely indigenous emerging as local people responding to local problems. The challenging task is mobilisation and involvement of the people in environmental protection. All sections of the society have to participate in this national endeavour. The important aspects about the skills needed and practical challenges of grass roots mobilization are:

- a) Start with an activity which the people readily relate to
- b) To build awareness raising and empowerment into the process
- c) Foster strong local leadership
- d) Tackle internal as well external injustices
- e) Encourage groups to chart their own course
- f) Develop action research
- g) Avoid early failure
- h) Forge alliances of local groups

- i) Build up strong communication skills
- j) Seek influential allies
- k) Explore the use of state instruments
- l) Develop a political strategy
- m) Balance external and internal contributions

#### Social Movements for Environmental Management:

The environmental action groups working with the ecosystem people in India have embarked upon 3 distinct sets of initiatives.

1. Through a process of organisation and struggle they have tried to prevent ecologically destructive economic practices.
2. They have promoted the environmental message through the skilful use of the media and more innovatively, via informal means such as walking tours and eco-development camps.
3. Social action groups have taken up programmes of environmental rehabilitation, restoring degraded village eco-systems and thereby enhancing the quality of life of its inhabitants.

Through the process of struggle these social movements spread consciousness and constructive work, action groups in the environmental field have come to develop an incisive critique of the development process itself.

Information about some such social movements for environmental management in India is given below:

**Kalpavirsh-KV:** This organization started in 1979 as a movement opposed to the destruction of Delhi's green areas. The main function of Kalpavirsh is to inculcate understanding and concern on environmental issues especially among the youth to conduct research in environmental problems, to campaign on environmental issues, to evolve a holistic environmental perspective. It is also functioning as a resource group of NCERT and other agencies on environment education.

**Chipko movement:** The Chipko Movement was started in the northern Himalayan segment of Uttar Pradesh by Sunderlal Bahuguna in the area that is well known as Uttarakhand. The word "chipko" refers to "to stick" or "to hug". The name of the movement comes from a word

meaning “embrace”: where the group of volunteers and women started the non-violent protest by hugging, clinging to the trees to save them from felling. This became popular as “Chipko movement”. Chipko movement is a grassroot level movement, which started in response to the needs of the people of Uttarakhand. The rate of heavy depletion of forests was resulting in destruction, arid- making the Himalayan mountain range barren. Moreover, the construction of dams, factories and roads had already led to deforestation. Most of the leaders of the Chipko Movement were village women and men who strove to save their means of subsistence and their communities. “what do the forests bear” soil, water and pure air” slogan coined by this movement. The main objective of this movement was to ensure an ecological balance and the survival of the tribal people whose economic activities revolved around these forests.

**NEERI:** *The National Environmental Engineering Research Institute* is a research institute created and funded by Government of India. It was established in Nagpur in 1958 with focus on water supply, sewage disposal, communicable diseases and to some extent on industrial pollution and occupational diseases found common in post-independent India. NEERI is a pioneer laboratory in the field of environmental science and engineering and part of Council of Scientific and Industrial Research (CSIR). NEERI falls under the Ministry of Science and Technology (India) of central government. NEERI states its mandate as:

- i. To conduct research and developmental studies in environmental science and engineering.
- ii. To render assistance to the industries of the region, local bodies, etc in solving the problems environmental pollution.
- iii. To interact and collaborate with academic and research institutions on environmental science and engineering for mutual benefit.
- iv. To participate in CSIR thrust area and mission projects.

**WWF:** *World Wide Fund for nature:* (WWF-India) was founded with the express objective of ensuring the conservation of the country’s wildlife and natural habitats. It was set up as a Charitable Public Trust on 27 November 1969. It was then known as the World Wildlife Fund-India, much before the terms ‘wildlife’ and ‘environment’ had caught the attention of the government or the public. For 50 years, WWF has been protecting the future of nature. The world’s leading conservation organization, WWF works in 100 countries. WWF’s unique way of working combines global reach with a foundation in science, involves action

at every level from local to global, and ensures the delivery of innovative solutions that meet the needs of both people and nature.

**Bombay Natural History Society:** On September 15, 1883 eight men interested in natural history met at Bombay in the then Victoria and Albert Museum constituted themselves as the Bombay Natural History Society. They have taken significant part in the campaigns for conservation of our natural heritage, notably for saving the invaluable tropical forests of silent valley in Kerala. The Society's achievements have aroused public awareness of the need for preservation of nature and have helped the country in legislating for the protection of wildlife.

**A.P.E.-Association for the Preservation of the Environment):** Association for the preservation of Environment is an organisation formed mainly for the preservation and protection of wildlife. Some of their objects are:

- (i) To help protect wilderness areas and create more sanctuaries when necessary
- (ii) To report to the relevant authority of any poaching or illegal trading wildlife or wildlife products
- (iii) To prevent cruelty to animals
- (iv) To restore environmentally degraded and polluted areas to their pristine state
- (v) To pay for law suits against offenders of the wildlife protection act.
- (vi) To financially support and equip anti-poaching squads

They also help the forest departments in various wildlife parks, who are always in need of funds for their basic day needs to monitor wildlife and prevent poaching. Vital equipment is always shortage with forest personnel.

**PAHAR People's Association For Himalaya Area Research:** This organisation dedicated to raising awareness of the fragile Himalayan environment and bringing together scientists, social activists and common people to save the Himalayas. PAHAR is a collective enterprise, possible by curiosity, hard work and research-oriented efforts of people who adore and love Himalayas.

**Green Peace:** Green Peace is a global environmental campaigning organisation. It organizes campaigns for the protection of oceans and ancient forests, for the phasing out of fossil fuels and the promotion of renewable energy in order to stop climate change, for the eliminations of toxic chemicals, against the release of genetically modified organisms into nature and for nuclear disarmament and for an end to nuclear contamination. The Green Peace organisation consists of Green Peace international in Amsterdam and Green Peace offices around the



world. Currently Green Peace has presence in 55 countries. They don't solicit or accept funding from governments, corporations or political parties. Green Peace neither seeks nor accepts donations, which could compromise its independence, aims objectives or integrity. Green Peace relies on the voluntary donations of individual supporters, and on grant support from foundations. Green Peace is committed to the principles of non-violence, political independence and internationalism. In exposing threats to the environment and in working to find solutions, green peace has no permanent allies or enemies.

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## UNIT II

### **International Environmental Law**

Recent decades of remarkable growth in the level of understanding the danger facing the international environment. Environmental pollution knows no geographical or political barriers. Pollution doesn't affect that particular state but it degrades entire globe. Carbon emission is an example. Carbon emitted by a country will affect that particular state and also it causes a hole in ozone layer and thereby people in other countries are also affected.

Predominantly state would only be responsible in the international legal sense for damage caused where it could be clearly demonstrated that this resulted from its own lawful activity. This has proved inadequate for environmental problems hence there are many multilateral agreements declarations are being signed and ratified by nations who are members in United Nations. The international concern for protection of environment is not recent one it exists more than a century. The earliest treaty was treaty between France and UK in the year 1867 on fisheries. Then in 1902 a convention on protection of birds entered.

*(A)Role of United Nations:* When the United Nations was created more than a half-century ago, environmental degradation was not even considered much of a global threat, and the term environment was not given importance in UN Charter and nowhere the word environment found in UN charter. Continuous environmental threats as soil erosion, air and water pollution, ozone depletion, climate change, dwindling biological diversity, ocean pollution and reduction in rainfall throughout the globe made the countries to perceive the serious circumstance of environment. The members in United Nations increasingly turned over the last few decades to the United Nations and focusing on the existing environment threats and thereby many conventions were made. More than 200 international environmental conventions now exist, and bodies such as the UN Environment Programme, the Commission on Sustainable Development, and the Global Environment Facility are playing increasingly important roles in international environmental management. Most striking, the conference created the UNEP- United Nations Environment Programme, which headquarters located in Nairobi and serves as the main focal point for environmental issues within the UN system. In 1972 UN conference on the Human Environment in Stockholm marked the arrival of this subject as an international issue.

***(B) STOCKHOLM DECLARATION ON HUMAN ENVIRONMENT 1972:***

The *United Nations Conference on the Human Environment*, having met at Stockholm from 5 to 16 June 1972, having considered the need for a common outlook and for common principles to inspire and guide the peoples of the world in the preservation and enhancement of the human environment. It has laid down 26 principles to be followed by the states for the preservation and improvement of the human environment.

**Principle 1:** Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations. In this respect, policies promoting or perpetuating apartheid, racial segregation, discrimination, colonial and other forms of oppression and foreign domination stand condemned and must be eliminated.

**Principle 2:** The natural resources of the earth, including the air, water, land, flora and fauna and especially representative samples of natural ecosystems, must be safeguarded for the benefit of present and future generations through careful planning or management, as appropriate.

**Principle 3:** The capacity of the earth to produce vital renewable resources must be maintained and, wherever practicable, restored or improved.

**Principle 4:** Man has a special responsibility to safeguard and wisely manage the heritage of wildlife and its habitat, which are now gravely imperilled by a combination of adverse factors. Nature conservation, including wildlife, must therefore receive importance in planning for economic development.

**Principle 5:** The non-renewable resources of the earth must be employed in such a way as to guard against the danger of their future exhaustion and to ensure that benefits from such employment are shared by all mankind.

**Principle 6:** The discharge of toxic substances or of other substances and the release of heat, in such quantities or concentrations as to exceed the capacity of the environment to render them harmless, must be halted in order to ensure that serious or irreversible damage is not inflicted upon ecosystems. The just struggle of the peoples of ill countries against pollution should be supported.

**Principle 7:** States shall take all possible steps to prevent pollution of the seas by substances that are liable to create hazards to human health, to harm living resources and marine life, to damage amenities or to interfere with other legitimate uses of the sea.

**Principle 8:** Economic and social development is essential for ensuring a fully living and working environment for man and for creating conditions on earth that are necessary for the improvement of the quality of life.

**Principle 9:** Environmental deficiencies generated by the conditions of under-development and natural disasters pose grave problems and can best be remedied by accelerated development through the transfer of substantial quantities of financial and technological assistance as a supplement to the domestic effort of the developing countries and such timely assistance as may be required.

**Principle 10:** For the developing countries, stability of prices and adequate earnings for primary commodities and raw materials are essential to environmental management, since economic factors as well as ecological processes must be taken into account.

**Principle 11:** The environmental policies of all States should enhance and not adversely affect the present or future development potential of developing countries, nor should they hamper the attainment of better living conditions for all, and appropriate steps should be taken by States and international organizations with a view to reaching agreement on meeting the possible national and international economic consequences resulting from the application of environmental measures.

**Principle 12:** Resources should be made available to preserve and improve the environment, taking into account the circumstances and particular requirements of developing countries and any costs which may emanate from their incorporating environmental safeguards into their development planning and the need for making available to them, upon their request, additional international technical and financial assistance for this purpose.

**Principle 13:** In order to achieve a more rational management of resources and thus to improve the environment, States should adopt an integrated and coordinated approach to their development planning so as to ensure that development is compatible with the need to protect and improve environment for the benefit of their population.

**Principle 14:** Rational planning constitutes an essential tool for reconciling any conflict between the needs of development and the need to protect and improve the environment.

**Principle 15:** Planning must be applied to human settlements and urbanization with a view to avoiding adverse effects on the environment and obtaining maximum social, economic and environmental benefits for all. In this respect projects which are designed for colonialist and racist domination must be abandoned.

**Principle 16:** Demographic policies which are without prejudice to basic human rights and which are deemed appropriate by Governments concerned should be applied in those regions where the rate of population growth or excessive population concentrations are likely to have adverse effects on the environment of the human environment and impede development.

**Principle 17:** Appropriate national institutions must be entrusted with the task of planning, managing or controlling the environmental resources of States with a view to enhancing environmental quality.

**Principle 18:** Science and technology, as part of their contribution to economic and social development, must be applied to the identification, avoidance and control of environmental risks and the solution of environmental problems and for the common good of mankind.

**Principle 19:** Education in environmental matters, for the younger generation as well as adults, giving due consideration to the underprivileged, is essential in order to broaden the basis for an enlightened opinion and responsible conduct by individuals, enterprises and communities in protecting and improving the environment in its full human dimension. It is also essential that mass media of communications avoid contributing to the deterioration of the environment, but, on the contrary, disseminates information of an educational nature on the need to project and improve the environment in order to enable man to develop in every respect.

**Principle 20:** Scientific research and development in the context of environmental problems, both national and multinational, must be promoted in all countries, especially the developing countries. In this connection, the free flow of up-to-date scientific information and transfer of experience must be supported and assisted, to facilitate the solution of environmental problems; environmental technologies should be made available to developing countries on

terms which would encourage their wide dissemination without constituting an economic burden on the developing countries.

**Principle 21:** States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.

**Principle 22:** States shall cooperate to develop further the international law regarding liability and compensation for the victims of pollution and other environmental damage caused by activities within the jurisdiction or control of such States to areas beyond their jurisdiction.

**Principle 23:** Without prejudice to such criteria as may be agreed upon by the international community, or to standards which will have to be determined nationally, it will be essential in all cases to consider the systems of values prevailing in each country, and the extent of the applicability of standards which are valid for the most advanced countries but which may be inappropriate and of unwarranted social cost for the developing countries.

**Principle 24:** International matters concerning the protection and improvement of the environment should be handled in a cooperative spirit by all countries, big and small, on an equal footing. Cooperation through multilateral or bilateral arrangements or other appropriate means is essential to effectively control, prevent, reduce and eliminate adverse environmental effects resulting from activities conducted in all spheres; in such a way that due account is taken of the sovereignty and interests of all States.

**Principle 25:** States shall ensure that international organizations play a coordinated, efficient and dynamic role for the protection and improvement of the environment.

**Principle 26:** Man and his environment must be spared the effects of nuclear weapons and all other means of mass destruction. States must strive to reach prompt agreement, in the relevant international organs, on the elimination and complete destruction of such weapons.

After the UN Conference on Human Environment, 1972 the United Nations Environment Program was established (UNEP) was established. UNEP was established to coordinate and promote environmental activities in the UN system. Its objectives are to

improve scientific and technological knowledge of environmental issues and to make available for environment development and conservation; to develop an integrated approach to the planning and management of development in order to achieve maximum economic, sociological and environmental benefits; and to assist all countries, especially developing countries, to address environmental problems through provision of financing, information, technology and educational assistance.

***(B) RIO DECLARATION OF THE UNITED NATIONS CONFERENCE ON ENVIRONMENT AND DEVELOPMENT 1992: UNCED***

The 1992 Rio Declaration on Environment and Development defines the right of all people to be involved in the development of their economies, and the responsibility of all human beings to safeguard the common environment. The declaration builds upon the ideas concerning the attitudes of individuals and nations towards the environment and development, first identified at the United Nations Conference on the Human Environment (1972).

The Rio Declaration states that long term economic progress is only ensured when it is linked with the protection of the environment. If this is to be achieved, then nations must establish a new global partnership involving governments, their people and the key sectors of society. Together human society must assemble international agreements that protect the global environment with responsible development. The United Nations Conference on Environment and Development 1992 has proclaimed 27 principles:

**Principle 1:** Human beings are at the centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature.

**Principle 2:** States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental and developmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.

**Principle 3:** The right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations.

order to achieve sustainable development, environmental protection shall be an integral part of the development process and cannot be considered in isolation.

States and all people shall cooperate in the essential task of eradicating poverty, a indispensable requirement for sustainable development, in order to decrease the standards of living and better meet the needs of the majority of the people of the

special situation and needs of developing countries, particularly the least developed countries, those most environmentally vulnerable, shall be given special priority. Actions in the field of environment and development should also address the needs of all countries.

States shall cooperate in a spirit of global partnership to conserve, protect and enhance the health and integrity of the Earth's ecosystem. In view of the different contributions to global environmental degradation, States have common but differentiated responsibilities. The developed countries acknowledge the responsibility that they bear in the pursuit of sustainable development in view of the pressures their societies place on the environment and of the technologies and financial resources they command.

States shall cooperate to achieve sustainable development and a higher quality of life for all people, to reduce and eliminate unsustainable patterns of production and consumption and to promote sustainable demographic policies.

States should cooperate to strengthen endogenous capacity-building for sustainable development by improving scientific understanding through exchanges of scientific and technological knowledge, and by enhancing the development, adaptation, and transfer of technologies, including new and innovative technologies.

Environmental issues are best handled with the participation of all concerned States at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public



awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.

**Principle 11:** States shall enact effective environmental legislation. Environmental standards, management objectives and priorities should reflect the environmental and developmental context to which they apply. Standards applied by some countries may be inappropriate and of unwarranted economic and social cost to other countries, in particular developing countries.

**Principle 12:** States should cooperate to promote a supportive and open international economic system that would lead to economic growth and sustainable development in all countries, to better address the problems of environmental degradation. Trade policy measures for environmental purposes should not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade. Unilateral actions to deal with environmental challenges outside the jurisdiction of the importing country should be avoided. Environmental measures addressing transboundary or global environmental problems should, as far as possible, be based on an international consensus.

**Principle 13:** States shall develop national law regarding liability and compensation for the victims of pollution and other environmental damage. States shall also cooperate in an expeditious and more determined manner to develop further international law regarding liability and compensation for adverse effects of environmental damage caused by activities within their jurisdiction or control to areas beyond their jurisdiction.

**Principle 14:** States should effectively cooperate to discourage or prevent the location and transfer to other States of any activities and substances that cause severe environmental degradation or are found to be harmful to human health.

**Principle 15:** In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.

**Principle 16:** National authorities should endeavour to promote the internalization of environmental costs and the use of economic instruments, taking into account the approach

that the polluter should, in principle, bear the cost of pollution, with due regard to the public interest and without distorting international trade and investment.

**Principle 17:** Environmental impact assessment, as a national instrument, shall be undertaken for proposed activities that are likely to have a significant adverse impact on the environment and are subject to a decision of a competent national authority.

**Principle 18:** States shall immediately notify other States of any natural disasters or other emergencies that are likely to produce sudden harmful effects on the environment of those States. Every effort shall be made by the international community to help States so afflicted.

**Principle 19:** States shall provide prior and timely notification and relevant information to potentially affected States on activities that may have a significant adverse transboundary environmental effect and shall consult with those States at an early stage and in good faith.

**Principle 20:** Women have a vital role in environmental management and development. Their full participation is therefore essential to achieve sustainable development.

**Principle 21:** The creativity, ideals and courage of the youth of the world should be mobilized to forge a global partnership in order to achieve sustainable development and ensure a better future for all.

**Principle 22:** Indigenous people and their communities and other local communities have a vital role in environmental management and development because of their knowledge and traditional practices. States should recognize and duly support their identity, culture and interests and enable their effective participation in the achievement of sustainable development.

**Principle 23:** The environment and natural resources of people under oppression, domination and occupation shall be protected.

**Principle 24:** Warfare is inherently destructive of sustainable development. States shall therefore respect international law providing protection for the environment in times of armed conflict and cooperate in its further development, as necessary.

**Principle 25:** Peace, development and environmental protection are interdependent and indivisible.

**Principle 26:** States shall resolve all their environmental disputes peacefully and by appropriate means in accordance with the Charter of the United Nations.

**Principle 27:** States and people shall cooperate in good faith and in a spirit of partnership in the fulfilment of the principles embodied in this Declaration and in the further development of international law in the field of sustainable development.

***(D) AGENDA 21:***

Agenda 21 one of the instruments adopted at the UNCED-United Nations Conference on Environment and Development held at Rio de Janeiro in 1992. Agenda 21 is non-binding and outcome of Rio declaration. Its set of strategies to draw up and to promote environmentally sound and sustainable development in all countries. It aims at establishing global partnership among government's, the general public, NGO'S and other groups for sustainable development. It's being brought out with 40 chapters which have been grouped into four sections and 700 pages. The four sections to Agenda 21 are;

Section I - Socio-economic dimensions

Section II - Conservation and resource management

Section III - Strengthening the role of Non-Governmental organisations and other social groups such as Trade union, women, youth

Section IV - Measures of implementation

There were some certain specifications focused in Agenda 21 like protection of atmosphere, Management of solid and sewage wastes, sustainable agriculture and rural development, deforestation, management of radio-active waste, management of hazardous waste, management of bio-technology.

***INAIROBI DECLARATION:***

The world community of states, assembled in Nairobi from 10 to 18 May 1982 to commemorate the tenth anniversary of the United Nations Conference on the Human Environment, held in Stockholm, having reviewed the measures taken to implement the Declaration and Action Plan adopted at that Conference, solemnly requests Governments and people to build on the progress so far achieved, but expresses its serious concern about

the present state of the environment worldwide, and recognizes the urgent necessity of intensifying the efforts at the global, regional and national levels to protect and improve it. The Stockholm Conference was a powerful force in increasing public awareness and understanding of the fragility of the human environment. The years since then have witnessed significant progress in environmental sciences; education, information dissemination and training have expanded considerably; in nearly all countries, environmental legislation has been adopted, and a significant number of countries have incorporated within their constitutions provisions for the protection of the environment. However, the Action Plan has only been partially implemented, and the results cannot be considered as satisfactory, due mainly to inadequate foresight and understanding of the long-term benefits of environmental protection, to inadequate co-ordination of approaches and efforts, and to unavailability and inequitable distribution of resources. For these reasons, the Action Plan has not had sufficient impact on the international community as a whole. Some uncontrolled deterioration, deforestation, soil and water degradation and desertification are reaching alarming proportions, and seriously endanger the living conditions in large parts of the world. Diseases associated with adverse environmental conditions continue to cause human misery. Changes in the atmosphere – such as those in the ozone layer, the increasing concentration of carbon dioxide, and acid rain-pollution of the seas and inland waters, careless use and disposal of hazardous substances and the extinction of animal and plant species constitute further grave threats to the human environment. Further efforts are needed to develop environmentally sound management and methods for the exploitation and utilization of natural resources and to modernize traditional pastoral system. Particular attention should be paid to the role of technical innovation in promoting resources substitution, recycling and conservation. Prevention of damage to the environment is preferable to the burdensome and extensive repair of damage already done. Preventive action should include proper planning of all activities that have an impact on the environment. It is also important to increase public and political awareness of the importance of the environment through information, education and training. Responsible individual behaviour and involvement are essential in furthering the cause of the environment. Non-governmental organizations have a particularly important and often inspirational role to play in this sphere. All enterprises, including multinational corporations, should take account of their environmental responsibilities when adopting industrial production methods of technologies, or when exporting to other countries. Timely and adequate legislation action is important in this regard.

**(F)BRUNTLAND REPORT:** After 1972 conference there was a World Commission on Environment and Development- WCED-Bruntland Commission. This commission worked for 3 years conducting public hearings, reviews and finally they gave unanimous report. It was termed as *Our Common Future* and was presented in United Nations General Assembly in the year 1987. Gro Harlem Bruntland coined the term Sustainable Development in the year 1983. She was appointed as chairman of this commission. This commission re-examine the critical environmental and developmental problems on earth and to formulate realistic proposals to solve them and to ensure human progress is sustained through development without bankrupting the resources of future generation. Our common future is divided into three parts. Part I: Common concern, Part II: Common challenges, Part III: Common endeavour. This commission recommended human laws must be formulated to keep human activities in harmony with the unchanging universal laws of nature.

**(G) CONVENTION ON BIODIVERSITY 1992:**In 1992 more than 100 heads of state met in Rio de Janeiro, for the Earth summit to address the urgent problems of environmental protection and socio-economic development. The assembled heads signed conventions on climate change and biodiversity. This convention proclaims that the states have the sovereign right to exploit their own resources following their own environmental policies, and the responsibility to ensure that these activities are within their jurisdiction or control and it must not cause any damage to other states or of areas beyond the limits of national jurisdiction. *Objective of this convention are: Conservation of biodiversity, sustainable use of its components, fair and equitable sharing of the benefits arising out of the utilization of genetic resources, including by appropriate access to genetic resources and by appropriate transfer of relevant technologies, taking into account all rights over those resources and to technologies, and by appropriate funding.* The predominant feature of this convention are:

1. **Identify components** of biological diversity important for its conservation and sustainable use and Monitor, through sampling and other techniques, the components of biological diversity identified
2. **In-situ conservation**” means the conservation of ecosystems and natural habitats and the maintenance and recovery of viable populations of species in their natural surroundings and, in the case of domesticated or cultivated species, in the surroundings where they have developed their distinctive properties. For In-situ

conservation with accordance to the convention each contracting party Establish a system of protected areas or areas where special measures need to be taken to conserve biological diversity; Develop, where necessary, guidelines for the selection, establishment and management of protected areas or areas where special measures need to be taken to conserve biological diversity; Regulate or manage biological resources important for the conservation of biological diversity whether within or outside protected areas, with a view to ensuring their conservation and sustainable use; Promote the protection of ecosystems, natural habitats and the maintenance of viable populations of species in natural surroundings; Promote environmentally sound and sustainable development in areas adjacent to protected areas with a view to furthering protection of these areas; Rehabilitate and restore degraded ecosystems and promote the recovery of threatened species, inter alia, through the development and implementation of plans or other management strategies; Establish or maintain means to regulate, manage or control the risks associated with the use and release of living modified organisms resulting from biotechnology which are likely to have adverse environmental impacts that could affect the conservation and sustainable use of biological diversity, taking also into account the risks to human health; Prevent the introduction of, control or eradicate those alien species which threaten ecosystems, habitats or species.

3. **Ex-situ conservation**” means the conservation of components of biological diversity outside their natural habitats. Each contracting party adopt measures for the ex-situ conservation of components of biological diversity, preferably in the country of origin of such components; Establish and maintain facilities for ex-situ conservation of and research on plants, animals and micro- organisms, preferably in the country of origin of genetic resources; Adopt measures for the recovery and rehabilitation of threatened species and for their reintroduction into their natural habitats under appropriate conditions; Regulate and manage collection of biological resources from natural habitats for ex-situ conservation purposes so as not to threaten ecosystems and in-situ populations of species, except where special temporary ex-situ measures are required and Cooperate in providing financial and other support for ex-situ conservation.

4. **Sustainable use of components of Biodiversity:** Each contracting party Integrate consideration of the conservation and sustainable use of biological resources into national decision-making; adopt measures relating to the use of biological resources to avoid or minimize adverse impacts on biological diversity; Protect and encourage customary use of biological resources in accordance with traditional cultural practices that are compatible with conservation or sustainable use requirements; Support local populations to develop and implement remedial action in degraded areas where biological diversity has been reduced; and Encourage cooperation between its governmental authorities and its private sector in developing methods for sustainable use of biological resources.
5. **Research and Training:** The Contracting Parties, taking into account the special needs of developing countries, shall: Establish and maintain programmes for scientific and technical education and training in measures for the identification, conservation and sustainable use of biological diversity and its components and provide support for such education and training for the specific needs of developing countries; Promote and encourage research which contributes to the conservation and sustainable use of biological diversity, particularly in developing countries.
6. **Public awareness:** Promote and encourage understanding of the importance of, and the measures required for, the conservation of biological diversity, as well as its propagation through media, and the inclusion of these topics in educational programmes; and Cooperate, as appropriate, with other States and international organizations in developing educational and public awareness programmes, with respect to conservation and sustainable use of biological diversity.
7. Introduce appropriate procedures requiring **environmental impact assessment** of its proposed projects that are likely to have significant adverse effects on biological diversity with a view to avoiding or minimizing such effects and, where appropriate, allow for public participation in such procedures; appropriate arrangements to be made to ensure that the environmental consequences of its programmes and policies that are likely to have significant adverse impacts on biological diversity are duly taken into account.

8. **Access to genetic resources:** The sovereign rights of States over their natural resources, the authority to determine access to genetic resources rests with the national governments and is subject to national legislation and each Contracting Party shall endeavour to create conditions to facilitate access to genetic resources for environmentally sound uses by other Contracting Parties and not to impose restrictions that run counter to the objectives of this Convention. Access, where granted, shall be on mutually agreed terms and subject to the provisions.
9. Each Contracting Party, recognizing that technology includes biotechnology, and that both access to and transfer of technology among Contracting Parties are essential elements for the attainment of the objectives of this Convention. Access to and transfer of technology to developing countries shall be provided and facilitated under fair and most favourable terms, including on concessional and preferential terms where mutually agreed. In the case of technology subject to patents and other intellectual property rights, such access and transfer shall be provided on terms which recognize and are consistent with the adequate and effective protection of intellectual property rights.
10. The Contracting Parties shall facilitate the exchange of information, from all publicly available sources, relevant to the conservation and sustainable use of biological diversity, taking into account the special needs of developing countries. Such exchange of information shall include exchange of results of technical, scientific and socio-economic research, as well as information on training and surveying programmes, specialized knowledge, indigenous and traditional knowledge.
11. The Contracting Parties shall promote international technical and scientific cooperation in the field of conservation and sustainable use of biological diversity, where necessary, through the appropriate international and national institutions.
12. Each Contracting Party shall take legislative, administrative or policy measures, as appropriate, to provide for the effective participation in biotechnological research activities by those Contracting Parties, especially developing countries, which provide the genetic resources for such research, and where feasible in such Contracting Parties. Contracting Party shall take all practicable measures to promote and advance priority access on a fair and equitable basis by Contracting Parties, especially



developing countries, to the results and benefits arising from biotechnologies based upon genetic resources provided by those Contracting Parties. Such access shall be on mutually agreed terms.

13. The developed country Parties shall provide new and additional financial resources to enable developing country Parties to meet the agreed full incremental costs to them of implementing measures which fulfil the obligations of this Convention and to benefit from its provisions and which costs are agreed between a developing country Party and the institutional structure, in accordance with policy, strategy, programme priorities and eligibility criteria and an indicative list of incremental costs established by the Conference of the Parties. Other Parties, including countries undergoing the process of transition to a market economy, may voluntarily assume the obligations of the developed country Parties. The Conference of the Parties, shall at its first meeting establish a list of developed country Parties and other Parties which voluntarily assume the obligations of the developed country Parties. The Conference of the Parties shall periodically review and if necessary amend the list.

#### ***(I) UNITED NATIONS FRAMEWORK CONVENTION ON CLIMATE CHANGE 1992: UNFCCC***

The states participated in UNCED held at Rio de Janeiro determined to protect the climate system for present and future generation and signed UNFCCC. Preventing “dangerous” human interference with the climate system is the ultimate aim of the UNFCCC. There are 26 provisions in this convention

Objective: Article 2 speaks about the objective of this convention. The ultimate object of UNFCCC is to achieve stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system. The UNFCCC aims at achieving such a level within a time frame sufficient to allow ecosystem to adapt naturally to climate change, to ensure food production is not threatened and to enable economic development to proceed in a sustainable manner.

Article 3 says that in achieving Article 2 the contracting parties are guided with certain principles: The Parties should protect the climate system for the benefit of present and future generations of humankind, on the basis of equity and in accordance with their *common but*

*differentiated responsibilities*- CBDR and respective capabilities. Accordingly, the developed country Parties should take the lead in combating climate change and the adverse effects thereof; The Parties should take *precautionary measures* to anticipate, prevent or minimize the causes of climate change and mitigate its adverse effects. Where there are threats of serious or irreversible damage, lack of full scientific certainty should not be used as a reason for postponing such measures; The Parties have a right to, and should, *promote sustainable development*; The Parties should cooperate to promote a supportive and open international economic system that would lead to sustainable economic growth and development in all Parties, particularly developing country Parties, thus enabling them better to address the problems of climate change.

Article 4 of the UNFCCC directs that all parties, taking into account their CBDR and their specific national and regional development priorities, objectives and shall: Develop, periodically update, publish and make available to the conference of parties (COP), national inventories of anthropogenic emissions by sources and removals by sinks of all greenhouse gases, promote sustainable management and promote and cooperate in the conservation and enhancement of sinks and reservoirs of all greenhouse gases, cooperate in preparing for adaptation to the impacts of climate change, develop and elaborate appropriate and integrated plans for coastal zone management, water resources and agriculture. To employ appropriate methods like impact assessments with a view to minimizing adverse effects on the economy, on public health and on the quality of the environment, promote, cooperate in education, training and public awareness related to climate change and encourage the widest participation in this process, including that of non-governmental organizations. The developed country parties and other parties included in Annex I commit themselves specifically as provided for in the following:

- i. Each of developed country parties shall adopt national policy and take corresponding measures on the mitigation of climate change, by limiting anthropogenic emissions of greenhouse gases.
- ii. Return individually or jointly to their 1990 levels of these anthropogenic emissions of carbon-dioxide and other greenhouse gases not controlled by the Montreal protocol.

- iii. The developed country parties and other developed parties included in Annex II shall provide new additional financial resources to meet the agreed full incremental costs of implementing measures that are covered under this article.
- iv. The developed countries may assist the developing country parties that are particularly vulnerable to the adverse effects of climate change in meeting costs of adaptation to those adverse effects.
- v. The developed country parties shall take all practicable steps to promote facilitate and finance, as appropriate, the transfer of, or access to environmentally sound technologies and know-how to other parties, particularly developing country parties, to enable them to implement the provisions of this convention.

Obligation of state parties: The state parties shall support and further develop international and intergovernmental programs and networks or organizations aimed at defining, conducting, assessing and financing research, data collection and systematic observation, taking into account the need to minimize duplication of effort. The observation, financing and assessing are also being done to developing countries. Apart from these the parties shall promote and facilitate at the national, regional, sub-regional levels, the development and implementation of educational and public awareness programs on climate change and its effects, public access to information on climate change and its effects.

The UNFCCC provides for the establishment of a subsidiary body for science and technological advice to provide the COP and other subsidiary bodies. This subsidiary body shall: Provide assessment of the state of scientific knowledge relating to climate change, prepare scientific assessment on the effects of measures taken in the implementation of the convention, identify innovative, efficient and state of the art technologies and know-how and advise on the ways and means of promoting development and transferring such technologies, respond to scientific technology and methodological question that the conference of parties and its subsidiary bodies may put.

***H. KYOTO PROTOCOL TO THE UNFCCC 1997:*** In 1995 several nations agreed that voluntary reduction in so called greenhouse gases were not working. So in order to reduce the emission of carbon-dioxide, methane and nitrous oxide the countries decide to put a deadline target through Kyoto Protocol. Therefore a conference was held at Kyoto on climate change

on December 1, 1997 to review the progress made in five years from UNFCCC. Some of the important commitments accepted by the parties related to Kyoto protocol are:

- (i) Enhancement of energy efficiency in relevant sections of national economy,
- (ii) protection and enhancement of sinks and reservoirs of greenhouse gases not controlled by Montreal Protocol.
- (iii) taking into account its commitments under relevant international environmental agreements.
- (iv) promotion of sustainable forest management practices, afforestation and reforestation,
- (v) promotion of sustainable forms of agriculture in light of climate change considerations.
- (vi) promotion, research, development and increased use of new and renewable forms of energy and advanced innovative form of technologies,
- (vii) Progressive reduction or phasing out of market imperfection, fiscal incentives, tax and duty exemptions and subsidies in greenhouse gas emitting sectors.
- (viii) Co-operate with other such parties to enhance individual and combined effectiveness of their policies and measure adopted. Parties also agree to share their experience and exchange information on such policies
- (ix) The parties included in Annex I of the UNFCCC shall pursue limitation or reduction of emission of greenhouse gases not controlled by the Montreal protocol from aviation and marine bunker fuels, working through the ICAO and International Maritime Organization
- (x) The parties included in Annex I shall strive to implement policies and measures under this Article in such a way as to minimize adverse effects, including the adverse effects of climate change, effects on international trade, and social, environmental and economic impacts on other parties, especially developing country parties. The parties shall individually or jointly ensure that their aggregate anthropogenic carbon-dioxide equivalent emissions of the greenhouse gases listed

in Annex A to the Kyoto protocol do not exceed their assigned amounts, calculated pursuant to their quantified emission limitation and reduction commitments inscribed in Annex B and in accordance with the provisions of Article 3 of the Kyoto protocol, with a view to reducing their overall emissions of such gases.

**(J) UN COMMISSION ON SUSTAINABLE DEVELOPMENT: UNCSD:** This is functional commission of United Nations under Economic and Social Council (ECOSOC). This commission originated in Agenda 21 from section 4 “Organising for sustainable development”. It was setup on 16.2.1993 as commission on ECOSOC under a Malaysian chairman. The function of commission is:

- (i) To follow up Rio conference
- (ii) To enhance international co-operation
- (iii) To rationalize the inter-governmental decision making capacity for integration of environment and development issues
- (iv) To examine the progress of implementation of agenda 21
- (v) Duty of commission to assess reports from UN members, UN committees concerned with environmental and developmental issues also of NGO's
- (vi) Commission required to consider information provided by government regarding implementation of agenda 21
- (vii) Commission must take care of problems faced by the governments which are related to financial resources, technology transfer, other environmental developmental issues
- (viii) Commission must submit a report analysis to UN through ECOSOC on the basis of agenda 21.

**(K) JOHANNESBURG SUMMIT:**

UN organised 10 day World Summit on Sustainable Development in Johannesburg, from 26<sup>th</sup> August to September 4 2002. It has been with a open call for protecting global environment and eradicating poverty through international action. During the time of 2002 kofiannan was the UN secretary general and he urged the committee to commit to affirm action to solve the issues identified in Rio Declaration 10 years before. So

at the end of this summit there was a declaration adopted named as” Johannesburg Declaration on Sustainable Development”. Beginning of the summit children spoke very clearly that the future belongs to them and they want an assurance from the committee for descent environment with proper implementation of sustainable development. Johannesburg declaration on Sustainable development with six different chapters listed out below:

- (i) From our origin to future
- (ii) From Stockholm to Rio de Janeiro to Johannesburg
- (iii) The challenges we face
- (iv) Our commitment to sustainable development
- (v) Multilateralism is the future
- (vi) Making it happen

The major key outcomes of the Johannesburg summit:

- (i) The summit reaffirmed sustainable development as a central element of the international agenda and gave new impetus to global action to fight poverty
- (ii) The understanding of sustainable development was broadened and strengthened as a result of the summit, particularly the important linkages between poverty, the environment and the use of natural resources
- (iii) Governments agreed to and reaffirmed a wide range of concrete commitments and targets for action to achieve more effective implementation of sustainable development
- (iv) The views of civil society were given prominence at the summit in recognition of the key role of civil society in implementing the outcomes and in promoting partnership initiatives.
- (v) Energy and sanitation issues were critical elements of the negotiation and outcomes to a greater degree than in previous international meetings on sustainable development
- (vi) The concept of partnerships between governments, business and civil society was given a large boost by the summit and the plan of implementation.

## **(L)RIO+20:**

Rio+20 held at Rio de Janeiro from 13 June to 22 June 2012. 191 countries of UN participated in it. UNCTD President from Brazil addressed the most participatory conference in history and it is said to be “*global expression of democracy*”. The Rio+20 is completely of agreements, actions, commitments, challenges, initiatives and announcements. They focused on Access to clean energy, food security, water, sustainable transportation. The outcome document of Rio+20 was “*the future we want*”. The two main theme of Rio- 20 is that how to build green economy to achieve sustainable development and lift people out of poverty and how to improve international co-operation co-ordination for sustainable development

## **PREDOMINANT CONCEPTS TO BE NOTED IN THIS UNIT:**

**INTER GENERATIONAL EQUITY:** The theory of intergenerational equity is the right of each generation of human beings to benefit from cultural and natural inheritance of past generations as well as the obligation to preserve such heritage for future generations. It requires conserving the biodiversity and quality of biological resources and also renewable resources. The concept is referred to in **Principle 1 and 2** of Stockholm Declaration.

**PRECAUTIONARY PRINCIPLE- PP:** It's a common sense idea like ‘better safe than sorry’ or ‘be caution’. It's translation of German Vorsorgeprinzip. Vorsorge means literally fore-caring. When human activities may lead to morally unacceptable harm that is scientifically plausible but uncertain, actions shall be taken to avoid or diminish that harm. Morally unacceptable harm refers to harm to humans or the environment. This principle carries both sense of fore caring and preparation, not only caution. The ethical assumption behind this principle is that humans are responsible to protect, preserve and restore the global ecosystem on which all life, including our own depends. This principle incorporated in **Principle 15** of Rio Declaration

**POLLUTER PAYS PRINCIPLE-PPP:** The absolute liability for harm to the environment extends not only to compensate the victims of pollution but also the cost of restoring the environmental degradation. Thus it includes the environment cost as well as direct costs to people or property. **Principle 16** of Rio Declaration enunciates PPP. Therefore PPP is, the responsibility to repair the environmental damage is that of the polluter.

**ENVIRONMENT IMPACT ASSESSMENT- EIA:** The modern technological state intensifies the conflict between environmental values and developmental needs. Legal strategies are necessary to reconcile this conflict, and to augment sustainable development. EIA is an instrument of reconciliation. The objectives of EIA are highlighted in the Council on European Economic committee: The effects of a project on the environment must be assessed in order to take account of the concerns to protect human health, to contribute by means of a better environment to the quality of life, to ensure maintenance of the diversity of species and to maintain the reproductive capacity of the ecosystems as a basic resource of life. **Principle 17** of Rio declaration affirm EIA

**STATE SOVEREIGNTY:** **Principle 21** of Stockholm and **Principle 2** of Rio Declaration is state sovereignty. This is based on ancient maxim *Sic utero tuo alienum non laedas* which means don't behave in a way that harms your neighbour. As per this principle every state has right to exploit their own resources pursuant to their own environmental policies and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other states or of areas beyond the limits of national jurisdiction.

**PUBLIC TRUST DOCTRINE:** The Public Trust Doctrine has its origins in Roman law. The Doctrine was founded on the idea that certain common properties such as river, seashore, forest and air were held by Government in trusteeship for the free and unimpeded use of the general public. Under Roman Law these natural resources were either owned by no one – *res nullius* or by everyone in common- *res communis*. The doctrine enjoins upon the Government to protect the resources for the enjoyment of the general public rather than to permit their use for private ownership or commercial purposes. At its widest, it could be used by the courts as a tool to protect the environment from many kinds of degradation. In some countries, the doctrine has formed the basis of environmental policy legislation, allowing private rights of action by citizens for violations by the state (directly or indirectly) of the public trust. Accepting public trust doctrine as a part of common law, the Indian courts have applied this explicitly in different cases. Stockholm Declaration also enunciates the same doctrine: “The natural resources of the earth, including the air, water, land, flora and fauna and especially representative samples of natural system, must be safeguarded for the benefit of present and future generations through careful planning or management, as appropriate... “



***SUSTAINABLE DEVELOPMENT:*** The well recognised principle of sustainable development for the protection and improvement of environment has been unanimously accepted by the world countries as a strategy that caters to the needs of the present without depriving the future generations of their right to available natural resources. It has been rightly said that sustainable development is meant to secure a balance between development activities for the benefits of the people and environmental protection and therefore, “it is a guarantee to the present and bequeath to the future generations.” While explaining the interdependence of conservation and sustainable development, the Bruntland report 1997 said- Sustainable development that meets the needs of the present without compromising the ability of future generations to meet their, own needs...Sustainable development requires meeting the basic needs of all and extending to all opportunity to satisfy their aspirations for a better life.”

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## UNIT III

### **Pollution Control Laws**

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

Water being a state subject, the parliament can exercise the power to legislate on water only under article 249 and 252 of the Constitution of India. Accordingly Parliament enacted Water (Prevention and Control of Pollution) Act, 1974. The Water Act represents India's first attempts to deal with an environmental issue comprehensively. The Act was first amended in 1978. It was again amended in 1988 to conform to the provisions of the Environment Protection Act 1986.

#### **Objectives of the Act:**

- a. Fundamental objective is to provide clean drinking water to all citizens
- b. To provide for prevention and control of water pollution and maintaining or restoring of wholesomeness of water
- c. To establish central and state boards for prevention and control
- d. To provide for conferring on and assigning to such boards power and functions
- e. To provide penalties
- f. To establish water testing labs to make the board to access the extent of pollutions

This Act has 64 sections with VIII Chapters

Chapter I: Preliminary

Chapter II: Central and State Board

Chapter III: Joint Board

Chapter IV: Powers and Functions of Boards

Chapter V: Prevention and Control of Water pollution

Chapter VI: Funds, Accounts and Audit

Chapter VII: Penalties

Chapter VIII: Miscellaneous

#### ***Section 2 is Definition clause:***

2(d) "occupier", in relation to any factory or premises, means the person who has control over the affairs of the factory or the premises, and includes, in relation to any substance, the person in possession of the substance.

I “pollution” means such contamination of water or such alteration of the physical, chemical or biological properties of water or such discharge of any sewage or trade effluent or of any other liquid, gaseous or solid substance into water (whether directly or indirectly) as may, or is likely to, create a nuisance or render such water harmful or injurious to public health or safety, or to domestic, commercial, industrial, agricultural or other legitimate uses, or to the life and health of animals or plants or of aquatic organisms;

(g) “sewage effluent” means effluent from any sewerage system or sewage disposal works and includes sullage from open drains.

(j) “stream” includes- river; Water course (whether flowing or for the time] being dry); inland water (whether natural or artificial); subterranean waters; sea or tidal waters to such extent or, as the case may be, to such point as the State Government may, by notification in the Official Gazette, specify in this behalf ;

(k) “trade effluent” includes any liquid, gaseous or solid substance which is discharged from any premises used for carrying on any [“Industry, operation or process, or treatment and disposal system” other than domestic sewage.

***Constitution of Boards:***

The ***Central Pollution Control Board*** shall consist of following members and all members are nominated by Central Government:

- (a) A full time chairman
- (b) Not more than 5 officials as representatives of Central Government
- (c) Not more than 5 persons from amongst the members of the State Boards. of whom not exceeding 2 shall be from members representing the local authorities.
- (d) Not more than 3 members to represent the interest of agriculture, fishery or industry or trade or any other interest which in the opinions of the governments, ought to be represented
- (e) 2 persons to represent the companies or corporation owned, controlled or managed by the Central Government
- (f) A full time member secretary possessing qualifications, knowledge and experience of scientific, engineering or management aspects of pollution control.

***Functions of Central Pollution Control board:***

Section 16 of the Act enumerates the function of CPCB. The main functions of the CPCB shall be to promote cleanliness of streams and wells in different areas of the state. Apart from this, the CPCB may perform all or any of the following functions:

- Advise the central Government on matters relating to prevention and control of water pollution.
- Co-ordinate the activities of the state pollution control boards and resolve dispute among them.
- Provide technical assistance and guidance to the SPCB carryout and sponsor investigations and research relating to problems of water pollution and prevention, control or abatement of water pollution.
- Plan and organise the training of person engaged in programs for the prevention, control or abatement of water pollution.
- Organise comprehensive programs regarding prevention and control of water pollution through mass media.
- Collect, compile and publish technical and statistical data relating to water pollution and measures devised for effective prevention and control of water pollution and prepare manuals, codes or guides relating to treatment and disposal of sewage and trade effluents and disseminate information connected therewith.
- Lay down, modify or annul the standards for a stream or well.
- Plan and execute a nation-wide program for prevention, control and abatement of water pollution.
- Establish or recognise lab to enable CPCB to perform the above function.
- Perform such other functions as may be prescribed.

***Powers of the Central Government:***

The Central Government is empowered by Section 18 of the Water Act to give directions in writing to the Central Pollution Control Board with respect to the carrying out of the functions by the Central Pollution Control Board (CPCB). The CPCB in turn may give directions to the State Pollution Control Board and such directions given in writing shall bind the State Pollution Control Board (SPCB). If the Central Government is of the opinion that SPCB has defaulted in complying with the directions given by the CPCB and as a result of such default a grave emergency has arisen, the Central Government may direct the CPCB to

perform any of the functions of SPCB in relation to such area for such period and for such purpose as may be specified in the order. The Central Government is also empowered to supersede the Central Board and Joint Boards for such period not exceeding one year, if at any time the Central Government is of the opinion that CPCB or the JPCB has persistently made default in the performance of the functions prescribed under the Water Act or that circumstance exist which render it necessary in the public interest to do so (Section 61).

Section 63 of the Water Act empowers the Central Government to make rules to provide for all or any of the following matters:

1. The terms and conditions of the service of members of CPCB
2. The intervals, the time and the place at which the meetings of the CPCB shall be held and the procedure to be followed at such meetings.
3. The fees and allowances to be paid to such members of committees of the CPCB.
4. The manner in which and purpose for which the person may be associated with CPCB and the fees and allowances payable to such persons.
5. The terms, conditions and service of the Chairman and the Member Secretary of CPCB.
6. Conditions subject to which a person may be appointed as Consulting Engineer to CPCB.
7. The powers and duties to be exercised and performed by the Chairman and the Member Secretary of the CPCB.
8. The form of the report of the CPCB analyst.
9. The form of the report of the Government analyst.
10. The form in which and the time within which the budget of the CPCB may be prepared and forwarded to the Central Government.
11. The form in which the Annual Report of the CPCB may be prepared.
12. The form in which the accounts of the CPCB may be maintained.
13. The manner in which notice of intention to make a complaint shall be given to the CPCB or officer authorised by it.
14. Any other matter relating to CPCB including the powers and functions of CPCB in relation to Union Territories.

***Powers of the Central Pollution Control Board:***

The CPCB is vested with the following powers:

- a) The Central Pollution Board is empowered by Section 18 of the Water Act to give directions to the State Pollution Control Board.
- b) The CPCB has powers to perform any of the functions of the SPCB in case of non-compliance of any directions given by the CPCB.
- c) The CPCB is empowered to issue directions under Section 33 A to direct:
  1. The closure, prohibition or regulation of any industry, operation or process
  2. The stoppage or regulation of supply of electricity, water or any other service.

The ***State Pollution control Board*** comprises of following members and all members are nominated by State Government:

- (a) A Chairman
- (b) Not more than 5 officials as representatives of State Government.
- (c) Not more than 5 persons from amongst the members of the Local Authorities functioning within the state.
- (d) Not more than 3 members to represent the interest of agriculture, fishery or industry or trade or any other interest which in the opinions of the governments, ought to be represented.
- (e) 2 persons to represent the companies or corporation owned, controlled or managed by the State Government.
- (f) A full time member secretary possessing qualifications, knowledge and experience of scientific, engineering or management aspects of pollution control.

The members of the board other than member secretary shall hold office for a period of 3 years from the date of his nomination. A member of board is also eligible for re-nomination.

***Functions of the State Pollution Control Board:***

List of functions given by SPCB are:

- (a) To plan a comprehensive program for prevention, control or abatement of pollution of streams and wells in the State.

- (b) To advise the State Government on matters relating to prevention, control or abatement of water pollution.
- (c) To collect and disseminate information relating to prevention, control or abatement of water pollution.
- (d) To encourage, conduct and participate in investigations and research relating to prevention, control or abatement of water pollution.
- (e) To collaborate with CPCB in organising the training of persons engaged in programs relating to prevention, control or abatement of water pollution.
- (f) To inspect sewage or trade effluents, works and plants for the treatment of sewage and trade effluents and to review the plans, specifications or other data relating to plants set up for the treatment of water in connection with the grant of any consent as required by the Water Act.
- (g) To lay down, modify or annul effluent standard for the sewage and trade effluents, and for the quality of receiving waters and to classify the waters of the State.
- (h) To evolve economical and reliable methods of treatment of sewage and trade effluents.
- (i) To evolve methods of utilisation of sewage and suitable trade effluents in agriculture.
- (j) To evolve efficient methods of disposal of sewage and trade effluents on land.
- (k) To lay down standards of treatment of sewage and trade effluents to be discharged into in any particular stream.
- (l) To make vary or revoke any order for the prevention, control or abatement of discharges of wastes into streams or wells and requiring any person concern to construct new systems for the disposal of sewage and trade effluents or to modify, alter or extend any such existing system or to adopt such remedial measures as are necessary for prevention, control or abatement of water pollution.
- (m) To lay down effluent standards to be complied with the persons while discharging sewage or sullage.
- (n) To establish or recognise lab to enable the Board to perform the above functions efficiently.
- (o) To advise the State Government with respect to the location of any industry the carrying on of which is likely to pollute a stream or well.

(p) To perform such other functions as may be prescribed or as may, from time to time be entrusted to it by the Central Board or the State Government.

***Powers of the State Government:***

The State Government is empowered by Section 19 of the Water Act to restrict the application of the Water Act to certain areas. If the State Government is of the opinion, after consultation with SPCB or on the recommendations of the SPCB, that the provisions of the Water Act need not be applied to the entire State then it may notify in the Official Gazette and restrict the application of this Act to such area or areas as may be declared therein as Water pollution, prevention and control area and thereafter the provisions of the Water Act shall apply only to such areas.

The State Governments is also empowered by Section 19 to alter any water pollution, prevention and control area and to definesnew water pollution, prevention and control area.

The State Government is conferred with the powers to give directions in writing to the SPCB. In case if there is inconsistency between the directions given by the State Government and by the COCB, the matter shall be referred to the Central Government for its decision. The State Government is empowered to supercede the SPCB for a period not exceeding one year, if at any time, the State Government is of the opinion that the SPCB has persistently failed to perform its functions prescribed by the Water Act or that circumstances exist which render it necessary in public interest to do so.

In G.S.Oberoi v. State of Punjab court held that giving of notice or opportunity of hearing to the Board or its Chairman and members was not necessary.

In R.A.Goel v. Union of India the parliament has by necessary implication excluded the principles of natural justice when the Board is to be superseded in public interest for valid reasons.

***Powers of the State Pollution Control Board:***

The following powers are vested with SPCB:

*Power to obtain information-Section 20:* SPCB may survey any area and keep records of the flow or volume and other characteristics of stream or well. The SPCB empowered to give directions requiring any person who is abstracting water from any such stream or well or is discharging sewage or trade effluent into any such stream or well, to give such information



as to the abstraction or the discharge in the form prescribed. They are also empowered to give directions to any person in charge of any establishment where any industry, operation or process or treatment and disposal system is carried out, to furnish all information regarding the construction, installation or operation of such establishment or of any disposal system or of any extension or addition thereto in such establishment.

In case of failure to comply with directions given under section 20, the offender shall be liable for imprisonment which may extend up to 3 months or with fine up to Rs10000/- or with both. If the failure continues then the offender is liable for an additional fine, which may extend to Rs. 5000/- for everyday during such failure continues.

*Power to take samples of effluents for Analysis-Section 21:*

The SPCB or any officer authorised by the SPCB shall have power to take samples of water from any stream or well or samples of any sewage or trade effluent, for the purpose of analysis. Section 21 of the Act lays down procedure for taking samples of effluents. The procedure is:

- i. The officer authorised by the SPCB shall serve a notice declaring the intention to take the sample for analysis, then and there, on the person in charge of or having control over the plant or vessel or in occupation of the place.
- ii. If the occupier wilfully absents himself, the person taking the sample shall inform the government analyst in writing about the wilful absence of the occupier or his agent.
- iii. If the occupier is present, then the sample collected shall be divided into two parts in the presence of the occupier or his agent.
- iv. The person taking the sample shall place it in a container which shall be marked and sealed and signed by both the person taking the sample and the occupier or his agent.
- v. After sealing and signing the container, the person taking the sample shall send one container to the lab established by the SPCB.
- vi. On the request of the occupier or his agent, the person taking the sample shall send the second container to the state water lab established by state government.

*Delhi Bottling Co. v. Central Board for the Prevention and Control of Water Pollution* the Delhi HC held that the officials of the board were not justified in getting the sample analysed from a lab recognised by the board instead of from the lab of the Delhi Administration without complying with the requirements of section 21. That being so the conclusion that the petitioners were discharging effluents in the stream, which were likely to cause pollution, was not held sustainable.

*Power of entry and inspection Section 23:*

Any person empowered by the SPCB shall have their right to enter any place at any time for the purpose of: Performing any of the functions of SPCB entrusted to him, Determining whether the provision of Act, the rules made there under, or any notice, order, directions given is complied with or not, Examining any plant, record, register, document or any material object or for conducting a search of any place in which he has reason to believe that an offence under this Act or rules made there under is being committed and for seizing any plant, record, register, document or other material object if he has reason to believe that it may furnish evidence of the commission of an offence punishable under the Act.

*Power to impose restriction on new outlets and new discharges- Section 25:*

Section 25 prohibits persons from: establishing or taking any steps to establish industry, operation or process or any treatment and disposal system or an extension or addition thereto, which is likely to discharge sewage or trade effluent into a stream or well or sewer or on land, without the previous consent of the SPCB, bringing into use any new or altered outlets for the discharge of sewage, without the previous consent of the SPCB, beginning to make any new discharge of sewage without the previous consent of the SPCB.

An application for consent of SPCB shall be made in such form and shall be accompanied by such fees as may be prescribed. On receipt of the application, the SPCB may make such inquiry, as it may deem fit.

The SPCB after making such inquiry, as it may deem fit may grant its consent subject to certain conditions, which will be valid for such period specified by the SPCB in the consent order. The application for consent shall be disposed of within a period of 4 months. If SPCB do not either grant or refuse consent within a period of 4 months from the date of application then it will be presumed that consent has been accorded without any conditions.

*Narula Dyeing and printing works v. UOI* Court held that obtaining a consent order from SPCB does not mean that the industry is entitled to discharge trade effluent into stream. It is incumbent upon the industry to comply with all the conditions prescribed in the consent order within the stipulated time limit. Failure to fulfil the conditions will result in lapse of the consent.

**Other related cases** A.P.Pollution control board v. M.V.Nayudu, vijayanagar Educaion Trust v.Karnataka State Pollution Control Board, Mahabir soap and Godakhu factory v. UOI, M.C.Mehta v. UOI, T.N.Godavarmanthirumalpad v. UOI, Gujarat Pollution Control Board v. Parmardevusinhshersinh.

*Power of State Government to carry out certain works:*

Section 30 provides that where Board has imposed any conditions on any person while granting consent under section 25 or 26 which require such person to execute any work in connection therewith and the person fails to execute that work, the Board may itself execute it after giving a notice to the concerned person. The Board may also recover the expenses incurred by it for the execution of the said work from the concerned person as arrears of land revenue or of public demand.

*Furnishing of information to State Board or other Agencies in certain cases:*

If due to an accident or other unforeseen act or event, any poisonous, noxious or polluting matter is discharged from any industry, operation or process, any treatment or disposal system or any extension or addition thereto, into stream or well or on sewer or on land resulting in pollution, then the person incharge of such place shall intimate the occurrence of such accident or event to the State Board and such other agencies or authorities as may be prescribed. This provision applies to local authorities as well where the local authority operates any sewage system or sewage work. This duty to supply information is mandatory and its failure is punishable under section 42 of the Act.

**Power to take emergency measure in case of pollution of stream and well:**

If due to an accident or other unforeseen act or event, any poisonous, noxious or polluting matter is present or likely to enter into any stream or well or on land by reason of the discharge, the board may for reasons to be recorded in writing, carry out such operation as it considers necessary for any of the following purposes:

- (i) removing the matter and disposing it off in such manner the board considers appropriate,
- (ii) remedying or mitigating any pollution caused by its presence,
- (iii) issuing orders restraining or prohibiting the person concerned for discharging any poisonous, noxious or polluting matter.

*Power of Board to make application to courts for restraining apprehended pollution of water in streams or wells:*

Board has power to make application to courts for restraining apprehended pollution of water in streams or wells. This is in Section 33 of the Act. The application can be made to a court not inferior to that of Metropolitan Magistrate or a Judicial Magistrate of I class. The court may make such order as it deems fit. It may direct the person, who is likely to cause or has caused pollution, to desist from taking such action and remove the polluting matter. If such a person fails to do so, the court may also authorise the Board to undertake the removal and disposal of the polluting matter and recover the expenses for the same from the concerned person.

Maharaja shri. Umaid Mills Ltd., Pali v. State-Court held that the proceedings under section 33 of Act are criminal in nature. Therefore, if the complaint in proceedings under section 33 of Act is dismissed, then the restoration of the same is not permissible as there is no provision in Cr.P.C for review of order.

*Power to give directions: Section 33 A*

This provision was incorporated through an amendment in the year 1988. Board may issue any directions in writing to any person, officer or authority, and such person, officer or authority shall be bound to comply with such directions. The power to give direction includes:

- (a) The closure prohibition or regulation of any industry, operation or process
- (b) The stoppage or regulation of supply of electricity, water or any other service.

The failure to comply with any direction given under this section is an offence punishable under section 41(2) of the Act. Also decision under 33A should not be extraneous considerations nor should it be taken arbitrarily.

In *Stella Silks Ltd. v. State of Karnataka* the industry was discharging pollutants and polluting water in violation of various provisions of the Act and conditions imposed thereunder for its own benefit. The industry also flouted orders of the court and violated its own undertaking given before the court. Accordingly, the Board ordered for the closure of the said industry. The court held that the said order is not to be interfered with and the petition of the company was dismissed with cost Rs 5000/-

Related case laws: Sector 14 residents welfare association v. State of Delhi

M.C.Mehta v. UOI (Calcutta tannery case), Ambuja Petrochemicals Ltd., v. A.P.Pollution control Board

***Penalties under Water Act:***

Under this Act different penalties have been prescribed for violating different provisions of the Act. Section 41 – 45 A are relevant provisions in this regard. Section 41 provides for failure to give information as required under section 20 of the Act, punishable with imprisonment which may extend to three months or with fine which may extend to ten thousand rupees or with both, and in the case of a continuing contravention or failure, with an additional fine which may extend to five thousand rupees for every day during which such contravention or failure continues after conviction for the first such contravention or failure. Further the section provides that:

- (i) For violation of any order or any direction prohibiting discharge of any polluting matter into stream or well or land (or)
- (ii) For violation of court order restraining pollution of water
- (iii) For violating the direction of Board

The punishment shall be with imprisonment for a term which shall not be less than one year and six months but which may extend to six years and with fine, and case the failure continues, with an additional fine which may extend to five thousand rupees for every day during which such failure continues after the conviction for the first such failure. If the failure continues beyond a period of one year after the date of conviction, the offender shall, on conviction, be punishable with imprisonment for a term which shall not be less than two years but which may extend to seven years and with fine.

Under section 42 penalty for certain acts:

- (a) destroys, pulls down, removes, injures or defaces any pillar, post or stake fixed in the ground or any notice or other matter put up, inscribed or placed, by or under the authority of the Board, or
- (b) obstructs any person acting under the orders or directions of the Board from exercising his powers and performing his functions under this Act, or
- (c) damages any works or property belonging to the Board, or
- (d) fails to furnish to any officer or other employees of the Board any information required by him for the purpose of this Act, or
- (e) fails to intimate the occurrence of an accident or other unforeseen act or even under section 31 to the Board and other authorities or agencies as required by that section, or
- (f) in giving any information which he is required to give under this Act, knowingly or wilfully makes a statement which is false in any material particular, or
- (g) for the purpose of obtaining any consent under section 25 or section 26, knowingly or wilfully makes a statement which is false in any material particular shall be punishable with imprisonment for a term which may extend to three months or with fine which may extend to ten thousand rupees or with both.

It is further provided that for the grant of a consent in pursuance of the provisions of section 25 or section 26 the use of a meter or gauge or other measure or monitoring device is required and such device is used for the purposes of those provision, any person who knowingly or wilfully alters or interferes with that device so as to prevent it from monitoring or measuring correctly shall be punishable with imprisonment for a term which may extend to three months or with fine which may extend to ten thousand rupees or with both.

Whoever contravenes the provision of section 24, permits knowingly any poisonous, noxious or polluting matter into any stream or well or land, the punishment shall be with imprisonment for a term which shall not be less than one year and six months but which may extend to six years and with fine.

Whoever contravenes the provision of section 25 or section 26 shall be punishable with imprisonment for a term which shall not be less than two years but which may extend to

six years and with fine. If any person who has been convicted of any offence under section 24 or 25 or section 26 is again found guilty of an offence involving a contravention of the same provision, he shall, on the second and on every subsequent conviction, be punishable with imprisonment for a term which shall not be less than one and half years but which may extend to seven years and with fine: Provided that for the purpose of this section no cognizance shall be taken of any conviction made more than two years before the commission of the offence which is being punished.

*Residuary Penalties:* Section 45 A inserted through 1988 Amendment in Act. This section is residuary penalty section. It prescribes quantum of punishment when no penalty for an offence has been provided elsewhere in this Act. This section provides that any person contravenes any provision of the Act or fails to comply with any order or direction under this Act and for which no penalty has been provided elsewhere in this Act, then such person shall be punishable with an imprisonment which may extend to 3 months or with fine which extend to Rs 10000/- or with both. In case there is continuing contravention or failure, the punishment shall be an additional fine which may extend to Rs.5000/- for every day during which such contravention or failure continues after conviction for the first contravention or failure.

Section 46- If any person convicted of any offence under this Act commits alike offence afterwards, the court may cause the offenders name and place of residence, the offence and the penalty imposed to be published at offender's expense in any newspaper.

The apex court under Article 32 of Indian Constitution has entertained public interest litigations in cases of water pollution and also it applies the doctrine polluter pays principle to compensate by way of cost for the restoration of the environment and ecology of the area.

In *M.C.Mehta v. Kamal Nath* the SC took notice of the pollution of the river Beas by the discharge of untreated effluents from the motel. The Supreme Court, directed that the motel shall not discharge untreated effluent into the river and that Himachal Pradesh Pollution control Board shall inspect the pollution control devices plant set up by the motel. It was further directed to HPCB shall not permit the discharge of untreated effluents into river beas. The Court directed that the motel should be issued a show causes notice as to why pollution fine and damages be not imposed on the management of the motel for causing water

pollution and thereby disturbing ecology of the area. Related case law: *M.C.Mehta v. Kamal Nath*.

***Offences by Companies–Section 47:*** *The Act incorporates the principle of Vicarious Liability.* This section provides that Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to the company for the conduct of, the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly: But there shall be ***no liability*** of any such person ***if he proves:***

- that the offence was committed without his knowledge or
- that he exercised all due diligence to prevent the commission of such offence.

Section 47 (2): Where an offence against this Act has been committed by a company and it is proved that the offence has been committed with consent or connivance of, or is attributed to any neglect on the part of any, director, manager, secretary or other officer of the company then such officers shall be deemed to be guilty of that offence and shall be proceeded against and punished accordingly. In *U.P.Pollution Control Board v. Modi Distillery* there was pollution by the industrial unit resulting in prosecution of Chairman, Managing Director and other directors of the company. There was wilful default of the industrial unit in furnishing details. Consequently, the name of the company was wrongly described in the complaint. It was held by the Supreme Court that this cannot be ground for quashing the complaint against the chairman and others. Related case laws: *U.P.Pollution Control Board v. Mohan Meakins Ltd.*, *NalinThakor v. State of Gujarat*, *U.P.Pollution Control Board v. Dr.Bhupendra Kumar Modi*

***Offences by Government Departments:*** Where an offence under this Act has been committed by any Department of Government, the Head of the Department shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly: ***There shall be no liability of the Head of the department:***

- If he proves that the offence was committed without his knowledge (or)
- That he exercised all due diligence to prevent the commission of such offence.



**Cognizance of offences- Section 49:** Court shall take cognizance of any offence under this Act only if complaint is made by:

- a Board or any officer authorised in this behalf by Act or
- any person who has given the notice of not less than 60 days of the alleged offence and of his intention to make complaint to the Board or the authorised officer.

No court inferior to that of Metropolitan Magistrate or Judicial Magistrate of first class shall try any offence punishable under this Act. It shall be the obligation of the Board to make available relevant reports in its possession to the person who intends to make complaint under the section. But the Board may refuse to make any such reports available to such person if in the opinion of the Board it will be against the public interest. Thus citizen can not only sue to enforce the Act to gain compliance by the industries, but they can also require the Board to provide the emission data needed to build a citizen's case. A judicial Magistrate of the first class or a Metropolitan Magistrate is specially empowered to pass a sentence of-

- (a) imprisonment exceeding two years
- (b) fine exceeding Rs2000/- on any person convicted.

**Miscellaneous provisions:** Chapter VIII of the Act contains certain miscellaneous provisions. The important provisions are:

**Central Water Laboratory:** Section 51 provides that the central government may, by notification in the official gazette-

- (a) establish a Central Water Laboratory; or
- (b) specify any laboratory or institute as a Central Water Laboratory, to carry out the functions entrusted to the Central Water Laboratory under this Act.

The *Central Government* may, after *consultation* with the *Central Board*, make rules prescribing-

- (a) the functions of the Central Water Laboratory;
- (b) the procedure for the submission to the said laboratory of samples of water or of sewage or trade effluent for analysis or tests, the form of the laboratory's report thereunder and the fees payable in respect of such report;

I such other matters as may be necessary or expedient to enable that laboratory to carry out its functions.

***State Water Laboratory-Section 52:***The State Government may, by notification in the Official Gazette –(a) establish a State Water Laboratory; or

- B. specify any State laboratory or institute as a State Water Laboratory, to carry out the functions entrusted to the State Water Laboratory under this Act.

The State Government may, after consultation with the State Board, make rules prescribing –

(a) the functions of the State Water Laboratory;

(b) the procedure for the submission to the said laboratory of samples of water or of sewage or trade effluent for analysis or tests, the form of the laboratory's report thereon and the fees payable in respect of such report;

and such other matters as may be necessary or expedient to enable that laboratory to carry out its functions.

***Bar of Jurisdiction- Section 58:***

No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which an appellate authority constituted under this Act is empowered by or under this Act to determine, and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

In *Sreenivasa Distilleries v. Thyagarajan* a suit for granting permanent injunction was filed by the plaintiff, restraining the defendants from letting out noxious fluids into the river. The defendant raised an objection that the suit was not maintainable in view of section 58 of the Act. It was held that the basic object of section 58 is to preserve the statutory protection given to the boards untouched by civil courts. In the instant case, an injunction was sought only to prevent the defendant from polluting water and it was not directed to annul any order passed by the authority constituted under Water Act. Any authority constituted under Water Act had passed no order and, therefore, any order passed by the civil court would not take away the jurisdiction of the authorities constituted under this Act. Thus section 58 of water act does not prohibit the jurisdiction of the Civil Court to entertain any suit or proceeding restraining the defendant to cause pollution.

**Section 60** the Act provides about overriding effect: The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act.

**Section 61: Power of Central Government to supersede the Central Board and Joint Boards**

**Power of Central Government to supersede the Central Board and Joint Boards.** If at any time the Central Government is of opinion:

(a) that the Central Board or any Joint Board has persistently made default in the performance of the functions imposed on it by or under this Act; or

(b) that circumstances exist which render it necessary in the public interest so to do so.

However the Government cannot supersede the Board for a period exceeding 1 year and if the government is superseding the Board on the grounds mentioned above in clause (1), it is required to give reasonable opportunity to such board to show cause why it should not be superseded and it shall consider the explanation and objections, if any of such board. Upon the publication of the notification superseding the central, joint or state board: (a) all the members shall, as from the date of supersession vacate their offices as such;

(b) all the powers, functions and duties which may, by or under this Act, be exercised, performed or discharged by the Central Board or such Joint Board shall, until the Central Board or the Joint Board, as the case may be, is reconstituted under sub-section (3) be exercised, performed or discharged by such person or persons as to Central Government may direct;

All property owned or controlled by the Central Board or such Joint Board shall, until the Central Board or the Joint Board, as the case may be, is reconstituted under sub-section (3) vest in the Central Government.

On the expiration of the period of supersession specified in the notification the Central Government or State Government may:

a) extend the period of supersession for such further term, not exceeding six months, as it may consider necessary; or

b) reconstitute the Central Board or the Joint Board, as the case may be, by fresh nomination or appointment, as the case may be. In such case any person who vacated his office upon supersession, shall also be eligible for nomination or appointment.

*Power to make rules- Section 64:* The Central Government and the State Government have the power to make rules in connection with the matters provided in the Water Act.

***Joint Boards:***

***Constitution of Boards:*** Section 13 provides that Joint Board for specified period, which can be further renewed, can be constituted by an agreement. The agreement may be entered into:

- (i) By two or more Governments of adjoining state.
- (ii) By the central government (in respect of one or more Union Territories) and one or more Governments of States adjoining to such Union Territories.

An agreement under this section may-

- (i) Provide for apportionment of the expenditure in connection with the Joint Boards.
- (ii) Determine that which of the participating Governments, shall exercise and perform the several powers and functions under this Act.
- (iii) Provide for consultation with reference to particular matters arising under this Act
- (iv) Make such incidental and ancillary provisions, not inconsistent with this Act, as may be deemed necessary or expedient for giving effect to the agreement

Agreement under this section is required to be published in the official gazette of the participating states and participating Union Territory as the case may be.

***Composition of Joint Boards:***

- (a) One full time chairman to be nominated by Central Government.

He must have special knowledge or practical experience relating to environmental protection. A person having knowledge and experience in administering institutions dealing with environment protection is also eligible.

- (b) 2 officials from each of the participating States to be nominated by the concerned participating State Government to represent that Government.
- (c) 1 person to be nominated by each of the participating State Governments to represent local authority functioning within the State Government.
- (d) 1 non-official member to be nominated by each of the participating State Governments to represent the interest of agriculture, fishery or industry or trade in the concerned State.

- (e) 2 persons to be nominated by the Central Government to represent the companies or corporation owned, controlled or managed by participating State Governments.
- (f) 1 full time Member Secretary to be appointed by the Central Government. He should possess qualifications, knowledge and experience of scientific, engineering or management aspects of pollution control.

When a Joint board is constituted by entering into an agreement by the Central Government in respect of one or more Union Territory(U.T.) and one or more governments of the adjoining States, then the Central Board shall not exercise the powers and perform the functions of a State board for that U.T.- Section 14(3).

**Special Provision relating to giving of directions:** Section 15 provides that whenever a Joint Board is constituted under Section 13, the powers of the government of a State for which the joint board is constituted shall be limited to give any direction under this Act only in cases where such direction relates to a matter within the territorial jurisdiction of that State. The Central Government alone shall be competent to give any direction under the Water Act where such direction relates to a matter within the territorial jurisdiction of two or more States or pertaining to U.T.

**Cases:**

*A.P. Pollution Control Board v. M.V. Nayudu*

Respondent industry sought to establish a new factory in the State of Andhra Pradesh to produce vegetable oils. The industry purchased land in Peddashpur village, within 10KM of two reservoirs that provided drinking water for 5 million people. In 1988, the Ministry of Forests and Environment established a "red" list of hazardous industries, including industry which produces "vegetable oils including solvent extracted oils." This Notification was issued by the Central Government based on its powers under the Water Prevention and Control of Pollution Act of 1974 ("Water Act"), the Air Prevention and Control of Pollution Act of 1981 ("Air Act"), the Water Prevention and Control of Pollution Act of 1977, and the Environment Protection Act of 1986 ("Environment Act"). Under these statutes, the Central Government directed that when the Pollution Control Board ("PCB") processed No Objection Certificate ("NOC") applications, it should determine which category (such as the "red" category) the industry belonged to, keeping in mind the pollution-causing potential of the industry. In 1994, under the directive of the Central government, the State of Andhra Pradesh

issued notification which prohibited industries from being located within 10 KM of reservoirs (“10 KM rule”). In 1995, respondent applied for NOC from the State of Andhra Pradesh Pollution Control Board. Subsequently the Board rejected the application because of the 10 KM rule. Respondent then, once again, applied for an NOC from the Board, which was rejected and later requested an exemption from the 10 KM rule from the State Government because it had already invested a large amount in its operations. The State Government granted the exemption and directed the Board to prescribe precautions to be taken by the respondent to safeguard against pollution. The Board set out a list of precautions because it was required to, but stood firm in rejecting the application for the NOC. Respondent then filed an appeal with the Appellate Authority under Section 28 of the Water Act. The Appellate Authority allowed the appeal and reversed the orders of the Board, finding that the “Red” list did not apply outside the Doon Valley, and relying on expert affidavit, which stated that respondent had used the latest eco-friendly technology. The Appellate Authority also held that under the principle of promissory estoppel, the Board had to grant the NOC because respondent had been granted permission for change of land-use and to erect a factory. The decision of the Appellate Authority was appealed. *The Court overturned the decision of the Appellate Authority and reinstated the decision of the Board to reject the respondent’s application for an NOC.* The Court first addressed whether it was permissible for the Central Government and the State Government to issue an exemption for an individual hazardous industry within the 10 KM area around a reservoir, even with the requirement that the industry provide safeguards. The Court held that, in light of the Environment Act and the 10 KM rule, which prohibited all industry within said area, the exemption was not appropriate and the NOC could not be granted. The Court reasoned that although Section 3(2)(v) permitted the government to place restrictions specifying where industry could operate only with safeguards, the total prohibition under the 10 KM rule meant that the State Government could not direct the Board to prescribe conditions for the grant of the NOC. It also found that the fundamental objective of the Water Act as to provide clean drinking water to its citizens, and that although Section 19 of the Water Act allowed the State to restrict its application in a particular area, it did not empower the State to grant an exemption to a particular industry in an area where it was totally prohibited. Finally, on this issue, the Court held that granting such an exemption to a particular industry was arbitrary and contrary to the public interest, which constituted a violation of Article 21 of the Constitution (the right to life, which includes the right to clean drinking water). The Court next considered whether, in light of the

reports furnished to the Court, the respondent could claim an exemption from the 10 KM rule and whether such an exemption should have been granted. The Court held that respondent had not met his burden because it had not shown that there would be no danger of pollution to the two reservoirs even if the industry were established within 10 KM of the reservoirs. The NEAA report found that the industry was hazardous, it had a high pollution potential, and the establishment of any chemical industry carried with it imminent dangers of chemical pollution in the water. Based on this conclusion, and the conclusions of the other reports, the Court found that it could not be said that the two reservoirs would not be endangered. As such, the Court held that the Board could not be directed to suggest safeguards and that there was every likelihood that safeguards could fail either due to accident or human error. Here, the Court relied on the precautionary principle when it stated that it was not willing to rely on the bear assurances of the respondent that care would be taken, because millions of people relied on the reservoirs for drinking water. The Court opined that it would be impossible for the Government to track whether the pollutants were leaking. Next, the Court held that promissory estoppels did not apply in this case. The Court noted that Section 25 of the Water Act required a person to get consent from the Board before taking any steps to establish industry. Therefore, respondent should not have sought permission for the building or the land change and it should not have proceeded with its civil works and machinery installation because it did not have the consent of the Board. The Court held that because the conduct of the respondent was contrary to the Act, the respondent could not seek an NOC after violating the policy decision of the government.

**Other cases to be referred:** *T.N.GodavarmanThirumalpad v. UOI*; *Narula Dyeing & Printing Works v. UOI*; *State of Manipur v. Chandam Manihar Singh*; *Ahil Bharat Goservasangh v. State of Andhra Pradesh*; *M.C.Mehta v. UOI AIR 1988*; *Delhi bottling Co.Pvt.Ltd., v Central Board for prevention and control of polluting*; *Abdul Hamid v. Gwalior Rayon Co.,; Viyaynagar Educational Trust v. K.S.P.C. Board, Bangalore*; *Gujarat Pollution Control Board v. ParmarDevusinhshersinh AIR 2000*.

## **B. PREVENTION AND CONTROL OF AIR POLLUTION**

“A little morphine in all the air. It would be wonderfully refreshing for everyone.”  
D.H. Lawrence, *Lady Chatterley’s Lover*

Air and water are the basic fluids for human life. The protection and prevention of pollution is need of the hour. The World Health Organization defines “air pollution as “the presence of materials in the air in such concentration which are harmful to man and his environment.” It may also be explained as the imbalance in the quality of air, which causes ill effects. Air pollutants are those materials which exist in such concentration so as to cause unwanted effects. Different types of pollutants are emitted continuously in the atmosphere but it is removed through self-purification process of air. When the rate of pollution exceeds and when the self-purifying capacity decreases, accumulation of pollutants in air causes serious health problems not only to human beings but also to other living creatures. Normally air pollutants are classified into 2 groups gaseous and Particulate pollutants.

**Sources of Air Pollution:** A stationary source of air pollution refers to an emission source that does not move, also known as a point source. Stationary sources include factories, power plants, dry cleaners and degreasing operations. The term area source is used to describe many small sources of air pollution located together whose individual emissions may be below thresholds of concern, but whose collective emissions can be significant. Residential wood burners are a good example of a small source, but when combined with many other small sources, they can contribute to local and regional air pollution levels. Area sources can also be thought of as non-point sources, such as construction of housing developments, dry lake beds, and landfills.

A mobile source of air pollution refers to a source that is capable of moving under its own power. In general, mobile sources imply “on-road” transportation, which includes vehicles such as cars, sport utility vehicles, and buses. In addition, there is also a “non-road” or “off-road” category that includes gas-powered lawn tools and mowers, farm and construction equipment, recreational vehicles, boats, planes, and trains.

Agricultural operations, those that raise animals and grow crops, can generate emissions of gases and particulate matter. For example, animals confined to a barn or restricted area (rather than field grazing), produce large amounts of manure. Manure emits various gases, particularly ammonia into the air. This ammonia can be emitted from the animal houses, manure storage areas, or from the land after the manure is applied. In crop production, the misapplication of fertilizers, herbicides, and pesticides can potentially result in aerial drift of these materials and harm may be caused. Although industrialization and the



use of motor vehicles are overwhelmingly the most significant contributors to air pollution, there are important natural sources of “pollution” as well. Wildland fires, dust storms, and volcanic activity also contribute gases and particulates to our atmosphere.

### **Effects of Air Pollution:**

*Acidification:* Chemical reactions involving air pollutants can create acidic compounds which can cause harm to vegetation and buildings. Sometimes, when an air pollutant, such as acid combines with the water droplets that make up clouds, the water droplets become acidic, forming acid rain. When acid rain falls over an area, it can kill trees and harm animals, fish, and other wildlife. Acid rain destroys the leaves of plants. When acid rain infiltrates into soils, it changes the chemistry of the soil making it unfit for many living things that depend on the soil as a habitat or for nutrition. Acid rain also changes the chemistry of the lakes and streams that the rainwater flows into, harming fish and other aquatic life. *Eutrophication:* Rain can carry and deposit the Nitrogen in some pollutants on rivers and soils. This will adversely affect the nutrients in the soil and water bodies. This can result in algae growth in lakes and water bodies, and make conditions for other living organism harmful. Apart from this chemical reactions involving air pollutants create a poisonous gas *ozone (O<sub>3</sub>)*. Gas Ozone can affect people’s health and can damage vegetation types and some animal life too.

SPM Suspended Particulate Matter, dust and ash particles laden with toxic chemicals are most defective. The primary sources of SPM are power plants, industrial units and auto emissions. Tobacco smoking also adds to air pollution. The danger of passive smoking is broader. Realizing the gravity of situation and considering the adverse effect of smoking on smokers and passive smokers, the SC of India in *Murli S. Deorav. UOI* directed the UOI, state Governments as well as Union territories to take effective steps to ensure prohibiting smoking in public places.

### ***THE AIR (PREVENTION AND CONTROL OF POLLUTION) ACT, 1981***

In the United Nations Conference on the Human Environment held in Stockholm in June, 1972 in which India participated, decisions were taken to take appropriate steps for the preservation of the natural resources of the earth which, among other things, include the preservation of the quality of air and control of air pollution. The government has decided to implement these decisions of the said Conference in so far as they relate to the preservation

of the quality of air and control of air pollution through Air Act 1981 and it was enacted under Article 253 by the Parliament.

**Object of the Act:** This Act is a specialised legislative measure meant to tackle one facet of environmental pollution and its object are:

- (i) To provide for the prevention, control and abatement of air pollution;
- (ii) To provide for the establishment of Central and State Boards, with a view to implement the aforesaid purpose;
- (iii) To provide for conferring on such Boards powers and assigning to such boards functions relating thereto; and
- (iv) To lay down the standards to maintain the quality of air.

This Act has 54 sections with 6 chapters.

Chapter I	Preliminary
Chapter II	Central and State Boards for the Prevention and Control of Air Pollution
Chapter III	Powers and Functions of Boards
Chapter IV	Prevention and Control of Pollution
Chapter V	Fund, Accounts and Audit
Chapter VI	Penalty and procedure
Chapter VII	Miscellaneous

***Definitions:***

Section 2 deals with definitions.

**“air pollutant”** means any solid, liquid or gaseous substance including noise present in the atmosphere in such concentration as may be or tend to be injurious to human beings or other living creatures or plants or property or environment;

**“air pollution”** means the presence in the atmosphere of any air pollutant;

**“Central Board”** means the [Central Pollution Control Board] constituted under Sec. 3 of the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974)

**“control equipment”** means any apparatus, device, equipment or system to control the quality and manner of emission of any air pollutant and includes any device used for securing the efficient operation of any industrial plant;

**“emission”** means any solid or liquid or gaseous substance coming out of any chimney, duct or flue or any other outlet;

**“industrial plant”** means any plant used for any industrial or trade purposes and emitting any air pollutant into the atmosphere;

**“occupier”**, in relation to any factory or premises, means the person who has control over the affairs of the factory or the premises, and includes, in relation to any substance, the person in possession of the substance;

**“State Board”** means:

- (i) in relation to a State in which the Water (Prevention and Control of Pollution) Act, 1974, is in force and the State Government has constituted for that state a [State Pollution Control Board] under sec. 4 of that Act, the said State Board; and
- (ii) in relation to any other State, the State Board for the Prevention and Control of Air Pollution constituted by the State Government under Sec. 5 of this Act.

***Central and State Boards for the Prevention and Control of Air Pollution:***

**Central Pollution Control Board** –Board constituted under **Sec. 3** of the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974), shall, without prejudice to the exercise and performance of its powers and functions under that Act, exercise the powers and perform the functions of the Central Pollution Control Board for the prevention and control of air pollution under this Act.

**State Boards:** In any state in which the Water Act is in force and the state Government has constituted for that state as a State Board under the Water Act then such state board shall be deemed to be the state board for the prevention and control of air pollution constituted under section 5 of this Act and the same will exercise the powers and perform the functions of the State Board for the prevention and control of air pollution under the Air Act.

In any state in which the Water Act is not in force or the state government has not constituted state board under the Water Act, the state Government shall constitute a state pollution control board for the prevention and control of air pollution and to exercise the

powers conferred on and perform the functions assigned to the Board under the Air Act. The State Board so constituted shall consist of following members, namely:

- (a) a Chairman, being a person having special knowledge or practical experience in respect of matters relating to environmental protection to be nominated by the State Government: provided that the Chairman may be either whole-time or part-time as the State Government may think fit;
- (b) such number of officials, not exceeding five, as the State Government may think fit, to be nominated by the State Government to represent that Government;
- (c) such number of persons, not exceeding five, as the State Government may think fit, to be nominated by the State Government from amongst the members of the local authorities functioning within the State;
- (d) such number of non-officials, not exceeding three, as the State Government may think fit to be nominated by the State Government to represent the interests of agriculture, fishery or industry or trade or labour or any other interest, which in the opinion of that Government, ought to be represented;
- (e) two persons to represent the companies or corporations owned, controlled or managed by the State Government, to be nominated by that Government;
- (f) a full-time member-secretary having such qualifications, knowledge and experience of scientific, engineering or management aspects of pollution control as may be prescribed, to be appointed by the State Government.

The State Government shall ensure that not less than two of the members are persons having special knowledge or practical experience in respect of matters relating to the improvement of the quality of air or the prevention, control or abatement of air pollution. The State Government has been declared as legal person under Section 5 as it can acquire and dispose of property and may sue and be sued as the State Board.

**Disqualifications.** –No person shall be a member of a State Board constituted under this Act, who –

- a. is, or at any time has been adjudged insolvent, or
- b. is of unsound mind and has been so declared by a competent Court, or

- c. is, or has been convicted of an offence which, in the opinion of the State Government, involves moral turpitudes, or
- d. is, or at any time has been convicted of an offence under this Act, or
- e. has directly or indirectly by himself or by any partner, any share or interest in any firm or company carrying on the business of manufacture, sale, or hire of machinery, industrial plant, control equipment or any other apparatus for the improvement of the quality of air or for the prevention, control or abatement of air pollution. or
- f. is a director or a secretary, manager or other, salaried officer or employee of any company or firm having any contract with the Board, or with the Government constitution the Board or with a local authority in the State, or with a company or corporation owned, controlled or managed by the Government, for the carrying out of programmes for the improvement of the quality of air or for the prevention, control, or abatement of air pollution, or
- g. has so abused, in the opinion of the State Government, his position as a member, as to render his continuance or the State Board detrimental to the interests of the general public.

The State Government shall, by order in writing, remove any member who is, or has become, subject to any disqualification mentioned above. The State Government under this section shall make no order of removal shall be made by the State Government under this section unless the member concerned has been given a reasonable opportunity of showing cause against the same. **Section 8A** member who has been removed under this section shall not be eligible to continue to hold office until his successor enters upon his office, or, as the case may be, for re-nomination as a member. **Section 9** if a member becomes subject to any disqualification mentioned above his seat shall be vacant. **Section 7(4)** A member of a State Board constituted under this Act, other than the member-secretary, shall be deemed to have vacated his seat, if he is absent without reasons from 3 consecutive meetings of the State Board. If a nominated member of the local authority ceases to be the member of the local authority, his seat shall also be declared as vacant. **Section 13** however a vacancy of the Board will not invalidate acts or proceedings of the board or any committee constituted by the boards.

**Section 10 and Section 11: Meetings of boards and constitution of committees:**

A Board shall meet at least once in every three months and shall observe such rules of procedure in regard to the transaction of business. If any business of an urgent nature is to be transacted, chairman may convene a meeting of the Board at such time as he thinks fit. Copies of the minutes of the meetings are forwarded to the Central Board and to the State Government concerned.

A Board may constitute as many committees consisting wholly of members or partly of members and partly of other persons and for such purpose or purposes as it may think fit. The committee shall follow the prescribed rules for transaction of its business.

**Section 12:** A Board may associate with itself in such manner, and for such purpose as may be prescribed, any person whose assistance or advice it may desire to obtain in performing any of its functions under this Act. A person associated with the Board shall have right to take part in the discussions of the Board relevant to that purpose, but shall not have a right to vote at a meeting of the Board and shall not be a member of the Board for any other purpose.

**Section 14:** A State Board constituted under this Act may from time to time appoint any qualified person to be a consultant to the Board as it thinks fit.

**Section 15:** A State Board may, by general or special order, delegate to the Chairman or the member-secretary or any other officer of the Board, any of its powers and functions under this Act as it may deem necessary.

**Section 19 to 31A deals with different measures, which can be taken to prevent and control Air Pollution**

**Section 19:**

(1) The State Government may, after consultation with the State Board, by notification in the Official Gazette declare in such manner as may be prescribed, any area or areas within the State as air pollution control area or areas for the purposes of this Act.

(2) The State government may, after consultation with the State Board, by notification in the Official Gazette,-

(a) alter any air pollution control area whether by way of extension or reduction ;

(b) declare a new air pollution control area in which may be merged one or more existing air pollution control areas or any part or parts thereof.

(3) If the State Government, after consultation with the State Board, is of opinion that the use of any fuel, other than an approved fuel, in any air pollution control area or part thereof, may cause or is likely to cause air pollution, it may, by notification in the Official Gazette, prohibit the use of such fuel in such area or part thereof with effect from such date (being not less than three months from the date of publication of the notification) as may be specified in the notification.

(4) The State Government may, after consultation with the State Board, by notification in the Official Gazette, direct that with effect from such date as may be specified therein, no appliance, other than an approved appliance, shall be used in the premises situated in an air pollution control area :

Provided that different dates may be specified for different parts of an air pollution control area or for the use of different appliances.

(5) If the State Government, after consultation with the State Board, is of opinion that the burning of any material (not being fuel) in any air pollution control area or part thereof may cause or is likely to cause air pollution, it may, by notification in the Official Gazette, prohibit the burning of such material in such area or part thereof.

**Section 22A. Power of Board to make application to court for restraining person from causing air pollution.**

(1) Where it is apprehended by a Board that emission of any air pollutant, in excess of the standards laid down by the State Board under clause (g) of sub-section (1) of section 17, is likely to occur by reason of any person operating an industrial plant or otherwise in any air pollution control area, the Board may make an application to a court, not inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class for restraining such person from emitting such air pollutant.

(2) On receipt of the application under sub-section (1), the court may make such order as it deems fit.

(3) Where under sub-section (2), the court makes an order restraining any person from discharging or causing or permitting to be discharged the emission of any air pollutant, it may, in that order,-

(a) direct such person to desist from taking such action as is likely to cause emission;

(b) authorise the Board, if the direction under clause (a) is not complied with by the person to whom such direction is issued, to implement the direction in such manner as may be specified by the court.

(4) All expenses incurred by the Board in implementing the direction of the court under clause (b) of sub-section (3) shall be recoverable from the person concerned as arrears of land revenue or of public demand.

**Section 23. Furnishing, of information to State Board and other agencies in certain cases.**

(1) Where in any area the emission of any air pollutant into the atmosphere in excess of the standards laid down by the State Board occurs or is apprehended to occur due to accident or other unforeseen act or event, the person in charge of the premises from where which emission occurs or is apprehended to occur shall forthwith intimate the fact of such occurrence or the apprehension of such occurrence to the State Board and to such authorities or agencies as may be prescribed.

(2) On receipt of information with respect to the fact or the apprehension of any occurrence of the nature referred to in sub-section (1), whether through intimation under that sub-section or otherwise, the State Board and the authorities or agencies shall, as early as practicable, cause such remedial measure to be taken as are necessary to mitigate the emission of such air pollutants.

(3) Expenses, if any, incurred by the State Board, authority or agency with respect to the remedial measures referred to in sub-section (2) together with interest ("t such reasonable rate, as the State Government may, by order, fix) from the date when a demand for the expenses is made until it is paid, may be recovered by that Board, authority or agency from the person concerned, as arrears of land revenue, or of public demand.

**Section 24. Power of entry and inspection.**

(1) Subject to the provisions of this section, any person empowered by a State Board in this behalf shall have a right to enter, at all reasonable times with such assistance as he considers necessary, any place---

(a) for the purpose of performing any of the functions of the State Board entrusted to him :



(b) for the purpose of determining whether and if so in what manner, any such functions are to be performed or whether any provisions of this Act or the rules made thereunder or any notice, order, direction or authorisation served, made, given or granted under this Act is being or has been complied with;

I for the purpose of examining and testing any control equipment, industrial plant, record, register, document or any other material object or for conducting a search of any place in which he has reason to believe that an offence under this Act or the rules made thereunder has been or is being or is about to be committed and for seizing any such control equipment, industrial plant, record, register, document or other material object if he has reasons to believe that it may furnish evidence of the commission of an offence punishable under this Act or the rules made there under.

(2) Every person operating any control equipment or any industrial plant, in an air pollution control area shall be bound to render all assistance to the person empowered by the State Board under sub-section (1) for carrying out the functions under that sub-section and if he fails to do so without any reasonable cause or excuse, he shall be guilty of an offence under this Act.

(3) If any person wilfully delays or obstructs any person empowered by the State Board under sub-section (1) in the discharge of his duties, he shall be guilty of an offence under this Act.

(4) The provisions of the Code of Criminal Procedure, 1973, or, in relation to the State of Jammu and Kashmir, or any area, in which that Code is not in force, the provisions of any corresponding law in force in that State or area, shall, so far as may be, apply to any search or seizure under this section as they apply to any search or seizure made under the authority of a warrant issued under section 94 of the said Code or, as the case may be, under the corresponding provisions of the said law.

#### **Section 25. Power to obtain information.**

For the purposes of carrying out the functions entrusted to it, the State Board or any officer empowered by it in its behalf may call for any information (including information regarding the types of air pollutants emitted into the atmosphere and the level of the emission of such air pollutants) from the occupier or any other person carrying on any industry or operating

any control equipment or industrial plant and for the purpose of verifying the correctness of such information, the State Board or such officer shall have the right to inspect the premises where such industry, control equipment or industrial plant is being carried on or operated.

**Section 26: Power to take samples of Air or emission**

(1) A State Board or any officer empowered by it in this behalf shall have power to take, for the purpose of analysis, samples of air or emission from any chimney, flue or duct or any other outlet in such manner as may be prescribed.

(2) The result of any analysis of a sample of emission taken under subsection (1) shall not be admissible in evidence in any legal proceeding unless the provisions of sub-sections (3) and (4) are complied with.

(3) Subject to the provisions of sub-section (4), when a sample of emission is taken for analysis under sub-section (1), the person taking the sample shall-

(a) serve on the occupier or his agent, a notice, then and there, in such form as may be prescribed, of his intention to have it so analysed;

(b) in the presence of the occupier or his agent, collect a sample of emission for analysis;

I cause the sample to be placed in a container or containers which shall be marked and sealed and shall also be signed both by the person taking the sample and the occupier or his agent;

(d) send, without delay, the container to the laboratory established or recognised by the State Board under section 17 or, if a request in that behalf is made by the occupier or his agent when the notice is served on him under clause (a), to the laboratory established or specified under sub-section (1) of section 28.

(4) When a sample of emission is taken for analysis under sub-section (1) and the person taking the sample serves on the occupier or his agent, a notice under clause (a) of sub-section (3), then,-

(a) in a case where the occupier or his agent negligently absents himself, the person taking the sample shall collect the sample of emission for analysis to be placed in a container or containers which shall be marked and sealed and shall also be signed by the person taking the sample, and

(b) in a case where the occupier or his agent is present at the time of taking the sample but refuses to sign the marked and sealed container or containers of the sample of emission as required under clause (c) of subsection (3), the marked and sealed container or containers shall be signed by the person taking the sample, and the container or containers shall be sent without delay by the person taking the sample for analysis to the laboratory established or specified under sub-section (7) of section 28 and such person shall inform the Government analyst appointed under sub-section (1) of section 29, in writing, about the willful absence of the occupier or his agent, or, as the case may be, his refusal to sign the container or containers.

#### **Section 47: Power of Central Government to supersede State Board**

(1) If at any time the State Government is of opinion-

(a) that a State Board constituted under this Act has persistently made default in the performance of the functions imposed on it by or under this Act, or

(b) that circumstances exist which render it necessary in the public interest so to do, the State Government may, by notification in the Official Gazette, supersede the State Board for such period, not exceeding six months, as may be specified in the notification: Provided that before issuing a notification under this sub-section for the reasons mentioned in clause (a), the State Government shall give a reasonable opportunity to the State Board to show cause why it should not be superseded and shall consider the explanations and objections, if any, of the State Board.

(2) Upon the publication of a notification under sub-section (1) superseding the State Board,-

(a) all the members shall, as from the date of supersession, vacate their offices as such;

(b) all the powers, functions and duties which may, by or under this Act, be exercised, performed or discharged by the State Board shall, until the State Board is reconstituted under sub-section (3), be exercised, performed or discharged by such person or persons as the State Government may direct.-,

All property owned or controlled by the State Board shall, until the Board is reconstituted under sub-section (3), vest in the State Government.

(3) On the expiration of the period of supersession specified in the notification issued under sub-section (1), the State Government may-

(a) extend the period of supersession for such further term, not exceeding six months, as it may consider necessary; or

(b) reconstitute the State Board by a fresh nomination or appointment as the case may be, and in such case any person who vacated his office under clause (a) of sub-section (2) shall also be eligible for nomination or appointment.

Provided that the State Government may at any time before the expiration of the period of supersession whether originally specified under sub-section (1) or as extended under this sub-section, take action under clause (b) of this sub-section.

#### **Case Laws:**

##### *A.P.Gunnies Merchants Association v. The Government of AP*

Traders in gunny bags were asked to shift from their present location to a much safer location as their activity contributed to air pollution in the thick populated area. The petitioner claimed *audi alteram partem* rule, which was not complied with before the order to shift was issued and hence the order is against the principle of natural justice. Since the business carried by petitioner is dangerous to the lives of people living in that area. Court was of the opinion that no fault could be impugned order which directs the shifting of business from a thickly populated area to safer place to avoid air pollution.

##### *K.Muniswamy Gowda v. State of Karnataka*

The petitioner sought an appropriate writ or direction against the owner of the rice mill for the shutting down the mill, which was functioning next to the residence of the petitioner and was causing health hazards by emitting husk and dusts in the entire atmosphere surrounding the area, resulting in the violation of the fundamental right of the petitioner as well as the pollution control laws. It was submitted before the court that the Karnataka SPCB had granted exemption to rice mills from the provisions of the Water Act and Air Act on the basis of instructions issued by the State Government. It was held by the High Court that a plain reading of section 18 (1) (b) of Air Act unquestionably manifest that the State Board shall be bound by only such directions issued by the state government which pertain to the discharge

of functions assigned to the SPCB under section 17 of the Act. It is also amply clear that neither the state government can issue any directions which have no nexus with the functions assigned to the board nor the board is bound to follow any such directions. The Parliament has not vested any discretion with the State Board to grant exemption to any plat or class of plants. There is no provision in the Air Act, which empowers the Board to keep any industrial plant out of the purview of the Act if it causes air pollution. Accordingly the notification of SPCB granting exemption to the rice mills from the provisions of Water Act and Air Act was held to be ultravires its powers and functions.

*Sitaramchhaparia v State of Bihar*

A tyre plant was set up in the residential area. The said industry was emitting carbon dioxide gas and other obnoxious gases from its furnaces thus causing air pollution and causing harm to the environment of the locality. The court noticed that the state respondent including the pollution control board and the industry department of the government of Bihar paid lip service to the obligation of law, which monitors environmental pollution. The court reminded the state of its constitutional obligation and directed the unit to be wound up and the state was to ensure the same.

*Jadav soap works v. UOI*

The Board arrived at the findings that the Petitioner industry was emitting high black smokes, which have been creating hazards to the inhabitants of the locality, and that the black smokes were being emitted without taking any preventive steps to control at source creating hazard in that area. The Board issued a notice to the industry for the closure of industry. However, no record was produced before the court to show how the pollution control board came to the conclusion before issuing the notice for the closure of the industry. Therefore, the court held that the whole action of the Board was arbitrary and highhanded exercise of power and thus the court quashed the impugned notice.

*Obayyapujari v. Member Secretary, K.S.P.C B., Bangalore*

*Assam pollution control Board v. Mahabir Coke Industry*

*Suma Traders v. Chairman K.S.Pollution Board.,*

*Municipal corporation of Delhi v. J.B.Bottling Co. (P) Ltd.,*

*G.S.Oberoi v. State of Punjab*

## **C.ENVIRONMENT PROTECTION ACT 1986**

Environment Protection Act:

The Preamble to the Act points out that the environment protection act was made:

- ✓ To implement decisions taken at the UN conference on Human Environment held at Stockholm in June 1972
- ✓ To take appropriate steps for the protection and improvement of human environment
- ✓ To prevent hazards to human beings, other living creatures, plants and property.

This Act has 4 chapters with 26 Sections. This Act is popularly said to be the Umbrella legislation in Environmental laws.

Section 2 is Definition:

(a) “environment” includes water, air and land and the inter- relationship which exists among and between water, air and land, and human beings, other living creatures, plants, micro-organism and property;

(b) “environmental pollutant” means any solid, liquid or gaseous substance present in such concentration as may be, or tend to be, injurious to environment;

I “environmental pollution “means the presence in the environment of any environmental pollutant;

I “hazardous substance” means any substance or preparation which, by reason of its chemical or chemical properties or handling, is liable to cause harm to human beings, other living creatures, plant, micro-organism, property or the environment;

(f) “occupier”, in relation to any factory or premises, means a person who has, control over the affairs of the factory or the premises and includes in relation to any substance, the person in possession of the substance;

Section 3: Power of Central Government to take measures to protect and improve environment

(1) Subject to the provisions of this Act, the Central Government, shall have the power to take all such measures as it deems necessary or expedient for the purpose of protecting and

improving the quality of the environment and preventing controlling and abating environmental pollution.

(2) In particular, and without prejudice to the generality of the provisions of sub-section (1), such measures may include measures with respect to all or any of the following matters, namely:--

- (i) co-ordination of actions by the State Governments, officers and other authorities—under this Act, or the rules made there under, or under any other law for the time being in force which is relatable to the objects of this Act;
- (ii) planning and execution of a nation-wide programme for the prevention, control and abatement of environmental pollution;
- (iii) laying down standards for the quality of environment in its various aspects;
- (iv) laying down standards for emission or discharge of environmental pollutants from various sources whatsoever:

Provided that different standards for emission or discharge may be laid down under this clause from different sources having regard to the quality or composition of the emission or discharge of environmental pollutants from such sources;

- (v) restriction of areas in which any industries, operations or processes or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards;
- (vi) laying down procedures and safeguards for the prevention of accidents which may cause environmental pollution and remedial measures for such accidents;
- (vii) laying down procedures and safeguards for the handling of hazardous substances;
- (viii) examination of such manufacturing processes, materials and substances as are likely to cause environmental pollution;
- (ix) carrying out and sponsoring investigations and research relating to problems of environmental pollution;
- (x) inspection of any premises, plant, equipment, machinery, manufacturing or other processes, materials or substances and giving, by order, of such directions

to such authorities, officers or persons as it may consider necessary to take steps for the prevention, control and abatement of environmental pollution;

- (xi) establishment or recognition of environmental laboratories and institutes to carry out the functions entrusted to such environmental laboratories and institutes under this Act;
- (xii) collection and dissemination of information in respect of matters relating to environmental pollution;
- (xiii) preparation of manuals, codes or guides relating to the prevention, control and abatement of environmental pollution;
- (xiv) such other matters as the Central Government deems necessary or expedient for the purpose of securing the effective implementation of the provisions of this Act.

(3) The Central Government may, if it considers it necessary or expedient so to do for the purpose of this Act, by order, published in the Official Gazette, constitute an authority or authorities by such name or names as may be specified in the order for the purpose of exercising and performing such of the powers and functions (including the power to issue directions under section 5) of the Central Government under this Act and for taking measures with respect to such of the matters referred to in sub-section (2) as may be mentioned in the order and subject to the supervision and control of the Central Government and the provisions of such order, such authority or authorities may exercise and powers or perform the functions or take the measures so mentioned in the order as if such authority or authorities had been empowered by this Act to exercise those powers or perform those functions or take such measures.

**Section 4 Power to appoint officers:** This section has conferred on the Central Government the power to appoint officers for the purpose of entrusting on them such of the powers and functions prescribed under this Act.

**Section 5: Power to order closure:** This section has conferred on the Central Government to issue directions in writing to any person, officer or any authority and such person, officer or authority shall be bound to comply with such directions. Under this section the Central Government has the power to issue directions for:



- (a) closure, prohibition or regulation of any industry, operation or process or
- (b) stoppage or regulation of the supply of electricity or water or any other service.

#### **Section 6: Rules to Regulate Environmental Pollution**

(1) The Central Government may, by notification in the Official Gazette, make rules in respect of all or any of the matters referred to in section 3.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:--

(a) the standards of quality of air, water or soil for various areas and purposes.

(b) the maximum allowable limits of concentration of various environmental pollutants (including noise) for different areas;

(c) the procedures and safeguards for the handling of hazardous substances;

(d) the prohibition and restrictions on the handling of hazardous substances in different areas;

(e) the prohibition and restriction on the location of industries and the carrying on process and operations in different areas;

(f) the procedures and safeguards for the prevention of accidents which may cause environmental pollution and for providing for remedial measures for such accidents.

**Section 10: Power to enter and search:** This section conferred powers on Central Government and persons empowered by the Central Government to enter any place for the purpose of:

1. performing any of the functions of the central government under the E.P Act
2. for the purpose of determining whether the provisions of the EP rules or any notice, order, direction made under this Act has been complied with
3. for the purpose of examining and testing any equipment, industrial plant, record, register, document or any other material object or for conducting a search of any building and for seizing any such equipment, industrial plant, record, register, document or any other material object.

**Section 11: Power to take samples:** This Act has conferred on the Central Government or any officer empowered by the central government, the power to take sample of air, water, soil or other substance from any factory, premises or other place for the purpose of analysis. The Central Government by a notification made on 16<sup>th</sup> February 1987 and by subsequent amendments thereafter has empowered 60 officers to take samples. The officer empowered to take sample shall:

- a. Serve a notice of his intention to collect samples and to analyse it in the prescribed form on the occupier or his agent or person in charge of the place
- b. Collect the sample for analysis in the presence of the occupier or his agent or person in charge of the place
- c. Cause the sample to be placed in a container which shall be marked and sealed and shall also signed both by the person taking the sample and the occupier or his agent or person in charge of the place
- d. Send the container without delay to the lab established or recognised by the Central Government.

**Section 15. Penalty for Contravention of the provisions of the act and the rules, orders and directions**

(1) Whoever fails to comply with or contravenes any of the provisions of this Act, or the rules made or orders or directions issued there under, shall, in respect of each such failure or contravention, be punishable with imprisonment for a term which may extend to five years with fine which may extend to one lakh rupees, or with both, and in case the failure or contravention continues, with additional fine which may extend to five thousand rupees for every day during which such failure or contravention continues after the conviction for the first such failure or contravention.

(2) If the failure or contravention referred to in sub-section (1) continues beyond a period of one year after the date of conviction, the offender shall be punishable with imprisonment for a term which may extend to seven years.

**Section 16. Offences by Companies :** (1) Where any offence under this Act has been committed by a company, every person who, at the time the offence was committed, was directly in charge of, and was responsible to, the company for the conduct of the business of

the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly: Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2). Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

**Section 22. Bar of Jurisdiction** No civil court shall have jurisdiction to entertain any suit or proceeding in respect of anything done, action taken or order or direction issued by the Central Government or any other authority or officer in pursuance of any power conferred by or in relation to its or his functions under this Act.

**Hazardous Waste Management and Handling Rules 1989 as Amended in 2000:**

Hazardous Waste Rules applies to Management and Handling of 18 categories of waste like:

- i. Cyanide waste
- ii. Metal finishing waste
- iii. Waste containing water soluble chemical compounds of lead, copper, zinc, chromium, nickel, selenium, barium and antimony
- iv. Non-halogenated hydro-carbons including solvents.
- v. Halogenated hydro-carbon including solvents
- vi. Waste from paints, pigments, glue, varnish and printing ink
- vii. Waste from dyes and dye-intermediates containing inorganic chemical compounds
- viii. Waste from dyes and dye-intermediate containing organic chemical compounds
- ix. Waste oil and oil emulsions
- x. Tarry wastes from refining and tar residues from distillation or pyrolytic treatment
- xi. Sludge arising from treatment of waste water containing heavy metal toxic organic, oils, emulsions and spent chemical and incineration ashes
- xii. Phenols

- xiii. Asbestos
- xiv. Acid/ Alkaline/slurry waste
- xv. Off specifications and discarded products
- xvi. Discarded container and container liners of hazardous and toxic chemicals and wastes
- xvii. Mercury, arsenic, thallium and cadmium bearing wastes
- xviii. Waste from manufacturing of pesticide and herbicide and residue from pesticide and herbicides formulation units.

The notification directs that hazardous waste shall be collected, treated, stored and disposed of only in such facilities as may be authorised for this purpose. It further directs that every occupier generating hazardous wastes and having a facility for collection, reception, treatment, transport, storage and disposal of such waste shall make an application to the state pollution control board for the grant of authorisation. It also directs that before hazardous wastes is delivered at the hazardous waste site, the occupier or operator of a facility shall ensure that the hazardous waste is packed in a manner suitable for storage and transport and labelling shall be easily visible and be able to withstand physical conditions and climatic factors. The notification directs the occupier to maintain records of the operation in the prescribed form and also directs to send annual returns to the state pollution control board. The occupier is also imposed a duty to report immediately to the pollution control board in case of any accident occurring at the facility or on a hazardous waste site. This notification empowers the State Government to undertake a continuing program to identify sites and compile and publish periodically an inventory of disposal sites within the state for the disposal of hazardous waste. This notification prohibits the import of hazardous waste from any country to India for the purpose of dumping and disposal of hazardous wastes. However this notification permits the import of such waste for the purpose of processing or reusing the waste as raw material after examination by the State Pollution Control Board. This notification permits the export of hazardous wastes subject to certain conditions. According to this notification the movement of hazardous waste from or to the country shall be considered illegal if:

1. It is without prior permission of the central government
2. Permissions has been obtained through falsification, misrepresentation or fraud
3. It does not conform to the shipping details provided in the document

## **The Batteries (Management and Handling ) Rules2001**

The Central Government in exercise of powers conferred by sections 6,8,25 of EPA 1986 has enacted rules. These rules came into force on 2001. In all these are 14 rules and one schedule.

Scope and application:

Rule 2 provides that these rules shall apply to every manufacturer, importer, reconditioner, assembler, dealer, recycler, auctioneer, consumer and bulk consumer involved in manufacture, processing, sale, purchase and use of batteries or components thereof:

Rule 3I defines: battery'- means lead acid battery which is a source of electrical energy and contains lead metal.

Rule 4 Responsibilities of manufacturer, importer, assembler and re-conditioner: it shall be the responsibility of a manufacturer, importer, assembler and re-conditioner to (

- (i) ensure that the used batteries are collected back as per the Schedule against new batteries sold excluding those sold to original equipment manufacturer and bulk consumer(s);
- (ii) ensure that used batteries collected back are of similar type and specifications as that of the new batteries sold;
- (iii) file a half-yearly return of their sales and buy-back to the State Board in Form- I latest by 3e June and 3 0 December of every year;
- (iv) set up collection centres either individually or jointly –at various places for collection of used batteries from consumers or dealers;
- (v) ensure that used batteries collected are sent only to the registered recyclers,
- (vi) ensure that necessary arrangements are made with dealers for safe transportation from collection centres to the premises of registered recyclers ;
- (vii) ensure that no damage to the environment occurs during transportation;
- (viii) create public awareness through advertisements, publications, posters or by other means with regard to the following:
  - (a) Hazards of lead;
  - (b) responsibility of consumers to return their used batteries only to the dealers or deliver at designated collection centres; and
  - (c) addresses of dealers and designated collection centres.

- (ix) use the international recycling sign on the Batteries;
- (x) buy recycled lead only from registered recyclers; and
- (xi) bring to the notice of the State Board or the Ministry of Environment and Forests any violation by the dealers.

**Rule 5. Registration of Importers.** – The importer shall get himself registered with the Ministry of Environment and Forests or an agency designated by it by submitting details in prescribed form

**Rule 6. Customs clearance of imports of new lead acid batteries.** – Customs clearance of imports shall be contingent upon

- 3. valid registration with the Reserve Bank of India (with Importer's Code Number);
- 4. one time registration with the Ministry of Environment and Forests or an agency designated by it in prescribed form
- 5. undertaking in Form; and
- 6. a copy of the latest half-yearly return in required form

**Rule 7. Responsibilities of dealer.** – It shall be the responsibility of a dealer to

- i. ensure that the used batteries are collected back as per the Schedule against new batteries sold;
- ii. give appropriate discount for every used battery returned by the consumer;
- iii. ensure that used batteries collected back are of similar type and specifications as that of the new batteries sold;
- iv. file half-yearly returns of the sale of new batteries and buy-back of old batteries to the manufacturer in Form V by 31<sup>st</sup> May and 30<sup>th</sup> November of every year-;
- v. ensure safe transportation of collected batteries to the designated collection centres or to the registered recyclers ; and
- vi. ensure that no damage is caused to the environment during storage and transportation of used batteries.

**Rule 8. Responsibilities of recycler. –Each recycler shall –**

- i. apply for registration to the Ministry of Environment and Forests or an agency designated by it if not applied already, by submitting information in Form VI;
- ii. ensure strict compliance of the terms and conditions of registration; however, those already registered with the Ministry of Environment and Forests or all agency designated by it for reprocessing used batteries would be bound by the terms and conditions of such registration;
- iii. submit annual returns as per Form VII to the State Board;
- iv. make available all records to the State Board for inspection;
- v. mark 'Recycled' on lead recovered by reprocessing; and
- vi. create public awareness through advertisements, publications, posters or others with regard to the following : (a) hazards of lead; and (b) obligation of consumers to return used batteries only to the registered dealers or deliver at the designated collection centres.

**Rule 9** Every recycler of used lead acid batteries shall make an application along with the following documents to the Joint Secretary, Ministry of Environment and Forests or any officer designated by the Ministry or an agency designated by it for grant of registration or renewal

- i. a copy of the valid consents under Water (Prevention and Control of Pollution) Act
- ii. a copy of the valid authorisation under Hazardous Wastes
- iii. a copy of the valid consents under Air Act
- iv. a copy of valid certificate of registration with District Industries Centre : and
- v. a copy of the proof of installed capacity issued by either State Pollution Control Board District Industries Centre.

The Joint Secretary, Ministry of Environment and Forests or any officer designated by the Ministry or an agency designated by it shall ensure that the recyclers possess appropriate facilities, technical capabilities, and equipment to recycle used batteries and dispose of hazardous waste generated; The Joint Secretary , Ministry of Environment and Forests or any officer designated by the Ministry or an agency designated by it shall take decision on application for registration within 120 days of receipt of application form with

complete details; The registration granted under this rule shall be in force for a period of two years from the date of issue or from the date of renewal unless suspended or cancelled earlier.

**Rule 13. Duties of Central Pollution Control Board.** – The Central Pollution Control Board shall compile and publish the data received every year from the State Boards. It shall review the compliance of the rules periodically to improve the collection and recycling of used. Lead batteries and apprise the Ministry of Environment and Forests, Government of India.

### **The Municipal solid waste Management and Handling Rules 2000**

The rules came into force w.e.f 03.10.2000. It has 9 rules and 4 schedules

**Rule 2:** These rules shall apply to every municipal authority responsible for collection, segregation, storage, transportation,, processing and disposal of municipal solid wastes .

Rule 3 deals with definition.

“biodegradable substance” means a substance that can be degraded by micro-organisms;

“land filling” means disposal of residual solid wastes on land in a facility designed with protective measures against pollution of ground water, surface water and air fugitive dust, wind-blown litter, bad odour, fire hazard, bird menace, pests or rodents, greenhouse gas emissions, slope instability and erosion;

“municipal solid waste” includes commercial and residential wastes generated in a municipal or notified areas in either solid or semi-solid form excluding industrial hazardous wastes but including treated bio-medical wastes;

“processing” means the process by which solid wastes are transformed into new or recycled products;

“recycling” means the process of transforming segregated solid wastes into raw materials for producing new products, which may or may not be similar to the original products;

“vermicom posting” is a process of using earthworms for conversion of bio-degradable wastes into compost.



Rule 4 says that every municipal authority shall, within the territorial area of the municipality, be responsible for the implementation of the provisions of these rules. The municipal authority shall also be responsible for any infrastructural development, for collection, storage, segregation, transportation, processing and disposal of municipal solid wastes. The municipal authority or the operator of the facility shall make the application in the prescribed form for grant of authorisation for setting up waste processing and disposal facility including land fills from the state board or the committee in order to comply with the implementation programme laid down in schedule I of these rules which is given under:

**Implementation Schedule (schedule I)**

Sr.No	Compliance Criteria	schedule
1	Setting up of waste processing and disposal facilities	31.12.2003
2	Monitoring the performance of waste processing and disposal facility	Once in 6 months
3	Improvement of existing landfill sites as per provisions of these rules	By 31.12.2001 or earlier
4	Identifying of landfill sites for future use and making sites ready for operation	By 31.12.2002 or earlier

It is mandatory for the municipal authority to comply with these rules as per the implementation schedule given above. Rule 4 further provides that the municipal authority shall furnish it annual report in the prescribed form:

- (i) to the secretary in charge of the department of urban development of the concerned state or as the case may be of the union territory, in case of a metropolitan city or
- (ii) to the District Magistrate or the deputy commissioner concerned in case of all other towns and cities

**Rule 5:Responsibility of the State Government and the Union territory Administrations**

(1) The Secretary-incharge of the Department of Urban Development of the concerned State or the Union territory, as the case may be, shall have the overall responsibility for the enforcement of the provisions of these rules in the metropolitan cities.

**(2) The District Magistrate or the Deputy Commissioner of the concerned district shall have the overall responsibility for the enforcement of the provisions of these rules within the territorial limits of their jurisdiction.**

**Rule 7: collection of Municipal Solid wastes:**

- Littering of municipal solid waste shall be prohibited in cities, towns and in urban areas notified by the State Governments. To prohibit littering and facilitate compliance, the following steps shall be taken by the municipal authority, namely**
- Organising house-to-house collection of municipal solid wastes through any of the methods, like community bin collection (central bin), house-to-house collection, collection on regular pre-informed timings and scheduling by using bell ringing of musical vehicle (without exceeding permissible noise levels);**
- Devising collection of waste from slums and squatter areas or localities including hotels, restaurants, office complexes and commercial areas;**
- Wastes from slaughter houses, meat and fish markets, fruits and vegetable markets, which are biodegradable in nature, shall be managed to make use of such wastes;**
- Bio-medical wastes and industrial wastes shall not be mixed with municipal solid wastes and such wastes shall follow the rules separately specified for the purpose;**
- Collected waste from residential and other areas shall be transferred to community bin by hand-driven containerised carts or other small vehicles;**
- Horticultural and construction or demolition wastes or debris shall be separately collected and disposed off following proper norms. Similarly, wastes generated at dairies shall be regulated in accordance with the State laws;**
- Waste (garbage, dry leaves) shall not be burnt;**
- Stray animals shall not be allowed to move around waste storage facilities or at any other place in the city or town and shall be managed in accordance with the State laws.**

**(2). The municipal authority shall notify waste collection schedule and the likely method to be adopted for public benefit in a city or town.**

(3). It shall be the responsibility of generator of wastes to avoid littering and ensure delivery of wastes in accordance with the collection and segregation system to be notified by the municipal authority.

2. Segregation of municipal solid wastes: In order to encourage the citizens, municipal authority shall organise awareness programmes for segregation of wastes and shall promote recycling or reuse of segregated materials. The municipal authority shall undertake phased programme to ensure community participation in waste segregation. For this purpose, regular meetings at quarterly intervals shall be arranged by the municipal authorities with representatives of local resident welfare associations and non-governmental organizations.

3. Storage of municipal solid wastes: Municipal authorities shall establish and maintain storage facilities in such a manner as they do not create unhygienic and insanitary conditions around it. Following criteria shall be taken into account while establishing and maintaining storage facilities, namely:

Storage facilities shall be created and established by taking into account quantities of waste generation in a given area and the population densities. A storage facility shall be so placed that it is accessible to users;

Storage facilities to be set up by municipal authorities or any other agency shall be so designed that wastes stored are not exposed to open atmosphere and shall be aesthetically acceptable and user-friendly;

Storage facilities or bins shall have easy to operate design for handling, transfer and transportation of waste. Bins for storage of bio-degradable wastes shall be painted green, those for storage of recyclable wastes shall be printed white and those for storage of other wastes shall be printed black;

Manual handling of waste shall be prohibited. If unavoidable due to constraints, manual handling shall be carried out under proper precaution with due care for safety of workers.

4. Transportation of Municipal solid waste:

Vehicles used for transportation of wastes shall be covered. Waste should not be visible to public, nor exposed to open environment preventing their scattering. The following criteria shall be met, namely:-

The storage facilities set up by municipal authorities shall be daily attended for clearing of wastes. The bins or containers wherever placed shall be cleaned before they start overflowing;

Transportation vehicles shall be so designed that multiple handling of wastes, prior to final disposal, is avoided.

**Processing of municipal solid waste:**

Municipal authorities shall adopt suitable technology or combination of such technologies to make use of wastes so as to minimize burden on landfill. Following criteria shall be adopted, namely:-

The biodegradable wastes shall be processed by composting, vermicomposting, anaerobic digestion or any other appropriate biological processing for stabilization of wastes. It shall be ensured that compost or any other end product shall comply with standards as specified in Schedule-IV;

Mixed waste containing recoverable resources shall follow the route of recycling. Incineration with or without energy recovery including fully incineration can also be used for processing wastes in specific cases. Municipal authority or the operator of a facility wishing to use other state-of-the-art technologies shall approach the Central Pollution Control Board to get the standards laid down before applying for grant of authorisation.

6. Disposal of Municipal waste: Land filling shall be restricted to non-biodegradable, inert waste and other waste that are not suitable either for recycling or for biological processing. Land filling shall also be carried out for residues of waste processing facilities as well as pre-processing rejects from waste processing facilities. Land filling of mixed waste shall be avoided unless the same is found unsuitable for waste processing. Under unavoidable circumstances or till installation of alternate facilities, land-filling shall be done following proper norms. Landfill sites shall meet the specifications as given in Schedule III.

### **Noise Pollution Rules 2000**

Traditional definition of noise is unwanted or disturbing sound. The word Noise derived from Latin word "Nausea" means noise. According to J.Tiffin "Noise is a sound which is disagreeable for an individual and which disturbs the normal way of an individual. United Nations OECD (The Organisation for Economic Co-operation and Development) glossary

defines Noise Pollution as “Noise pollution is sound at excessive levels that may be detrimental to human health”. Noise pollution is nowhere defined in Central legislative Acts. But in EPA Section 6 (2) (b) of EPA prescribes maximum permissible for noise in different areas. In 1987 Amendment to Air prevention and control of Pollution Act 1981 expanded the definition of Air pollution to include Noise in Section 2 (a) of Air Act 1981 “Air pollutant” means any solid, liquid or gaseous substance including noise present in the atmosphere in such concentration as may be or tend to be injurious to human beings or other living creatures or plants or property or environment”. Noise is measured as Decibel. The World Health Organisation’s guidelines recommend a night time average level of noise suitable for undisturbed sleep of from 35 to 30 Db, and include a peak night time maximum of 45 decibels. In India the present condition is that it goes beyond the prescribed decibel. Noise pollution is causing on the health of the people, and nowadays the people are suffering from stress and anxiety and also psychological health. It shows its effects like disturbance of sleep, Constant stress, fatigue and hypertension can link to excessive noise levels. There are many types of diseases and stress related to a heart which can harm it because of the Blood pressure levels, cardiovascular diseases, and high noises can cause to the high blood pressure and increases heart beat rate as it cause the normal blood flow.

Public awareness is essential for prevent and control the noise pollution. Not only the government but we should also be aware of the harmful consequences of noise pollution.

Central Government in exercise of power under clause (ii) of (2) of Section 3 along with Rule 5 of EPA 1986 enacted noise pollution.

***Object of Rules:***

Increasing ambient noise levels in public places various sources inter-alia, industrial activity, construction activity, generator sets, loudspeakers, public address systems etc., vehicle horns all these have deleterious effects to humans. So it’s must to maintain the ambient noise levels hence Noise Pollution Rules 2000 was framed. It has eight sections and one schedule.

Section 2 deals with definitions:

“Authority” means any authority or officer authorised by the Central Government, or as the case may be, the State Government in accordance with the laws in force and includes a District Magistrate, Police Commissioner, or any other officer designated for the maintenance

of the ambient air quality standards in respect of noise under any law for the time being in force.

*Amendment rules 2010: "public place" means any place to which the public have access, whether as of right or not, and includes auditorium, hotels, public waiting rooms, convention centres, public offices, shopping malls, cinema halls, educational institutions, libraries, open grounds and the like which are visited by general public; and "night time" means the period between 10.00 p.m. and 6.00 a.m."*

### Section 3 :

- i. The ambient air quality standards in respect of noise for different areas/zones shall be such as specified in the Schedule annexed to these rules.
- ii. The State Government may categorize the areas into industrial, commercial, residential or silence areas/zones for the purpose of implementation of noise standards for different areas.
- iii. The State Government shall take measures for abatement of noise including noise emanating from vehicular movements and ensure that the existing noise levels do not exceed the ambient air quality standards specified under these rules.
- iv. All development authorities, local bodies and other concerned authorities while planning developmental activity or carrying out functions relating to town and country planning shall take into consideration all aspects of noise pollution as a parameter of quality of life to avoid noise menace and to achieve the objective of maintaining the ambient air quality standards in respect of noise.
- v. An area comprising not less than 100 metres around hospitals, educational institutions and courts may be declared as silence area/zone for the purpose of these rules. *Ambient Air quality given in the schedule:*

Area Code	Area/Zone	Day limits	Night limits
A	Industrial area	75	70
B	Commercial area	65	55
C	Residential area	55	45
D	Silence area	50	40

**Section 4: Responsibility as to enforcement of noise pollution control measures.** The noise levels in any area/zone shall not exceed the ambient air quality standards in respect of noise as specified in the Schedule. The authority shall be responsible for the enforcement of noise pollution control measures and the due compliance of the ambient air quality standards in respect of noise.

**Section 5: Restrictions on the use of loud speakers/public address system:** A loud speaker or a public address system shall not be used except after obtaining written permission from the authority. A loud speaker or a public address system shall not be used at night except in closed premises for communication within, e.g. auditoria, conference rooms, community halls and banquet halls.

*Amendment Rules, 2010: "5A. Restrictions on the use of horn, sound emitting construction equipment and bursting of fire crackers:*

*(1) No horn shall be used in silence zones or during night time in residential areas except during a public emergency.*

*(2) Sound emitting fire crackers shall not be burst in silence zone or during night time.*

*(3) Sound emitting construction equipment shall not be used or operated during night time in residential areas and silence zones."*

**Section 6 Consequences of any violation in silence zone/area:** Whoever, in any place covered under the silence zone/area commits any of the following offence, he shall be liable for penalty under the provisions of the Act:

- i. whoever, plays any music or uses any sound amplifiers,
- ii. whoever, beats a drum or tom-tom or blows a horn either musical or pressure, or trumpet or beats or sounds any instrument, or
- iii. whoever, exhibits any mimetic, musical or other performances of a nature to 44raq crowds.

*Amendment Rules 2010: whoever, bursts sound emitting fire crackers; or whoever, uses a loud speaker or a public address system."*

**Section 7. Complaints to be made to the authority:** A person may, if the noise level exceeds the ambient noise standards by 10 Db(A) or more given in the corresponding columns against any area/zone, make a complaint to the authority. The authority shall act on the complaint and take action against the violator in accordance with the provisions of these rules and any other law in force.

*Amendment Rules 2010: These words were inserted "if there is a violation of any provision of these rules regarding restrictions imposed during night time".*

**Section 8: Power to prohibit etc., continuance of music sound or noise :**

1. If the authority is satisfied from the report of an officer in charge of a police station or other information received by him that it is necessary to do so in order to prevent annoyance, disturbance, discomfort or injury or risk of annoyance, disturbance, discomfort or injury to the public or to any person who dwell or occupy property on the vicinity, he may, by a written order issue such directions as he may consider necessary to any person for preventing, prohibiting, controlling or regulating:

(a) the incidence or continuance in or upon any premises of –

- (i) any vocal or instrumental music,
- (ii) sounds caused by playing, beating, clashing, blowing or use in any manner whatsoever of any instrument including loudspeakers, public address systems, appliance or apparatus or contrivance which is capable of producing or re-producing sound, or

(b) the carrying on in or upon, any premises of any trade, avocation or operation or process resulting in or attended with noise.

2. The authority empowered under sub-rule (1) may, either on its own motion, or on the application of any person aggrieved by an order made under sub-rule (1), either rescind, modify or alter any such order: Provided that before any such application is disposed of, the said authority shall afford to the applicant an opportunity of appearing before it either in person or by a person representing him and showing cause against the order and shall, if it rejects any such application either wholly or in part, record its reasons for such rejection.



*Amendment rules 2010: (i) in sub-clause (ii), for the words, "public address systems, appliance or apparatus" the words "public address systems, horn, construction equipment, appliance or apparatus" shall be substituted; after sub-clause (ii), the following sub-clause shall be inserted, namely: -sound caused by bursting of sound emitting fire crackers. or. "*

#### **Cases:**

*Free legal Aid cell v. Government of NCT of Delhi,*

The Delhi HC inter-alia, directed that the authority empowered to take action under the said Rules should give wide publicity to the rules by inserting appropriate advertisements in atleast six national daily newspapers. The court further directed that it would be responsibility of the area to see that the Rules are strictly adhered to in letter and spirit. Any default in this regard will be treated as misconduct and the defaulting officer shall be liable for that the suggestions of the Delhi HC as worth noticing and the noise pollution can be controlled only by creating awareness among the people and by implementing the said rules strictly.

*In Church of God (full gospel) in India v. K.K.R. Majestic colony Welfare Association:* The Supreme court pointed out that even though the Rules are unambiguous there is lack of awareness among the citizens as well as the implementation authorities about the Rules or their duty to implement the same. Noise polluting activities are rampant and yet for one reason or the other, the foresaid rules framed under various other Acts are not enforced.

*State of Rajasthan v. G.Chawla; Rajni Kant v. State of UP; P.A.Jacob v. Superintendent of Police, Kottayam; V.Lakshmi pathy v. State; Ram Lal v. Mustafabad Oil and cotton ginning factory; Burrabazar Fireworks dealers Association v. Commissioner of Police, Calcutta.*

#### **Biomedical Waste (management & handling) rules 1998**

The powers conferred by section 6, 8, and 25 of the Environment (Protection) Act 1986, the Central Govt. has made The Biomedical Waste (Management & Handling) Rules to safeguard the public and health care workers from the risk arising due to Biomedical Waste. The penalties are same as specified in Environment (Protection) Act 1986.

1. These rules apply to all persons who generate, collect, receive, store, transport, treat, dispose, or handle bio-medical waste in any form

**2. Definition:** In these rules unless the context otherwise requires: -

- (i) “Act” means the Environment (Protection) Act, 1986 (29 of 1986);
- (ii) “Animal House” means a place where animals are reared/kept for experiments or testing purposes;
- (iii) “Authorization” means permission granted by the prescribed authority for the generation, collection, reception, storage, transportation, treatment, disposal and/or any other form of handling of bio-medical waste in accordance with these rules and any guidelines issued by the Central Government;
- (iv) “Authorized person” means an occupier or operator authorized by the prescribed authority to generate, collect, receive, store, transport, treat, dispose and/or handle biomedical waste in accordance with these rules and any guidelines issued by the Central Government;
- (v) “Bio-medical waste” means any waste, which is generated during the diagnosis, treatment or immunization of human beings or animals or in research activities pertaining to in the production or testing of including categories mentioned in Schedule 1;
- (vi) “Biologicals” means any preparation made from organisms or micro organisms or product of metabolism and biochemical reaction intended for use in the diagnosis, immunization or the treatment or disposal of human beings or animals or in research activities pertaining, hereto;
- (vii) “Bio-medical waste treatment facility” means any facility wherein treatment, disposal of bio-medical waste or processes incidental to such treatment or disposal is carried out;
- (viii) “Occupier” in relation to any institution generation bio-medical waste, which includes a hospital, nursing home, clinic, dispensary, veterinary institutions, animal house, pathological laboratory, blood bank by whatever name called, means a person who has control over that institution and/or its premise.
- (ix) “Operator of a bio-medical waste facility” means a person who owns or controls or operates a facility for the collection, reception, storage, transport, treatment, disposal or any other form of handling of bio-medical waste; 10. “Schedule” means schedule appended to these rules;

**Section 4: Duty of Occupier:** It shall be the duty of every occupier of an institution generating bio-medical waste, which includes a hospital nursing home, clinic, dispensary, veterinary institutions, and animal house, pathological laboratory, blood bank by whatever name called to take all steps to ensure that such waste is handled without any adverse effect to human health and the environment.

**Section 5: Treatment and Disposal:**

- a) Bio-medical waste shall be treated and disposal of in accordance with Schedule 1, and in compliance with the standards prescribed in Schedule V.
- b) Every occupier, where required, shall set up requisite bio-medical waste treatment facilities like incinerator, autoclave, microwave system for the treatment of waste, or, ensure requisite treatment of waste at a common waste treatment facility or any other waste treatment facility.

**Section 6: Segregation, Packing, Transportation and Storage :**

- a. Bio-medical waste shall not be mixed with other wastes.
- b. Bio-medical waste shall be segregated into containers/bags at the point of generation in accordance with Schedule II prior to its storage, transportation, treatment and disposal. The containers shall be labelled according to Schedule III.
- c. If a container is transported from the premises where bio-medical waste is generated to any waste treatment facility outside the premises, the container shall, apart from the label prescribed in Schedule III, also carry information prescribed in Schedule IV.
- d. Notwithstanding anything contained in the Motor Vehicle Act, 1988, or rules there under, untreated biomedical waste shall be transported only in such vehicles as may be authorized for the purpose by the competent authority as specified by the government.
- e. No untreated bio-medical waste shall be kept/stored beyond a period of 48 hours: Provided that if for any reason it becomes necessary to store the waste beyond such period, the authorized person must take permission of the

prescribed authority and take measures to ensure that the waste does not adversely affect human health and the environment.

**Section 7 Prescribed Authority :**

- a. The Government of every State and Union Territory shall establish a prescribed authority with such members as may specified for granting authorization and implementing these rules. If the prescribed authority comprises of more than one member, a chairperson for the authority shall be designated.
- b. The prescribed authority for the State or Union Territory shall be appointed within one month of the coming into force of these rules.
- c. The prescribed authority shall function under the supervision and control of the respective Government of the State or Union Territory.
- d. The prescribed authority shall on receipt of Form 1 make such enquiry as it deems fit and if it is satisfied that the applicant possesses the necessary capacity to handle biomedical waste in accordance with these rules, grant or renew an authorization as the case may be.
- e. An authorization shall be granted for a period of three years, including an initial trial period of one year from the date of issue. Thereafter, an application shall be made by the occupier/operator for renewal. All such subsequent authorization shall be for a period of three years. A provisional authorization will be granted for the trial period, to enable the occupier/ operator to demonstrate the capacity of the facility.
- f. The prescribed authority may after giving reasonable opportunity of being heard to the application and for reasons thereof to be recorded in writing, refuse to grant or renew authorization.
- g. Every application for authorization shall be disposal of by the prescribed authority within ninety days from the date of receipt of the application.
- h. The prescribed authority may cancel or suspend an authorization, if for reason, to be recorded in writing, the occupier/operator has failed to comply with any provision of the Act or these rules.

Provided that no authorization shall be cancelled or suspended without giving a reasonable opportunity to the occupier/operator of being heard.

**Section 8. Authorization :**

- a. Every occupier of an institution generating, collecting, receiving, transporting, treating, disposing and/or handling bio-medical waste in any manner, except such occupier of clinic, dispensaries, pathological laboratories, banks providing treatment/service to less than 1000 (one thousand) patients per month, shall make an application in Form 1 to the prescribed authority for grant of authorization.
- b. Every operator of a bio-medical waste facility shall make an application in Form 1 to the prescribed authority for grant of authorization.
- c. Every application in Form 1 for grant of authorization shall be accompanied by a fee as may be prescribed by the Government of the State or Union Territory.

**Section 9. Advisory Committee :**The Government of every State/Union Territory shall constitute an advisory committee. The Committee will include experts in the fields of medical and health, animal husbandry and veterinary sciences, environmental management, municipal administration, and any other related department or organization including non-governmental organizations. The State Pollution Board/ Pollution Control Committee shall be represented. As and when required, the committee shall advise the Union Territory Government about matters related to the implementation of these rules.

**Section 10 Annual Report :**Every occupier/operator shall submit an annual report to the prescribed authority in Form II by 31 January every year, to include information about the composition and quantities of bio-medical wastes handled during the preceding year. The prescribed authority shall send this information in a compiled form to the Central Pollution Control Board by 31 March every year.

**Section 11. Maintenance of Records:**

- a. Every authorized person shall maintain records related to the generation, collection, reception, storage, transportation, treatment, disposal and

m of handling of bio-medical waste in accordance with these rules and any guidelines issued.

l records shall be subjected to inspection and verification by the prescribed authority at any time.

ent Reporting: When any accidents occur at any institution or facility or any biomedical waste is handled or during transportation of such waste, the shall report the accident in Form III to the prescribed authority forth with.

deal Any person aggrieved by an order by the prescribed authority under within thirty days from date on which the order is communicated to them, such authority as the Government of State/Union Territory may think fit to ed that the authority may entertain the appeal after the expiry of the said days if it is satisfied that the appellant of prevent by sufficient cause from n time.

### **Manufacture, Sale and Usage Rules, 1999**

ne of the largest consumers of plastics products, and approximately 12 plastic items are consumed every year. Plastics are non-biodegradable and environment for decades. Recycled plastics are even more harmful to the the virgin plastic products, due to mixing of coloring agents, stabilizers, and other additives. It is estimated that the total generation of plastic waste ntry is approximately 8 million tons.

several rules to control usage of plastics. The Central Government in powers conferred by section 3(2) (viii) read with section 25 of the 1986, has enacted these rules. These rules came in to force in 20.09.1999

es have been enacted with the aim to prohibit the use of carry bags or of recycled plastics for storing, carrying, dispensing or packaging of rules further prescribe conditions for manufacturing of carry bags and stics. They also put obligation on the Plastic Industry Association to ulatory measures.

**2. DEFINITIONS: In these rules, unless the context otherwise requires, -**

- a) **“Act” means the Environment (Protection) Act, 1986 (29 of 1986);**
- b) **“carry bags” means plastic bags which have a self carrying feature commonly known as vest type bags or any other feature used to carry commodities such as “D” punched bags; as illustrated in the Annexure to these rules;**
- c) **“commodities” includes articles such as vegetables, fruits, pharmaceuticals and the like;**
- d) **“container” means flexible or rigid containers made of virgin plastics or recycled plastics with or without lid used to store, carry or dispense commodities;**
- e) **“food-stuffs” means ready to eat food articles and food products, fast food, processed or cooked food in liquid, powder, solid or semi-solid form;**
- f) **“registration” means registration of units manufacturing carry-bags and containers made of virgin or recycled plastics with the concerned State Pollution Control Board or Pollution Control Committee as the case may be;**
- g) **“vendor” means a person who sells food stuffs packed or stored in plastic carry bags or containers.**

**3. PRESCRIBED AUTHORITY:**

**(a) The prescribed authority for enforcement of the provisions of these rules related to manufacture and recycling shall be the State Pollution Control Boards in respect of States and the Pollution Control Committees in respect of Union Territories;**

**(b) The prescribed authority for enforcement of the provisions of these rules related to the use, collection, segregation, transportation and disposal shall be the District Collector/Deputy Commissioner of the concerned district where no Such Authority has been constituted by the State Government/Union Territory administration under any law regarding non-biodegradable garbage.**

#### **4. RESTRICTION ON MANUFACTURE, SALE, DISTRIBUTION AND USE OF VIRGIN AND RECYCLED PLASTIC CARRY BAGS AND RECYCLED PLASTIC CONTAINERS**

(1) No person shall manufacture, stock, distribute or sell carry bags made of virgin or recycled plastic bags which are less than 8 x 12 inches {20 x 30 cms} in size and which do not conform to the minimum thickness specified in rule 8.

- No vendor shall use carry bags made of recycled plastic for storing, carrying, dispensing or packaging of foodstuffs.
- No vendor shall use containers made of recycled plastics for storing, carrying, dispensing or packaging of foodstuff

For the purposes of this rule, the minimum weight of 50 carry bags made of virgin or recycled plastics shall be 105 gms. Plus or minus 5% variation and the carry bags of larger sizes shall be of proportionate increase in weight.

**5. CONDITIONS OF MANUFACTURE OF CARRY BAGS AND CONTAINERS, MADE OF PLASTICS:** Subject to the provisions of rule 4, any person may manufacture carry bags or containers made of plastics if the following conditions are satisfied, namely-

(a) Carry bags and containers made of virgin plastic shall be in natural shade or white;

(b) Carry bags and containers made of recycled plastic and used for purposes other than storing and packaging foodstuffs shall be manufactured using pigments colourants as per IS:9833:1981 entitled "List of pigments and colourants for use in plastics in contact with foodstuffs, pharmaceuticals and drinking water".

**6. RECYCLING:** Recycling of plastics shall be undertaken strictly in accordance with the Bureau of Indian Standards specification: IS 14534: 1998 entitled "The Guidelines for Recycling of Plastics".

**7. MARKING/CODIFICATION:** Subject to the provision of Rule 4 and 5, manufactures of] recycled plastic carry bags having printing facilities shall code/mark carry bags and containers as per Bureau of Indian Standard Specification: IS 14534: 1998 entitled "The Guidelines for Recycling of Plastics" and the end product made out of recycled plastics shall



be marked as “recycled” along with the indication of the percentage of use of recycled material. Other manufacturers, who do not have printing facilities, shall comply with the condition within one year of publication of these rules. Manufacturers shall print on each packet of carry bags as to whether these are made of “recycled material” or of “virgin plastic”.

**8. THICKNESS OF CARRY BAGS :**The minimum thickness of carry bags made of virgin plastics or recycled plastics shall not be less than 20 microns.

**9. SELF REGULATION BY CERTAIN PERSONS :**Without prejudice to the provisions contained in rule 3, the Plastics Industry Association, through their member units, shall undertake self-regulatory measures.

**10. GRANT OF REGISTRATION FOR MANUFACTURES:** (1) Every occupier manufacturing carry bags or containers of virgin plastic or recycled plastic or both shall make an application in Form 1 appended to these rules to the State Pollution Control Board or Pollution Control Committee of the union territory concerned for grant of registration or renewal of registration for his unit within four months from the date of publication of the Recycled Plastics Manufacture and Usage (Amendments) Rules, 2003 in the official gazette.

(2) On or after the commencement of the Recycled Plastics Manufacture and Usage (Amendments) Rules 2003, no person shall manufacture carry bags or containers irrespective of its size or weight unless the occupier of the unit has registered the unit with the State Pollution Control Board/ Pollution Control Committee prior to the commencement of production;

(3)The State Pollution Control Board or Pollution Control Committee shall not issue and renew a registration certificate of a unit unless that unit meets the norms prescribed under rules 5,6,7 and 8 of these rules and also possess a valid consent under the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974) and the Air (Prevention and Control of Pollution) Act, 1981 (14 of 1981) as per the requirements laid down by the State Pollution Control Board or Pollution Control Committee.

(4) Every State Pollution Control Board or State Pollution Control Committee shall grant registration within thirty days of receipt of application complete in all respects.

(5) The registration granted under this rule shall, unless revoked suspended or cancelled earlier, be valid for a period of three years.

(6) Every application for renewal of registration shall be made in the prescribed form appended to these rules at least 60 days before the expiry of the validity of registration

### **E. Environmental Impact Assessment**

Environment Impact Assessment (EIA) is a formal process used to predict the environmental consequences of any development project. Environment Impact Assessment in India is statutory backed by the Environment Protection Act in 1986, which contains various provisions on EIA methodology and process. EIA looks into various problems, conflicts and natural resource constraints which may not only affect the viability of a project but also predict if a project might harm to the people, their land, livelihoods and environment. Once these potential harmful impacts are predicted, the EIA process identifies the measures to minimize those impacts.

Origin of EIA:

*Environmental Impact Assessment started as a mandatory regulatory procedure originated in the early 1970's with the implementation of the National Environmental Policy act (NEPA) 1969 in the US. EIA process took off after the mid 1980's, after World Bank adopted EIA for major development projects, in which borrower country had to undertake the EIA under the Bank's supervision. Now EIA is a formal process in more than 100 countries.*

EIA was included through **Rio Declaration in Principle 17**. It says: *“Environmental impact assessment, as a national instrument, shall be undertaken for proposed activities that are likely to have a significant adverse impact on the environment and are subject to a decision of a competent national authority”*.

**Objective of Earthen council on European Economic Committee**, in their directive to the member states, highlights the objectives of EIA in the following words:

*“The effects of a project on the environment must be assessed in order to take account of the concerns to protect human health, to contribute by means of a better environment to the quality of life, to ensure maintenance of the diversity of species and to maintain the reproductive capacity of the ecosystem as a basic resource of life”*

Environment Impact Assessment core value is the process should be fair, objective, unbiased and balanced; it should provide balanced, credible information for decision making; it should result in Environmental Safeguard.

Environmental Clearance from central government is required for 32 categories of development projects – under industrial sectors: Mining, Thermal power plants, River valley, Infrastructure (road, highways, ports, harbors, and airports) Industries including very small electroplating in foundry units.

Institutionalisation of impact assessment in India took in early 1980. It had its origin under EPA. A draft notification was published in the year 1992 with provisions for central clearance for certain projects and state clearance for certain other projects. The projects required EIA were listed in the notification. A committee of experts would evaluate and assess them and make recommendations based on a technical assessment of the document.

#### **F.Coastal Regulation Zone notification**

Coastal nations have a particular interest in safeguarding their coastlines. India has a coast line of about 7500km of which mainland accounts for 5400 kms. The country is one of the leading coastal nations in the world. Coastal Zone is rich in coastal ecosystem. The developmental measures like harbour and urban centre in the coastal belt led to degradation of the natural habitat and ecosystem. Over exploitation of resources resulted very badly on coastal belt. This made necessary for formulating coastal regulation notification in the year 1991. This notification imposed restriction on industries, operations and process in CRZ.

The Central government has declared the Coastal stretches of seas, bays, estuaries, creeks, rivers and backwaters which are influenced by tidal action up to 500 meters in the land ward side from the high tideline and the land between the low tide and the high tide line as coastal regulation zone. The high tide line means the line on the land upto which the highest water line reaches during the spring tide. The coastal Regulation zone is classified into 4 categories. The development or construction activities in different categories of CRZ shall be regulated by the concern authorities at the State, Union territory.

The three institutions responsible for the implementation of the CRZ Notification are:

- ✓ The National Coastal Zone Management Authority (NCZMA)
- ✓ State/Union Territory Coastal Zone Management Authorities (SCZMAs/UTCZMAs) in every coastal state and Union Territory (nine SCZMAs in Andhra Pradesh, Goa, Gujarat, Karnataka, Kerala, Maharashtra, Odisha, Tamil Nadu and West Bengal, and

four UTCZMAs in Andaman and Nicobar Islands, Daman and Diu, Lakshadweep and Puducherry)

- ✓ District Level Coastal Committees (DLCCs) in every district that has a coastal stretch and where the CRZ Notification is applicable.

In April 1996, the Supreme Court (SC), in its order in the case of the Indian Council for Enviro Legal Action and the Union of India, directed that the Central Government should consider setting up State Coastal Zone Management Authorities in each coastal state and a National Coastal Zone Management Authority.

S.n o:	Categories of CRZ	Norms for regulation of activities
1.	<p><b>CRZ I:</b></p> <p>(a) Areas that are ecologically sensitive and important, such as national parks, marine parks, sanctuaries, reserve forest, wildlife habitats, mangroves, corals, coral reefs, areas close to breeding and spawning grounds of fish and other marine lives, areas of outstanding natural beauty, historical heritage areas rich in genetic diversity, areas likely to be inundated due to rise in sea level consequent to global warming and such other areas as may be declared by the central government or concerned authorities at the State/Union Territory from time to time.</p> <p>(b) Area between low tide line and high tide line.</p>	<p>No new construction shall be permitted in CRZ I</p> <p>Except (a) project relating to atomic energy</p> <p>(b) pipelines, conveying system including transmission lines</p> <p>(c) Facilities that are essential for activities permissible under CRZ I. Between the LTL HTL activities are specified in para 2 may be permitted. In addition in LTL and HTL, which are not ecologically sensitive and important, the following may be permitted (a) Exploration and extraction of natural gas (b) activities specified under para (ii) of para 2 and construction of dispensaries, schools, rain shelters, community toilet, bridges, roads, water supply, drainage, sewage which are required for traditional inhabitants of the Sunderbans bio-sphere reserve area, West Bengal State Coastal Zone Management Authority.</p>
2.	<p><b>CRZ II:</b></p> <p>The areas that have already been developed upto/or close to the shoreline. For this purpose, developed area is referred to as that area within municipal limit or in other legally designated urban area which is already substantially built up and which has been provided with drainage and approach roads and other infrastructural</p>	<p>1. Building shall be permitted only on the landward side of the road or on the land ward side of existing authorised structures. No permission for construction of buildings shall be given on land ward side of any new roads which are constructed on the sea ward side of an existing road;</p> <ul style="list-style-type: none"> <li>• Facilities for receipts and storage of petroleum products and liquefied natural gas as specified in Annex III appended to this notification and facility for regasification of liquefied natural</li> </ul>

	<p>facilities, such as water supply and sewerage mains.</p>	<p>gas subject to the conditions as mentioned in para 2</p> <ul style="list-style-type: none"> <li>• Desalination plants</li> <li>• Storage of non-hazardous cargo such as edible oil, fertilizers and food grain in notified ports.</li> <li>• Facility for generating power by non-conventional energy sources.</li> <li>• Construction of airstrips and associated facilities in the Islands of Lakshadweep and Andaman and Nicobar.</li> </ul> <p>2. Reconstruction of the authorised buildings to be permitted without change in the existing use.</p> <p>3. The design and construction of buildings shall be consistent with the surrounding landscape and local architectural style</p>
<p>3.</p>	<p><b>CRZ III</b></p> <p>Areas that are relatively undisturbed and those which do not belong to category II or I. This will include coastal zone in the rural areas both developed and undeveloped and also areas within municipal limits or in other legally designated urban areas, which are not substantially built up.</p>	<p>The area upto 200 meters from the HTL is to be declared as no development zone.</p> <p>The “no development zone” definition has been changed now. It is reduced from 200 metres from the high-tide line to 100 meters only. This has been done to meet increased demands of housing of fishing and other traditional coastal communities. The State Government may permit construction facility for water supply, drainage and sewerage for requirement official inhabitants. The following uses may be permitted in this zone: agriculture, horticulture, gardens, pastures, parks, play fields and salt manufacture from sea water.</p> <p>Development of vacant plots between 200 and 500 mts of HTL is permitted with the prior approval of ministry of environment and forest.</p> <p>Construction of beach resorts/hotels shall not be</p>

		<p>permitted in ecologically sensitive areas.</p> <p>Construction of beach resorts in the designated areas of CRZ III be subject to some conditions:</p> <p>(a) the project proponents shall not undertake any construction within 200mts from HTL and in area between LTL and HTL.</p> <p>(b)to allow public access to beach atleast a gap of20 mts width shall be provided between any two hotels or beach resorts.</p> <p>(c) if the project involves diversion of forestland for non-forest purposes, clearance as required under Forest Conservation Act.</p> <p>(d)ground water shall not be tapped within 200mts of HTL.</p> <p>(e)the overall height of construction shall not exceed 9mts and construction shall not be more than 2 floors.</p>
4.	<p><b>CRZ IV</b></p> <p>Coastal stretches in the Andaman and Nicobar, Lakshadweep and small islands, except those designed as CRZ-I or II or III</p>	<p>Andaman and Nicobar Islands:</p> <p>(a)No new construction of building within 200mtsof HTL shall be permitted.</p> <p>(b)Corals from beach and coastal waters shall not be used for construction and other purposes.</p> <p>(c)Dredging and under water blasting in and round coral formation shall not be permitted.</p> <p>Lakshadweep and small islands:</p> <p>(a)Buildings within 500 mts from HTL shall not have more than 2 floors, the total covered area on all floors shall not be more than 50% of plot size and total height of construction shall not exceed 9mts.</p> <p>(b)the design and construction of building shall be consistent with surrounding landscape and local architectural style.</p>

		<p>(c) dredging and under water blastings in and around coral formations shall not be permitted.</p> <p>(d) some of the islands the coastal stretches may be classified into categories CRZ I or II or III with prior approval of Ministry of Environment and forest and in such designated stretches, the appropriate regulation given for respective categories shall apply.</p>
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*National Coastal Zone Management Authority:*

- The Central Government constituted NCZMA.
- The Headquarters shall be at New Delhi.
- NCZMA comprises of : A Chairman; Member secretary; 10 other members
- The members of NCZMA hold office for a period of 2 years.

*Powers and functions of Authorities:*

- a) The NCZMA has the power to take actions necessary “for protecting and improving the quality of the coastal environment and preventing, abating and controlling environmental pollution in coastal areas.”
- b) It is responsible for the coordination of actions of SCZMAs and for providing technical support and assistance to them when necessary.
- c) It has also been authorised to examine proposals received from the SCZMAs and UTCZMAs for:
  - Changes and modifications in the classification of Coastal Regulation Zone (CRZ) areas and in the Coastal Zone Management Plans (CZMPs).
  - The area specific management plans, Integrated Coastal Zone Management (ICZM) Plans and modifications of the same. Further, it may advise the Central Government on policy, planning and research and development in relation to the Coastal Regulation Zone management.
- d) The NCZMA was also expected to put in place General Planning Guidelines, against which the SCZMAs and UTCZMAs could examine project proposals to be located in the CRZ.



### ***Case Laws:***

#### **S.Jagannath v. Union of India**

This case brought into force for the first time the non-implementation of the CRZ notification. Though the notification was enacted, it was never brought into force and the petitioner filed this writ for stoppage of intensive and semi-intensive type of prawn farming in the ecologically fragile coastal areas and for prohibiting use of wastelands and wetlands for prawn farming. The petitioner also sought for the constitution of a National Coastal Zone Management Authority to safeguard the marine and coastal areas. The allegation of the petitioner was that the coastal states were allowing big business houses to develop prawn farms on a large scale in the coastal States in violation of the EPA, 1986 and various other provisions of law. The Court ordered NEERI to visit the coastal states of Andhra and Tamil Nadu and give its report on the status of farms set up in the said areas. The report submitted indicated that due to the impact of aquaculture, the environment was adversely degraded. The impact was on surface water, contamination of soil and ground water and destruction of mangrove vegetation.

The Court order the following:

- no part of the agricultural land and salt farms could be converted into aqua culture farms
- an authority shall be constituted by the Central Government under sec. 8 (3) of the EPA, 1986.
- the authority so constituted shall implement the precautionary principle and polluter pays principle;
- no shrimp culture ponds should be constructed within the CRZ;
- all the infrastructure set up within the CRZ such as shrimp culture farms should be demolished and removed;
- aquaculture industry functioning at present within one km of the Chilika and Pulicat lakes must compensate the affected persons;
- all employees/workmen engaged in the shrimp culture industry for less than one year should be retrenched and those employed for more than one year paid compensation.
- aquaculture industry functioning outside the CRZ should obtain clearance from the authority within a specified period failing which they must stop their operations.

### **G. Disaster Management Act, 2005**

This Act was established in the year 2005. It has 11 Chapters with 79 Section.

Section 2 is definition:

Sec 2(d) “disaster” means a catastrophe, mishap, calamity or grave occurrence in any area, arising from natural or man-made causes, or by accident or negligence which results in substantial loss of life or human suffering or damage to, and destruction of, property, or damage to, or degradation of, environment, and is of such a nature or magnitude as to be beyond the coping capacity of the community of the affected area;

2 I “disaster management” means a continuous and integrated process of planning, organising, coordinating and implementing measures which are necessary or expedient for— (i) prevention of danger or threat of any disaster; (ii) mitigation or reduction of risk of any disaster or its severity or consequences; (iii) capacity-building; (iv) preparedness to deal with any disaster; (v) prompt response to any threatening disaster situation or disaster; (vi) assessing the severity or magnitude of effects of any disaster;(vii) evacuation, rescue and relief; (viii) rehabilitation and reconstruction.

(i) “mitigation” means measures aimed at reducing the risk, impact or effects of a disaster or threatening disaster situation;

(m) “preparedness” means the state of readiness to deal with a threatening disaster situation or disaster and the effects thereof;

Section 3: THE NATIONAL DISASTER MANAGEMENT AUTHORITY:

Section 3(1) Establishment of NDMA

Section 3 (2) The National Authority shall consist of the Chairperson and such number of other members, not exceeding nine, as may be prescribed by the Central Government and, unless the rules otherwise provide, the National Authority shall consist of the following:

(a) the Prime Minister of India, who shall be the Chairperson of the National Authority, ex officio;

(b) other members, not exceeding nine, to be nominated by the Chairperson of the National Authority.

(3) The Chairperson of the National Authority may designate one of the members nominated under clause (b) of sub-section (2) to be the Vice-Chairperson of the National Authority.

(4) The term of office and conditions of service of members of the National Authority shall be such as may be prescribed.

**Section 7. Constitution of advisory committee by National Authority.—**(1) The National Authority may constitute an advisory committee consisting of experts in the field of disaster management and having practical experience of disaster management at the national, State or district level to make recommendations on different aspects of disaster management. (2) The members of the advisory committee shall be paid such allowances as may be prescribed by the Central Government in consultation with the National Authority.

**Section 8. Constitution of National Executive Committee.—**(1) The Central Government shall, immediately after issue of notification under sub-section (1) of section 3, constitute a National Executive Committee to assist the National Authority in the performance of its functions under this Act. (2) The National Executive Committee shall consist of the following members, namely:— (a) the Secretary to the Government of India in charge of the Ministry or Department of the Central Government having administrative control of the disaster management, who shall be Chairperson, ex officio; (b) the Secretaries to the Government of India in the Ministries or Departments having administrative control of the agriculture, atomic energy, defence, drinking water supply, environment and forests, finance (expenditure), health, power, rural development, science and technology, space, telecommunication, urban development, water resources and the Chief of the Integrated Defence Staff of the Chiefs of Staff Committee, ex officio. (3) The Chairperson of the National Executive Committee may invite any other officer of the Central Government or a State Government for taking part in any meeting of the National Executive Committee and shall exercise such powers and perform such functions as may be prescribed by the Central Government in consultation with the National Authority. (4) The procedure to be followed by the National Executive Committee in exercise of its powers and discharge of its functions shall be such as may be prescribed by the Central Government.

**Section 9. Constitution of sub-committees.—**(1) The National Executive Committee may, as and when it considers necessary, constitute one or more sub-committees, for the efficient discharge of its functions. (2) The National Executive Committee shall, from amongst its members, appoint the Chairperson of the sub-committee referred to in sub-section (1). (3) Any person associated as an expert with any sub-committee may be paid such allowances as may be prescribed by the Central Government.

**Section 14. Establishment of State Disaster Management Authority.—**(1) Every State Government shall, as soon as may be after the issue of the notification under sub-section (1) of section 3, by notification in the Official Gazette, establish a State Disaster Management Authority for the State with such name as may be specified in the notification of the State Government. (2) A State Authority shall consist of the Chairperson and such number of other members, not exceeding nine, as may be prescribed by the State Government and, unless the rules otherwise provide, the State Authority shall consist of the following members, namely:— (a) the Chief Minister of the State, who shall be Chairperson, ex officio; (b) other members, not exceeding eight, to be nominated by the Chairperson of the State Authority; (c) the Chairperson of the State Executive Committee, ex officio. (3) The Chairperson of the State Authority may designate one of the members nominated under clause (b) of sub-section (2) to be the Vice-Chairperson of the State Authority. (4) The Chairperson of the State Executive Committee shall be the Chief Executive Officer of the State Authority, ex officio: Provided that in the case of a Union territory having Legislative Assembly, except the Union territory of Delhi, the Chief Minister shall be the Chairperson of the Authority established under this section and in case of other Union territories, the Lieutenant Governor or the Administrator shall be the Chairperson of that Authority: Provided further that the Lieutenant Governor of the Union territory of Delhi shall be the Chairperson and the Chief Minister thereof shall be the Vice-Chairperson of the State Authority. (5) The term of office and conditions of service of members of the State Authority shall be such as may be prescribed.

**Section 16. Appointment of officers and other employees of State Authority.—**The State Government shall provide the State Authority with such officers, consultants and employees, as it considers necessary, for carrying out the functions of the State Authority.

**Section 25. Constitution of District Disaster Management Authority.—** (1) Every State Government shall, soon as may be after issue of notification under sub-section (1) of section 14, by notification in the Official Gazette, establish a District Disaster Management Authority for every district in the State with such name as may be specified in that notification. (2) The District Authority shall consist of the Chairperson and such number of other members, not exceeding seven, as may be prescribed by the State Government, and unless the rules otherwise provide, it shall consist of the following, namely:— (a) the Collector or District Magistrate or Deputy Commissioner, as the case may be, of the district who shall be Chairperson, ex officio; (b) the elected representative of the local authority who shall be the co-Chairperson, ex officio: Provided that in the Tribal Areas, as referred to in the Sixth Schedule to the Constitution, the Chief Executive Member of the district council of autonomous district, shall be the co-Chairperson, ex officio; (c) the Chief Executive Officer of the District Authority, ex officio; (d) the Superintendent of Police, ex officio; (e) the Chief Medical Officer of the district, ex officio; (f) not exceeding two other district level officers, to be appointed by the State Government. (3) In any district where zilaparishad exists, the Chairperson thereof shall be the co-Chairperson of the District Authority. (4) The State Government shall appoint an officer not below the rank of Additional Collector or Additional District Magistrate or Additional Deputy Commissioner, as the case may be, of the district to be the Chief Executive Officer of the District Authority to exercise such powers and perform such functions as may be prescribed by the State Government and such other powers and functions as may be delegated to him by the District Authority.

**Section 26. Powers of Chairperson of District Authority.—**(1) The Chairperson of the District Authority shall, in addition to presiding over the meetings of the District Authority, exercise and discharge such powers and functions of the District Authority as the District Authority may delegate to him. (2) The Chairperson of the District Authority shall, in the case of an emergency, have power to exercise all or any of the powers of the District Authority but the exercise of such powers shall be subject to ex post facto ratification of the District Authority. (3) The District Authority or the Chairperson of the District Authority may, by general or special order, in writing, delegate such of its or his powers and functions, under sub-section (1) or (2), as the case may be, to the Chief

Executive Officer of the District Authority, subject to such conditions and limitations, if any, as it or he deems fit.

## **POWERS AND FUNCTIONS OF AUTHORITIES:**

### **Section 6. Powers and functions of *National Authority*.**

1. Subject to the provisions of this Act, the National Authority shall have the responsibility for laying down the policies, plans and guidelines for disaster management for ensuring timely and effective response to disaster.
2. Without prejudice to generality of the provisions contained in sub-section (1), the National Authority may —
  - a. lay down policies on disaster management;
  - b. approve the National Plan;
  - c. approve plans prepared by the Ministries or Departments of the Government of India in accordance with the National Plan;
  - d. lay down guidelines to be followed by the State Authorities in drawing up the State Plan;
  - e. lay down guidelines to be followed by the different Ministries or Departments of the Government of India for the purpose of integrating the measures for prevention of disaster or the mitigation of its effects in their development plans and projects;
  - f. coordinate the enforcement and implementation of the policy and plan for disaster management;
  - g. recommend provision of funds for the purpose of mitigation;
  - h. provide such support to other countries affected by major disasters as may be determined by the Central Government;
  - i. take such other measures for the prevention of disaster, or the mitigation, or preparedness and capacity building for dealing with the threatening disaster situation or disaster as it may consider necessary;
  - j. lay down broad policies and guidelines for the functioning of the National Institute of Disaster Management.
3. The Chairperson of the National Authority shall, in the case of emergency, have power to exercise all or any of the powers of the National Authority but exercise

of such powers shall be subject to ex post facto ratification by the National Authority.

**Section 18. Powers and functions of *State Authority*:**

1. Subject to the provisions of this Act, a State Authority shall have the responsibility for laying down policies and plans for disaster management in the State.
2. Without prejudice to the generality of provisions contained in sub-section (1), the State Authority may—
  - (c) lay down the State disaster management policy;
  - (d) approve the State Plan in accordance with the guidelines laid down by the National Authority;
  - (e) approve the disaster management plans prepared by the departments of the Government of the State;
  - (f) lay down guidelines to be followed by the departments of the Government of the State for the purposes of integration of measures for prevention of disasters and mitigation in their development plans and projects and provide necessary technical assistance therefor;
  - (g) coordinate the implementation of the State Plan;
  - (h) recommend provision of funds for mitigation and preparedness measures;
  - (i) review the development plans of the different departments of the State and ensure that prevention and mitigation measures are integrated therein;
  - (j) review the measures being taken for mitigation, capacity building and preparedness by the departments of the Government of the State and issue such guidelines as may be necessary.
3. The Chairperson of the State Authority shall, in the case of emergency, have power to exercise all or any of the powers of the State Authority but the exercise of such powers shall be subject to ex post facto ratification of the State Authority.

**Section 30. Powers and functions of *District Authority* :**

- (1) The District Authority shall act as the district planning, coordinating and implementing body for disaster management and take all measures for the purposes of disaster management

in the district in accordance with the guidelines laid down by the National Authority and the State Authority.

(2) Without prejudice to the generality of the provisions of sub-section the District Authority may

- i. prepare a disaster management plan including district response plan for the district;
- ii. coordinate and monitor the implementation of the National Policy, State Policy, National Plan, State Plan and District Plan;
- iii. ensure that the areas in the district vulnerable to disasters are identified and measures for the prevention of disasters and the mitigation of its effects are undertaken by the departments of the Government at the district level as well as by the local authorities;
- iv. ensure that the guidelines for prevention of disasters, mitigation of its effects, preparedness and response measures as laid down by the National Authority and the State Authority are followed by all departments of the Government at the district level and the local authorities in the district;
- v. give directions to different authorities at the district level and local authorities to take such other measures for the prevention or mitigation of disasters as may be necessary;
- vi. lay down guidelines for prevention of disaster management plans by the department of the Government at the districts level and local authorities in the district;
- vii. monitor the implementation of disaster management plans prepared by the Departments of the Government at the district level;
- viii. lay down guidelines to be followed by the Departments of the Government at the district level for purposes of integration of measures for prevention of disasters and mitigation in their development plans and projects and provide necessary technical assistance therefor;
- ix. monitor the implementation of measures referred to in clause (viii);
- x. review the state of capabilities for responding to any disaster or threatening disaster situation in the district and give directions to the relevant departments or authorities at the district level for their up gradation as may be necessary;
- xi. review the preparedness measures and give directions to the concerned departments at the district level or other concerned authorities where necessary for bringing the



- preparedness measures to the levels required for responding effectively to any disaster or threatening disaster situation;
- xii. organise and coordinate specialised training programmes for different levels of officers, employees and voluntary rescue workers in the district;
  - xiii. facilitate community training and awareness programmes for prevention of disaster or mitigation with the support of local authorities, governmental and non-governmental organisations;
  - xiv. set up, maintain, review and upgrade the mechanism for early warnings and dissemination of proper information to public;
  - xv. prepare, review and update district level response plan and guidelines;
  - xvi. coordinate response to any threatening disaster situation or disaster;
  - xvii. ensure that the Departments of the Government at the district level and the local authorities prepare their response plans in accordance with the district response plan;
  - xviii. lay down guidelines for, or give direction to, the concerned Department of the Government at the district level or any other authorities within the local limits of the district to take measures to respond effectively to any threatening disaster situation or disaster;
  - xix. advise, assist and coordinate the activities of the Departments of the Government at the district level, statutory bodies and other governmental and non-governmental organisations in the district engaged in the disaster management;
  - xx. coordinate with, and give guidelines to, local authorities in the district to ensure that measures for the prevention or mitigation of threatening disaster situation or disaster in the district are carried out promptly and effectively;
  - xxi. provide necessary technical assistance or give advice to the local authorities in the district for carrying out their functions;
  - xxii. review development plans prepared by the Departments of the Government at the district level, statutory authorities or local authorities with a view to make necessary provisions therein for prevention of disaster or mitigation;
  - xxiii. examine the construction in any area in the district and, if it is of the opinion that the standards for the prevention of disaster or mitigation laid down for such construction

is not being or has not been followed, may direct the concerned authority to take such action as may be necessary to secure compliance of such standards;

- xxiv. identify buildings and places which could, in the event of any threatening disaster situation or disaster, be used as relief centre or camps and make arrangements for water supply and sanitation in such buildings or places;
- xxv. establish stockpiles of relief and rescue materials or ensure preparedness to make such materials available at a short notice;
- xxvi. provide information to the State Authority relating to different aspects of disaster management;
- xxvii. encourage the involvement of non-governmental organisations and voluntary socialwelfare institutions working at the grassroots level in the district for disaster management;
- xxviii. ensure communication systems are in order, and disaster management drills are carried out periodically;
- xxix. perform such other functions as the State Government or State Authority may assign to it or as it deems necessary for disaster management in the District.

#### ***NATIONAL INSTITUTE OF DISASTER MANAGEMENT***

Section 42 National Institute of Disaster Management.—(1) With effect from such date as the Central Government may, by notification in the Official Gazette appoint in this behalf, there shall be constituted an institute to be called the National Institute of Disaster Management.

(2) The National Institute of Disaster Management shall consist of such number of members as may be prescribed by the Central Government.

(3) The term of office of, and vacancies among, members of the National Institute of Disaster Management and manner of filling such vacancies shall be such as may be prescribed.

(4) There shall be a governing body of the National Institute of Disaster Management which shall be constituted by the Central Government from amongst the members of the National Institute of Disaster Management in such manner as may be prescribed.

(5) The governing body of the National Institute of Disaster Management shall exercise such powers and discharge such functions as may be prescribed by regulations.

(6) The procedure to be followed in exercise of its powers and discharge of its functions by the governing body, and the term of office of, and the manner of filling vacancies among the members of the governing body, shall be such as may be prescribed by regulations.

(7) Until the regulations are made under this section, the Central Government may make such regulations; and any regulation so made may be altered or rescinded by the National Institute of Disaster Management in exercise of its powers.

(8) Subject to the provisions of this Act, the National Institute of Disaster Management shall function within the broad policies and guidelines laid down by the National Authority and be responsible for planning and promoting training and research in the area of disaster management, documentation and development of national level information base relating to disaster management policies, prevention mechanisms and mitigation measures.

(9) Without prejudice to the generality of the provisions contained in sub-section (8), the National Institute, for the discharge of its functions, may—

(a) develop training modules, undertake research and documentation in disaster management and organise training programmes;

(b) formulate and implement a comprehensive human resource development plan covering all aspects of disaster management;

(c) I provide assistance in national level policy formulation;

(d) provide required assistance to the training and research institutes for development of training and research programmes for stakeholders including Government functionaries and undertake training of faculty members of the State level training institutes;

(e) I provide assistance to the State Governments and State training institutes in the formulation of State level policies, strategies, disaster management framework and any other assistance as may be required by the State Governments or State training institutes for capacity-building of stakeholders, Government including its functionaries, civil society members, corporate sector and people's elected representatives;

(f) develop educational materials for disaster management including academic and professional courses;

(g) promote awareness among stakeholders including college or school teachers and students, technical personnel and others associated with multi-hazard mitigation, preparedness and response measures;

(h) undertake, Organise and facilitate study courses, conferences, lectures, seminars within and outside the country to promote the aforesaid objects;

(i) undertake and provide for publication of journals, research papers and books and establish and maintain libraries in furtherance of the aforesaid objects;

(j) do all such other lawful things as are conducive or incidental to the attainment of the above objects; and

(k) undertake any other function as may be assigned to it by the Central Government.

Section 43. Officers and other employees of the National Institute.—The Central Government shall provide the National Institute of Disaster Management with such officers, consultants and other employees, as it considers necessary, for carrying out its functions.

#### **NATIONAL DISASTER RESPONSE FORCE**

Section 44 National Disaster Response Force.—(1) There shall be constituted a National Disaster Response Force for the purpose of specialist response to a threatening disaster situation or disaster. (2) Subject to the provisions of this Act, the Force shall be constituted in such manner and, the conditions of service of the members of the Force, including disciplinary provisions therefore, be such as may be prescribed.

Section 45. Control, direction, etc.—The general superintendence, direction and control of the Force shall be vested and exercised by the National Authority and the command and supervision of the Force shall vest in an officer to be appointed by the Central Government as the Director General of the National Disaster Response Force

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## UNIT IV

### **Resource Conservation and Animal Welfare Laws**

#### **A. Wild life Protection Act 1972:**

In ancient India the environmental protection was a moral duty which is imposed on people by religious scriptures, seers, and other agencies. The scriptures of religion emphasize the protection of the environment and the living creatures. Some of the animals were considered as the vehicles of gods in Hindu religion. Kautilya, one of the great political philosophers and the author of The Arthashastra, prohibited and prescribed penalties for the killing of animals, cutting of trees and the excess exploitation of the natural resources. The great Maurya king Ashoka banned the killing of wild animals, and later prohibited the killing of certain species of animals. Pre constitution period some provisions were available to protect animals like The Cattle Trespass Act, 1871; The Elephants Preservation Act, 1879; some sections of Indian Penal Code, 1860; wild Birds and Animals Protection Act, 1912, The Indian Forest Act, 1927. Later on there is dramatic increase in wildlife trade. This is because demand for such products increases in international market. All over world there is demand for tiger bones, skins, rhino horn, ivory, bear bile, musk, fur trade and it goes on. The Indian Forest Act, 1927 also included certain provisions for restricting hunting in reserved and protected forests and other authorized establishments or Sanctuaries. Under this Act, hunting, shooting, fishing, poisoning water or setting traps, etc. is an offence.

At the request of state Governments Wildlife Protection Act was passed by the Parliament in the year 1972 and applies to all states except Jammu and Kashmir. The Wildlife Protection Act, 1972 is the major legislation which specifically enacted for the protection of the wildlife in India. Apart from this The Wild Life (Transactions and Taxidermy) Rules, 1973; The Wild Life (Stock Declaration) Central Rules, 1973; The Wild life (Protection) Licensing (Additional Matters for Consideration) Rules, 1983; The Wild Life (Protection) Rules, 1995; The Wild Life (Specified Plants – Conditions for Possession by Licensee) Rules, 1995; Forest Conservation Act, 1980; Forest (Conservation) Rules, 1981; National Forest Policy, 1988; Biological Diversity Act, 2002 are some other legislation which protect wild life.

Brief discussion about the Wild life protection Act 1972:

This Act has 7 chapters with 6 schedules and 66 Sections. Section 2 deals with definition clause. 39 terms are being defined for the purpose of this Act. Important definition alone discussed here:

“*wildlife*” includes any animal, bees butterflies, crustacean, fish and moths; and aquatic or land vegetation which forms part of any habitat; **Section 2 (37)**

“*wild animal*” means any animal found wild in nature and includes any animal specified in Schedule I, Schedule II, Schedule, IV or Schedule V, wherever found; **Section 2 (36)**

“*animal*” includes amphibians, birds, mammals, and reptiles, and their young, and also includes, in the cases of birds and reptiles, their eggs –**Section 2 (1)**

“*animal article*” means an article made from any captive animal or wild animal, other than vermin, and includes an article or object in which the whole or any part of such animal [has been used and ivory imported into India and an article made therefrom- **Section 2 (2)**

“*Board*” means the Wildlife Advisory Board constituted –**Section 2 (4)**

“*captive animal*” means any animal, specified in Schedule 1, Schedule II, Schedule III or Schedule IV, which is captured or kept or bred in captivity- **Section 2(5)**

“*vermin*” means any wild animal specified in Sch.V- **Section 2 (34)**

“*hunting*”, with its grammatical variations and cognate expressions, includes,

(a) capturing, killing, poisoning, snaring, and trapping or any wild animal and every attempt to do so,

(b) driving any wild animal for any of purposes specified in sub clause

I injuring or destroying or taking any part of the body of any such animal, or in the case of wild birds or reptiles, damaging the eggs of such birds or reptiles, or disturbing the eggs or nests of such birds or reptiles- **Section 2 (16)**

“*habitat*” includes land, water, or vegetation which is the natural home of any wild animal – **Section 2 (15)**

*“trophy”* means the whole or any part of any captive animal or wild animal, other than vermin, which has been kept or preserved by any means, whether artificial or natural, and includes,

(a) rugs, skins, and specimens of such animals mounted in whole or in part through a process of taxidermy, and

(b) antler, horn, rhinoceros horn, feather, nail, tooth, musk, eggs, and nests;- **Section 2 (31)**

*“uncured trophy”* means the whole or any part of any captive animal, other than vermin, which has not undergone a process of taxidermy, and includes a {freshly killed wild animal ambergris, musk and other animal products} - **Section 2 (32)**.

*Authorities constituted under Wild life Act:* As per the **Sec. 3** of the Act, the Central Government may appoint a Director of Wildlife Preservation, Assistant Directors of Wildlife Preservation and such other officers and employees as may be necessary.

As per the **Sec. 4**, the State Government may, for the purpose of this Act appoint Chief Wildlife Warden, Wildlife Warden, Honorary Wildlife Wardens and other officers and employees as may be necessary.

*Constitution of the Wildlife Advisory Board:* As per **Sec. 6**, the State Governments and the Administrators in Union Territories shall constitute a Wildlife Advisory Board. The Board constitutes following members:

(a) the Minister in charge of Forest in the State or Union Territory, or, if there is no such Minister, the Chief Secretary shall be the Chairman;

(b) two members of the State Legislature or, in the case of a Union Territory having a Legislature, two members of the legislature of the Union Territory, as the case may be;

(c) Secretary to the State Government, or the Government of the Union Territory, in charges of Forests;

(d) The Forest Officer in charge of the State Forest Department, by whatever designation called, ex-officio;

I an officer to be nominated by the Director;

(f) Chief Wildlife Warden, ex-officio;

(g) Officers of the State Forest Government not exceeding five

(h) such other person, not exceeding ten, who, in the opinion of the State Government, are interested in the protection of Wildlife, including the representatives of tribals not exceeding three.

***Section 8:Duties of Advisory Board:*** duty of the Wildlife Advisory Board to advise the State Government.

- In the selection of areas to be declared as Sanctuaries, National Parks, and Closed Areas and the administration thereof ;
- in formulation of the policy of protection and conservation of Wildlife and specified plants;
- in any matter relating to any schedule;
- in relation to the measures to be taken for harmonizing the needs of the tribals and other dwellers of the forest with the protection and conservation of wildlife; and
- in any matter that may be referred to it by the State Government.

***Hunting of Wild animals:Sec. 2(16(a) (b) (c))*** defines the word hunting as follows Hunting, with its grammatical variations and cognate expressions, includes; capturing, killing, poisoning, snaring, and trapping or any wild animal and every attempt to do so; driving any wild animal for any of purposes specified in sub clause; injuring or destroying or taking any part of the body of any such animal, or in the case of wild birds or reptiles, damaging the eggs of such birds or reptiles, or disturbing the eggs or nests of such birds or reptiles;



**Sec. 9** of the Act prohibits hunting of any wild animal specified in Schedules 1, 2, 3, and 4. Any person who hunts any wild animal shall be punishable with imprisonment for a term which may extend to 3 years or with fine which may extend to Rs. 25000/- or with both. However if any person commits the offence in the sanctuary or national park, with respect any animal specified in Schedule 1, he shall be punishable with imprisonment which shall not be less than 1 year but may extend to 6 years and also with fine which shall not be less than 5000/-

The Chief Wildlife Warden may permit hunting of wild animals in certain situations. They are;

- (1) The Chief Wildlife Warden may, if he is satisfied that any wild animal specified in Schedule 1 has become dangerous to human life or is so disabled or diseased as to be beyond recovery, by order in writing and stating the reasons therefore, permit any person to hunt such animal or cause animal to be hunted;
- (2) The Chief Wildlife Warden or the authorized officer may, if he is satisfied that any wild animal specified in Schedule. II or III or IV has become dangerous to human life or to property (including standing crops on any land) or is so disabled or diseased as to be beyond recovery, by order in writing and stating the reasons therefore, permit any person to hunt such animal or cause such animal to be hunted.
- (3) The killing or wounding in good faith of any wild animal in defense of oneself or of any other person shall not be an offence; Provided that nothing in this sub-section shall exonerate any person who, when such defense becomes necessary, was committing any act in contravention of any provision of this Act or any rule or order made there under.
- (4) Any wild animal killed or wounded in defense of any person shall be Government property.

*Grant of permission for hunting for special purposes:* The Chief Wildlife Warden, permit, by an order in writing stating the reasons therefore, to any person, on payment of such fee as may be prescribed, which shall entitle the holder of such permit to hunt. subject to such conditions as may be specified therein, any wild animal specified in such permit, for the purpose of: Education; Scientific research; Scientific management; means and includes

translocation of any wild animal to an alternative suitable habitat; or population management of wildlife, without killing or poisoning or destroying any wild animals; Collection of specimens; for recognised zoos subject to the permission under section 38-1 or for museums and similar institutions; derivation, collection or preparation of snake-venom for the manufacture of life saving drugs.

*Protection of Specified plants: Sec. 17A* of the Act prohibits picking, uprooting, etc., of specified plants. As otherwise provided in this Chapter, no person shall:

- a. pick, uproot, damage destroy, acquire or collect any specified plant from any forestland and area specified, by notification, by the Central Government,
- b. possess, sell, other for sale, or transfer by way of gift or otherwise, or transport any specified plant, whether alive or dead, or part or derivative thereof:

Provided that nothing in this section shall prevent a member of a scheduled tribe, subject to the provisions of Chapter IV, from picking, collecting or possessing in the district he resides any specified plant or part or derivative thereof for his bonafide personal use.

The Chief Wild Life Warden may with the previous permission of the State Government, grant to any person a permit to pick, uproot, acquire or collect from a forest land or the area specified under section 17A or transport, subject to such conditions as may be specified therein, any specified plant for the purpose of education; scientific research., collection, preservation and display in a herbarium of any scientific institutions; or propagation by a person or an institution approved by the Central Government in this regard.

*Sanctuaries: Section 18* provides that the State Government may, by notification, declare its intention to constitute any area other than area comprised with any reserve forest or the territorial waters as a sanctuary if it considers that such area is of adequate ecological, faunal, floral, geomorphologic, natural or zoological significance, for the purpose of protecting, propagating or developing wildlife or its environment. For the purposes of this section, it shall be sufficient to describe the area by roads, rivers, ridges, or other well-known or readily intelligible boundaries. The Chief Wildlife Warden may, on an application, grant to any person a permit to enter or reside in a sanctuary for the following purposes:

- a) Investigation or study of wildlife and any purpose ancillary or incidental thereto;
- b) Photograph
- c) Scientific research
- d) Tourism
- e) Transaction of lawful business with any person in the sanctuary

Only a public servant on duty or permit holder or a person having a right over immovable property within the limits of a sanctuary, person passing through pathway in the sanctuary and dependants of the above can also enter or reside in the sanctuary.

**Section 35: National Park-** The state government, for the purpose of protecting, propagating or developing wildlife may by a notification declare that an area, by reason of its ecological, faunal, floral, geomorphological or zoological association or importance, needed to be constituted as a National Park. Once a National Park is declared, no alteration of the boundaries shall be made except on the resolution passed by the legislature of the state. In a National Park, the following activities are strictly prohibited:

- Destroying, exploring or removing any wildlife,
- Destroying, damaging the habitat of any wild animal,
- Deprive any wild animal of its habitat,
- Grazing of any livestock

Section 33 A: Central Zoo Authority and Recognition of Zoos

**Section 38 A: Central Zoo Authority :** The central government shall constitute the *Central Zoo Authority*, consisting of a chair person, ten members and a member secretary. They shall hold office for a period of three years. The Central Zoo Authority shall perform the following functions:

- ✓ Specify the minimum standards for housing, upkeep and veterinary care of the animals kept in a zoo;
- ✓ Evaluate and assess the functioning of zoos with respect to the standards or the norms as may be prescribed;
- ✓ Recognize or derecognize zoos;

- ✓ Identify endangered species of wild animals for purposes of captive breeding and assigning responsibility in this regard to a zoo;
- ✓ Co-ordinate the acquisition, exchange and loaning of animals for breeding purposes;
- ✓ Ensure maintenance of stud-books of endangered species of wild animals bred in captivity;
- ✓ Identify priorities and themes with regard to display of captive animals in a zoo;
- ✓ Co-ordinate training of zoo personnel in India and outside India;
- ✓ Co-ordinate research in captive breeding and educational programmes for the purposes of zoos;
- ✓ Provide technical and other assistance to zoos for their proper management and development on scientific lines;
- ✓ Perform such other functions as may be necessary to carry out the purposes of this Act with regard to zoos.

***Section 39: Trade or commerce in wild animals, animal articles and trophies:***

The term trophy means the whole or any part of any captive animal or wild animal, other than vermin, which has been kept or preserved by any means, whether artificial or natural, and includes, rugs, skins, and specimens of such animals mounted in whole or in part through a process of taxidermy, and antler, horn, rhinoceros horn, feather, nail, tooth, musk, eggs, and nests. And uncured trophy means the whole or any part of any captive animal, other than vermin, which has not undergone a process of taxidermy, and includes a [freshly killed wild animal ambergris, musk and other animal products];

Sec. 39 of the Act, declares that every wild animal other than vermin, which is hunted or kept or bred in captivity or found dead or killed by mistake, shall be the property of the State Government. Likewise, animal articles, trophy or uncured trophy, meat derived from any wild animal, ivory imported to India, article made from such ivory, vehicle vessel weapon, trap or tool that has used for committing an offence and has been seized shall be the property of the state government. If any of the above is found in the sanctuary or a National Park declared by the Central Government then it shall be property of the Central Government.

### ***Section 50 Prevention and detection of offences:***

This section confers power of entry, search, arrest and detention on the Director or any other officer authorized by him or the chief wildlife warden or Officer authorized by him or any Police Officer not below the rank of Sub-inspector. Officer not below the rank of Assistant Director of Wildlife Preservation or Wildlife Warden shall have the powers to issue a search warren, to enforce the attendance of witnesses, to compel the discovery and production of documents and material objects and to receive and record evidence.

### ***Cognizance of Offence***

No court shall take cognizance of any offence against the Wildlife Protection Act except on a complaint by: The Director of wildlife preservation or any other officer authorized in this behalf by the Central Government or; The Chief Wildlife Warden or any other officer authorized by the State Government; or, any person who has given notice of not less than 60 days, in the manner prescribed, of the alleged offence and of his intention to make a complaint to the Central Government or the State Government or the officer authorised as aforesaid.

***Punishments:*** Provided that where the offence committed is in relation to any animal specified in Scheduled I or Part II of Schedule. II, or meat of any such animal, animal article, trophy, or uncurled trophy derived from such animal or where offence [relates to hunting in, or, altering the boundaries of] a sanctuary or a National Park, such offence shall be punishable with imprisonment for a term which shall not be less than [one year] but may extend to six years and also with fine which shall not be less than five thousand rupees. Provided further that in the case of a second or subsequent offence of the nature mentioned in this sub-section, the term or imprisonment may extend to six years and shall not be less than two years and the amount of fine shall not be less than ten thousand rupees .Any person who contravenes any provisions of Chapter VA, [Prohibition of Trade or Commerce in Trophies, Animal Articles, etc. derived from Certain Animals.] shall be punishable with imprisonment for a7 term which shall not be less then one year but which may extend to seven years and also with fine which shall not be less than Rs5000/-

Any person who contravenes the provisions of Section 38J [tease, molest, injure or feed any animal or cause disturbance to the animals by noise or otherwise, or litter the

grounds in a zoo] shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to two thousand rupees, or with both. Provided that in case of second or subsequent offence the term of imprisonment may extend to one year or the fine may extend to five thousand rupees As per section 52, whoever attempts to contravene, or abets the contravention of, any of the provisions of this Act or of any rule of order made hereunder shall be deemed to have contravened that provision or rule or order, as the case may be. If any person, exercising powers under this Act, vexatiously and unnecessarily seizes the property of any other person on the pretence of seizing it for the reasons mentioned in sec. 50, he shall, on conviction, be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

***Forfeiture of Property Derived from Illegal Hunting and Trade:***

A new chapter, Chapter VI-A, had been incorporated by the Wildlife (Protection) Amendment Act of 2002 .According to this new chapter, if any person or associate of persons or trust acquires property from illegal hunting or trade of wildlife, it shall be forfeited to the State Government by the competent authority. Such property can be forfeited after taking all necessary steps (inquiry, investigation or survey in respect of any person, place, property, documents institution, etc.) and after tracing and identifying any such property. During the investigation and proceeding of forfeit the property, if the competent authority finds that only a part of the acquired property is proved illegal, the authority shall make orders, giving an opportunity to the person affected, to pay a fine equal to the market value of such part of property in lieu of forfeiture.

***Cases:***

*Rajendra Kumar V. Union of India*, the petitioner challenged the vis of the above clause which imposed a complete ban on import of ivory and articles made form it. It affected his livelihood and freedom of trade and business provided under Article 19(1). Moreover, he contended that ivory derived from a mammoth was not ivory derived from a scheduled animal, therefore, any article made out of such fossil ivory could not be brought within the purview of the Act. But the Court observed that, the Chapter V-A of this Act, is incorporated in accordance with the direction of Convention on International Trade in Endangered Species of Wild Fauna and Flora [CITES]. The object and reasons of the Amendment Act, 1991 make it amply clear that trade in African ivory is proposed to be banned after giving due

opportunity to traders to dispose of the existing stocks. So the Section under chapter V-A cannot be void.

In *Animal and Environment Legal Defence Fund V. Union of India*, which was a writ petition came to Supreme Court, the petitioners filed the petition challenging the validity of granting permits for fishing to 305 tribal families in reservoirs within the Pench National Park (Madhya Pradesh). But the Supreme Court adopted humanitarian approach keeping in mind the economic sustainability and environment protection. The Supreme Court directed the forest authorities and wildlife authorities to take adequate measures to protect the environment and at the same time keep watch on the villagers. The villagers were also directed not to enter other areas other than the reservoir.

In *Gujarat Navodaya Mandal V. State*, the Gujarat High Court observed that there is nothing illegal in giving permission to lay down pipeline in and through the Marine National Park/ Sanctuary, Jamnagar. Because all the possible measures were taken to protect ecology and environment. Moreover there were conditions on permission to proper management as well as for the improvement of wildlife.

*Other cases to be referred:*

*K.M.Chinnappa v. UOI; State of Bihar v. Murad Ali Khan; State of HP v. Smt Halli Devi; Indian Handicraft Emporium v. UOI; Pyarelal v. State; All India Mobile Zoo owners and Animal Welfare Association v. UOI.*

### **B. Forest Conservation Act 1980**

The Forest Conservation Act was passed in 1980 to provide for the conservation of forests and matters connected therewith. The Act extends in whole of India except the State of Jammu & Kashmir and is in force from 25th October 1980. It was subsequently amended in 1988 (69 of 1988) have the following sections:

2. Restriction on the conservation of forests of use of forest land for non-forest purpose.

3. Constitution of advisory committee.

(A) Penalty for conservation of Act.

(B) Offences by authorities and government departments

#### 4. Power to make rules.

#### 5. Repeal and saving.

Sections 3 (A) and 3 (B) were added through the amendments of 1988, which deal with penalty for conservation of the provisions of the Act and offences by authorities and Government Department, respectively.

*The important feature of this Act:* The Forest Conservation Act was enacted with a view to check further deforestation, which ultimately results in ecological imbalances, accordingly the provisions made therewith must apply to all forest irrespective of the nature of ownership for classification thereof. The term forest land included any area recorded as forest in the Government record irrespective of the ownership. The Act places restrictions on the power of the State Government concerning preservation of forests or use of forest land for non-forest purposes. Section 2 of the Act provides that the State Government shall not make amendments except with the prior approval of the Central Government or any order directing thereon:

- That any reserved forest or any portion thereof, shall cease to be reserved.
- That any forest land or any portion thereof may be used for any non-forest purpose.
- That any forest land or any portion thereof may be assigned by way of lease or otherwise to any private person or non-Government body.
- That any forest or any portion thereof may be cleared of trees which have grown naturally in that land for the purpose of using it for reforestation.

2. The Act provides for the constitution of advisory committee to advise the Government with regard to the grant of approved by the Central Government (Sec. 2) or any other matter connected with conservation of forests which may be referred to it by the Central Government (Sec.3)

3. As per Section 2 of the Act, all ongoing non-forest activities within any forest, in any State throughout the country, without prior approval of the Centre, must cease forthwith.



4. On violation of the provision of Section 2, the offender shall be punishable with imprisonment for a period extending to 15 days (Section 3-A). Any government department or any authority deemed to be guilty of the offence shall be liable to be proceeded against and punished accordingly.

5. The amendment of 1988 shattered all the expectations of tribal communities and many voluntary agencies placed all the forest land under the jurisdiction of the forest department.

For the purpose of section 2 of the Act, non-forest purpose means the breaking up or clearing of any forest land or portion thereof for:

(a) The cultivation of tea, coffee, spices, rubber, palms, oil-bearing plant, horticulture crops or medicinal plants.

(b) Any purpose other than reforestation, but does not include any work relating to ancillary conservation, development and management of forest and wildlife, namely, the establishment of check posts, fire-lines, wireless communication and construction of fencing, bridges and culverts, dams, waterholes, trench marks, boundary marks, pipelines or other like purposes. Forests are renewable natural sources. These are national assets to be protected and enhanced for the wellbeing of the people and Nation. Section 4 of FCA comprises following members:

Chairman	Inspector General of forests, Ministry of Environment & Forest
Member	Additional IG of forests, Ministry of Environment and forest
Member	Joint commissioner (soil conservation) Ministry of Agriculture
Member	3 eminent environment Scientists
Member secretary	Deputy of IG of forest, Ministry of Environment & Forest

***Cases: Goa Foundation v State of Goa AIR 2001:***

The petitioner were a registered society under the Society Registration Act. They are also a Society working towards environmental protection. The objection of the petitioner was that the State government had granted lease of a land in Sanguem Taluka for the purpose of erecting a beneficiation plant and purposes related therewith. The petitioners pleaded that a rich forest wealth in Goa state particularly the conservation of ecological fragile areas falls in the leased land. The plot in question constitutes one of the last remaining vestiges of primary forest in the ecologically sensitive region of the Western Ghats. The plot leased has more than 60 % density of trees which means the forest land is of the nature of a closed forest system and the Forest department intends to convert the same into Reserve Forest. The petitioner contended that overnight the lease was granted under mysterious circumstances, when the revenue authorities filed a report underestimating the density of trees in the plot. When the lease was granted the diversion of forest land to non-forest purposes in private land or so called private forest and revenue lands was thought not to come in the purview of the Forest [Conservation] Act, 1980. But now the position has been altered and the State of Goa is governed by the Preservation of Trees Act, 1984.

The petitioner also alleged that the respondents had already felled 2 hectares of rich forest illegally and without any permission from any of the statutory authorities. Further monstrous act of environmental terrorism was followed by using a bulldozer to remove all the roots of the trees. Pits were dug to lay foundation stone for the beneficiation plant without any permission from any authorities under the law. The government on its part contended that the grant of lease for setting up a beneficiation plant for iron ore was done way back in 1988 at Tudow. It is estimated that the Tudow mines contain 78 million tons law grade iron ore. Hence 12 hectares of land was delivered and heavy investment are already being done for starting the company. The company's project is worth Rs. 25 crores and the company will not occupy more than one hectare. Only 49 trees had been felled and they denied the petitioners claim that an average 250 tree per hectare was covered by forest.

The Court went in detailed the various International Conventions and treaties to which India is a party and held that the State of Goa should have taken prior approval from the Central Government in terms of Forest [Conservation] Rules, 1981. The Court observed that the 1980 Act was an Act in recognition of the awareness that deforestation and ecological

imbalance as a result of such deforestation have become social menaces and further deforestation and ecological imbalances should be prevented. It is, therefore, clear that merely because one of the Ministries of the Government had granted permission, that permission would not be permission for the purposes of the Forest [Conservation] Act, 1980. The Court rejected the contention of the respondents that the land under contention was not forest land, as the land was undisputed a forest land, with enough number of trees on it and any action taken in contravention of sec. 2 of the Forest Act, 1980 contemplates prior permission of the Central Government. Even otherwise the land is situated to an adjacent Government forest and the land is sought to be used for setting up of a beneficiation plant which involves dust and water pollution and consequent destruction of the adjoining forest. It will substantially affect the environment and ecology of the area. This, in fact, would affect the right to life. The petitioner have averred that the cutting of trees without obtaining permission was resorted to. In matters of ecology and environment and considering the principle of sustainable development, no person or organization, however, high and mighty they may be, can be permitted to flout the law of the land.

Following the above observation the Court held that the lease granted in favour of the respondent is born null and void The Court directed the authorities to restore the land to its original use.

### **C. Biological Diversity Act, 2002**

Biodiversity defined as "Biological diversity" means the variability among living organisms from all sources including, inter alia, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part; this includes diversity within species, between species and of ecosystems.

Biodiversity is extremely complex, dynamic and varied. Biodiversity can broadly be divided at three levels i.e. genetic diversity, species diversity and ecosystem diversity. Biodiversity management is required at all these levels because by changing biodiversity, we strongly affect human well-being and the well-being of every other living creature.

India is one of the 12-mega diverse countries of the world. With only 2.5% of the world land area, India has 7.8% of global recorded species. India has 4 out of 34 global biodiversity hotspots in the Eastern Himalayas, in the Indo-Burma region. India also became a

signatory to various other ecological as well environmental laws in order to curtail overexploitation of resources. The Biodiversity Act 2002 was also passed by the Parliament with basic objectives like *Conservation of Biological diversity, Sustainable use of its components, Fair and equitable sharing of the benefits arising out of utilization of genetic resources.*

Act has also given force to some of the terms of CBD by the following provisions:

- *To set up National Biodiversity Authority (NBA), State Biodiversity Board(SBB) and Biodiversity Management Committees(BMC's).*
- *To respect and protect knowledge of local communities traditional knowledge related to biodiversity.*
- *To conserve and develop areas of importance from the standpoint of biological diversity by declaring them biological diversity heritage sites.*

**National Biodiversity Authority and State Biodiversity Boards:**

The National Biodiversity Authority (NBA) is a statutory autonomous body, headquartered in Chennai, under the Ministry of Environment and Forests, Government of India established in 2003 to implement the provisions under the Act. State Biodiversity Boards (SBB) has been created in 28 States along with 31,574 Biological management committees (for each local body) across India. The National Biodiversity Authority (NBA) was established in 2003 to implement India's Biological Diversity Act (2002). The NBA is Autonomous body and that performs facilitative, regulatory and advisory function for Government of India on issue of Conservation, sustainable use of biological resource and fair equitable sharing of benefits of use. The Biological diversity Act (2002) mandates implementation of the act through decentralized system with the NBA focusing on advice the Central Government on matters relating to the conservation of biodiversity, sustainable use of its components and equitable sharing of benefits arising out of the utilization of biological resources; advice the State Government in the selection of areas of biodiversity importance to be notified under sub-section (1) of section 37 as heritage sites and measures for the management of such heritage sites; The state Biodiversity Board (SBBs) focusing on advice the State Government, subject to any guidelines issued by the Central Government, on matters relating to the conservation of biodiversity, sustainable use of its components and equitable sharing of the benefits arising out of the utilization of biological resources;

Regulate by granting of approvals or otherwise request for commercial utilization or bio-survey and bio-utilization of any biological resource by Indians; and Local Level Biodiversity Management committees (BMCs) responsible for promoting conservation, sustainable use and documentation of biological diversity including preservation of habitats, conservation of land races, folk varieties and cultivators, domesticated stocks and breeds of animals and microorganisms and chronicling of knowledge relating to biological diversity.

The NBA with its Headquarters in Chennai, India delivers its mandate through a structure that comprises of the Authority, secretariat, SBBs, BMCs and Expert Committees. Since its establishment, NBA has supported creation of SBBs in 28 States, facilitated establishment of around 32,131 BMCs, advised notification. To implement this Act central government established a body called as National Biodiversity Authority, under the power conferred by section 8 of CBD Act. It started functioning from 1st October 2003. The NBA is an Autonomous body .The main functions of the Authority are, according to Ministry of environment and forest. It shall be the duty of the National Biodiversity Authority to regulate activities referred to in sections 3, 4 and 6 and by regulations issue guidelines for access to biological resources and for fair and equitable benefit sharing. The National Biodiversity Authority may grant approval for undertaking any activity referred to in sections 3, 4 and 6.

The National Biodiversity Authority may advise the Central Government on matters relating to the conservation of biodiversity, sustainable use of its components and equitable sharing of benefits arising out of the utilization of biological resources; The National Biodiversity Authority may advise the State Governments in the selection of areas of biodiversity importance to be notified under sub-section (1) of section 37 as heritage sites and measures for the management of such heritage sites; The National Biodiversity Authority may perform such other functions as may be necessary to carry out the provisions of this Act. The National Biodiversity Authority may, on behalf of the Central Government, take any measures necessary to oppose the grant of intellectual property rights in any country outside India on any biological resource obtained from India or knowledge associated with such biological resource which is derived from India.

**NBA consists of following members:**

- a) A Chairperson- eminent person having adequate knowledge and experience in the conservation and sustainable use of biodiversity and in matters relating to equitable sharing of benefits, to be appointed by Central Government.
- b) 3 ex-officio to be appointed by Central Government one representing Ministry dealing with tribal affairs and 2 representing ministry dealing with Environment and forests of one shall be the Additional Director General of forests or the Director General of Forests.
- c) Seven ex-officio members to be appointed by the Central Government to represent respectively the Ministers of the Central Government dealing with:
  - Agricultural Research and Education
  - Biotechnology
  - Ocean Development
  - Agriculture and cooperation
  - Indian Systems of Medicine and Homeopathy
  - Science and Technology
  - Scientific and Industrial research.
- (d) Five non-official members to be appointed from amongst specialist and scientist knowledge of or experience in, matters relating to conservation of biodiversity, sustainable use of biological resources and equitable sharing of benefits arising out of the use of biological resources, representatives of industry, conservers creators and knowledge holders of biological resources.

It is a 3 tier system At national Level: National Biodiversity Authority (NBA) At State Level: State Biodiversity Boards (SBB's) – Advise the State Governments, subject to guidelines issued by the Central Government, on matters relating to conservation of biodiversity, sustainable use of its components and equitable sharing of benefits arising out of utilization of biological resources. On local Level: Biodiversity Management Committees (BMC's) – Prepare, maintain and validate People's Biodiversity Register (PBR) in consultation with the local people. Advice on any matter referred to it by the State Biodiversity Board or Authority for granting approval. Currently there are SBBs in 26 States, and around 33,426 BMCs. BMC's can be a major tool for implementation this whole system

but actually it is not working. There are not all areas of country which have proper working there and this register maintenance in these days is just a matter of formality

### **Functions:**

- Regulation of acts prohibited under the Act
- Advise the Government on conservation of biodiversity
- Advise the Government on selection of biological heritage sites
- Take appropriate steps to oppose grant of intellectual property rights in countries, arising from the use of biological resources or associated traditional knowledge

### **Regulations**

A foreigner, non-resident Indian as defined in clause (30) of section 2 of The Income tax Act, 1961 or a foreign company or body corporate need to take permission from the Government before obtaining any biological resources or associated knowledge from India. For research, body corporates need to take permission from the concerned State Biodiversity Board. The results of research using biological resources from India cannot be transferred to a non-citizen or a foreign company without the permission of NBA. However, no such permission is needed for the publication of the research in a journal or seminar, or in case of a collaborative research by institutions approved by Central Government. No person should apply for patent or any other form of intellectual property protection based on the research arising out of biological resources without the permission of the NBA. The NBA while granting such permission should make an order for benefit sharing or royalty based on utilisation of such protection.

**Sec 37** The State Government may with the consultation of local bodies notify areas of biodiversity importance as biodiversity heritage sites under this Act. In consultation with the Central Government frame rules for this management and conservation of heritage sites. The Government may also frame schemes and compensating or rehabilitating people economically affected by the notification.

**Section 40 Biodiversity Act, 2002:** Power of Central Government to exempt certain areas from biological resources. Notwithstanding anything contained in this Act, the Government may, in consultation with the National Biodiversity Authority, by notification

...te, declare that the provisions of this Act shall not apply to any items,  
...al resources normally traded as commodities.

...t of usage of biological resources can be done in following manner:

...rship of intellectual property rights

...technology

...production, research development units in the area of source

...f monetary and non-monetary compensation

...of venture capital fund for aiding the cause of benefit claimers

*Management Committee (BMC)* "Every local body shall constitute a BMC  
...the purpose of promoting conservation, sustainable use and documentation  
...ersity including preservation of habitats, conservation of land races, folk  
...vars, domesticated stocks and breeds of animals and microorganisms and  
...nowledge relating to biological diversity"

...cal body (i.e. Panchayat, Mandal, Municipality etc.) shall constitute a  
...ity Management Committee (BMC) within its area of jurisdiction in I.

...n function of the BMC is to prepare People's Biodiversity Register in  
...ion with local people. The Register shall contain comprehensive  
...on on availability and knowledge of local biological resources, their  
...d or any other use or any other traditional knowledge associated with them.

...r functions of the BMC are to advise on any matter referred to it by the  
...diversity Boards or Authority for granting approval, and to maintain data  
...local vaidya's and practitioners using the biological resources.

Biodiversity Registers, and the particulars it shall contain and the format for  
...e database will be according to the guidelines of the National Biodiversity  
... (NBA).

...e Biodiversity Boards shall provide guidance and technical support to the  
...ity Management Committees for preparing People's Biodiversity Registers.

...ple's Biodiversity Registers shall be maintained and validated by the  
...ity Management Committees.



The Committee shall also maintain Register giving information about the details of the access to biological resources and traditional knowledge granted, details of the collection fee imposed and details of the benefits derived and the mode of their sharing.

Section 58: The offences under the biological diversity act are cognizable and non bailable.

Section 61: No court shall take cognizance of any offence under this Act or rules and regulations made thereunder save on a complaint made by the National Biodiversity Authority or State Bio diversity board, as the case may be .

Section 54: No suit, prosecution or other legal proceedings shall lie against the Central Government or any officer of the Central Government or the State Government or any member, officer or employee of the National Biodiversity Authority or the Sate Biodiversity Board for anything which is done in good faith or intended to be done under this Act or the rules or regulations made thereunder.

Section 59: The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

The following shall be punishable with imprisonment for a term which may extend to five years or fine which may extend to ten lakh rupees or both:

- (i) a non-citizen and an Indian who is an individual or a body corporate having non-Indian participation shall if he undertakes biodiversity related activities without prior approval of the National Biodiversity Authority.(contravention of the provisions of section 3)
- (ii) any person whether a citizen or not . transfers results of any research relating to any biological resources for monetary consideration to any person who is not a citizen of India.(contravention to the provision of section 4)and
- (iii)any person who makes an application for an Intellectual Property Right on an invention based of any research or information on a biological resource obtained from India without previous approval of the National Biodiversity Authority before making such application.(contravention of the provision of sec.6).

II. the following shall be punishable with imprisonment for a term which may extend to three years , or with fine which may extend to five lakh rupees or both.

- (i) Any citizen of india excluding Vaid and Hakims who are practicing indigenous medicines ,who obtains any biological resource for commercial utilization or bio survey without giving prior intimation to the State Biodiversity Board..(contravention to the provision of section 7)
- (ii) Any citizen of india or a body corporate , organization or association registered in India intending to undertake any activity of obtaining biological resources for commercial utilization violates the order that he shall give prior intimation in such forms as may be prescribed by the State Government to the State Biodiversity Board.(contravention of any order made under sub-section (1) of sec 24)

III. If a person contravenes any direction given or order made by the Central Government, the State Government , the National Biodiversity Authority or the State Biodiversity Board for which no punishment has been separately provided under this Act , he shall be punished with a fine which may extend to one lakh rupees and in case of a second or a subsequent offence , with fine which may extend to two lakh rupees and in the case of a continuous contravention with additional fine which may extend to two lakh rupees everyday during which the default continues.(sec.56).

offences by companies :- where the company is accused every time who at the time of offence was incharge or responsible to the company aswell as the company shall be deemed to be guilty and shall be punished unless such person proves that the offence or contravention was committed without his knowledge and inspite of due diligence to prevent the commission of such an offence or contravention. Where in the case of person in charge of the conduct of business of the company he is deemed to be guilty unless he proves that he has no knowledge of the committal of the offence or it has occurred notwithstanding his due diligence to prevent the same , in the case of a person who is a director , manager, secretary or other officer of the company , it shall be proved that the offence has been committed with his consent or his connivance or is attributed to his neglect to bring home his guilt.(sec 57).

#### **D.Prevention of Cruelty to Animals Act, 1960**

India has some finest provision to safeguard the animals. Article 51 A (g) says that it is the fundamental duty of every citizen to have compassion for all living creature.

- ✓ *To kill or maim any animal, including stray animals, is a punishable offence. IPC Sections 428 and 429.*
- ✓ *Abandoning any animal for any reason can land you in prison for up to three months. Section 11(1)(i) and Section 11(1)(j), PCA Act, 1960.*
- ✓ *No animal (including chickens) can be slaughtered in any place other than a slaughterhouse. Sick or pregnant animals shall not be slaughtered. Rule 3, of Prevention of Cruelty to Animals, (Slaughterhouse) Rules, 2001 and Chapter 4, Food Safety and Standards Regulations, 2011.*
- ✓ *stray dogs that have been operated for birth control cannot be captured or relocated by anybody including any authority. ABC Rules, 2001.*
- ✓ *Neglecting an animal by denying her sufficient food, water, shelter and exercise or by keeping him chained/confined for long hours is punishable by a fine or imprisonment of up to 3 months or both. Section 11(1)(h), PCA Act, 1960.*
- ✓ *Monkeys are protected under the Wildlife (Protection) Act, 1972 and cannot be displayed or owned.*
- ✓ *Bears, monkeys, tigers, panthers, lions and bulls are prohibited from being trained and used for entertainment purposes, either in circuses or streets. Section 22(ii), PCA Act, 1960.*
- ✓ *Animal sacrifice is illegal in every part of the country. Rule 3, Slaughterhouse Rules, 2001.*
- ✓ *Cosmetics tested on animals and the import of cosmetics tested on animals is banned. Rules 148-C and 135-B of Drugs & Cosmetics Rules, 1945*
- ✓ *Teasing, feeding or disturbing the animals in a zoo and littering the zoo premises is an offence punishable by a fine of Rs. 25000 or imprisonment of up to three years or both. Section 38J, Wildlife (Protection) Act, 1972.*
- ✓ *Capturing, trapping, poisoning or baiting of any wild animal or even attempting to do so is punishable by law, with a fine of up to Rs. 25000 or imprisonment of up to seven years or both. Section 9, Wildlife (Protection) Act, 1972.*
- ✓ *Conveying or carrying animals whether in or upon any vehicle, in any manner or position which causes discomfort, pain or suffering is a punishable offence under two Central Acts. Section 11(1)(d) Prevention of Cruelty to Animals, (Transport of Animal) Rules, 2001 and Motor Vehicles Act 1978.*

Parliament of India enacted the Prevention of Cruelty to Animals Act in the year 1960.

*Objectives* :To prevent the infliction of unnecessary pain or suffering on animals as well as to prevent to cruelty to animals.

Animals: this term include any living creature except human being. Cruelty: it is not define under this act but it roughly means the infliction of unnecessary pain or suffering.

“captive animal” means any animal (not being a domestic animal) which is in capacity or confinement, whether permanent or temporary, or which is subjected to any appliance of contrivance for the purpose of hindering or preventing its escape from captivity or confinement or which is pinioned or which is or appears to be. maimed;

"domestic animal" means any animal which is tamed or which has been or is being sufficiently tamed to serve some purpose for the use of man or which, although it neither has been nor is intended to be so tamed, is or has become in fact wholly or partly tamed

"phooka" or "doom dev" includes any process of introducing air or any substance into the female organ of a milch animal with the object of drawing off from the animal any secretion of milk.

*Duties of persons having charge of animals*: It shall be the duty of every person having the care or charge of any animal to take all reasonable measures to ensure the well-being of such animal and to prevent the infliction upon such animal of unnecessary pain or suffering.

Section 11 of PCA enumerates instances, which would amount to treating of animals cruelty. Activities that would to cruelty to animals are:

(a) beats, kicks, over-rides, over-drives, over-loads, tortures or otherwise treats any animal so as to subject it to unnecessary pain or suffering or causes, or being the owner permits, any animal to be so treated; or

(b) (employs in any work or labour or for any purpose any animal which, by reason of its age or any disease) infirmity; wound, sore or other cause, is unfit to be so employed or, being the owner, permits any such unfit animal to be employed; or

(c) wilfully and unreasonably administers any injurious drug or injurious substance to (any animal) or wilfully and unreasonably causes or attempts to cause any such drug or substance to be taken by (any animal;) or

(d) conveys or carries, whether in or upon any vehicle or not, any animal in such a manner or position as to subject it to unnecessary pain or suffering; or

(e) keeps or confines any animal in any -cage or other receptacle which does not measure sufficiently in height, length and breadth to permit the animal a reasonable opportunity for movement; or

(f) keeps for an unreasonable time any animal chained or tethered upon an unreasonably short or unreasonably heavy chain or cord; or

(g) being the owner, neglects to exercise or cause to be exercised reasonably any dog habitually chained up or kept in close confinement; or

(h) being the owner of (any animal) fails to provide such animal with sufficient food, drink or shelter; or

(i) without reasonable cause, abandons any animal in circumstances which tender it likely that it will suffer pain by reason of starvation thirst; or

(j) wilfully permits any animal, of which he is the owner, to go at large in any street, while the animal is affected with contagious or infectious disease or, without reasonable excuse permits any diseased or disabled animal, of which he is the owner, to die in any street; or

(k) offers for sale or without reasonable cause, has in his possession any animal which is suffering pain by reason of mutilation, starvation, thirst, overcrowding or other illtreatment; or

(l) mutilates any animal or kills any animal (including stray dogs) by using the method of strychnine injections, in the heart or in any other unnecessarily cruel manner or;

(m) solely with a view to providing entertainment

(i) confines or causes to be confined any animal (including tying of an animal as a bait in a tiger or other sanctuary) so as to make it an object or prey for any other animal; or

(n) organises, keeps uses or acts in the management or, any place for animal fighting or for the purpose of baiting any animal or permits or offers any place to be so used or receives money for the admission of any other person to any place kept or used for any such purposes; or

(o) Promotes or takes part in any shooting match or competition wherein animals are released from captivity for the purpose of such shooting:

he shall be punishable in the case of a first offence, with fine which shall not be less than ten rupees but which may extend to fifty rupees and in the case of a second or subsequent offence committed within three years of the previous offence, with fine which shall not be less than twenty-five rupees but which may extend, to one hundred rupees or with imprisonment for a term which may extend, to three months, or with both.

*Section 12: Penalty for practising phooka or doom dev :* If any persons upon any cow or other milch animal the operation called practising phooka or [doom dev or any other operation (including injection of any or doom dev. substance) to improve lactation which is injurious to the health of the animal] or permits such operation being performed upon any such animal in his possession or under his control, he shall be punishable with fine which may extend to one thousand rupees, or with imprisonment for a term which may extend to two years, or with both, and the animal on which the operation was performed shall be forfeited to the Government.

### **E.Madras Metropolitan Area Ground Water Act 1987**

The Government of Tamil Nadu enacted the Madras Metropolitan Area Groundwater (Regulation) Act, 1987 with following objects:

1. To regulate and control the extraction, use or transport of ground water
2. To conserve ground water in certain areas in the state of Tamil Nadu.

It extends to the whole of city of Madras and certain revenue villages in Chengalpattu district specified in schedule to the Act

Section 3 says: Notwithstanding anything contained in any law for the time being in force, no person; shall sink a well in the scheduled area unless he has obtained a permit in this behalf from the competent authority.

Any person desiring to sink a well in the scheduled area shall apply to the competent authority for the grant of a permit for this purpose and shall not proceed with any activity connected with such sinking unless a permission has been granted by the competent authority.

The decision regarding the grant or refusal to grant the permit shall be intimated by the competent authority to the applicant within such period as may be prescribed.

In granting or refusing to grant permit under sub-section (4); the competent authority shall have regard to the following matters, namely :-

- a. the purpose or purposes for which the well is to be sunk ;
- b. the existence of other competitive users ;
- c. the existence of other wells in the locality
- d. the availability of groundwater
- e. such other matter as may be prescribed.

Section 5 Licence for extraction, use or transport of ground water: Notwithstanding anything contained in any law for the time being in force and subject to the provisions of sub-sections (2) to (7), on and from the date of commencement of this Act,- (a) no person shall extract or use ground water in the scheduled area for any purpose other than domestic purposes ; (b) no person shall transport groundwater by means of any lorry, trailer or any other goods vehicle. (2) .If any person desires to-- (i) extract or use groundwater in the scheduled area for any purpose other than domestic purposes; or (ii) transport groundwater by means of any lorry, trailer or any other goods vehicle, then, he shall make an application to the competent authority for the grant of licence for such extraction, use or transport.

10. Offences and penalties: Any person contravenes, or fails to comply with, any of the provision of this Act or the rules made under this Act or of the terms, conditions and restrictions - subject to which the permit or licence has been granted, he shall be punished for the first offence with fine which may extend to five hundred rupees and for the second or any subsequent offence, 9th imprisonment for a term which may extend to six months, or

with fine which may extend to one thousand rupees, or with both. Any person who after having been convicted of any offence, under this Act, continues to commit the same offence shall be, punished with a further fine which may extend to one hundred rupees for every day during which he continues so to offend after such conviction.

Section 12 makes the offence punishable under this Act as a cognizable offence within the meaning of crpc 1973. It further provides that no court shall take cognizance of any offence punishable under this Act except upon a complaint in writing by the competent authority or an officer generally or specially authorised by the Government in this behalf.

By Tamil Nadu Municipal Laws Amendment Act 2003 suitable amendments were made in the Municipal Corporation Acts of Chennai, Madurai and Coimbatore in the Tamil Nadu District Municipalities Act to make the installation of rain water Harvesting Structure mandatory, in the manner and within such time prescribed.

#### **F. The Tamil Nadu Protection of Tanks and Eviction of Encroachment Act 2007**

- This Act extends to whole of Tamil Nadu
- Both act and rules came into force on 1.10.2007
- Objectives of this Act:  
to provide measures for checking encroachment; for eviction of encroachments in tanks and protection of such tanks which are under the control and management of PWD; for protection of such tanks and matters related to it.
- This Act has totally 12 Sections
- *Section 2* defines certain terms in this Act.
- 'tank' means a storage structure built in for harnessing water for use and includes supply channel and its cross masonries, tank sluice, surplus weir, surplus course and its cross masonries; field channel and its cross masonries besides the drains and tank poramboke lands which are under the control and management of Public Works Department.
- *Section 3*: The Government may direct that a survey be made, with reference to the records available with the Revenue Department, of tanks in every district for the purpose of determining their limits in respect of area and that proper charts and



registers be prepared setting forth the channel and all boundaries and marks and all other matters necessary for the purpose of identifying such limits.

- Section 4: (1) The Government or any other officer authorized by it may, by order, appoint any officer not below the rank of Taluk Surveyor as Survey Officer for surveying the tanks within such local limits as may be specified in such order.

(2) The Survey Officer shall carry out the survey of tanks in such manner as they be prescribed.

(3) The Survey Officer shall be assisted by such officers of the Public Works Department having control over such tanks.

- Section 5. The Survey Officer and officers assisting the Survey Officer shall have power to enter upon any land and to do all acts necessary for the survey of tanks.

- Section 6. (1) The Survey Officer shall after the completion of the survey of tanks, prepare a chart and a register pointing out the boundaries of the tanks and such other information necessary for the purpose of identifying the limits of tank (2) The chart and the register prepared under sub-section (1) shall be handed over to an Officer of the Public Works Department, having control over such tanks, as may be specified by the Government. (3) The officer referred to in sub-section (2), shall within one month from the date of handing over of the charge and register, publish a notice in such manner as may be prescribed pointing out the boundaries of the tank.

- Section 7: If the officer feels any person have encroached the area then the encroacher should be evicted, the officer must issue notice, if the encroacher has not evicted or removed or not vacated, then the officer has the power to remove the person from encroached area and can take possession of the land. He can take the help of police officer if required, if any crop or product raised or any building constructed in the encroached area be liable to forfeiture and any building or other construction, if not removed by encroacher, be liable to forfeit.

- Section 8: Whoever,

- a. Enters the land in the water spread and foreshore areas of the tank without any lawful authority,
- b. practices crop cultivation without any lawful authority,
- c. raises plantation crops without any lawful authority,

- d. damages the tank bund, tank sluices, surplus weirs and other built in structures,
- e. obstructs the officers in carrying out their work under this Act,
- f. interferes with the flow in the supply channels feeding the tanks and encroachers upon adjoining canal poramboke lands,
- g. interferes with the flow in the field channels taking off from tank sluices to feed the ayacut area,
- h. damages distribution and control structures located in the field channels,
- i. damages and obstructs the flows in the field drainage systems,
- j. lifts water from the tank through mechanical and electrical devices for cultivation, without lawful authority,

shall on conviction, be punished with imprisonment for a term which may extend to three months or with fine of rupees five thousand or with both

- Section 9: No suit, prosecution or other legal proceedings shall lie against any person for anything which is in good faith done or intended to be done in pursuance of this Act or a rule or order made thereunder.
- Section 10: If any difficulty arises in giving effect to the provisions of the Act, the Government may by order published in the Tamil Nadu Government Gazette, make such provisions, not inconsistent with the provisions of this Act, as appear to them to be necessary or expedient for removing the difficulties. Provided that no order shall be made after the expiry of a period of two years from the date of commencement of this Act.
- Section 11: The provisions of this Act shall be in addition to and not in derogation of any other law for the time being in force
- Section 12: The Government may, in the public interest, alienate any part of the tank poramboke land which is under the control of Public Works Department without interfering with storage capacity and water quality.

Rule 7(2) cost of eviction also imposed by officer, by preferring a complaint against the person with competent JM for recovery.

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## UNIT V

### LEGAL REMEDIES FOR ENVIRONMENTAL PROBLEMS

#### (A) Principle of Strict Liability:

The rule is based on the principle of no fault liability, and therefore, even if the defendant was neither negligent nor intentionally caused the harm or was careful, still he could be held liable under the rule. In *Rylands v. Fletcher* the defendant held liable on the basis of the following rule propounded by Blackburn, J.- “we think that the rule of law is, that the person who for his own purposes brings on his lands and keeps there anything likely to do mischief if it escapes, must keep it in at his peril, and if he does not do so, is *prima facie* answerable for all the damage, which is the natural consequence of its escape. He can excuse himself by showing that the escape was owing to the plaintiff’s default or perhaps that the escape was the consequence of *Vis Major*, or the act of God... and it seems but brought something on his own property which was not naturally there, harmless to others so long as it is confined to his own property, but which he knows to be mischievous if it gets on his neighbours, should be obliged to make good the damage which ensues if he does not succeed in confining it to his own property”. It was held that for the liability under the rule, the use of land should be non-natural. Thus, the liability arises, not because there was any fault or negligence on the part of the person, but because he kept some dangerous thing on his land and the same escaped from there and caused damage.

Limitations of the strict liability rule:

It is clear from the study of case law that there is no liability under the rule unless there is some escape from the defendant’s land, but there is no necessity that the thing be likely to escape. What matters for this purpose is that if it escapes it is likely to do mischief and this is the meaning to be given to dangerous thing in this context. “In *Read v. Lyons and co. Ltd.*, the necessary factors for establishing liability under the strict liability rule were clarified. They are: *dangerous thing likely to do mischief, brought on to land, escape, non-natural use of the land.*

#### Exceptions to the strict liability rule:

Although it is widely acknowledged that at the decision of *Rylands v. Fletcher* created a regime of strict liability, the liability is not absolute and courts have developed a number of

defences. The following *exceptions* to the rule of strict liability have been recognised by courts: *Plaintiff's own fault, Act of God, Statutory authority, common benefit, act of third party*

**Principle of Absolute liability:**

The rule of strict liability was applicable as much in India as in England before the historical judgement of the SC of India in the case of M.C.Mehta v. UOI – oleum gas leakage case. The Constitutional bench of SC modified the 19<sup>th</sup> century English law principle of Strict liability and evolved new rule suitable to the social and economic conditions prevailing in India i.e. the rule of Absolute liability. In this case the SC was dealing with the claims arising from the leakage of oleum gas on 4 and 6<sup>th</sup> December 1985 from one of the units Sriramafooda and fertilizers industry in the city of Delhi, belonging to Delhi cloth mills limited. As a consequence of this leakage, it was alleged that one advocate practising in Tis Hazari court had died and several others were affected by the same.

The SC utilised this occasion for taking bold decision by holding that it was not bound to follow the 19<sup>th</sup> century rule of English law, and it could evolve rule suitable to the social and economic conditions prevailing in India at the present time. While explaining the reasons for adoption of new rule, Bhagavathi, CJ., observed, “This rule Rylands v. Fletcher , evolved in the 19<sup>th</sup> century at a time when all these developments of science and technology have not taken place cannot afford any guidance in evolving any standard of liability consistent with the constitutional norms and the need of present day economy and social structure”

The court formulated the rule of Absolute liability in the following words: An enterprise which engaged hazardous or inherently dangerous industry which possess a potential threat to the health and safety of the persons working in the factory and residing in the surrounding areas owes an absolute and non-delegable duty to the community to ensure that no harm results to anyone on account of hazardous or inherently dangerous nature of the activity which it has undertaken. The enterprise must be held to be under an obligation to provide an hazardous or inherently dangerous activity in which it is engaged must be conducted with the highest standards of safety and if any harm results on account of such activity, the enterprise must be absolutely liable to compensate for such harm and it should be no answer to the enterprise to say that it had taken all reasonable care and that harm occurred without negligence on its part. The following reasons were given by the court for its decision:

- (i) The persons harmed an account of the hazardous or inherently dangerous activity carried on by the enterprise would not be in a position to avoid such harm
- (ii) Such hazardous or inherently dangerous activity for private profit can be tolerated only on condition that the enterprise indemnifies all those who suffer due to the activity of the enterprise regardless of whether it is carried on carefully or not
- (iii) The enterprise alone has the resource to discover and guard against hazards or dangerous and to provide warning against potential hazards.

The court further laid down that the measure of the compensation must be correlated to the magnitude and capacity of the enterprise because such compensation must have a deterrent effect. The larger and more prosperous of the enterprise, greater must be the amount of compensation payable by it for the harm caused on account of accident in the carrying on of the hazardous or inherently dangerous activity by the enterprise.

**Provisions under Indian Penal Code:**

Chapter 14 of IPC contains provisions relating to offences affecting the public health, safety, convenience, decency and morals. Section 268 deals with public nuisance and it provides that “A person is guilty of a public nuisance, who does any act, or else guilty any illegal omission which causes any common injury, danger or annoyance to the public or the people in general who dwell or occupy property in the vicinity or which must necessarily cause injury, abstraction, danger or annoyance to persons who may have occasions to use any public right”. It further provides common nuisance is not excused on the ground that it causes some convenience or advantage.

The health, safety, comfort or conveniences of the public generally have always been considered public nuisances. For example keeping large quantity of naphtha near dwelling houses, blasting near a high way, keep large quantity of materials for making fireworks near a street, working rice husking machine at night in residential quarter of a city etc have been held to public nuisances.

Section 268 requires the following essentials:

- i. Doing of any act or illegal omission to do an act
- ii. The act or omission: (i) must cause any common injury, danger or annoyance-
  - a. To the public or
  - b. To the people in general, who dwell or occupy property in the vicinity, or

(ii) must necessarily cause injury, abstraction, danger or annoyance to persons who may have occasions to use any public right

Section 290 prescribes punishment for public nuisance. The punishment may extend to Rs.200/-

Offences under the Indian Penal Code affecting Public Health, safety and convenience:

Section	Offences	Punishment
268	Public Nuisance (causing annoyance)	Fine-Rs 200 u/s 290
269	Negligently act likely to spread infection of disease dangerous to life	Imprisonment of either description upto 6 months or fine or both
270	Malignant act likely to spread infection of disease dangerous to life	Imprisonment of either description upto 2 years or fine or both
277	Fouling water of public spring or reservoir	Imprisonment of either description upto 3 months or fine upto Rs.500 or both
278	Making atmosphere noxious to health	Fine up to Rs.500
283	Danger or obstruction in public way	Fine upto Rs200
284	Negligent conduct with respect to poisonous substances	Imprisonment of either description upto 6 months or fine upto Rs.1000 or both
285	Negligent conduct with respect to fire or combustible matter	Imprisonment of either description up to 6 months or fine up to Rs 1000 or both
286	Negligent conduct with respect to fire or explosive substances	Imprisonment of either description up to 6 months or fine up to Rs 1000 or both
287	Negligent conduct with respect to machinery	Imprisonment of either description up to 6 months or fine up to Rs 1000 or both
291	Continuance of nuisance after injunction to discontinue	Imprisonment of either description up to 6 months or fine up to Rs 1000 or both

#### Provisions under Criminal Procedure Code:

Part B of chapter X of Criminal Procedure Code deals with Public Nuisances. Section 133 to 143 deal with abatement of Public Nuisance. The provisions in this section are attracted only in cases of emergency and imminent danger to health or the physical comfort of the

community. Section 133 confers a power on the Magistrate to deal with Public Nuisance. This power, it was held, could be used by Magistrate to order a Municipality to remove a nuisance caused by the existence of open drainage, pits and public excretion by human beings for want of lavatories. The erring municipality could be punished under section 188 of IPC.

**Persons liable for Nuisance:**

It is a general principle that an action for nuisance must be brought "against the hand committing the injury, or against the owner for whom the act was done". An action for nuisance will lie against the person (1) if he causes it (2) if neglect of some duty he allowed it to arise (3) when it has arisen, without his own act or default, he omits to remedy it within a reasonable time after he became ought to have become aware of it.

**Remedies:**

The remedies for private nuisance are abatement, damages and injunction. Local bodies like Municipality have generally statutory powers to abate the public nuisance when they unreasonably refuse to exercise these powers, Calcutta High court held that a petition under Article 226 can be filed for directing them to exercise the statutory powers for abating the nuisance. In case of the damages, the measure of the damage is the diminution in value of the property in consequences of the nuisance.

### **Provision under Indian Constitutional and Case Laws:**

The Indian Constitution is amongst the few in the world that contains specific provisions on environment protection. The chapters directive principles of state policy and the fundamental duties are explicitly enunciated the nation commitment to protect and improve the environment. It was the first time when responsibility of protection of the environment imposed upon the states through Constitution (Forty Second Amendment) Act, 1976.

Article 48-A the provision reads as follows: The State shall endeavour to protect and improve the environment and to safeguard the forest and wildlife of the country. The Amendment also inserted Part VI-A (Fundamental duty) in the Constitution. which reads as follows:

Article 51-A (g) "It shall be duty of every citizen of India to protect and improve the natural environment including forests, lakes, and wildlife and to have compassion for living creature."

Principle of social Justice through Constitution and this principle is applied by the Courts. Honourable Judges V.R.KrishnaIyer, P.N Bhagawathi, Kuldipsungh, H.R.Khanna who recognised third generation rights - Environment Rights as a constitutional mandate and applied it.

In *Municipal Council, Ratlam vs. Vardhichand and others*<sup>30</sup> the Supreme Court identified the responsibilities of the municipal council towards environmental protection and developed the law of public nuisance in the Code of Criminal Procedure as a potent instrument for the enforcement of their duties. When the case came before the Supreme Court Justice V.R.KrishnaIyer made a thorough examination of the two main issues. The municipal legislation which casts a duty on the municipality to maintain clean roads and clean drains, and the provisions of the Section 188 of the Indian Penal Code (1860), which prescribes punishment to a person contravening the directions of the magistrate. According to Justice Iyer, the imperative tone of these provisions demands a mandatory duty. When an order is given under Section 133 of the Cr.P.C., the municipality cannot take the plea that notwithstanding the public nuisance, its financial inability validly exonerated it from statutory liability. Further, the Court held that the processes that are envisaged under Section 133 of the Cr.P.C. have a social justice component. The remedies available, and the powers exercisable, under the provision are conducive to the demands of the rule of law necessitated by the conditions of developing countries.

In *Krishna Gopal vs. State of Madhya Pradesh* the Madhya Pradesh High Court has gone one step forward and ordered the closure of the factory even though the contention of the defendant was that the inconvenience to the inmates of a house is not of public nuisance but only private in nature. The High Court observed: "It is not the intent of the law that the community as a whole or large number of complainants should come forward to lodge their complaint or protest against the nuisance : that does not require any particular number of complainants. A mere reading of Section 133 (1) of Cr.P.C. would go to show that the jurisdiction of sub-divisional magistrate can be invoked on receiving a report of a police officer or other information and on taking such evidence if any, as he thinks fit. These words are important. Even on information received the sub-divisional magistrate is empowered to take action in his behalf for either removal or regularizing a public QA nuisance". The Court further said that smoke and noise emanated from the glucose manufacturing factory is



injurious to health and physical comfort of the community, and dismissed the revision petition filed by the defendant.

In *Madhavi vs. Thilakan* the Kerala High Court upheld the order of the magistrate under Section 133 Criminal Procedure Code against the nuisance created by the automobile workshop in a residential area.

In *Ajeet Mehta vs. State of Rajasthan* the Section 133 Cr. P. C. was very much recognized by the Rajasthan High Court and the court upheld the orders of the magistrate in the removal of loading, unloading and stocking of fodder business near a residential locality causing serious health hazard.

In *Pranab Kumar Chakraborty vs. Mohamed Akram Hussain* the Gauhati High Court decided that with the help of an order under Section 133 Cr. P. C. a landlord could not evict a tenant. The Court further said that magistrate must satisfy himself in an objective manner in finding out whether there is nuisance or likelihood of nuisance.

Delhi gas leak case: *M.C. Mehta v. Union of India*: In instant case, the Supreme Court laid down two important principles of law: (1) The power of the Supreme Court to grant remedial relief for a proved infringement of a fundamental right (in case of Article 21) includes the power to award compensation. (2) The judgment opened a new frontier in the Indian jurisprudence by introducing a new "no fault" liability standard (absolute liability) for industries engaged in hazardous activities which has brought about radical changes in the liability and compensation laws in India. The new standard makes hazardous industries absolutely liable from the harm resulting from its activities.

The fundamental right to water has evolved in India, not through legislative action but through judicial interpretation. In *Narmada Bachao Andolan v. Union of India and Ors.*, the Supreme Court of India upheld that "Water is the basic need for the survival of human beings and is part of the right to life and human rights as enshrined in Article 21 of the Constitution of India and the right to healthy environment and to sustainable development are fundamental human rights implicit in the right to life.

*Charan Lal Sahu Case* The Supreme Court in this case said, the right to life guaranteed by Article 21 of the Constitution includes the right to a wholesome environment.

*DamodharRao v. S.O.Municipal Corporation Hyderabad* The Court resorted to the Constitutional mandates under Articles 48A and 51A(g) to support this reasoning and went to the extent of stating that environmental pollution would be a violation of the fundamental right to life and personal liberty as enshrined in Article 21 of the Constitution.

The Supreme Court in “M.C. Mehta vs. Union of India -1991 ordered the Cinema theatres all over the country to exhibit two slides free of cost on environment in each show. Their licenses will be cancelled if they fail to do so. The Television network in the country will give 5 to 7 minutes to televise programmes on environment apart from giving a regular weekly programme on environment. Environment has become a compulsory subject up to 12th standard from academic session 1992 and University Grants Commission will also introduce this subject in higher classes in different Universities.

The livelihood of forest dwellers in the Nilgiri region of Tamil Nadu was affected by the destruction of forests. The Supreme Court in “*TN Godavarman Thirumulpad vs. Union of India and Ors.*” passed a series of directions since 1995, till the final judgment in 2014. The Apex Court decided to set up a Compensatory Aforestation Funds Management and Planning Authority (CAMPA) to monitor the afforestation efforts, to oversee the compensation who suffered on account of deforestation, and to accelerate activities for preservation of natural forests. A writ petition was filed by the Tarun Bharat Sangh in the Supreme Court to stop mining activities in the Sariska Wildlife Sanctuary. The Court in the case of “*The Tarun Bharat Sangh vs. Union of India and Ors. (1991)*” banned all the mining activities in the Sanctuary.

The Bench of Justices Kuldip Singh and Sagir Ahmed held that the Government violated the Doctrine of Public Trust in “*M.C. Mehta vs. Kamal Nath and Ors. (1996)*”. The Himachal Pradesh State Government had leased out a protected forest area on the bank of river Beas to motels, for commercial purposes. In 1996, the Supreme Court passed a judgment that would hold the State more responsible for maintaining natural resources. The Right to Pollution Free Environment was declared to be a part of Right to Life under Article 21 of the Constitution of India in the case of “*Subhash Kumar vs. State of Bihar and Ors. (1991)*”. Right to Life is a Fundamental Right which includes the Right of enjoyment of pollution free water and air for full enjoyment of life.

**India Council For Enviro-Legal Action v. Union of India:** In this case a number of chemical industrial plants operating in the Bichiri village, Udaipur District, Rajasthan were found to be operating without permits nor adherence to effluent discharge standard. The plants were producing toxic chemicals including oleum, single super phosphate and highly toxic 'H' acid. The Plants discharged toxic effluents emanating from their operation into the surrounding environment thereby polluting the land and water aquifers

The Supreme Court in its decision held the Plants liable for the cost of improving and restoring the environment affected in the Bichiri village, Udaipur District, Rajasthan. The court allowed both the Central Government of India and the villagers to proceed against the plants in the appropriate civil courts to claim damages. The court further ordered the closure of the Plants.

**Vellore Citizens Welfare Forum v. Union of India:** Vellore Citizens Forum brought an action to stop tanners operating within the State of Tamil Nadu from discharging untreated effluent into agricultural fields, waterways, open lands and waterways. It is estimated that nearly 35,000 hectares of agricultural land in the tanner's belt had become polluted and unfit for cultivation at the time of this action. The court directed the Central Government to establish an authority to deal with the situation created by the tanners. It directed the authority to implement the precautionary principle, and identify the (1) loss to the ecology/environment; and (2) individuals/families who have suffered because of the pollution, and then determine the compensation to reverse the environmental damage and compensate those who have suffered from the pollution. The Collector/District Magistrates shall collect and disburse the money. The Court directed that where a polluter refuses to pay compensation, his industry should be closed, and the revenue recovered as areas of land revenue. Also even if an industry sets up the necessary pollution control devices now it is still liable to pay for the past pollution it has generated. The Supreme Court went further to fine each of the industries the sum of Rupees 10,000 each to be put into an Environment Protection Fund and be used to restore the environment and to compensate affected persons. The Court in this case also emphasized on the constitution of Green Benches in India dealing specifically with matters relating to environment protection and also for speedy and expeditious disposal of environmental cases.

In **L.K Koolwal V State of Rajasthan**, a simple writ petition by citizens of Jaipur compelled the municipal authorities to provide adequate sanitation. The court observes that

when every citizen owes a constitutional duty to protect the environment (Art.51A), the citizen must be also entitled to enlist the court's aid in enforcing that duty against recalcitrant State agencies. The Court gave the administration six month to clean up the entire city, and dismissed the plea of lack of funds and staff.

Art.246 of the Constitution divides the subject areas of legislation between the Union and the States. The Union List (List I) includes defence, foreign affairs, atomic energy, interstate transportation, shipping, air trafficking, oilfields, mines and inter-state rivers. The State List (List II) includes public health and sanitation, agriculture, water supplies, irrigation and drainage, fisheries. The Concurrent list (List III) (under which both State and the Union can legislate) includes forests, protection of wildlife, mines and minerals and development not covered in the Union List, population control and factories. From an environmental standpoint, the allocation of legislative authority is an important one – some environmental problem such as sanitation and waste disposal, are best tackled at the local level; others, like water pollution and wildlife protection, are better regulated uniform national laws.

Art.253 empowers Parliament to make laws implementing India's international obligations as well as any decision made at an international conference, association or other body. Art.253 states: Notwithstanding anything in the foregoing provision provisions of this chapter, Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body. The Tiwari Committee in 1980 recommended that a new entry on "environmental Protection" be introduced in the concurrent list to enable the centre to legislate on environmental subjects, as there was no direct entry in the 7th seventh enables Parliament to enact comprehensive environment laws. The recommendation, however, did to consider parliament's power under Art.253

Article 14 states: "The states shall not deny to any person equality before the law or the equal protection of the laws within the territory of India." The right to equality may also be infringed by government decisions that have an impact on the environment. An arbitrary action must necessary involve a negation of equality, thus urban environmental groups often resort to Art.14 to quash arbitrary municipal permission for construction that are contrary to development regulations.

Article 21: "No person shall be deprived of his life or personal liberty except according procedure established by law." In *Maneka Gandhi v Union of India*, the Supreme Court while elucidating on the importance of the 'right to life' under Art. 21 Honourable Justice Bhagwati held that the right to life is not confined to mere animal existence, but extends to the right to live with the basic human dignity. Similarly while interpreting Art. 21 in *Ganga Pollution Case* as discussed before, Justice Singh justified the closure of polluting tanneries observed: "we are conscious that closure of tanneries may bring unemployment, loss of revenue, but life. Health and ecology have greater importance to the people."

In *Delhi Bottling Co. Pvt. Ltd. V. CPCB*, AIR 1986 Del 152, it was found that the representatives of board got the samples analysed from a non-recognized laboratory by the state. The court held that since section 21 was not complied upon, the test results were inadmissible as evidence.

#### Writs and PILs for Safeguarding the Environment:

A writ petition can be filed to the Supreme Court under Art. 32 and the High Court under Art. 226, in the case of a violation of a fundamental right. Since the right to a wholesome environment has been recognised as an implied fundamental right, the writ petitions are often resorted to in environment cases. Generally, the writs of Mandamus, Certiorari and Prohibition are used in environmental matters. For instance, a Mandamus (a writ to command action by a public authority when an authority is vested with power and wrongfully refuses to exercise it) would lie against a municipality that fails to construct sewers and drains, clean street and clear garbage (*Rampal v State of Rajasthan*) likewise, a state pollution control board may be compelled to take action against an industry discharging pollutants beyond the permissible level. The writs of certiorari and prohibition are issued when an authority acts in excess of jurisdiction, acts in violation of the rules of natural justice, acts under a law which is unconstitutional, commits an error apparent on the face of the record, etc. For instance, a writ of certiorari will lie against a municipal authority that considers a builder's applications and permits construction contrary to development rules e.g. wrongfully sanctions an office building in an area reserved for a garden. Similarly, against water pollution control board that wrongly permits an industry to discharge effluents beyond prescribed levels.

A writ of Certiorari will lie against a municipal authority that permits construction contrary to development rules or acts in excess of jurisdiction or in violation of rules of natural justice for instance wrongly sanctioning an office building in an area reserved for garden.

In *E.Sampath Kumar v. Government of Tamil Nadu*, The party an individual was troubled by the excessive noise pollution and vibrations caused by electrical motors, diesel engines, and generator used by a Hotel. The high court held that an affected person can maintain a writ petition while rejecting the hotel owner's plea that a civil suit would be proper remedy.

Public interest litigation describes legal actions brought to protect or enforce right enjoyed by public. In a public interest case, the subject matter of litigation is typically a grievances against the violation of basic human rights of the poor and helpless or about or about the content or conduct of government policy this litigation is not strictly adversarial (in an adversarial procedure, each party produces his own evidence tested by cross-examination by other side) and in it a judge play a large role in organising and shaping the litigation and in supervising the implementation of relief. Since the 1980s public interest litigation (PIL) has altered both the litigation landscape and the role of the higher judiciary in India. Supreme Court and High Court judges were asked to deal with public grievances over flagrant human rights violations by the state or to vindicate the public policies embodied in statutes or constitutional provisions. This new type of judicial business is collectively called public interest litigation. In *RamdasShenoy v The Chief Officer, Town Municipal Council ,Udipi* a rate tax payer's right to challenge an illegal sanction to convert a building into a cinema was upheld by Supreme Court. In *Mahesh R Desai V. Union of India*, a journalist complained to the Supreme Court that the national coastline was being sullied by unplanned development that violated a Central Government directive. The Supreme Court registered the letter as a petition, requested the court's legal aid committee to appoint a lawyer for the petition and issued notice to the Union Government and the government of the all States.

**TajMahal Case:**In *TajMahal's case (M C Mehta V. Union of India, AIR 1997, SC 734)*, the Supreme Court issued directions that coal and coke based industries in Taj Trapezium (TTZ) which were damaging Taj should either change over to natural gas or to be relocated outside TTZ. Again the Supreme Court directed to protect the plants planted around

Taj by the Forest Department as under: The Divisional Forest Officer, Agra is directed to take immediate steps for seeing that water is supplied to the plants... The Union Government is directed to release the funds immediately without waiting for receipt of the proposal from the U.P. Government on the basis of the copy of the report. Funding may be subsequently worked out with the U.P. Government, but in any set of circumstances for want of funds the Government is directed to see that plants do not wither away. The Court held that 292 industries located in Agra operating in Agra must changeover within fixed time schedule to natural gas as industries must or stop functioning with coke /coal and get relocated. The industries not applying for relocation are to stop functioning with coke/coal from 30-04-97. The Shifting industries must be given incentives in terms of the provisions of Agra Master Plan and also the incentives normally extended to the new industrial units.

In *Union Carbide Corporation v Union of India* (AIR 1990 SC 273), the Supreme Court secured a compromise between the UCC and Government of India. Under the settlement, UCC agreed to pay US \$470 million in full and final settlement of all past and future claims arising from the Bhopal disaster. In addition to facilitate the settlement, the Supreme Court exercised its extraordinary jurisdiction and terminated all the civil, criminal and contempt of court proceedings that had arisen out of the Bhopal disaster. It was held by the court that if the settlement fund is exhausted, the Union of India should make good the deficiency. Review petition under Art.137 and writ petitions under Art.32 of the Constitution of India were filed questioning the constitutionality of the settlement (providing for the registration and processing of claims) and the resultant categorization of the victims was also upheld. It was laid down that there is no need to tie down the settlement to future liability.

In *Kinkri Devi v. State of Himachal Pradesh*, the Himachal Pradesh High Court observed that if industrial growth sought to be achieved by reckless mining resulting in loss of life, loss of property, loss of amenities like water supply and creating of environmental imbalance then there may ultimately be no real economic growth and no real development.

In *N.D. Jayal v. Union of India*, Court held that the right to clean environment and right to development are integral parts of human right covered by Article 21 of Constitution. The Court laid down that the principle of sustainable development is a means to achieve the object and purpose of Environment Protection Act, 1986 as well as protection envisaged under Article 21 of Constitution. The Court found that the conditional

of Environment and Forests had granted for the construction of Tehri Dam implemented. The conditional clearance granted by the ministry related to treatment, command area development, rehabilitation, disaster management, or equality maintenance, Bhagirathi Besan management authority. Supreme that disaster management must be integrated with development activities. people who are displaced from the area on account of the construction of the t under Article 21 to lead a decent life and earn livelihood in rehabilitated observed that rehabilitation must take place 6 months before the sub a. In Fertilizers and Chemicals Travancore limited Employees association v. India. the court held that where public sector undertakings manufacture fertilizers for the larger benefit of the community asking them to relocate as t to the life of the people in neighbourhood areas, would not be a practical e court recommended that such industries should continue their production effective measures to protect and prevent the risk of environmental accident.

Rama Subramanayyam v. The Member Secretary, Chennai Metropolitan Court stated that the construction builders have a duty to use modes for n for multistory buildings, so that it does not cause noise pollution in the s.

uilders Pvt. Ltd. V. Radhey ShyamSahu, Lucknow nagar Mahapalika ilders Pvt. Ltd. (the appellant herein) to construct an underground shopping the Jhandewala Park. The major part of the work was completed. The High e relevant resolutions that permitted the construction. When it set aside the gh Court had noticed certain facts. The park was of historical importance, alika did not deny. Preservation or maintenance of the park was necessary ment angle. The only reason advanced by the Mahapalika for construction of commercial complex was to ease the congestion in the area. The High nstruction of the underground shopping complex would only complicate the present scheme would further congest the area. The builders appealed. The ent on to say that Mahapalika is the trustee for the proper management of e nature of the park, as it existed, is destroyed it would be violative of the trust as expounded by this court, the court quotes that the idea of public pon three principles. Firstly, certain interests like the air and the sea have



such importance to the citizenry that it would be unwise to make them the subject of private ownership. Secondly, They should be made freely available to the entire citizenry without regard to economic status. Thirdly, It is principle purpose of government to promote the general public rather than to redistribute public goods from broad public use to restrict private benefit.

### **The Public Liability Insurance Act, 1991**

The Public Liability Insurance Act has been incorporated on 22nd January 1991. This Act has been established to provide immediate insurance for the person who met with an accident while handling hazardous substance and other similar circumstances. This Act has 22 Sections with one schedule. *Section 2* deals with:

"accident" means an accident involving a fortuitous, sudden or unintentional occurrence while handling any hazardous substance resulting in continuous, intermittent or repeated exposure to death, of or injury to, any person or damage to any property but does not include an accident by reason only of war or radio-activity;

"hazardous substance" means any substance or preparation which is defined as hazardous substance under the Environment (Protection) Act, 1986 (29 of 1986), and exceeding such quantity as may be specified, by notification, by the Central Government;

"owner" means a person who owns, or has control over handling any hazardous substance at the time of accident and includes:

(i) in the case of firm, any of its partners;

(ii) in the case of an association, any of its members; and

(iii) in the case or a company, any of its directors, managers, secretaries or other officers who is directly in charge of, and is responsible to the company for the conduct of the business of the company;]

"Relief Fund" means the Environmental Relief Fund establishment under section 7A

"vehicle" means any mode of surface transport other than railways.

Section 3: Where death or injury to any person (other than a workman) or damage to any property has resulted from an accident, the owner shall be liable to give such relief as is specified in Schedule for such death, injury or damage.

(2) In any claim for relief under sub-section (1) (hereinafter referred to in this Act as claim for relief), the claimant shall not be required to plead and establish that the death, injury or damage in respect of which the claim has been made was due to any wrongful act, neglect or default of any person.

Here Injury denotes permanent total or permanent partial disability or sickness resulting out of an accident.

This Public liability-Insurance will help the weaker section of the people who handles such hazardous substances and chemicals from delayed relief or compensation. This Act provides immediate insurance relief to such person with genuine injury occurring through an accident as prescribed in this Act.

All owners of such factory or industry handling hazardous substance shall take several insurance policies in order to provide immediate relief to its own employee during such unforeseen accident or injury or even death while handling such chemicals or substances. In case if any owner fails to take such insurance before this Act, shall take such Insurance for Contract of insurance within a year of Commencement of this Act. No person shall claim for relief in case if such accident occurs due to his own wrong handling or negligent in handling, etc.

Every owner shall renew their insurance policies before the expiry date of such policies in order to meet such unforeseen circumstances throughout the period. Owners should not take insurance policies less than the paid-up-capital of undertaking hazardous chemicals and substances that is owned and controlled. At the same time the amount of insurance policies should not exceed Fifty Cores Rupees. The liability of the insurer for one insurance policy shall be within the amount prescribed in the contract of insurance in that policy.

The Owners shall pay not only premium to the insurer but also for a relief fund not more than such premium paid as specified in this Act. The insurer later shall return back the

excess amount of Relief fund to the owners. In case if the insurer fails to returns the money on time, it shall be recoverable as arrears of land revenue or of public fund.

The Central Government shall by notifications exempt itself, State Government, any Corporations owned by Central and State Governments and any Local Authority from this Insurance operations except in case where the owners fails to maintain such insurance policies to provide immediate relief to its employees during accident while handling hazardous substances.

The Collector immediately after knowing about such accident shall investigate such occurrence and publicity made in such a manner to receive application of Claim for injury, death, etc either by the same person or his legal representatives or agent of such deceased person

The Collector shall not appreciate any application that is made any other members other than the members specified in this Act. The Application must be filled with all relevant particulars and should be made within five years of such unforeseen accident caused while handling hazardous substances. The Collector after receiving the application shall fix a date for enquiry through notification to the Owner and Parties after giving an opportunity to hear and pass such award to grant relief to the affected parties that appears to be fit for his quantum of injury incurred.

The copies of the awards shall be given to the parties within fifteen days from the date of award. During the award the insurer are demanded to pay such amount as specified in the award within thirty days from the date of such award and deposit such amount before the Collector. The Collector shall demand for relief fund if any and asked to deposit such amount as specified in the award. The Collector shall also demand for any amount paid by the Owner as specified in the award and is asked to deposit before him. The Collector has the power as specified in Civil Procedure Code, 1908.

The Central Government shall with notification introduce an Environment Relief Fund that is paid with a scheme framed and administered in accordance with this Act. The Central Government shall authorize a person to monitor such place where hazardous substances where carried forward for usage, as and when necessary to see whether any of the

provisions of this Act has been violated or to be performed. All expenses incurred by such person for disposal of hazardous substances shall be recovered through arrears of land revenue or of public fund from the Owner.

The Central Government shall pass any directions in pursuance to this Act to any of the Officers or person authorized to do so or Owner or agents, etc. In case if the Central Government through its authorized person comes to know that the Owner is handling such hazardous substances against the provisions of this Act shall be produced before the Magistrate on application by such person.

All expenses incurred on legal proceedings shall be recoverable from the Owner as arrears of land revenue or of public fund. Any person acting in contravention to this Act shall be punished with imprisonment with or without fine as it deems fit. No legal action shall be taken against any activities done in pursuance to this Act. The Central Government shall have enormous powers to make any number of rules in pursuance to this Act. It shall constitute any number of committees as and when necessary. Each rules or schemes framed should be assented by the Houses of Parliaments.

### **The National Green Tribunal Act 2010**

The National Green Tribunal has been established on 18.10.2010 under the National Green Tribunal Act 2010 for effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment and giving relief and compensation for damages to persons and property and for matters connected therewith or incidental thereto. It is a specialized body equipped with the necessary expertise to handle environmental disputes involving multi-disciplinary issues. The Tribunal shall not be bound by the procedure laid down under the Code of Civil Procedure, 1908, but shall be guided by principles of natural justice.

National Green Tribunal is India's first dedicated environmental court with a wide jurisdiction to deal with not only violations of environmental laws, but also to provide for compensation, relief and restoration of the ecology in accordance with the 'Polluter Pays' principle and powers to enforce the 'precautionary principle'. The Tribunal's

dedicated jurisdiction in environmental matters shall provide speedy environmental justice and help reduce the burden of litigation in the higher courts. The Tribunal is mandated to make and endeavour for disposal of applications or appeals finally within 6 months of filing of the same.

the Environmental Court is not a new concept. Different courts in the country have recommended the establishment of Environmental Court to take up the cases related to environmental degradation. In *M.C Mehta vs. Union of India* case in 1986, Supreme Court observed that environmental cases involve assessment of scientific data. Setting up of environmental courts on regional basis would require professional judge and experts, keeping in view the expertise required for such adjudication. In another judgement '*Indian Council for Enviro-Legal Action vs. Union of India*, 1996 the Supreme Court observed that Environmental Courts having civil and criminal jurisdiction must be established to deal with the environmental issues in a speedy manner. Supreme Court of India in *A.P. Pollution Control Board vs. M.V. Nayudu*: 1999 referred to the need for establishing Environmental Courts which would have the benefit of expert advice from environmental scientists/technically qualified persons, as a part of the judicial process, after an elaborate discussion of the views of jurists of various countries. The 186th Report of Law Commission of India on the Proposal to Constitute Environmental Courts in September 2003, stated, that the "National Environmental Appellate Authority constituted under the National Environmental Appellate Authority Act, 1997, for the limited purpose of providing a forum to review the administrative decisions on Environment Impact Assessment, had very little work. It appears that since the year 2000, no judicial member has been appointed. So far as the National Environmental Tribunal Act 1995, is concerned, the legislation is yet to be notified after eight years of enactment. Since it was enacted by Parliament, the tribunal under the Act is yet to be constituted. Thus, these two tribunals are non-functional and exist only on paper". In its recommendation, the Commission proposed for setting up of environmental courts with judicial members and technical experts.

**National Green Tribunal Benches:** The National Green Tribunal started functioning since 4th July, 2011. Initially, the NGT is proposed to be set up at five places of sittings and will follow circuit procedure for making itself more accessible. New Delhi is the

Principal Place of Sitting of the Tribunal and Bhopal, Pune, Kolkata and Chennai are the other 4 place of sitting of the Tribunal.

<b>Zone</b>	<b>Jurisdiction</b>	<b>Place of sitting</b>	<b>Started from</b>
<i>East</i>	<i>West Bengal, Orissa, Bihar, Jharkhand, seven sister States of North- Eastern region, Sikkim, Andaman and Nicobar Islands.</i>	<i>Kolkata</i>	<i>May 2014</i>
<i>South</i>	<i>Kerala, Tamil Nadu, Andhra Pradesh, Karnataka, Union Territories of Pondicherry and Lakshadweep</i>	<i>Chennai</i>	<i>November 2012</i>
<i>West</i>	<i>Maharashtra, Gujarat, Goa with Union Territories of Daman and Diu and Dadra and Nagar Haveli</i>	<i>Pune</i>	<i>August 2013</i>
<i>Central</i>	<i>Madhya Pradesh, Rajasthan and Chhattisgarh.</i>	<i>Bhopal</i>	<i>April 2013</i>
<i>North</i>	<i>Uttar Pradesh, Uttarakhand, Punjab, Haryana, (Principal Himachal Pradesh, Jammu and Kashmir, Bench) National Capital Territory of Delhi and Union Territory of Chandigarh.</i>	<i>Delhi (Principal Bench)</i>	<i>July 2010</i>

### **Objective**

The objective of establishing a National Green Tribunal was as follows:

- To provide effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment.
- Giving relief and compensation for damages to persons and property
- Other Related Matters.

### **Chairperson and Members of NGT**

- It has a full time chairperson and following members:
- At least 10 and maximum 20 Full time Judicial members
- At least 10 and maximum 20 Full time Expert Members

### ***Qualification for Chairperson***

The person should have been either a Judge of India's Supreme Court or Chief Justice of a High Court in India.

### ***Qualification for Judicial member***

A Judge of Supreme Court of India, Chief Justice of High Court, Judge of a High Court

### ***Qualification for Expert members***

- Either a degree in Master of Science (in physical sciences or life sciences) with a Doctorate degree or Master of Engineering or Master of Technology
- Or an experience of fifteen years in the relevant field and administrative experience of fifteen years in Central or a State Government or in a reputed National or State level institution.
- Post retirement jobs
- Once retired, the chairman or judicial members cannot take up any job related to matters of this tribunal for at least 2 years.

### ***Appointment of Members***

- Appointment of members is done by Central Government.
- Chairperson of NGT is appointed by the Central Government in consultation with the Chief Justice of India.
- Judicial Members and Expert Members of the Tribunal are appointed on the recommendations of such Selection Committee.
- Chairperson, Judicial Member and Expert Member hold office for 5 years.
- Maximum age of the chairman 70 years if he has been a Supreme Court Judge and 67 years, if he has been a high court judge.
- Chairperson can be removed from his office via an order made by the Central Government after an inquiry made by a Judge of the Supreme Court in which such Chairperson or Judicial Member has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

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## **ENVIRONMENTAL LAW**

Time: 2 ½ hours

Maximum:70 marks

### **PART – A (2 X 12 = 24 Marks)**

**Answer TWO of the following in about 500 words each**

1. Define fair and equitable sharing under the Biodiversity Act and bring out the criteria for determination of equitable benefit sharing by National Bio-diversity Authority.
2. Define Noise Pollution and discuss the legal rules relating to Noise Pollution.
3. Trace the evolution of laws relating to Environment protection in India.

### **PART B- 2X 7=14 Marks**

**Answer TWO of the following in about 300 words each**

4. Examine factors responsible for depletion of ground water resource and the legislative measures to protect ground water.
5. Discuss the powers and functions of the authorities under Water Act 1974.
6. Enumerate the constraints and agenda for action of National Conservation Strategy.

### **PART C- 5x4=20 Marks**

**7. Write Short Notes on Five of the following:**

- a) Climate Change
- b) Biodiversity
- c) Ground Water
- d) Bio-Medical Waste
- e) Sustainable Development
- f) Protected Forest
- g) NGT

### **PART D-6x2= 12 Marks**

**Answer TWO of the following by referring to the relevant provisions of law and decided cases. Give cogent reasons.**

8. Government zoological park was located in the heart of the city and near to it was a vacant land of 35 acres. A leading five star hotel group intended to construct a luxurious hotel and obtained lease rights from government. Explain whether construction of hotel could be legally challenged.



9. Mumbai city is an area where maximum floating crowd visit. Due to congestion of the area the Government of Maharashtra purposes to establish underground space to avoid traffic congestion, land use demand. The Project to be completed by 2020. NETHRA an NGO raises voice against the project, files PIL against state Government- Decide.

10. Writ Petition was filed under Article 32 seeking that the authorities of Delhi Municipal Corporation are wholly remiss in discharge of their duties in the collection, removal and disposal of garbage and other waste from city- Decide.

