

SESSION 1

INTRODUCTION TO ENVIRONMENTAL LAW AND POLICY

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SESSION 1
INTRODUCTION TO ENVIRONMENTAL LAW AND POLICY

1. Concept of Law and Policy

1.1. Introduction

‘Environment’ is a very comprehensive term. It includes within its ambit a wide variety of phenomenon. It is a dynamic term that may be used to describe a limited area on one hand, and the entire planet on the other. The term Environment may be perceived in different connotations. There numerous definitions of the term as provided by different National and International legal instruments.

Generally speaking, Environment includes the external conditions, resources, stimuli *etc.* with which an organism interacts. The Preamble of the United Nations Declaration on Human Environment, adopted in Stockholm in June 1972 states, *“Man is both creature and moulder of his environment, which gives him physical substance and affords him the opportunity for intellectual, moral, social and spiritual growth”*.

The environment is clearly at risk from a variety of sources of harm, mostly of human origin. In order to tackle this problem it is important that we develop strategies for modifying human behavior towards environmentally benign practices and away from environmentally damaging ones. In very broad terms, techniques for modifying human behavior can be thought of as falling into two types: **incentives and disincentives**. Law is important as it creates a framework within which incentives and disincentives can operate.

Law is all pervasive. Other methods for influencing human behavior are to a certain extent, voluntary or optional. Education, ethics, peer and family pressure: these all apply in various degrees. Law, on the other hand, cannot easily be avoided. It is axiomatic to the “rule of law” that law in a society applies equally to everyone at all times.

1.2. The Concept of Law

Law has been described as ‘generally...a way of regulating human behavior’¹. Yet

¹ Mc Eldowney and Mc Eldowney 1996, Volume. 3

such simple formulations leave many issues unresolved. Hence, there is a need to closely consider the concept of “law”

- Law as Commands

One school of thought² is that the only thing that count as ‘laws’ are commands of a sovereign, backed up by sanctions in the event of disobedience. A sovereign, for Austin, is an individual or body that is clearly identifiable, habitually obeyed by society, and is not habitually obedient to any other superior.

One problem with the command concept of law is that it doesn’t fit very readily with laws that merely empower or permit one to do something. It fails adequately to separate legal coercion from non-legal coercion.

- Law as Rules

Problems with ‘command’ theories of law led to the development of “rule” theories of law. Hart (1961), the most eminent rule theorists, divided legal rules into primary rules and secondary rules. Primary rules have substantive content (e.g. it is an offence to pollute a watercourse). Secondary rules are rules about primary rules. It is the possession of both primary and secondary rules which according to Hart, demarcates a legal system from other institutions for social control. This implies, incidentally, that less formal systems of social conventions and rules as much as those possessed by certain indigenous peoples may not achieve the status of ‘legal system’.

The rule model of law faces certain problems. First, what should courts do if the law does not contain a rule governing a particular case or if the rule seems vague? Hart’s answer is that laws, whilst generally comprehensive and clear, there may be situations where the judges must exercise discretion. This would imply that we must accept that judges actually make law where the legislature has been unclear or left a gap. The discretion explanation itself however is subject to criticism. Second, it is not certain that any clear rules exist. Some rules are made not by the legislature but by the judges. In the case of judge-made rules (precedents) the scope of any given rule is often unclear.

- Laws as Principles

² Hobbes 1996, orig. 1651; Bentham 1891, orig. 1776; Austin 1954, orig. 1832

Not everyone agrees that law consists of a body of clear rules surrounded by a woolly mantle of judicial discretion. Dworkin (1977), for one, famously argued that law also contains principles and does not contain discretion. He distinguished rules and principles as follows. He said that rules apply in an “all or nothing” fashion (e.g. river pollution is forbidden) whereas principles have the quality of ‘weight’; that is to say, a principle is never absolute and is always subject to being balanced with and against other principles. An example of a principle might be ‘a polluter shall pay for environment damage caused’.

Unlike Hart, Dworkin denied that judges have discretion when faces with unclear or seemingly unjust cases. Instead he asserted that, in such hard access, judged should reach a solution based on the principles of their particular legal system. Principles which can be found in most legal systems include- proportionality, non-discrimination, natural justice, and equitable principles

The idea that law contains legal principles is not unproblematic³. One issue is whilst Dworkin characterises principles as having ‘weight’, he never explains how this ‘weight’ is to be ascertained. It is not clear that Dworkin’s characterisation of rules as absolute is correct; it may be that where rules appear to conflict they can also be ‘weighted’ against one another. If that is the case then the distinction between the two types of law collapses and the need for principles disappears. A third problem is that of identification. Protocols exist for identifying legal rules, the same does not appear to be true of legal principles.

- *Law as Ethics or Morality*

The argument that there is some degree of necessary connection between law and morality (or ethics) is generally known as natural law theory⁴. More specifically, natural law is the idea that law must have a certain reasonable moral content in order to be called law at all. Part of importance of natural law thinking is that it can be used to undermine unethical legislation and defeat attempts to justify morally repugnant acts (e.g. genocide) by appeal to the claims of ‘only following the law’. Human rights law which is driven by natural law theories is of increasing

³ Toubes Muniz 1997; Alexander and Kress 1997

⁴ Aquinas 1991; Finnis 1980

importance in environmental protection⁵. The recent development of the field of 'environmental ethics' raises the question of a role for natural law in promoting or protecting basic ethical values in nature.

Natural law theory is subject to certain criticisms. Most obvious is the difficulty of ascertaining or reaching agreement on, those ethical principles and values that should inform or limit law's content.

- *Law as Social Norm and Customs*

The western concept of law is not shared universally. In particular, many indigenous peoples exist within less formalized systems of law in which the boundary between social norms and 'legal' rules is blurred or non-existent⁶. Laws based on local custom-'customary law'-continue to be of considerable practical importance in many developing countries, especially in Africa. Individuals often rely on customary rights to protect their environment, and their own homes, from the threat of development. Many important concepts existing within one legal culture may be absent, or present only in altered form, in others. Sometimes law cannot replace the social functions of tradition and custom.

Attitudes and behaviours formed from thousands of years of custom and tradition can be almost impossible for law alone to alter. The practice in China and Hong Kong of eating wild animals, often exotic and/or endangered species has been little affected by laws rendering such practices illegal. Furthermore, the use of wild animal parts in medicinal preparations in these countries is not considered to be morally wrong.

- *Laws as Written Documents*

It is assumed in the modern western society that laws must exist in a written form. This stems, historically, from the need for dissemination of laws. It also acts as a safeguard against corruption or mischievous interpretation. The requirement is met in modern times, by the publication of statutes, or, in civil law countries, 'codification' of the whole environmental law. In recent times access to environmental legislation-at international, regional and domestic levels-has been significantly improved by creation of numerous Internet sites which facilitate

⁵ Boyle and Anderson 1996

⁶ Stavenhagen 1990

access.

The desirability of setting laws in written form led to an increase in written reports of courts' judgment. In addition to the traditional medium of the printed page, decided cases are increasingly disseminated via electronic media such as CD ROMs and the Internet.

- *Law Distinguished From Policy*

An important distinction in the concept of law is the one between law and policies. Government circulars, strategies or advice documents cannot substitute for the hard-edged character of legislation which is necessary so that 'individuals are in a position of legislation which is necessary so that 'individuals are in a position to know their rights in order to rely upon them where appropriate'. Two factors distinguish law from policy. First, policy is generally advisory in nature, recommending objectives or setting targets, rather than prescribing particular actions. Second, policy may derive from any number of institutional processes whereas law must pass strict secondary rules of recognition before it has legal quality. The 'relegation' of some instrument to the field of policy rather than law does not exclude it from legal importance. Failure to take relevant policies into account or, conversely, consideration of irrelevant policies may invalidate decisions of public bodies.

Not surprisingly, disputes not infrequently arise concerning the relevance, hence permissibility, of environmental policies taken into account by public authorities. Sometimes environmental policies must be taken into account. For instance, in UK development control law, governing advice about development controls, issued in the form of Planning Policy Guidance (PPG) notes, must be taken into consideration in the determination of applications for planning permission.⁷

1.3. Environmental Law and Policy

Environmental Law is a body of law, which is a system of complex and interlocking statutes, common law, treaties, conventions, regulations and policies which seek to protect the natural environment which may be affected, impacted or endangered by human activities. Some environmental laws regulate the quantity

⁷ Moore 1987, 176

and nature of impacts of human activities: for example, setting allowable levels of pollution or requiring permits for potentially harmful activities. Other environmental laws are preventive in nature and seek to assess the possible impacts before the human activities can occur.

Environmental law as a distinct system arose in the 1960s in the major industrial economies. It is fast becoming an important and specialized branch of law. Many of its doctrines are gradually becoming clear. The questions addressed to by environmental law are substantive in nature, whereas, the remedies of these issues are mainly procedural. In recent years, environmental law has become seen as a critical means of promoting sustainable development. Policy concepts such as the precautionary principle, public participation, environmental justice, and the polluter pays principle have informed many environmental law reforms in this respect. There has been considerable experimentation in the search for more effective methods of environmental control beyond traditional "command-and-control" style regulation. Eco-taxes, tradable emission allowances, voluntary standards such as ISO 14000 and negotiated agreements are some of these innovations.

Reference Articles

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B. Other Articles

1. Beena Kumari, V.K., *Environmental pollution and Common Law Remedies*, *Cochin University Law Review*, School of Legal Studies, Cochin

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2. Divan, Shyam and Rosencranz, Armin, *Environmental Law and Policy in India - Cases, Materials and Statutes*, Oxford University Press, New Delhi.
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2. Environmental Law and the Indian Constitution

Constitution of India (selected provisions) – (*Annexure 1*)

- *Part IV- Article 37, 39(e), 48A, 49, 51(c)*
- *Part IVA- Article 51A*
- *Part III- Article 14, 21, 32, 19(1)(g)*
- *Article 243-B, 243-G*
- *Article 32 and 226*

1.4. Some important provisions

- *Duty of the State (Part IV)*

Part IV of the Constitution of India contains the directive principles of State policy. These directives are the active obligations of the State; they are policy prescriptions for the guidance of the Government.

Article 37 of Part IV of the Constitution limits the application of the directive principles by declaring that these principles shall not be enforceable by any Court. Therefore, if a directive is not followed by the State, its implementation cannot be secured through judicial proceedings. On the other hand, these principles are fundamental in the governance of the country and it is the duty of the state to apply these principles during the process of law-making.

Part IV - Directive Principles of State Policy

Article 48A. Protection and improvement of environment and safeguarding of forests and wild life

The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country.

The parliament had considerable debate over the wording of the draft Article 48-A. Several amendments were moved in both the houses of the Parliament. H.M. Seervai has correctly pointed out:

Article 48-A reflects an increasing awareness of people all over the world of the need to preserve the environment from pollution, especially in urban areas. Smoke, industrial waste, deleterious exhaust fumes from motor cars and other combustion engines are injurious to the health and well-being of

the people and foul the atmosphere. The preservation of forests and their renewal by afforestation has long been recognised in India as of great importance both with reference to rainfall and to prevent erosion of the soil by depriving it of forests which protect it. The preservation of wild life is looked upon as necessary for the 'preservation of ecological balance'. Article 48-A rightly emphasis the fact that the State should try not only to protect but to improve the environment.⁸

Article 39(e), 47 and 48-A of the Directive Principles of State Policy have a definite bearing of environmental problems. They, by themselves and collectively impose a duty on the State to secure the health of the people, improve public health and protect and improve the environment.

Environmental pollution may damage the monuments of national importance, the protection of which is a duty of the State under Article 49 of the Constitution. Article 49 of the Directive Principles of State Policy provides for the obligation of the State to protect monuments, places and objects of national importance. In the *Taj* case⁹ the Supreme Court of India seems to have got inspiration from Article 49 while protecting the Taj Mahal, a monument protected under the Ancient Monuments and Archaeological Sites and Remains Act, 1958, from harmful Industrial emissions originating in and around Agra.

Article 51(c) directs the State to foster respect for international law and treaty obligations in the dealings of organised peoples with one another. Therefore, in view of the range of international treaties law and treaty obligations in Article 51 (c), read to conjunction with the specific treaty provision, may also serve to strengthen the hands of pro-conservation judge.

- *Fundamental Duties of the Citizens (Part IV A)*

The Constitution (Forty-second Amendment) Act, 1976 inserted part IV-A into the Constitution of India. This new part prescribes certain fundamental duties for the citizens of India. The sole Article of this part, Article 51-A, specifies ten fundamental duties.

Part IVA - Fundamental Duties

⁸ H.M. Seervai, *Constitutional Law of India: A Critical Commentary*, 2019 (Vol.2, 1993).

⁹ *M.C. Mehta v. Union of India*, AIR 1997 SC 734

Article 51A. Fundamental duties

It shall be the duty of every citizen of India ...

(g) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures;

Then Indian Constitution has imposed a joint responsibility upon the State; and every citizen of India to protect and improve the natural environment. In the words of Ranganath Mishra, J.:

“Preservation of environment and keeping the ecological balance unaffected is a task which not only Government but also very citizen must undertake. It is a social obligation and let is remind every citizen that it is his fundamental duty as enshrined in Article 51-A (g) of the Constitution”¹⁰

After making reference to Article 48-A and Article 51-A (g), the High Court of Himachal Pradesh concluded-

Thus 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 forests, the flora and fauna, the rivers and lakes and all the other water resources of the country. The neglect or failure to abide by the pointer or to perform the duty is nothing short of a betrayal of the fundamental law which the State and, indeed, every Indian high or low, is bound to uphold and maintain.¹¹

The Courts have reminded time and again to both State as well as citizens about their duties towards environment while deciding environmental issues by referring to Article 48-A and 51- A(g) of the Constitution.

- Fundamental Rights (Part III)

- *Right to Wholesome Environment*

Part III of the Constitution of India contains fundamental rights. These rights were included in the Constitution after long debates in the Constituent assembly.

Part III - Fundamental Rights

Article 21. Protection of life and personal liberty

No person shall be deprived of his life or personal liberty except according

¹⁰ *Rural Litigation and Entitlement Kendra v. State of U.P.*, AIR 1987 SC 359, 364.

¹¹ *Kinkri devi v. State of Himachal Pradesh*, AIR 1988 HP 4,8.

to procedure established by law.

Article 32. Remedies for enforcement of rights conferred by this Part

(1) the right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.

(2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part.

It was the *Maneka Gandhi* case that heralded the new era of judicial thought. The court started recognising several unarticulated liberties that were implied by Article 21 and during this process the Supreme Court interpreted, after some hesitation the right to life and personal liberty to include the right to wholesome environment. The conflict between development needs and environmental protection has been the most controversial issue before the courts in decide in environmental matters. Incidentally the *Dehradun Quarries* case that paved the way for right to wholesome environment has also focused on this continuing conflict. The judgments in Dehradun quarries cases were passed under Article 32 of the Constitution and involved closure of some of the quarries on the ground that their operation was upsetting ecological balance of the area. The indirect approval of the right to humane and healthy environment by the Supreme Court continued further in the *Oleum gas leak* case¹².

Life cannot be possible without clean drinking water therefore; right to clean water is one of the attributes of the right to life in Article 21 of the Constitution¹³. The industrial establishments in and around residential colonies are another cause of concern, more so, when the industries have mushroomed contrary to the development plans. In *V. Lakshmi pathy v. State of Karnataka*¹⁴ the same issue came before the High Court of Karnataka. The High Court held that once a development plan had earmarked the area for residential purpose, the land was bound to be put to such use only. Thus, High Courts , it seems, were more

¹² M.C. Mehta v. Union of India, AIR 1987 SC 965.

¹³ *Attakoya Thangal v. Union of India* 1990 (1) KLT 580

¹⁴ AIR 1992 Kant 57

enthusiastic and active in accepting and declaring that 'right to life' in Article 21 includes 'right to environment'

➤ *Right to livelihood vis-à-vis Environment*

The Supreme Court has recognised another aspect of the right to life enshrined under Article 21 of the Constitution, viz. the right to livelihood. There is a real chance of clash of these rights, i.e. right to environment and right to livelihood as government's action to close down industrial units for protection of environment may result in loss of job, dislocation of poor workers and might disrupt badly the lifestyles of people heavily dependent on such industries.

The right to livelihood has been recognised by the Supreme Court in the case of *Olga Tellis v. Bombay Municipal Corporation*¹⁵. The Court issued directions to the Municipal Corporation to provide alternative sites or accommodation to the slum and pavement dwellers near to their original sites; and to provide amenities to slum-dwellers.

In many cases the Supreme Court passed orders requiring State agencies and concerned person to resettle and rehabilitate the workers or other persons who were being displaced by the decision of the Court or of the Government displaced by the Decision of the Court or of the Government to close down an industry or to relocate at a suitable place.

➤ *Right to equality*

Article 14 of the Constitution guarantees to every person the right –not to be denied equality before the law or the equal protection of the laws. The possibility of infringement of this Article by a government decision having impact on the environment cannot be ruled out. Article 14 strikes at arbitrariness because an action that is arbitrary must necessarily involve a negation of equality.”¹⁶

Thus, permission for contractions that is contrary to town planning regulation by the municipal authority may be challenged. Similarly, Article 14 may be invoked to challenge governmental sanction of projects having adverse impact on the

¹⁵ AIR 1986 SC 180

¹⁶ *Ajay Hasia v. Khalid Mujib Shervardi*, AIR 1981 SC 487,499.

natural environment and where such sanctions involve arbitrary considerations.

➤ *Freedom of trade*

Article 19(1) (g) of the Constitution guarantees to all citizens of India, the right to practice any profession or to carry on any occupation or trade or business. The freedom however, is not uncontrolled.

The aggrieved industrialist may resort to Article 19 in case his trade and business interests are affected by the action of governmental agencies in the name of the environmental protection. “As environmental regulation grows more stringent and its enforcement becomes more vigorous, industrial challenge to agency action is likely to increase. Courts will then need to balance environmental interests with the fundamental right it carry on any occupation, trade the fundamental right to carry in any occupation, trade or business guaranteed in Article 19(1) (g). Various standards have been prescribed by the Government for the discharge of different pollutants. An industry may challenge a very stringent standard which cannot be complied with, despite best efforts by available technology or if it is otherwise unreasonable.

Role of Panchayat and Municipalities

The Constitution (Seventy-third Amendment) Act 1992 and the Constitution (Seventy –fourth Amendment) Act 1992 have given a Constitutional status to the panchayats and the Municipalities respectively. Article 243-B provides or the establishment of intermediate and district levels. Article 243-G authorises the legislature of State to endow the Panchayats with such powers and authority as may be necessary to enable them to function as institution of self-government.

The Eleventh Schedule along with other matters contains following matters which are directly or indirectly related to environment like, agriculture, soil conservation, water management and watershed development; fisheries; social forestry and farm forestry; minor forest produce; drinking water; health and sanitation; and maintenance of community assets.

The matters which are related to environment in the twelfth Schedule may be enumerated as follows-

Urban planning including town planning regulation of land use water supply; public health, sanitation, conservancy and solid waste management, urban forestry, protection of the environment and promotion of ecological aspects;

provision of urban amenities such as park grounds ; cremation grounds and electric crematoriums; prevention of cruelty to animals regulation slaughter houses and tanneries.

Thus it is evident that the Constitution imposes the duty to protect and preserve the environment in all the there tiers of the Government i.e. Central, state and local.

Writ Jurisdiction and Public Interest Litigations

One of the most innovative parts of the Constitution is that the Writ Jurisdiction is conferred on the Supreme Court under Article 32 and on all the High Courts under Article 226. Under these provisions, the courts have the power to issue any direction or orders or writs, including writs in the nature of *habeas corpus*, *mandamus*, **prohibition**, *quo warranto* and *certiorari*, whichever is appropriate. This has paved way for one of the most effective and dynamic mechanisms for the protection of environment, that is, Public Interest Litigations.

Annexure 1

- *Constitution of India (selected provisions)*
- *Part IV- Article 37, 39(e), 48A, 49, 51(c)*
- *Part IVA- Article 51A*
- *Part III- Article 14, 19(1)(g), 21, 32*
- *Article 243-B, 243-G*
- *Article 226*

I. PART IV

PART IV

DIRECTIVE PRINCIPLES OF STATE POLICY

37. Application of the principles contained in this Part.—The provisions contained in this Part shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws.

39. Certain principles of policy to be followed by the State.—The State shall, in particular, direct its policy towards securing—

(a) that the citizens, men and women equally, have the right to an adequate means of livelihood;

(b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;

(c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;

(d) that there is equal pay for equal work for both men and women;

(e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;

(f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

48A. Protection and improvement of environment and safeguarding of forests and wild life.—The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country.

49. Protection of monuments and places and objects of national importance.—It shall be the obligation of the State to protect every monument or place or object of artistic or historic interest, declared by or under law made by Parliament to be of national importance, from spoliation, disfigurement, destruction, removal, disposal or export, as the case may be.

51. Promotion of international peace and security.—The State shall endeavor to—

- (a) promote international peace and security;
- (b) maintain just and honorable relations between nations;
- (c) foster respect for international law and treaty obligations in the dealings of organized peoples with one another; and
- (d) encourage settlement of international disputes by arbitration.

II. PART IV A

FUNDAMENTAL DUTIES

51A. Fundamental duties.—It shall be the duty of every citizen of India—

- (a) to abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem;
- (b) to cherish and follow the noble ideals which inspired our national struggle for freedom;
- (c) to uphold and protect the sovereignty, unity and integrity of India;
- (d) to defend the country and render national service when called upon to do so;
- (e) to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women;
- (f) to value and preserve the rich heritage of our composite culture;
- (g) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures;
- (h) to develop the scientific temper, humanism and the spirit of inquiry and reform;
- (i) to safeguard public property and to abjure violence;
- (j) to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement.

III. PART III

FUNDAMENTAL RIGHTS

Right to Equality

14. Equality before law.—The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

Right to Freedom

19. Protection of certain rights regarding freedom of speech, etc.—(1) All citizens shall have the right—

- (a) to freedom of speech and expression;
- (b) to assemble peaceably and without arms;
- (c) to form associations or unions;
- (d) to move freely throughout the territory of India;
- (e) to reside and settle in any part of the territory of India; and [(f) *has been repealed*]
- (g) to practise any profession, or to carry on any occupation, trade or business.

21. Protection of life and personal liberty.—No person shall be deprived of his life or personal liberty except according to procedure established by law.

Right to Constitutional Remedies

32. Remedies for enforcement of rights conferred by this Part.—

- (1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.
- (2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of *habeas corpus*, *mandamus*, prohibition, *quo warranto* and *certiorari*, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part.
- (3) Without prejudice to the powers conferred on the Supreme Court by clauses (1) and (2), Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under Clause (2).
- (4) The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution.

IV. ARTICLE 243 B and 243 G

PART IX

PANCHAYATS

243B. Constitution of Panchayats.—(1) There shall be constituted in every State, Panchayats at the village, intermediate and district levels in accordance with the provisions of this Part.

(2) Notwithstanding anything in clause (1), Panchayats at the intermediate level may not be constituted in a State having a population not exceeding twenty lakhs.

243G. Powers, authority and responsibilities of Panchayats.—Subject to the provisions of this Constitution, the Legislature of a State may, by law, endow the Panchayats with such powers and authority as may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Panchayats at the appropriate level, subject to such conditions as may be specified therein, with respect to—

- (a) the preparation of plans for economic development and social justice;
- (b) the implementation of schemes for economic development and social justice as may be entrusted to them including those in relation to the matters listed in the Eleventh Schedule.

V. ARTICLE 226

PART VI

THE STATES

CHAPTER V.—THE HIGH COURTS IN THE STATES

226. Power of High Courts to issue certain writs.—(1) Notwithstanding anything in article 32 every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of *habeas corpus*, *mandamus*, prohibition, *quo warranto* and *certiorari*, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.

(2) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is

not within those territories.

(3) Where any party against whom an interim order, whether by way of injunction or stay or in any other manner, is made on, or in any proceedings relating to, a petition under clause (1), without—

(a) furnishing to such party copies of such petition and all documents in support of the plea for such interim order; and

(b) giving such party an opportunity of being heard,

makes an application to the High Court for the vacation of such order and furnishes a copy of such application to the party in whose favor such order has been made or the counsel of such party, the High Court shall dispose of the application within a period of two weeks from the date on which it is received or from the date on which the copy of such application is so furnished, whichever is later, or where the High Court is closed on the last day of that period, before the expiry of the next day afterwards on which the High Court is open; and if the application is not so disposed of, the interim order shall, on the expiry of that period, or, as the case may be, the expiry of the said next day, stand vacated.

(4) The power conferred on a High Court by this article shall not be in derogation of the power conferred on the Supreme Court by clause (2) of article 32.

Reference Articles

Annexed

Divan, Shyam and Rosencranz, Armin, *Constitutional and Legislative Provisions, Environmental Law and Policy in India - Cases, Materials and Statutes*, Oxford University Press, New Delhi, pp. 40-86.

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3. Law of Crimes and Environment

Related Legislations (select provisions) –

- *Indian Penal Code, 1860-Section 277,278,425*
- *The Indian Criminal Procedure Code of 1973 (CrPC) – Section 133*

3.1. Introduction

Environmental crime refers to the violation of laws intended to protect the environment and human health. These laws govern air and water quality and dictate the ways in which the disposal of waste and hazardous materials can legally take place. Individuals or corporations can be found guilty of environmental crimes.

3.2. Indian Penal Code, 1860

Public Nuisance under the Indian Penal Code focuses on the operation of the law of nuisance through specific statutory provisions in the Civil and Criminal Codes of India. The Indian penal Code of 1860 contains elaborate provisions defining the crime of public nuisance in its various aspects and instances and prescribes punishments. Chapter XIV of the Indian Penal Code deals with offences affecting public health, safety, convenience, decency and morals. While Section 268 defines Public Nuisance, there are two specific sections dealing with the fouling of water (Section 277) and making the atmosphere noxious to health (section 278) which could be used against perpetrators of water and air pollution. Section 277 and 278 of the Indian Penal Code read as follows:

277. Fouling water of public spring or reservoir. Whoever voluntarily corrupts or fouls the water of any public spring or reservoir, so as to render it less fit for the purpose for which it ordinarily used, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees or with both.

278. Making atmosphere noxious to health. Whoever voluntarily vitiates the atmosphere in any place so as to make it noxious to the health of persons in general dwelling or carrying on business in the neighbourhood

pr passing along a public way, shall be punished with fine which may extend to five hundred rupees.

The above two provisions have direct relevance to environmental protection as they seek to prevent water and air pollution through a penal strategy. However, their effective application towards achieving this objective is doubtful, because the technicalities of Indian criminal law require a complete satisfaction of the ingredients of the offence as stipulates in the penal provisions. Take for instance, the provision relating to fouling of water. The wording requires proof of the voluntary corruption or fouling of water, that the water must be of public spring or a reservoir and that the water must have been rendered less fit for the purpose for which it was ordinarily used. Such wording not only creates a burden for the prosecution to prove, but also provide the accused enough grounds to argue his way out. The above provisions did not liberate the criminal justice process from the difficulties of the common law demanding elaborate evidence for sundry matters as well as technical interpretations of obvious things and events.

Section 425: whoever with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public or to any person, causes the destruction of any property, or any such change in any property or in the situation thereof as destroys or demises its value or utility or affects injuriously, commits “mischief”

Explanation 1: it is not essential to the offence of mischief that the offender intended to cause loss or damage to the owner of the property injured or destroyed. It is sufficient if he intends to cause damage to any person by injuring any property, whether it belongs to that person or not.

Explanation 2: Mischief may be committed by an act affecting property belonging to the person who commits the act or to that person and others jointly causing diminution of water supply has been treated as mischief in section 430 of the code and the possible direct cause may also be pollution. Adulterating of food or drink so as to make it noxious has also been made punishable¹⁷

¹⁷ L.N. Mathur, “A Federal Legislative History Of Control Of Water Pollution In India”

3.3. The Indian Criminal Procedure Code of 1973 (CrPC)

The Indian Criminal Procedure Code of 1973 has a significant chapter on maintenance of public order and tranquility, which falls into four parts. Part A deals with unlawful assemblies (Section 129-132), Part B with public nuisance (Sections 133-143), Part C with urgent cases of nuisance or apprehended danger (Section 144), and part D with disputes as to immovable property (Sections 145-148). Most relevant in our present context is Section 133, which has been resorted to as an effective remedy to abate public nuisance in instances of environmental harm. This provision empowers a District Magistrate to pass conditional orders for the removal of nuisances. This section is supplemented with ancillary provisions, contained in Sections 134 to 143 of the Code, to constitute a comprehensive procedure tackling public nuisance.

Section 144 of the Code has to be seen as a significant provision conferring wide powers upon the Magistrate to deal with urgent cases of nuisance or apprehended danger and tranquillity. This magisterial power has been exercised only for the purpose of preventing public disorder arising out of public unrest or riot situations. The potential of this provision is vast, but it does not appear to have been utilised effectively in cases of environmental harm.

The provisions in the old Indian law, which have a bearing on the environment, have hardly been used in the past. The consciousness to protect the environment was not as strong then, as it is today. Unless there was awareness on the part of the people to approach the authorities neither the government nor the courts would have had the opportunity to make use of the statutory provisions.

The important role played by the judicial activism of the eighties made its impact felt more in the area of the environmental protection than in any other field. *Municipal council, Ratlam v. Vardhichand*¹⁸ is a signpost. The Supreme Court identified the responsibilities of local bodies towards the protection of environment and developed the law of public nuisance in the Code of Criminal procedure as a potent instrument for enforcement of their duties.

in *Legal Control of Environmental Pollution, op. cit.*, p. 90.

¹⁸ AIR 1980 SC 1622

The processes that are envisaged under S. 133 of the CrPC 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. The Supreme Court had no hesitation in endorsing the view that the municipality should prepare a scheme and abate the nuisance which was allowed to continue only due to the lack of initiative from the municipality.

3.4. Different Types of Environmental Crimes

Environmental crime covers a wide range of violations that result in harm befalling the environment and human life, from errors at the administrative or record keeping level to the actual illegal dumping of pollutants into the environment.

Environmental crimes may include but are not limited to the following:

- Littering
- Improper waste disposal
- Oil spills
- Destruction of wetlands
- Dumping into oceans, streams, lakes, or rivers
- Improperly handling pesticides or other toxic chemicals
- Burning garbage
- Improperly removing and disposing of asbestos
- Falsifying lab data pertaining to environmental regulations
- Smuggling certain chemicals, such as CFC refrigerants, into the U.S.
- Bribing government officials
- Committing fraud related to environmental crime

3.5. Punishment

Environmental law violators are usually hit with criminal fines, probation, jail time, or a combination of these punishments. While jail time may be the most formidable punishment for individuals who commit environmental crimes, fines are intended to deter large corporations from violating environmental laws and regulations. Without the threat of heavy monetary punishment, some corporations

might find that noncompliance is more cost-effective than obeying the law. Environmental crime fines are meant to offset the financial allure of activities such as illegal dumping.

Enforcement is often carried out by joint task forces, which are composed of representatives from federal, state, and local organizations. At the federal level, the Environmental Protection Agency (EPA) has enforcement authority over environmental law violations.

Annexure 1

Law of Crimes and Environment - Related Legislations (select provisions)

- *Indian Penal Code, 1860-Section 268,277,278,425*
- *The Indian Criminal Procedure Code of 1973 (CrPC) – Section 133*

I. Indian Penal Code, 1860

CHAPTER XIV

OF OFFENCES AFFECTING THE PUBLIC HEALTH, SAFETY, CONVENIENCE, DECENCY AND MORALS

268. Public nuisance – A person is guilty of a public nuisance who does any act or is guilty of an illegal omission which causes any common injury, danger or annoyance to the public or to the people in general who dwell or occupy property in the vicinity, or which must necessarily cause injury, obstruction, danger or annoyance to persons who may have occasion to use any public right.

A common nuisance is not excused on the ground that it causes some convenience or advantage.

277. Fouling water of public spring or reservoir – Whoever voluntarily corrupts or fouls the water of any public spring or reservoir, so as to render it less fit for the purpose for which it is ordinarily used, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

278. Making atmosphere noxious to health – Whoever voluntarily vitiates the atmosphere in any place so as to make it noxious to the health of persons in general dwelling or carrying on business in the neighborhood or passing along a public way, shall be punished with fine which may extend to five hundred rupees.

Of fraudulent deeds and disposition of property

Of mischief

Mischief – Whoever with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public or to any person, causes the destruction of any property, or any such change in any property or in the situation thereof as destroys or diminishes its value or utility, or affects it injuriously, commits

"mischief".

Explanation 1.-It is not essential to the offence of mischief that the offender should intend to cause loss or damage to the owner of the property injured or destroyed. It is sufficient if he intends to cause, or knows that he is likely to cause, wrongful loss or damage to any person by injuring any property, whether it belongs to that person or not.

Explanation 2.-Mischief may be committed by an act affecting property belonging to the person who commits the act, or to that person and others jointly.

Illustrations

- (a) A voluntarily burns a valuable security belonging to Z intending to cause wrongful loss to Z. A has committed mischief.
- (b) A introduces water in to an ice-house belonging to Z and thus causes the ice to melt, intending wrongful loss to Z. A has committed mischief.
- (c) A voluntarily throws into a river a ring belonging to Z, with the intention of there by causing wrongful loss to Z. A has committed mischief.
- (d) A, knowing that his effects are about to be taken in execution in order to satisfy a debt due from him to Z, destroys those effects, with the intention of thereby preventing Z from obtaining satisfaction of the debt, and of thus causing damage to Z. A has committed mischief.
- (e) A having insured a ship, voluntarily causes the same to be cast away, with the intention of causing damage to the underwriters. A has committed mischief.
- (f) A causes a ship to be cast away, intending thereby to cause damage to Z who has lent money on bottomry on the ship. A has committed mischief.
- (g) A having joint property with Z in a horse, shoots the horse, intending thereby to cause wrongful loss to Z. A has committed mischief.
- (h) A causes cattle to enter upon a field belonging to Z, intending to cause and knowing that he is likely to cause damage to Z's crop. A has committed mischief.

II. The Indian Criminal Procedure Code, 1973

CHAPTER X

MAINTENANCE OF PUBLIC ORDER AND TRANQUILLITY

B.- Public nuisances

133. Conditional order for removal of nuisance.- (1) Whenever a District Magistrate or a Sub-divisional Magistrate or any other Executive Magistrate specially empowered in this behalf by the State Government, on receiving the report of a police officer or other information and on taking such evidence (if any) as he thinks fit, considers -

(a) that any unlawful obstruction or nuisance should be removed from any public place or from any way, river or channel which is or may be lawfully used by the public; or

(b) that the conduct of any trade or occupation, or the keeping of any goods or merchandise, is injurious to the health or physical comfort of the community, and that in consequence such trade or occupation should be prohibited or regulated or such goods or merchandise should be removed or the keeping thereof regulated; or

(c) that the construction of any building, or, the disposal of any substance, as is likely to occasion conflagration or explosion, should be prevented or stopped; or

(d) that any building, tent or structure, or any tree is in such a condition that it is likely to fall and thereby cause injury to persons living or carrying on business in the neighborhood or passing by, and that in consequence the removal, repair or support of such building, tent or structure, or the removal or support of such tree, is necessary; or

(e) that any tank, well or excavation adjacent to any such way or public place should be fenced in such manner as to prevent danger arising to the public; or

(f) that any dangerous animal should be destroyed, confined or otherwise disposed of,

such Magistrate may make a conditional order requiring the person causing such obstruction or nuisance, or carrying on such trade or occupation, or keeping any such goods or merchandise, or owning, possessing or controlling such building, tent, structure, substance, tank, well or excavation, or owning or possessing such animal or tree, within a time to be fixed in the order-

(i) to remove such obstruction or nuisance; or

(ii) to desist from carrying on, or to remove or regulate in such manner as may be directed, such trade or occupation, or to remove such goods or merchandise, or to regulate the keeping thereof in such manner as may be directed; or

(iii) to prevent or stop the construction of such building, or to alter the disposal of such substance; or

(iv) to remove, repair or support such building, tent or structure, or to remove or support such trees; or

(v) to fence such tank, well or excavation; or

(vi) to destroy, confine or dispose of such dangerous animal in the manner provided in the said order:

or, if he objects so to do, to appear before himself or some other Executive Magistrate subordinate to him at a time and place to be fixed by the order, and show cause, in the manner hereinafter provided, why the order should not be made absolute.

(2) No order duly made by a Magistrate under this section shall be called in question in any Civil Court.

Explanation.- A public place includes also property belonging to the State, camping grounds and left unoccupied for sanitary or recreative purposes.

Reference Articles

A. Annexed Articles

1. Jaiswal, P.S., Common Law and Other Statutory Remedies, Environmental Law, Pioneer Publications, New Delhi, pp. 19-35

B. Other Articles

2. Sadasivan Nair, G., *Environmental Offences--Crimes against Humanity and the Environment*, *Cochin University Law Review*, School of Legal Studies, Cochin University, Volume 11, p. 65.

4. Law of Torts and Environment

Related Legislations (select provisions)

- *The Environment (Protection) Act 1986*
- *The Factories (Amendment) Act 1987*
- *The Public Liability Insurance Act, 1991 (PLIA)*
- *Civil Procedure Code, 1908*

4.1. Introduction

Litigation related to environmental contamination and toxins has grown at a rapid pace, as businesses come under greater scrutiny for their environmental practices and face potentially costly claims. Industrialization has posed serious concern for the protection of environment. If we follow the development around the world in last two decades or so, it is clear that both judicial and legislative processes have applied the yardstick of 'Strict or Absolute Liability' to judge the conduct of the polluters. A toxic tort is a special type of personal injury lawsuit in which the plaintiff claims that exposure to a chemical caused the plaintiff's toxic injury or disease.

4.2. Hazardous and Inherently Dangerous Activities

Strict liability for ultra-hazardous activities might also be considered a general principle of law as it is found in the national law of many states in relation to ultra-hazardous activities. Under the English law, 'a person who for his own purposes brings on his own land and collects 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' as laid down by the landmark judgment of *Ryland v. Fletcher*¹⁹.

Absolute liability for the harm caused by industry engaged in hazardous and inherently dangerous activities is a newly formulated doctrine free from the exceptions to the strict liability rule in England. The Indian rule was evolved in

¹⁹ (1868) LR 3 HL 330

*MC Mehta v. Union of India*²⁰, which was popularly known as the Oleum gas leak case. It was public interest litigation under Article 32 of the Indian constitution.

In the judgment, on the substantive law it was emphasized that the principle of absolute liability should be followed to compensate victims of hazardous and inherently dangerous activity'. Industries engaged in such activities are absolutely liable to compensate those who are affected by the harm arising from such activities.

4.3 Some Important Legislations in detail

Legislation in the late 80's and the 90's reflect the law's growing recognition of the capacity of 'hazardous substances' to cause damage to person, property and the environment. The Bhopal Gas Disaster and the judgement of the court in the *Oleum Gas Leak* case were the prelude to the Environment (Protection) Act 1986, the Factories (Amendment) Act 1987 and the Public Liability Insurance Act, 1991 (PLIA). The UN Conference on Environment and Development held at Rio de Janeiro in 1992 provided further spurt, as did environmental activism and environmental litigation. The National Environmental Tribunal Act, 1995 (NETA) is the most recent in the field of 'accident' law. The long title to the Act suggests that it is enacted to provide for strict liability for damages arising out of any accident occurring while handling any hazardous substance and for establishing a National Environmental Tribunal.

The NETA and PLIA are both concerned with the aftermath of the same occurrences. While the PLIA deals with interim compensation, the NETA established a tribunal, and provides guidelines, to adjudicate all claims arising out of "accidents". There are points of convergence as well as difference, between the two Acts. The principles of liability and of compensation according to an enacted schedule are common to the PLIA and the NETA. Both legislations provide for no fault liability, making the "owner" liable for paying compensation assessed under the Acts. Both legislations exclude "workman" who is covered by the Workmen's Compensation Act. However, while PLIA resorts to the device of insurance to spread risk and cost and requires the owner to go deep only where it goes beyond the limits set in the PLIA rules and the capacity of the Environment Relief Fund (ERF), the NETA appears to leave it to the owner to find the resources to pay

²⁰ AIR 1987 SC 1086

compensation. There is a penal provision in the NETA which provides for a term of imprisonment up to three years , or fine which may extend to Rs. 10 Lakhs or both, where any person “fails to comply with a order made by the Tribunal”.

Confronted with the possibility of mass torts resulting in injury, and loss to a number of victims, the more visible efforts of the state are in the direction of expediting the computing and payment of compensation. There is a consequent delinking of these issues from questions of culpability, answerability and of safety. The schedule to the Act lists out the heads under which compensation may be claimed. It includes harm caused to the person, damage, loss or destruction of private property, expenses incurred by the government in the aftermath of an accident claims connected with harm, damage or destruction of fauna, flora and the soil, air, water, land and ecosystems; loss of business or employment and a residual head to cover “any other claim arising out of, or connected with, any activity of handling of hazardous substance”.

It is significant that there is no priority of claims. The crediting of the amount ordered to be paid on the ground of damage to the environment into the ERF merits scrutiny, particularly since the amounts in the ERF are intended to be used as a buffer between the exhaustion of insurance payments and the liability of the owner to cover the difference under the PLIA.

The unresolved questions of liability of the state as a joint tortfeasor, and of compensation resurfaced in *Naresh Dutt Tyagi v. State of U.P.* In this case, the Primary Cooperative Society, Garh Mukteshwar, District Ghaziabad, said to be a federating unit of the U.P. Cooperative Union Ltd. stored certain chemical pesticides in a godown. Fumes emanating from the pesticides leaked to the contiguous property through the ventilators killing three children and causing the petitioner’s wife to miscarry. Proceedings to establish fault were on when the Supreme Court was approached to rule on “whether such large scale stocks of hazardous chemicals are permissible to be stored in a residential block, whether the storage is regulated by statutory provisions, if not , whether any breach of common law duty has occurred and whether the governmental authorities are liable in damages.

4.4. Civil Procedure Code, 1908

Under the Civil Procedure Code of 1908, civil suits against the perpetrators of public nuisance were allowed. By the amendment of the Civil Procedure Code in 1976, the procedure was made easier for the general public to seek recourse in the civil courts. Section 91 of the Code now reads as follows:

Public Nuisances and other wrongful acts affecting the public:-

- (1) In the case of a public nuisance or other wrongful act affecting, or likely to affect, the public, a suit for a declaration and injunction on for such other relief as may be appropriate in the circumstances of the case, may be instituted,-
 - (a) By the Advocate-General, or
 - (b) With the leave of the court, by two or more persons, even though no special damage has been caused to such persons by reason of such public nuisance or other wrongful act.
- (2) Nothing in this section shall be deemed to limit or otherwise affect any right of suit which may exist independently of its provision.

Prior to the amendment in 1976 such suits were allowed only with the sanction of the Advocate General. Thus a modification was brought about to the standing requirement which had been an obstacle in civil actions against environmental degradation. This is an important instance of early relaxation of procedural rules in the wider context of developing Indian public interest litigation.

Order 1 Rule 8 under the Civil Procedure Code of 1908, as amended in 1976 complements the above section and is significant for environmental litigation in India. This rule permits one person to sue or defend on behalf of all having the same interest in what are known as representative suits over a single cause of action. Where the interest of the community at large is affected, the court has the power to direct one person or few to represent the whole community so that members of a class should have a common interest in a common subject matter and a common grievance and the relief sought should be beneficial to all. This rule is an enabling provision and does not prevent an individual from pursuing the same matter on his own right to seek relief.

An important feature of the civil litigation strategy adopted in India is the resort to injunctive relief rather than damages. Although in theory damages form an important principle in a tort action, in practice injunctive relief is used more in India for abating pollution. Lawyers in India, intent on abating pollution, often seek a temporary injunction against the polluter followed by a perpetual injunction on decree.

Reference Articles

C. Annexed

1. Divan, Shyam and Rosencranz, Armin, *Judicial Remedies and Procedures, Environmental Law and Policy in India - Cases, Materials and Statutes*, Oxford University Press, New Delhi, pp. 87-166.

Reference Books:

2. Divan, Shyam and Rosencranz, Armin, *Environmental Law and Policy in India - Cases, Materials and Statutes*, Oxford University Press, New Delhi.
3. Rosencranz, Armin; Divan, Shyam and Noble, Martha L., (Ed.) Tripathi, *Environmental Law and Policy in India - Cases, Materials and Statutes*, The Book Review Literary Trust, New Delhi.
4. Jaiswal, P.S., *Environmental Law*, Pioneer Publications, Delhi.

5. Environmental Justice, Equity and Governance

5.1. Introduction

The term 'environment' can describe a limited area or the entire planet, even including a part of the outer space which surrounds it. The term 'biosphere' used in particular by UNESCO, corresponds to one of the broadest definitions, since it designates the totality of the human environment, the part of the universe where, according to present knowledge all life is concentrated.²¹

The definition of environment affects the scope of legal rules which are intended to protect the environment law cannot affect the natural processes that cause environmental changes. However, the obligatory character of law and the sanctions which can ensure the enforcement of legal rules should prevent and eliminate acts and behaviors which are detrimental to the environment. Non-binding principles and rules, formulated in recommendation or declaration by international organization or conferences play an increasing role in international law, especially in the field of environmental protection. Their function is to guide State authorities and also other actors in their action but they can also contribute to the emergence of new obligatory rules.

5.2. Stages in Environmental Protection

The social mechanism of environmental protection can be characterized by a three stage approach.

- In the first stage law mainly national Constitutions, laws with a large environmental scope and major intentional declaration or treaties defines the environmental values to be preserved and protected.
- In the second stage environmental policy determines the objectives and strategies which should be used in order to ensure the respect of environmental values, taking into account the prevailing economic, social and cultural situation.
- In the third stage legal instruments are used to reach the objectives fixed by the environmental policy. The content of such instruments can be economic, political, social or educational. As a feedback, their implementation often needs the support of public opinion, the consensus of

²¹ *Man Belongs to the Earth* : UNESCO's Man and the Biosphere Programme, UNESCO 1988

which was the very basis of the recognition of the environment as a fundamental value.

The main characteristics of environmental law is the necessity for an inter disciplinary approach because of the complexity of the subject. In order to prepare appropriate modern legal rules, legal research should be undertaken in the two fields of legal history and comparative law.

5.3. Environmental Doctrines

Right to wholesome environment is a fundamental right protected under Article 21 of the Constitution of India. However the important question is that whether the environment can be protected at present times when almost all the countries in South-East Asia are still at their developing stages? Development comes through industrialization, which in turn the main factor behind the degradation of environment. To resolve the issue, the experts worldwide have come up with a doctrine called 'Sustainable Development', i.e. there must be balance between development and ecology. The concept of 'Sustainable Development' had come to be known as early as in 1972 in the Stockholm declaration. It had been stated in the declaration that:

“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 generation”

The concept was given a definite shape in a report by World Commission on Environment, which was known as ' our common future' (the Brundtland Report). The commission, which was chaired by the then Norway Prime Minister, Ms. G.H. Brundtland defined 'Sustainable Development' as “Development that meets the needs of the present without compromising the ability of the future generations to meet their own needs”.

The concept was further discussed under agenda 21 of UN conference on environment and development held in June 1992 at Rio de Janeiro, Brazil and later on in the Johannesburg Conference held in 2002. Some of its basic principles as described in 'Brundtland report' are as follows:

- **Inter-Generational Equity:** The principle talks about the right of every generation to get benefit from the natural resources. Principle 3 of the Rio declaration states that:
" The right to development must be fulfilled so as to equitably meet

developmental and environmental needs of present and future generations." The main object behind the principle is to ensure that the present generation should not abuse the non-renewable resources so as to deprive the future generation of its benefit.

- **The Precautionary Principle:** This principle has widely been recognized as the most important principle of 'Sustainable Development'. Principle 15 the Rio declaration states that: "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." In other words it means:
 - 1) Environmental measures by the state government and the local authority must anticipate, prevent and attack the causes of environmental degradation.
 - 2) Where there are threats of serious and irreversible damage, lack of scientific certainty should not used as a reason for postponing measures to prevent environmental degradation.
 - 3) The 'onus of proof' is on the actor or the developer to proof that his action is environmentally beginning.
- **Polluter Pays Principle:** Principle 16 of the Rio declaration states that : "National authorities should endeavor 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."

It is quite obvious that the object of the above principle was to make the polluter liable not only for the compensation to the victims but also for the cost of restoring of environmental degradation. Once the actor is proved to be guilty, he is liable to compensate for his act irrelevant of the fact that whether he's involved in development process or not.

These concepts of have become an integral part of Environmental Law. Most of the doctrines are recognized worldwide and have been adopted and implemented everywhere, including in India. Judiciary in India, more precisely, the Supreme Court and the High Courts has played an important role in preserving the doctrine of ' Sustainable Development '. Parliament has enacted various laws to deal with

the problems of environmental degradation. In such a situation, the superior courts have played a pivotal role in interpreting those laws to suit the doctrine of 'Sustainable Development'.

The Polluter Pays" principle has been held to be a sound principle by this Court in *Indian Council for Enviro - Legal Action v. Union of India, AIR 1996 SC 1446*.

The Court observed, "We are of the opinion that any principle evolved in this behalf should be simple, practical and suited to the conditions obtaining in this country". In this case the number of private companies operated as chemical companies were creating hazardous wastes in the soil, henceforth, polluting the village area situated nearby, and they were also running without licenses, so an environmental NGO, filed writ petition under article 32 of the Constitution of India, which sought from the court to compel SPCB and CPCB to recover costs of the remedial measures from the companies.

The Court ruled that "Once the activity carried on is hazardous or inherently dangerous, the person carrying on such activity is liable to make good the loss caused to any other person by his activity irrespective of the fact whether he took reasonable care while carrying on his activity. The rule is premised upon the very nature of the activity carried on".

Consequently the polluting industries are "absolutely liable to compensate for the harm caused by them to villagers in the affected area, to the soil and to the underground water and hence, they are bound to take all necessary measures to remove sludge and other pollutants lying in the affected areas".

The "**Polluter Pays**" principle as interpreted by the Court means that 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. Remediation of the damaged environment is part of the process of "Sustainable Development" and as such polluter is liable to pay the cost to the individual sufferers as well as the cost of reversing the damaged ecology.

It is worthwhile to mention here that principle 10 of Rio declaration, 1992 states that:

"Environmental issues are best handled with participation of all concerned citizens, 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”.

Environment and development are two sides of the same coin. Any one of these cannot be sacrificed for the other. On contrary, both are equally important for our better future. Thus the responsibility lies on the Supreme Court and the various High Courts to deal with these cases with caution of high degree. Then only, we will achieve our goal i.e. to secure a pollution free developed country for our next generation.

Reference Books:

1. Divan, Shyam and Rosencranz, Armin, *Environmental Law and Policy in India - Cases, Materials and Statutes*, Oxford University Press, New Delhi.
2. Rosencranz, Armin; Divan, Shyam and Noble, Martha L., (Ed.) Tripathi, *Environmental Law and Policy in India - Cases, Materials and Statutes*, The Book Review Literary Trust, New Delhi.
3. Jaiswal, P.S., *Environmental Law*, Pioneer Publications, Delhi.

6. The Environment (Protection) Act, 1986 (EPA)

6.1. Introduction

The Environment (Protection) Act (*Annexure I*) was enacted in the year 1986. It was enacted with the main objective to provide the protection and improvement of environment and for matters connected therewith. The Act is one of the most comprehensive legislations with pretext to protection and improvement of environment.

The Constitution of India also provides for the protection of the environment. Article 48 A of the Constitution specifies that the State shall endeavor to protect and improve the environment and to safeguard the forests and wildlife of the country. Article 51 A further provides that every citizen shall protect the environment.

6.2. Premises of the Act

It is now generally accepted that environment is threatened by a wide variety of human activities ranging from the instinctive drive to reproduce its kind to the restless urge of improving the standards of living, development of technological solutions to this end, the vast amount of waste, both natural and chemical, that these advances produce. Paradoxically, this urge to grow and develop, which was initially uncontrolled is now widely perceived to be threatening as it results in the depletion of both living and non-living natural resources and life support systems. The air, water, land, living creatures as well as the environment in general is becoming polluted at an alarming rate that needs to be controlled and curbed as soon as possible.

The 1986 Act was enacted in this spirit. From time to time various legislations have been enacted in India for this purpose. However, all legislations prior to the 1986 Act have been specific relating to precise aspects of environmental pollution. However, the 1986 Act was a general legislation enacted under Article 253 (**Legislation for giving effect to international agreements.**—Notwithstanding anything in the foregoing 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) of the Constitution, pursuant to the international obligations of India. India was a signatory to the Stockholm Conference of 1972 where the world community had

resolved to protect and enhance the environment.

The United Nations conference on human environment, held in Stockholm in June 1972, proclaimed that “Man is both creator and molder of his environment, which gives him physical sustenance and affords him the opportunity for intellectual, moral, social and spiritual growth. In the long and tortuous evolution of the human race on this planet a stage has reached when through the rapid acceleration of science and technology man has acquired the power to transform his environment in countless ways and on unprecedented scale. Both aspects of man's environment, the natural and man made are essential to his well being and to the enjoyment of basic human rights even the right to life itself”.

While several legislations such as The Water (Prevention and Control of Pollution) Act, 1974 and The Air (Prevention and Control of Pollution) Act, 1981 were enacted after the Conference, the need for a general legislation had become increasingly evident. The EPA was enacted so as to overcome this deficiency.

6.3. Objectives

As mentioned earlier, the main objective of the Act was to provide the protection and improvement of environment and for matters connected therewith. Other objectives of implementation of the EPA are:

- To implement the decisions made at the UN Conference on Human Environment held at Stockholm in June, 1972.
- To enact a general law on the areas of environmental protection which were left uncovered by existing laws. The existing laws were more specific in nature and concentrated on a more specific type of pollution and specific categories of hazardous substances rather than on general problems that chiefly caused major environmental hazards.
- To co-ordinate activities of the various regulatory agencies under the existing laws
- To provide for the creation of an authority or authorities for environmental protection
- To provide a deterrent punishment to those who endanger human environment, safety and health

6.4. Scope and Applicability

The Environment (Protection) Act is applicable to whole of India including Jammu & Kashmir. It came into force on November 19, 1986.

6.5. Definitions

Section 2 of the EPA deals with definitions. Some important definitions provided in the Section are:

Section 2 (a) **“Environment”** includes water, air, and land and the interrelationship that exists among and between water, air and land and human beings, other living creatures, plants, micro-organism and property. This definition is not exhaustive but an inclusive one.

Section 2 (b) **"Environmental Pollutant"** means any solid, liquid or gaseous substance present in such concentration as may be, or tend to be injurious to environment

Section 2 (c) **“Environmental Pollution”** means the presence in the environment of any environmental pollutant⁶. This implies the imbalance in environment. The materials or substances when after mixing in air, water or land alters their properties in such manner, that the very use of all or any of the air water and land by man and any other living organism becomes lethal and dangerous for health.

Section 2 (e) **"Hazardous Substance"** means any substance or preparation which, by reasons of its chemical or physico-chemical properties or handling, is liable to cause harm to human beings, other living creatures, plants, micro-organism, property or environment.

6.6. Powers of Central Government to take measures to Protect and Improve Environment

According to the provisions of the 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.

Such measures may include measures with respect to all or any of the following matters, namely:

- a) co-ordination of actions by the State Governments, officers and other authorities-
 - (a) under this Act, or the rules made thereunder, or
 - (b) under any other law for the time being in force which is relatable to the objects of this Act;
- b) planning and execution of a nation-wide programme for the prevention, control and abatement of environmental pollution;

- c) laying down standards for the quality of environment in its various aspects;
- d) 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;

- e) 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;
- f) laying down procedures and safeguards for the prevention of accidents which may cause environmental pollution and remedial measures for such accidents;
- g) laying down procedures and safeguards for the handling of hazardous substances;
- h) examination of such manufacturing processes, materials and substances as are likely to cause environmental pollution;
- i) carrying out and sponsoring investigations and research relating to problems of environmental pollution;
- j) 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;
- k) establishment or recognition of environmental laboratories and institutes to carry out the functions entrusted to such environmental laboratories and institutes under this Act;
- l) collection and dissemination of information in respect of matters relating to environmental pollution;
- m) preparation of manuals, codes or guides relating to the prevention, control and abatement of environmental pollution;
- n) 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.

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.

As considerable adverse environment impact has been caused due to degradation of the environment with excessive soil erosion and water and air pollution due to certain development activities therefore it is necessary to protect the environment. This can be achieved only by careful assessment of a project proposed to be located in any area, on the basis of an environment impact assessment and environment management plan for the prevention, elimination or mitigation of the adverse impacts, right from the inception stage of the project.

The Central Government has passed certain notifications laying that the expansion or modernization of any existing industry or new projects listed shall not be undertaken in any part of India, unless it gets environmental clearance by the Central Government, or the State Government.

6.7. Powers of the Court

The Act does not curtail the powers of the Supreme Court. It has from time to time in various matters issued directions and orders to control pollution. Some such important cases pertaining to protection of environment are:

- **Directions issued to control vehicular pollution**

In *Mehta v Union of India (1998) 6 SCC 63*, in order to control the chaotic traffic conditions and vehicular pollution, the Supreme Court issued the following directions.

(a) All commercial/transport vehicles which are more than 20 years old should be phased out and not permitted to ply in Delhi after October 1998

(b) All such commercial /transport vehicles which are 17 to 19 years old (3200) shall not be permitted to ply in the National Capital Territory, Delhi after 1998;

(c) Such of the commercial /transport vehicles which are 15 and 16 years old (4962) shall not be permitted to ply after December 31, 1998

The Supreme Court made this order applicable to all commercial/transport vehicles whether registered in the National Capital Territory of Delhi or outside (but ply in Delhi) which are of more than stipulated age and which do not have any authority to ply in Delhi.

- **Protection of Coastline of India**

In *Indian Council for Enviro-Legal Action v Union of India*²² the Supreme Court in regard to the 600 kms long coast line emphasized that that it would be the duty and responsibility of the coastal states and Union Territories in which the stretch exists, to see that the notifications issued, declaring the coastal stretches should be properly and duly implemented. Further the various restrictions on the setting up and expansion of industries, operation or process, etc. in the regulation Zone should be strictly enforced.

In the same case the court enunciated the principle further that the polluter pays. Once the activity carried on is hazardous or inherently dangerous, the person carrying on such activity is liable to make good the loss caused to any other person irrespective of the fact whether he took reasonable care while carrying on his activity. Under this principle it is not the role of the Government to meet the costs involved in either prevention of such damage or in carrying out remedial action, because the effect of this would be to shift the financial burden of the pollution incident on the taxpayer. The responsibility of repairing the damage is that of the offending industry.

- **Other cases**

In *Vellore Citizen Welfare Forum v. Union of India & others*²³ the polluter principle as interpreted by the Supreme Court means that 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. Remediation of the damaged environment is part of the process of "Sustainable Development" and as such polluter is liable to pay the cost to the individual sufferer as well as the cost

²² (1996) 5 SCC 281

²³ (1996) 5 SCC 647

of reversing the damaged ecology.

In *Goa Foundation v Diksha Holdings Pvt. Ltd*²⁴ the court observed that with a view to protect the ecological balance in the coastal areas, notifications having been issued by the Central Government, there ought not to be any violation and prohibited activities should not be allowed to come up within the area declared as CRZ notification. The court also emphasised that no activities which would ultimately lead to unscientific and unsustainable development and ecological destruction should be allowed.

6.8. Prevention, Control and Abatement of Environment Pollution

Chapter III of the EPA deals with prevention, Control and abatement of Environmental Pollution. Some important provisions of this chapter provide that, No person carrying on any industry, operation or process shall discharge or emit or permit to be discharged or emitted any environmental pollutant in excess of such standards as may be prescribed.

No person shall handle or cause to be handled any hazardous substance except in accordance with such procedure and after complying with such safe guards as may be prescribed. Where the discharge of any environmental pollutant in excess of the prescribed standards occurs or is apprehended to occur due to any accident or other unforeseen act or event, the person responsible for such discharge and the person in charge of the place at which the discharge occurs shall be bound to prevent or mitigate the environmental pollution.

and shall also:

- (a) intimate the fact of such occurrence or apprehension of such occurrence; and
- (b) be bound, if called upon, to render all assistance.

On receipt of such information, the authorities or agencies shall cause such remedial measures to be taken as are necessary to prevent or mitigate the environmental pollution.

The expenses incurred by any authority or agency may be recovered from the person concerned as arrears of land revenue or of public demand.

6.9. Penalties

Section 15 provides for Penalties for contravention of the provisions of the Act as

²⁴ (2001) 2 SCC 97

well as the Rules, Orders and Directions. Whoever fails to comply with or contravenes any of the provisions, rules, orders or directions of this Act shall be punishable with imprisonment for a term which may extend to five years or with fine which may extend to one lakh rupees, or with both. 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.

If the failure or contravention 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.

- **Offences by Companies**

Offences by Companies are dealt with under Section 16. Where any offence is 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 shall be deemed to be guilty of the offence.

If he proves that the offence was committed without his knowledge or that he exercised due diligence to prevent the commission of such offence he shall not be liable to any punishment.

Where the offence has been committed with the consent or connivance of or is attributable to any neglect on part of , any director, manager, secretary or other officer of the company, such person shall be deemed to be guilty of the offence

- **Cognizance of Offences and Bar of Jurisdiction of Civil Courts**

As per the provisions of Section 19 of the EPA, no court shall take cognizance of any offence under this Act except on a complaint made by:

- (a) the central Government or any authority or officer authorized in this behalf by that Government; or
- (b) any person who has given notice of not less than 60 days, of the alleged offence and his intention to make a complaint, to the Central Government or the authority or officer authorized.

Section 22 provides that 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 under the Act.

6.10. The National Environment Appellate Authority

The National Environment Appellate Authority (NEAA) was set up as an independent body to address cases in which environmental clearances granted by the ministry of environment are challenged by civil society. On January 30, 1997, the President of India, in exercise of the powers conferred under Article 123 (123. Power of President to promulgate Ordinances during recess of Parliament.— (1) If at any time, except when both Houses of Parliament are in session, the President is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such Ordinances as the circumstances appear to him to require.) of the Constitution, promulgated an Ordinance to provide for the establishment of the NEAA to hear appeals with respect to restriction of areas in which any industries, operations and processes shall not be carried out or shall be carried out subject to the safeguards as provided under the EPA. The Ordinance was later on repealed with the enactment of the National Environment Appellate Authority Act, 1997. (Annexure 2)

The NEAA Act, which was granted presidential assent on 26th March, 1997 came into force from 9.4.97. This Act provides for the establishment of a NEAA. The Act was enacted with the following object:

To hear appeals with respect to restriction of areas in which any industry, operations or processes or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards under the EPA and for matters connected therewith or incidental thereto.

This is to bring in transparency in the process, accountability and to ensure smooth and expeditious implementation of developmental schemes and projects.

Jurisdiction of the Act

Any aggrieved person may file an appeal within thirty days of passing of an order granting environmental clearance in the areas in which any industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards under the EPA. It is further provided that the Authority may entertain an appeal even after the expiry of the said term if a sufficient cause for delay in filing such an appeal exists. The Authority is required to dispose off the appeal within ninety days from the date of filing of the same. However, the Authority may, for reasons that are to be recorded in writing, dispose off the appeal within a

further period of thirty days.

(2) An Ordinance promulgated under this article shall have the same force and effect as an Act of Parliament, but every such Ordinance—

(a) shall be laid before both Houses of Parliament and shall cease to operate at the expiration of six weeks from the reassembly of Parliament, or, if before the expiration of that period resolutions disapproving it are passed by both Houses, upon the passing of the second of those resolutions; and

(b) may be withdrawn at any time by the President.

Explanation.—Where the Houses of Parliament are summoned to reassemble on different dates, the period of six weeks shall be reckoned from the later of those dates for the purposes of this clause.

(3) If and so far as an Ordinance under this article makes any provision which Parliament would not under this Constitution be competent to enact, it shall be void.

Annexure 1
The Environment (Protection) Act, 1986
No. 29 OF 1986

[23rd May, 1986.]

An Act to provide for the protection and improvement of environment and for matters connected there with:

WHEREAS the decisions were taken at the United Nations Conference on the Human Environment held at Stockholm in June, 1972, in which India participated, to take appropriate steps for the protection and improvement of human environment;

AND WHEREAS it is considered necessary further to implement the decisions aforesaid in so far as they relate to the protection and improvement of environment and the prevention of hazards to human beings, other living creatures, plants and property;

BE it enacted by Parliament in the Thirty-seventh Year of the Republic of India as follows:-

CHAPTER I

PRELIMINARY

1. SHORT TITLE, EXTEND AND COMMENCEMENT

(1) This Act may be called the Environment (Protection) Act, 1986.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different provisions of this Act and for different areas.

2. DEFINITIONS

In this Act, unless the context otherwise requires,--

(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;

(c) "environmental pollution" means the presence in the environment of any environmental pollutant;

(d) "handling", in relation to any substance, means the manufacture, processing, treatment, package, storage, transportation, use, collection, destruction,

conversion, offering for sale, transfer or the like of such substance;

(e) "hazardous substance" means any substance or preparation which, by reason of its chemical or physico-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;

(g) "prescribed" means prescribed by rules made under this Act.

CHAPTER II

GENERAL POWERS OF THE CENTRAL GOVERNMENT

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 subsection (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--

(a) under this Act, or the rules made thereunder, or

(b) 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.

4. APPOINTMENT OF OFFICERS AND THEIR POWERS AND FUNCTIONS

(1) Without prejudice to the provisions of sub-section (3) of section 3, the Central Government may appoint officers with such designation as it thinks fit for the purposes of this Act and may entrust to them such of the powers and functions under this Act as it may deem fit.

(2) The officers appointed under sub-section (1) shall be subject to the general control and direction of the Central Government or, if so directed by that Government, also of the authority or authorities, if any, constituted under sub-section (3) of section 3 or of any other authority or officer.

5. POWER TO GIVE DIRECTIONS

Notwithstanding anything contained in any other law but subject to the provisions of this Act, the Central Government may, in the exercise of its powers and performance of its functions under this Act, 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.

*Explanation--*For the avoidance of doubts, it is hereby declared that the power to issue directions under this section includes the power to direct--

- (a) the 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.

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.

CHAPTER III

PREVENTION, CONTROL, AND ABATEMENT OF ENVIRONMENTAL

POLLUTION

7. PERSONS CARRYING ON INDUSTRY OPERATION, ETC., NOT TO ALLOW EMISSION OR DISCHARGE OF ENVIRONMENTAL POLLUTANTS IN EXCESS OF THE STANDARDS

No person carrying on any industry, operation or process shall discharge or emit or permit to be discharged or emitted any environmental pollutants in excess of such standards as may be prescribed.

8. PERSONS HANDLING HAZARDOUS SUBSTANCES TO COMPLY WITH PROCEDURAL SAFEGUARDS

No person shall handle or cause to be handled any hazardous substance except in accordance with such procedure and after complying with such safeguards as may be prescribed.

9. FURNISHING OF INFORMATION TO AUTHORITIES AND AGENCIES IN CERTAIN CASES

(1) Where the discharge of any environmental pollutant in excess of the prescribed standards occurs or is apprehended to occur due to any accident or other unforeseen act or event, the person responsible for such discharge and the person in charge of the place at which such discharge occurs or is apprehended to occur shall be bound to prevent or mitigate the environmental pollution caused as a result of such discharge and shall also forthwith--

(a) intimate the fact of such occurrence or apprehension of such occurrence; and

(b) be bound, if called upon, to render all assistance, to such authorities or agencies as may be prescribed.

(2) On receipt of information with respect to the fact or apprehension on any occurrence of the nature referred to in sub-section (1), whether through intimation under that sub-section or otherwise, the authorities or agencies referred to in sub-section (1) shall, as early as practicable, cause such remedial measures to be taken as necessary to prevent or mitigate the environmental pollution.

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

10. POWERS OF ENTRY AND INSPECTION

(1) Subject to the provisions of this section, any person empowered by the Central

Government 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 Central Government 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 authorization served, made, given or granted under this Act is being or has been complied with;

(c) 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 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 equipment, industrial 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 this Act or the rules made thereunder or that such seizure is necessary to prevent or mitigate environmental pollution.

(2) Every person carrying on any industry, operation or process of handling any hazardous substance shall be bound to render all assistance to the person empowered by the Central Government 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 persons empowered by the Central Government under sub-section (1) in the performance of his functions, 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 an 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 seizures 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 provision of the said law.

11. POWER TO TAKE SAMPLE AND PROCEDURE TO BE FOLLOWED IN CONNECTION THEREWITH

(1) The Central Government or any officer empowered by it in this behalf, shall have power to take, for the purpose of analysis, samples of air, water, soil or other substance from any factory, premises or other place in such manner as may be

prescribed.

(2) The result of any analysis of a sample taken under sub-section (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), the person taking the sample under sub-section (1) shall--

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

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

(c) 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 or person;

(d) send without delay, the container or the containers to the laboratory established or recognized by the Central Government under section 12.

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

(a) in a case where the occupier, his agent or person wilfully absents himself, the person taking the sample shall collect the sample 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 or person present at the time of taking the sample refuses to sign the marked and sealed container or containers of the sample as required under clause (c) of sub-section (3), the marked and sealed container or containers shall be signed by the person taking the samples, and the container or containers shall be sent without delay by the person taking the sample for analysis to the laboratory established or recognized under section 12 and such person shall inform the Government Analyst appointed or recognized under section 12 in writing, about the wilfull absence of the occupier or his agent or person, or, as the case may be, his refusal to sign the container or containers.

12. ENVIRONMENTAL LABORATORIES

(1) The Central Government may, by notification in the Official Gazette,--

(a) establish one or more environmental laboratories;

(b) recognize one or more laboratories or institutes as environmental laboratories

to carry out the functions entrusted to an environmental laboratory under this Act.

(2) The Central Government may, by notification in the Official Gazette, make rules specifying--

(a) the functions of the environmental laboratory;

(b) the procedure for the submission to the said laboratory of samples of air, water, soil or other substance for analysis or tests, the form of the laboratory report thereon and the fees payable for such report;

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

13. GOVERNMENT ANALYSTS

The Central Government may by notification in the Official Gazette, appoint or recognise such persons as it thinks fit and having the prescribed qualifications to be Government Analysts for the purpose of analysis of samples of air, water, soil or other substance sent for analysis to any environmental laboratory established or recognized under sub-section (1) of section 12.

14. REPORTS OF GOVERNMENT ANALYSTS

Any document purporting to be a report signed by a Government analyst may be used as evidence of the facts stated therein in any proceeding under this Act.

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 thereunder, 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.

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.

*Explanation--*For the purpose of this section,--

(a) "company" means any body corporate and includes a firm or other association of individuals;

(b) "director", in relation to a firm, means a partner in the firm.

17. OFFENCES BY GOVERNMENT DEPARTMENTS

(1) 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.

Provided that nothing contained in this section shall render such Head of the Department liable to any punishment if he proves that the offence was committed without his knowledge or that he exercise 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 Department of Government 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 officer, other than the Head of the Department, such officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

CHAPTER IV

MISCELLANEOUS

18. PROTECTION OF ACTION TAKEN IN GOOD FAITH

No suit, prosecution or other legal proceeding shall lie against the Government or any officer or other employee of the Government or any authority constituted under this Act or any member, officer or other employee of such authority in respect of anything which is done or intended to be done in good faith in

pursuance of this Act or the rules made or orders or directions issued there under.

19. COGNIZANCE OF OFFENCES

No court shall take cognizance of any offence under this Act except on a complaint made by--

(a) the Central Government or any authority or officer authorized in this behalf by that Government, or

(b) any person who has given notice of not less than sixty days, in the manner prescribed, of the alleged offence and of his intention to make a complaint, to the Central Government or the authority or officer authorized as aforesaid.

20. INFORMATION, REPORTS OR RETURNS

The Central Government may, in relation to its function under this Act, from time to time, require any person, officer, State Government or other authority to furnish to it or any prescribed authority or officer any reports, returns, statistics, accounts and other information and such person, officer, State Government or other authority shall be bound to do so.

21. MEMBERS, OFFICERS AND EMPLOYEES OF THE AUTHORITY CONSTITUTED UNDER SECTION 3 TO BE PUBLIC SERVANTS

All the members of the authority, constituted, if any, under section 3 and all officers and other employees of such authority when acting or purporting to act in pursuance of any provisions of this Act or the rules made or orders or directions issued thereunder shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code (45 of 1860).

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.

23. POWERS TO DELEGATE

Without prejudice to the provisions of sub-section (3) of section 3, the Central Government may, by notification in the Official Gazette, delegate, subject to such conditions and limitations as may be specified in the notifications, such of its powers and functions under this Act [except the powers to constitute an authority under sub-section (3) of section 3 and to make rules under section 25] as it may deem necessary or expedient, to any officer, State Government or other authority.

24. EFFECT OF OTHER LAWS

(1) Subject to the provisions of sub-section (2), the provisions of this Act and the

rules or orders made therein shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act.

(2) Where any act or omission constitutes an offence punishable under this Act and also under any other Act then the offender found guilty of such offence shall be liable to be punished under the other Act and not under this Act.

25. POWER TO MAKE RULES

(1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(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 in excess of which environmental pollutants shall not be discharged or emitted under section 7;

(b) the procedure in accordance with and the safeguards in compliance with which hazardous substances shall be handled or caused to be handled under section 8;

(c) the authorities or agencies to which intimation of the fact of occurrence or apprehension of occurrence of the discharge of any environmental pollutant in excess of the prescribed standards shall be given and to whom all assistance shall be bound to be rendered under sub-section (1) of section 9;

(d) the manner in which samples of air, water, soil or other substance for the purpose of analysis shall be taken under sub-section (1) of section 11;

(e) the form in which notice of intention to have a sample analyzed shall be served under clause (a) of sub section (3) of section 11;

(f) the functions of the environmental laboratories, the procedure for the submission to such laboratories of samples of air, water, soil and other substances for analysis or test; the form of laboratory report; the fees payable for such report and other matters to enable such laboratories to carry out their functions under sub-section (2) of section 12;

(g) the qualifications of Government Analyst appointed or recognized for the purpose of analysis of samples of air, water, soil or other substances under section 13;

(h) the manner in which notice of the offence and of the intention to make a complaint to the Central Government shall be given under clause (b) of section 19;

(i) the authority of officer to whom any reports, returns, statistics, accounts and other information shall be furnished under section 20;

(j) any other matter which is required to be, or may be, prescribed.

26. RULES MADE UNDER THIS ACT TO BE LAID BEFORE PARLIAMENT

Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Annexure 2
THE NATIONAL ENVIRONMENT APPELLATE AUTHORITY ACT,
1997
ACT NO. 22 OF 1997

[26th March, 1997]

An Act to provide for the establishment of a National Environment Appellate Authority to hear appeals with respect to 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 under the Environment (Protection) Act, 1986 and for matters connected therewith or incidental thereto.

Be it enacted by Parliament in the Forty-eighth Year of the Republic of India as follows:-

CHAPTER I

PRELIMINARY

1. SHORT TITLE AND COMMENCEMENT

(1) This Act may be called the National Environment Appellate Authority Act, 1997.

(2) It shall be deemed to have come into force on the 30th day of January, 1997.

2. DEFINITIONS

In this Act, unless the context otherwise requires,-

- (a) "Act" means the Environment (Protection) Act, 1986;
- (b) "Authority" means the National Environment Appellate Authority established under sub-section (1) of section 3;
- (c) "Chairperson" means the Chairperson of the Authority;
- (d) "Member" means a Member of the Authority;
- (e) "prescribed" means prescribed by rules made under this Act;
- (f) "Vice-Chairperson" means the Vice-Chairperson of the Authority.

CHAPTER II

ESTABLISHMENT OF AUTHORITY

3. ESTABLISHMENT OF AUTHORITY

(1) The Central Government shall, by notification in the Official Gazette, establish a body to be known as the National Environment Appellate Authority to

exercise the powers conferred upon, and to perform the functions assigned to, it under this Act.

(2) The head office of the Authority shall be at Delhi.

4. COMPOSITION OF AUTHORITY

The Authority shall consist of a Chairperson, a Vice-Chairperson and such other Members not exceeding three, as the Central Government may deem fit.

5. QUALIFICATIONS FOR APPOINTMENT AS CHAIRPERSON, VICE-CHAIRPERSON OR MEMBER

(1) A person shall not be qualified for appointment as a Chairperson unless he has been-

- (a) a Judge of the Supreme Court; or
- (b) the Chief Justice of a High Court.

(2) A person shall not be qualified for appointment as a Vice-Chairperson unless he

has-

(a) for at least two years held the post of a Secretary to the Government of India or any other post under the Central or State Government carrying a scale of

pay which is not less than that of a Secretary to the Government of India; and

(b) expertise or experience in administrative, legal, managerial or technical aspects of problems relating to environment.

(3) A person shall not be qualified for appointment as a Member unless he has professional knowledge or practical experience in the areas pertaining to conservation,

environmental management, law or planning and development.

(4) The Chairperson, the Vice-Chairperson and the Members shall be appointed by

the President.

6. VICE CHAIRPERSON TO ACT AS CHAIRPERSON OR TO DISCHARGE HIS FUNCTIONS IN CERTAIN CIRCUMSTANCES

(1) In the event of the occurrence of any vacancy in the office of the Chairperson by reason of his death, resignation or otherwise, the Vice-Chairperson shall act as the Chairperson until the date on which a new Chairperson appointed in accordance with the provisions of this Act to fill such vacancy enters upon his

office.

(2) When the Chairperson is unable to discharge his functions owing to absence, illness or any other cause, the Vice-Chairperson or, as the case may be, such one of the

Member as the Central Government may, by notification, authorise in this behalf, shall

discharge the functions of the Chairperson until the date on which the Chairperson resumes his duties.

7. TERMS OF OFFICE

The Chairperson, the Vice-Chairperson or a Member shall hold office as such for a term of three years from the date on which he enters upon his office, but shall be eligible for re-appointment for another term of three years:

Provided that no Chairperson, Vice-Chairperson or Member shall hold office as such after he has attained,-

(a) in the case of the Chairperson, the age of seventy years; and

(b) in the case of the Vice-Chairperson or a Member, the age of sixty-five years.

8. RESIGNATION AND REMOVAL

(1) The Chairperson, the Vice-Chairperson or a Member may, by notice in writing under his hand addressed to the President, resign his office:

Provided that the Chairperson, the Vice-Chairperson or a Member shall, unless he is permitted by the President to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is the earliest.

(2) The Chairperson, the Vice-Chairperson or a Member shall not be removed from his office except by an order made by the President on the ground of proved misbehavior or incapacity after an inquiry made by a Judge of the Supreme Court in which such Chairperson, the Vice-Chairperson or a Member had been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

(3) The President may suspend from office the Chairperson, the Vice-Chairperson or a Member in respect of whom a reference has been made to the Supreme Court under sub-section (2) until the President has passed orders on receipt of the report of the Supreme Court on such reference.

(4) The Central Government may, by rules, regulate the procedure for the investigation of misbehavior or incapacity of the Chairperson, the Vice-Chairperson or a Member referred to in sub-section (2).

9. SALARIES AND ALLOWANCES AND OTHER TERMS AND CONDITIONS OF SERVICE OF CHAIRPERSON, VICE-CHAIRPERSON AND MEMBERS

The salaries and allowances payable to, and the other terms and conditions of service (including pension, gratuity and other retirement benefits) of, the Chairperson, the Vice-Chairperson and the Members shall be such as may be prescribed by the Central Government.

10. VACANCY IN AUTHORITY NOT TO INVALIDATE ACTS OR PROCEEDINGS

No act or proceedings of the Authority shall be questioned or shall be invalid merely on the ground of existence of any vacancy or defect in the establishment of the Authority.

CHAPTER III

JURISDICTION AND POWERS OF AUTHORITY

11. APPEALS TO AUTHORITY

(1) Any person aggrieved by an order granting environmental clearance in the areas in which any industries, operations or processes or class of industries, operations and processes shall not be carried out or shall be carried out subject to certain safeguards may, within thirty days from the date of such order, prefer an appeal to the Authority in such form as may be prescribed:

Provided that the Authority may entertain any appeal after the expiry of the said period of thirty days but not after ninety days from the date aforesaid if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(2) For the purposes of sub-section (1), "person" means-

(a) any person who is likely to be affected by the grant of environmental clearance;

(b) any person who owns or has control over the project with respect to which an application has been submitted for environmental clearance;

(c) any association of persons (whether incorporated or not) likely to be affected

by such order and functioning in the field of environment;

(d) the Central Government, where the environmental clearance is granted by

the State Government and the State Government, where the environmental clearance

is granted by the Central Government; or

(e) any local authority, any part of whose local limits is within the neighbourhood

of the area wherein the project is proposed to be located.

(3) On receipt of an appeal preferred under sub-section (1), the Authority shall, after giving the appellant an opportunity of being heard, pass such orders, as it thinks fit.

(4) The Authority shall dispose of the appeal within ninety days from the date of filing

the appeal:

Provided that the Authority may for reasons to be recorded in writing, dispose of the appeal within a further period of thirty days.

12. PROCEDURE AND POWER OF AUTHORITY

(1) The Authority shall not be bound by the procedure laid down in the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice and subject to the other provisions of this Act and of any rules made by the Central Government, the Authority shall have power to regulate its own procedure including the fixing of places and times of its inquiry and deciding whether to sit in public or in private.

(2) The Authority shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely:-

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

(d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872 requisitioning any public record or document or copy of such

record or

document from any office;

(e) issuing commissions for the examination of witnesses or documents;

(f) reviewing its decisions;

(g) dismissing a representation for default or deciding it, *ex parte*;

(h) setting aside any order of dismissal of any representation for default or

any

order passed by it *ex parte*; and

(i) any other matter which is required to be, or may be, prescribed by the Central Government.

13. FINANCIAL AND ADMINISTRATIVE POWERS OF CHAIRPERSON

The Chairperson shall exercise such financial and administrative powers as may be vested in him under the rules:

Provided that the Chairperson shall have authority to delegate such of his financial and administrative powers as he may think fit to the Vice-Chairperson or any other officer subject to the condition that the Vice-Chairperson or such other officer shall, while exercising such delegated powers, continue to act under the direction, control and supervision of the Chairperson.

14. STAFF OF AUTHORITY

(1) The Central Government shall determine the nature and categories of the officers and other employees required to assist the Authority in the discharge of its functions and provide the Authority with such officers and other employees as it may think fit.

(2) The officers and other employees of the Authority shall discharge their functions under the general superintendence of the Chairperson.

(3) The salaries and allowances and conditions of service of the officers and other employees shall be such as may be prescribed.

CHAPTER IV

MISCELLANEOUS

15. BAR OF JURISDICTION

With effect from the date of establishment of the Authority, no civil court or other authority shall have jurisdiction to entertain any appeal in respect of any matter with which the Authority is so empowered by or under this Act.

16. PROCEEDINGS BEFORE THE AUTHORITY TO BE JUDICIAL PROCEEDINGS

All proceedings before the Authority shall be deemed to be judicial proceedings within the meaning of sections 193, 219 and 228 of the Indian Penal Code.

17. MEMBERS AND STAFF OF AUTHORITY TO BE PUBLIC SERVANTS

The Chairperson, the Vice-Chairperson and the Members and the officers and other employees of the Authority shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

18. PROTECTION OF ACTION TAKEN IN GOOD FAITH

No suit, prosecution or other legal proceeding shall lie against the Central Government or against the Chairperson, the Vice-Chairperson or a Member of the Authority or any other person authorized by the Chairperson, the Vice-Chairperson or a Member for anything which is in good faith done or intended to be done in pursuance of this Act or any rule or order made thereunder.

19. PENALTY FOR FAILURE TO COMPLY WITH ORDER OF AUTHORITY

Whoever fails to comply with any order made by the Authority, he shall be punishable with imprisonment for a term which may extend to seven years, or with fine which may extend to one lakh rupees, or with both.

20. 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 has 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.

Explanation. - For the purposes of this section, (a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm.

21. POWER TO REMOVE DIFFICULTIES

(1) If any difficulty arises in giving effect to the Provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act, as appear to it to be necessary or expedient for removing the difficulty:

Provided that no such order shall be made after the expiry of the period of three years from the date on which this Act receives the assent of the President.

(2) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.

22. POWER TO MAKE RULES

(1) The Central Government may, by notification, make rules for carrying out the provisions of this Act.

(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 procedure under sub-section (4) of section 8 for the investigation of misbehavior or incapacity of the Chairperson, the Vice-Chairperson or a Member;

(b) the salaries and allowances payable to and the other terms and conditions of service of the Chairperson, the Vice-Chairperson and the Members under section 9;

(c) the form which an appeal shall contain under sub-section (1) of section 11;

(d) financial and administrative powers of the Chairperson under section 13;

(e) the salaries and allowances and conditions of service of the officers and other employees of the Authority;

(f) any other matter which is required to be, or may be, prescribed.

(3) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

23. REPEAL AND SAVING

(1) The National Environment Appellate Authority Ordinance, 1997 is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance, shall be deemed to have been done or taken under the corresponding provisions of this Act.

Reference Articles

A. Annexed

1. Bakshi, Upendra, *Environment Protection Act: An Agenda for Implimentation*, N.M. Tripathi Pvt. Ltd., Bombay.
2. Jaiswal, P.S., *The Environment (Protection) Act, 1986*, *Environmental Law*, Pioneer Publications, Delhi, pp. 36-77.

B. Other Articles

3. Jayakumar. K., *Environment (Protection) Act: A Critical overview*, *Cochin University Law Review*, School of Legal Studies, Cochin University, Volume 11, p. 33.
4. Kurup, P.G., *Environment Protection Act: A Scientist's View*, *Cochin University Law Review*, School of Legal Studies, Cochin University, Volume 11, p. 12.
5. Leelakrishnan, P., *Environmental Impact Assessment: Need for Law*, *Cochin University Law Review*, School of Legal Studies, Cochin University, Volume 10, p. 246.
6. Sharathchandran, U., *Environmental Legislation in India*, *Cochin University Law Review*, School of Legal Studies, Cochin University, Volume 4, p. 280.

Reference Books

1. Bakshi, P.M., *The Environment Protection Act, 1986*, Indian Law Institute, New Delhi, 1992.

7. National Environmental Policy, 2006

7.1. Introduction

The “Environment” comprises all entities, natural or manmade, external to oneself, and their interrelationships, which provide value, now or perhaps in the future, to humankind. Environmental concerns relate to their degradation through actions of humans.

The Articles are reproduced as follows:

48A. Protection and improvement of environment and safeguarding of forests and wild life.—The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country.

51A. Fundamental duties.—It shall be the duty of every citizen of India—

(a) to abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem;

(b) to cherish and follow the noble ideals which inspired our national struggle for freedom;

(c) to uphold and protect the sovereignty, unity and integrity of India;

(d) to defend the country and render national service when called upon to do so;

(e) to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women;

(f) to value and preserve the rich heritage of our composite culture;

(g) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures;

(h) to develop the scientific temper, humanism and the spirit of inquiry and reform;

(i) to safeguard public property and to abjure violence;

(j) to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement.

The National Environmental Policy (NEP) was drafted under the obligation imposed by Article 48 A and Article 51 A. These Articles of the Constitution

of India call for a national commitment to provide for a clean environment.

The NEP was drafted keeping in mind all the shortcomings that were a part of the previous national environmental policies, especially the draft NEP, 2004. The task of drafting the Draft NEP, 2004 was assigned to TERI, formerly known as the Tata Energy Research Institute, renamed as The Energy & Resources Institute.

However, this draft was a highly controversial document, the reason being that it was preferred by MoEF over the draft report of the National Biodiversity Strategy and Action Plan (NBSAP), which was conceived much earlier than the NEP.

The main issue was that even though the process for drafting the NEP was an infant as compared to the process of drafting the NBSAP, the ministry was keen to make the NBSAP in tune with the NEP. The other issue was that it was highly felt by the persons involved in the process of NBSAP that the process of NEP was kept a secret and was not at all transparent, unlike the process of NBSAP.

7.2. National Environmental Policy, 2006

The NEP identifies all the previous failed policies as well as attempts to search for a solution to the problems that arise in effectively protecting and improving the environment. The NEP, 2006 is the outcome of extensive consultations with experts in different disciplines, Central Ministries, Members of Parliament, State Governments, Industry Associations, Academic and Research Institutions, Civil Society, NGOs and the Public. While drafting the NEP the earlier drafts of this were also taken into account.

Previously, a draft NEP was drafted in the year 2004 which was made available to the public for their inputs and comments. The draft was posted on the MoEF website after which, recommendations and feedback from the general public was called for. The NEP, 2006 was drafted keeping in mind all such previous efforts.

7.3. Objectives of NEP

The intention of formulating the NEP has been to draft an overarching policy

that encompasses provisions of all previous legislations, even if it at the cost of duplicating the previous efforts. A diverse developing society such as ours provides numerous challenges in the economic, social, political, cultural, and environmental arenas. All of these coalesce in the dominant imperative of alleviation of mass poverty, reckoned in the multiple dimensions of livelihood security, health care, education, empowerment of the disadvantaged, and elimination of gender disparities.

The pre-existing national policies for environmental management are contained in the National Forest Policy, 1988, National Conservation Strategy and Policy Statement on Environment and Development, 1992, The Policy Statement on Abatement of Pollution, 1992, etc. Some sector policies such as the National Agriculture Policy, 2000, National Population Policy, 2000 and National Water Policy, 2002 have also contributed towards environmental management. All of these policies have recognized the need for sustainable development in their specific contexts and formulated necessary strategies to give effect to such recognition. However, the NEP is a more general and comprehensive policy covering a more general policy covering the environmental problems at large. The National Environment Policy seeks to extend the coverage and fill in gaps that still exist, in light of present knowledge and accumulated experience. It does not displace, but builds on the earlier policies.

The NEP proposes economic efficiency criterion in environmental conservation. It stresses on the polluter pays principle as well as cost-benefit optimization. These concepts are vital in order to solve environmental problems effectively. It also talks about dealing with environmentally damaging behavior on the basis of civil suits, as opposed to the current reliance on criminal suits. Civil cases are flexible, with sanctions customized on a case-by-case basis. The burden of proof is reduced, and the cases dealt with relatively speedily. The policy further explains the failure of command-and-control instruments used for environmental compliance and enforcement, and proposes the idea of market-based instruments relying on price incentives. This is a very encouraging step. However, it needs to be explored further.

The National Environment Policy (NEP) is intended to guide the Government in bringing about regulatory reforms, implementation of programmes and projects for environmental conservation, besides reviewing and enacting

legislation. The dominant theme of the policy is to ensure that the livelihood of people dependent on forest products is secured from conservation than from degradation of the resources. It focuses on conservation of critical environmental resources, livelihood security for the poor, integration of environmental concerns in economic and social development and judicious use of the resources. To achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it.

Environmental Impact Assessment continues to be the principal methodology for appraisal and review of new projects. Under the new arrangement, there will be significant devolution of powers to the State/Union Territory level.

It also seeks to revisit the Coastal Regulation Zone notifications to make the approach to coastal environmental regulation more holistic and, thereby, ensure protection to coastal ecological systems, waters and the vulnerability of some coastal areas to extreme natural events and potential sea level rise.

Involvement of Panchayati Raj Institutions and urban local bodies has been highlighted in the NEP that will include capacity development initiatives. A large-scale exercise has been completed for providing inputs towards a national biodiversity strategy and action plan.

7.4. Criticisms

The NEP 2006 is not free of its shortcomings. Critics have criticized the policy stating that it falls short in carrying the logic forward in its search for solutions. Its recommendations are a contradictory mixture of the new and old ideas, lacking the clarity and consistency necessary to address the serious problems in our natural resource management.

Outcome of any policy depends on the institutional structure within which the policy operates. Institutions and the incentives and disincentives they generate are solely responsible for the success or failure of a policy. Decisions are optimal when decision makers bear the full costs as well as the benefits of their decisions. The fundamental problem in environmental management is that the

costs and benefits are shouldered generally by different parties.

Thus ownership or stewardship of natural resources by the communities that are affected directly by these resources creates a framework that is able to resolve the perceived conflict between humans and the ecology.

However, despite all shortcomings, the NEP 2006 is definitely on the right path with its emphasis on the 'wise-use' approach instead of the western approach of wilderness. Its overarching goal is to find ways to manage the environment so that humans can co-exist and prosper with it and not against it-the right to economic growth and social development.