

B.A.LL.B. VII SEMESTER

LLB Paper Code: 409

Subject: Environmental Law

Objective: The objective of this paper is to acquaint the students with the environmental issues and the measures taken for its protection along with the norms prevailing at international and national level.

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UNIT – I: Environmental Law: International and National Perspective

Topic: Introduction

Environment – Meaning

Environment is the surrounding things. It includes living things and natural forces. The environment of living things provides conditions for development and growth, also causes danger and damage. Living things do not simply exist in their environment. They constantly interact with it. Organisms change in response to conditions in their environment. The environment consists of the interactions among plants, animals, soil, water, temperature, light, and other living and non-living things.

The word environment is used to talk about many things. People in different fields of knowledge (like history, geography or biology) use the word differently. An electromagnetic environment is the various radio waves that equipment such as radio and radar can meet. Galactic environment refers to conditions between the stars

Environment Pollution – Meaning and Issues

One of the greatest problems that the world is facing today is that of environmental pollution, increasing with every passing year and causing grave and irreparable damage to the earth. Environmental pollution consists of five basic types of pollution, namely, air, water, soil, noise and light.

Pollution is the introduction of contaminants into the natural environment that can cause adverse change. Pollution can take the form of chemical substances or energy, such as noise, heat or light. Pollutants, the components of pollution, can be either foreign substances/energies or naturally occurring contaminants.

Air pollution is by far the most harmful form of pollution in our environment. Air pollution is caused by the injurious smoke emitted by cars, buses, trucks, trains, and factories, namely sulphur dioxide, carbon monoxide and nitrogen oxides. Even smoke from burning leaves and cigarettes are harmful to the environment causing a lot of damage to man and the atmosphere. Evidence of increasing air pollution is seen in lung cancer, asthma, allergies, and various breathing problems along with severe and irreparable damage to flora and fauna. Even the most natural phenomenon of migratory birds has been hampered, with severe air pollution preventing them from reaching their seasonal metropolitan destinations of centuries.

Chlorofluorocarbons (CFC), released from refrigerators, air-conditioners, deodorants and insect repellents cause severe damage to the Earth's environment. This gas has slowly damaged the atmosphere and depleted the ozone layer leading to global warming.

Water pollution caused industrial waste products released into lakes, rivers, and other water bodies, has made marine life no longer hospitable. Humans pollute water with large scale disposal of garbage, flowers, ashes and other household waste. In many rural areas one can still find people bathing and cooking in the same water, making it incredibly filthy. Acid rain further adds to water pollution in the water. In addition to these, thermal pollution and the depletion of dissolved oxygen aggravate the already worsened condition of the water bodies. Water pollution can also indirectly occur as an offshoot of soil pollution – through surface runoff and leaching to groundwater.

Noise pollution, soil pollution and light pollution too are the damaging the environment at an alarming rate. Noise pollution include aircraft noise, noise of cars, buses, and trucks, vehicle horns, loudspeakers, and industry noise, as well as high-intensity sonar effects which are extremely harmful for the environment.

Maximum noise pollution occurs due to one of modern science's best discoveries – the motor vehicle, which is responsible for about ninety percent of all unwanted noise worldwide.

Soil pollution, which can also be called soil contamination, is a result of acid rain, polluted water, fertilizers etc., which leads to bad crops. Soil contamination occurs when chemicals are released by spill or underground storage tank leakage which releases heavy contaminants into the soil. These may include hydrocarbons, heavy metals, MTBE, herbicides, pesticides and chlorinated hydrocarbons.

Light Pollution includes light trespass, over-illumination and astronomical interference

Topic: International Norms

Sustainable Development – Meaning and Scope

"Sustainable development is development that meets the needs of the present, without compromising the ability of future generations to meet their own needs."

1. Sustainable development (SD) is a process for meeting human development goals while sustaining the ability of natural systems to continue to provide the natural resources and ecosystem services upon which the economy and society depend. While the modern concept of sustainable development is derived most strongly from the 1987 Brundtland Report, it is rooted in earlier ideas about sustainable forest management and twentieth century environmental concerns.
2. Sustainable development is the organizing principle for sustaining finite resources necessary to provide for the needs of future generations of life on the planet. It is a process that envisions a desirable future state for human societies in which living conditions and resource-use continue to meet human needs without undermining the "integrity, stability and beauty" of natural biotic systems

Sustainability can be defined as the practice of maintaining processes of productivity indefinitely—natural or human made—by replacing resources used with resources of equal or greater value without degrading or endangering natural biotic systems. Sustainable development ties together concern for the carrying capacity of natural systems with the social, political, and economic challenges faced by humanity. Sustainability science is the study of the concepts of sustainable development and environmental science. There is an additional focus on the present generations' responsibility to regenerate, maintain and improve planetary resources for use by future generations.

Sustainable development has its roots in ideas about sustainable forest management which were developed in Europe during the seventeenth and eighteenth centuries. In response to a growing awareness of the depletion of timber resources in England, John Evelyn argued that "sowing and planting of trees

had to be regarded as a national duty of every landowner, in order to stop the destructive over-exploitation of natural resources" in his 1662 essay *Sylva*. In 1713 Hans Carl von Carlowitz, a senior mining administrator in the service of Elector Frederick Augustus I of Saxony published *Sylvicultura oeconomica*, a 400-page work on forestry. Building upon the ideas of Evelyn and French minister Jean-Baptiste Colbert, von Carlowitz developed the concept of managing forests for sustained yield. His work influenced others, including Alexander von Humboldt and Georg Ludwig Hartig, leading in turn to the development of a science of forestry. This in turn influenced people like Gifford Pinchot, first head of the US Forest Service, whose approach to forest management was driven by the idea of wise use of resources, and Aldo Leopold whose land ethic was influential in the development of the environmental movement in the 1960s.

In 1980 the International Union for the Conservation of Nature published a world conservation strategy that included one of the first references to sustainable development as a global priority. Two years later, the United Nations World Charter for Nature raised five principles of conservation by which human conduct affecting nature is to be guided and judged.^[8] In 1987 the United Nations World Commission on Environment and Development released the report *Our Common Future*, commonly called the Brundtland Report. The report included what is now one of the most widely recognised definitions of sustainable development

“ Sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs. It contains within it two key concepts:

- The concept of 'needs', in particular, the essential needs of the world's poor, to which overriding priority should be given; and
- The idea of limitations imposed by the state of technology and social organization on the environment's ability to meet present and future needs.

”

—World Commission on Environment and Development, *Our Common Future* (1987)

In 1992, the UN Conference on Environment and Development published in 1992 the Earth Charter, which outlines the building of a just, sustainable, and peaceful global society in the 21st century. The

action plan Agenda 21 for sustainable development identified information, integration, and participation as key building blocks to help countries achieve development that recognizes these interdependent pillars. It emphasises that in sustainable development everyone is a user and provider of information. It stresses the need to change from old sector- centred ways of doing business to new approaches that involve cross-sectoral co-ordination and the integration of environmental and social concerns into all development processes. Furthermore, Agenda 21 emphasises that broad public participation in decision making is a fundamental prerequisite for achieving sustainable development. Under the principles of the United Nations Charter the Millennium Declaration identified principles and treaties on sustainable development, including economic development, social development and environmental protection. Broadly defined, sustainable development is a systems approach to growth and development and to manage natural, produced, and social capital for the welfare of their own and future generations. The term sustainable development as used by the United Nations incorporates both issues associated with land development and broader issues of human development such as education, public health, and standard of living.

A 2013 study concluded that sustainability reporting should be reframed through the lens of four interconnected domains: ecology, economics, politics and culture

Precautionary Principle

The precautionary principle or precautionary approach to risk management states that if an action or policy has a suspected risk of causing harm to the public or to the environment, in the absence of scientific consensus that the action or policy is not harmful, the burden of proof that it is *not* harmful falls on those taking an action.

The principle is used by policy makers to justify discretionary decisions in situations where there is the possibility of harm from making a certain decision (e.g. taking a particular course of action) when extensive scientific knowledge on the matter is lacking. The principle implies that there is a social responsibility to protect the public from exposure to harm, when scientific investigation has found a plausible risk. These protections can be relaxed only if further scientific findings emerge that provide sound evidence that no harm will result.

In some legal systems, as in the law of the European Union, the application of the precautionary principle has been made a statutory requirement in some areas of law.

Regarding international conduct, the first endorsement of the principle was in 1982 when the World Charter for Nature was adopted by the United Nations General Assembly, while its first international implementation was in 1987 through the Montreal Protocol. Soon after, the principle integrated with many other legally binding international treaties such as the Rio Declaration and Kyoto Protocol.

The term "precautionary principle" is generally considered to have arisen in English from a translation of the German term *Vorsorgeprinzip* in the 1980s.

The concepts underpinning the precautionary principle pre-date the term's inception. For example, the essence of the principle is captured in a number of cautionary aphorisms such as "an ounce of prevention is worth a pound of cure", "better safe than sorry", and "look before you leap". The precautionary principle may also be interpreted as the evolution of the ancient medical principle of "first, do no harm" to apply to institutions and institutional decision-making processes rather than individuals.

In economics, the precautionary principle has been analysed in terms of the effect on rational decision-making of the interaction of irreversibility and uncertainty. Authors such as Epstein (1980) and Arrow and Fischer (1974) show that irreversibility of possible future consequences creates a quasi-option effect which should induce a "risk-neutral" society to favor current decisions that allow for more flexibility in the future. Gollier et al. (2000) conclude that "more scientific uncertainty as to the distribution of a future risk – that is, a larger variability of beliefs – should induce Society to take stronger prevention measures today."

The Precautionary Principle is a strategy to cope with possible risks where scientific understanding is yet incomplete, such as the risks of nano technology, genetically modified organisms and systemic insecticides.

The Precautionary Principle is defined as follows:
When human activities may lead to morally unacceptable harm that is scientifically plausible but uncertain, actions shall be taken to avoid or diminish that harm. Morally unacceptable harm refers to harm to humans or the environment that is

- threatening to human life or health, or

- serious and effectively irreversible, or
- inequitable to present or future generations, or
- imposed without adequate consideration of the human rights of those affected.

The judgement of plausibility should be grounded in scientific analysis. Analysis should be ongoing so that chosen actions are subject to review. Uncertainty may apply to, but need not be limited to, causality or the bounds of the possible harm. Actions are interventions that are undertaken before harm occurs that seek to avoid or diminish the harm. Actions should be chosen that are proportional to the seriousness of the potential harm, with consideration of their positive and negative consequences, and with an assessment of the moral implications of both action and inaction. The choice of action should be the result of a participatory process.

Polluter pays Principle

The Polluter Pays Principle (PPP) is an environmental policy principle which requires that the costs of pollution be borne by those who cause it. In its original emergence the Polluter Pays Principle aims at determining how the costs of pollution prevention and control must be allocated: the polluter must pay.

Its immediate goal is that of internalizing the environmental externalities of economic activities, so that the prices of goods and services fully reflect the costs of production. Bugge (1996) has identified four versions of the PPP: economically, it promotes efficiency; legally, it promotes justice; it promotes harmonization of international environmental policies; it defines how to allocate costs within a State.

The normative scope of the PPP has evolved over time to include also accidental pollution prevention, control and clean-up costs, in what is referred to as *extended Polluter Pays Principle*.

Today the Principle is a generally recognized principle of International Environmental Law, and it is a fundamental principle of environmental policy of both the Organisation for Economic Co-operation and Development (OECD) and the European Community.

The first mention of the Principle at the international level is to be found in the 1972 Recommendation by the OECD Council on Guiding Principles concerning International Economic Aspects of Environmental Policies, where it stated that: "The principle to be used for allocating costs of pollution prevention and control measures to encourage rational use of scarce environmental resources and to avoid distortions in

international trade and investment is the so-called Polluter-Pays Principle." It then went on to elaborate: "This principle means that the polluter should bear the expenses of carrying out the above-mentioned measures decided by public authorities to ensure that the environment is in an acceptable state."

The PPP has also been reaffirmed in the 1992 Rio Declaration, at Principle 16: "National authorities should endeavour to promote the internalization of environmental costs and the use of economic instruments, taking into account the approach that the polluter should, in principle, bear the cost of pollution, with due regard to the public interest and without distorting international trade and INVESTMENT.", and is mentioned, recalled or otherwise referred to in both Agenda 21 and the World Summit on Sustainable Development (WSSD) Johannesburg Plan of Implementation.

The PPP is today one of the fundamental principles of the environmental policy of European Community. The Treaty Establishing the European Community, under Title XIX Environment, provides at article 174.2 that: "Community policy on the environment shall be based on the precautionary principle and on the principles that preventive action should be taken, that environmental damage should as a priority be rectified at source and that the polluter should pay."

The PPP is widely acknowledged as a general principle of International Environmental Law, and it is explicitly mentioned or implicitly referred to in a number of Multilateral Environmental Agreements.

Application

The PPP is normally implemented through two different policy approaches: command-and-control and market-based. Command-and-control approaches include performance and technology standards. Market-based instruments include pollution taxes, tradable pollution permits and product labelling. The elimination of subsidies is also an important part of the application of the PPP.

At the international level the Kyoto Protocol is an example of application of the PPP: parties that have obligations to reduce their greenhouse gas emissions must bear the costs of reducing (prevention and control) such polluting emissions.

In environmental law, the polluter pays principle is enacted to make the party responsible for producing pollution responsible for paying for the damage done to the natural environment. It is regarded as a regional custom because of the strong support it has received in most Organisation for Economic Co-operation and Development (OECD) and European Community (EC) countries.

The polluter pays principle underpins environmental policy such as an ecotax, which, if enacted by government, deters and essentially reduces greenhouse gas emissions. Some eco-taxes underpinned by the polluter pays principle include: the Gas Guzzler Tax, in US, Corporate Average Fuel Economy (CAFE)- a "polluter pays" fine. The U.S. Superfund law requires polluters to pay for cleanup of hazardous waste sites, when the polluters can be identified.

Polluter pays is also known as extended producer responsibility (EPR). This is a concept that was probably first described by Thomas Lindhqvist for the Swedish government in 1990. EPR seeks to shift the responsibility dealing with waste from governments (and thus, taxpayers and society at large) to the entities producing it. In effect, it internalised the cost of waste disposal into the cost of the product, theoretically meaning that the producers will improve the waste profile of their products, thus decreasing waste and increasing possibilities for reuse and recycling.

Public Trust Doctrine

The public trust doctrine is the principle that certain resources are preserved for public use, and that the government is required to maintain them for the public's reasonable use.

The ancient laws of the Roman Emperor Justinian held that the sea, the shores of the sea, the air and running water was common to everyone. The seashore, later defined as waters affected by the ebb and flow of the tides could not be appropriated for private use and was open to all. This principle became the law in England as well. In the Magna Carta in England centuries later public rights were further strengthened at the insistence of the nobles that fishing weirs which obstructed free navigation be removed from rivers.

These rights were further strengthened by later laws in England and subsequently became part of the common law of the United States as established in *Illinois Central Railroad v. Illinois*, 146 U.S. 387 (1892). In that case the Illinois Legislature had granted an enormous portion of the Chicago harbor to the Illinois Central Railroad. A subsequent legislature sought to revoke the grant, claiming that original grant should not have been permitted in the first place. The court held that common law public trust doctrine prevented the government from alienating the public right to the lands under navigable waters (except in the case of very small portions of land which would have no effect on free access or navigation).

The public trust applies to both waters influenced by the tides and waters that are navigable in fact. The public trust also applies to the natural resources (mineral or animal) contained in the soil and water over those public trust lands.

Basically, the ancient Roman Empire developed this legal theory i.e. Doctrine of the Public Trust. The Public Trust Doctrine primarily rests on the principle that certain resources like air, sea, waters and the forests have such a great importance to the people as a whole that it would be wholly unjustified to make them a subject of private ownership. The said resources being a gift of nature, they should be made freely available to everyone irrespective of the status in life. The doctrine enjoins upon the Government to protect the resources for the enjoyment of the general public rather than to permit their use for private ownership or commercial purposes.

Public trust doctrine serves two purposes: it mandates affirmative state action for effective management of resources and empowers citizens to question ineffective management of natural resources. It is a common law concept, defined and addressed by academics in the United States and the United Kingdom. Various common properties; including rivers, the seashore, and the air, are held by the government in trusteeship for the uninterrupted use of the public. The sovereign could not, therefore, transfer public trust properties to a private party if the grant would interfere with the public interest. The public trust has been widely used and scrutinized in the United States, but its scope is still uncertain. Various have been made to apply this doctrine to protect navigable and non-navigable waters, public land sand parks, and to apply it to both public and private lands and ecological resources. The Supreme Court of California has broadened the definition of public trust by including ecological and aesthetic considerations. Although the public trusts doctrine is not without its fair share of criticism it is being increasingly related to sustainable development, the precautionary principle and bio-diversity protection. The doctrine combines the guarantee of public access to public trust resources with a requirement of public accountability in respect of decision-making regarding such resources. Moreover, not only can it be used to protect the public from poor application of planning law or environmental impact assessment, it also has an intergenerational dimension.

TOPIC: Constitutional Guidelines

Right to Wholesome Environment – Evolution and Application

The Constitution of India came into force on 26th January, 1950. Originally, the constitution contains no specific provisions for environmental protection. However, certain specific provision have been incorporated by the Constitution (Forty Second Amendment) Act, 1976 and subsequent amendments. Indian Constitution is one of the very few constitutions in the world, which provides for specific provision for the protection and improvement of the Environment.

The constitution, being the fundamental law of the land has a binding force on citizens, non – citizens as well as the State. The Fundamental Rights and the Directive Principles of the State Policy underline our national commitment to protect and improve the environment. The courts in India have also given a new interpretation to the constitutional provision relating to protection and improvement of the environment (the intended meaning of the environment in the constitution) may be explained with reference to the following head:

1. The Constitution Forty Second Amendment.
2. Federal System of Govt. (Distribution of Legislative Power).
3. Fundamental Rights.
4. Directive Principles of State Policy; and
5. Fundamental

Constitution Forty Second Amendment: - In 1976, under the leadership of the then Prime Minister, Smt. Indira Gandhi, the Constitution (Forty Second Amendment) Act was passed and the provisions relating to the protection of environment for the first time were incorporated by adding a new provision Article 48-A in the Chapter, Directive Principles of State Policy.

According to Article 48-A “the State shall Endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country”.

Further, a new provision Article 51-A in the form of “Fundamental Duties” was also incorporated by the 42nd Amendment. According to the sub-clause (g) of Art. 51-A, “*it shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures*”. The above two provision impose two-fold responsibilities. On the one hand, it gives directive to the State for protection and improvement of environment, and on the other hand it casts/imposes a duty on every citizen to help in the preservation of natural environment.

Federal System of Government (Distribution of Legislative Power):-

From environmental point of view, allocation of legislative authority is very important. The constitution of India deals exhaustively with legislative powers pertaining to environmental law. The legislative powers under the scheme of the constitution is divided into three lists viz., the Union List or List – I, the State List or List –II, the Concurrent List or List – III. Part – XI (Arts. 245-263) of the constitution provides for the distribution of legislative powers between the union and the states. Article 246 distributes the subjects of legislative power in these three lists between the Centre and the States. The union list contains 97 subjects and the Parliament alone has the power to legislate. The State List contains 66 subjects and the States have power to legislate. However, in respect of Concurrent List, which contains 52 subjects, both the Parliament and the State Legislatures have the power to legislate. There are about 200 Central and State Legislation on environmental protection. The most important environmental legislation, passed by the parliament under Art. 249 of the Constitution are The Water (Prevention and Control of Pollution) Act, 1974; The Air (Prevention and Control of Pollution) Act, 1974; The Air (Prevention and Control of Pollution) Act, 1981; and the Environment (Protection) Act, 1986.

Relevant Provisions – Art. 14, 19 (1) (g), 21, 48-A, 51-A(g)

Fundamental Rights:- Part –III of the Constitution, containing Arts. 12 to 35, deals with fundamental rights. Articles 15(2)(b); Art. 21 and Art. 24 provide for specific provision for environmental protection. Article 15(2)(b):- According to Art. 15(2)(b), “No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them be subjected to any disability, liability, restriction or condition with regard to: the use of wells, bathing ghats, roads and places of public resort, maintained wholly or partly out for state funds or dedicated to the use of general public:.. In simple words, Art. 15(2) prohibits discrimination on the ground of sex, race, religion, caste, place of birth etc. to make use of the public

places the general public. The public places, which are part and parcel of the human environment should be made available to the public. The preamble to our constitution ensures socialistic pattern of the society and decent standard of life, which can be pollution free environment.

Article 21:- According to Article 21 of the constitution, “no person shall be deprived of his life or personal liberty except according to procedure established by law”.

Article 21 is the heart of the fundamental rights and has received expanded meaning from time to time after the decision of the Supreme Court in *Maneka Gandhi vs. Union of India*, (AIR 1978 SC 597). Art. 21 guarantees a fundamental right to life –a life of dignity to be lived in a proper environment, free of danger of disease and infection. The right to live in a healthy environment as part of Art. 21 of the Constitution was first recognized in the case of.

Rural Litigation and Entitlement Kendra vs. State of U.P., AIR 1988 SC 2187 (Popularly known as *Dehradun Quarrying Case*).

It is the first case of this kind in India, involving issues relating to environment and ecological balance. The R.L. & E. Kendra and others in a letter to the Supreme Court complained about the illegal / unauthorized mining in the Missouri, Dehradun belt. As a result, the ecology of the surrounding area was adversely affected and it led to the environmental disorder.

The Supreme Court treated the letter as writ petition under Art. 32 of the Constitution and directed to stop the excavation (illegal mining) under the Environment (Protection) Act, 1986. The respondents contended / argued that the write petition was registered in 1983 and the Environment (Protection) Act was passed in 1986 and hence the criminal proceedings cannot be initiated with retrospective effect. The court rejected the contention of the respondents and held that the provisions of procedural law shall apply to ordinary criminal cases and not to the environmental cases. The court directed the Central and State Governments to take necessary steps to prevent illegal mining and to re-afforestation in the area of mining.

In *M.C. Mehta vs. Union of India*, AIR 1987 SC 1086 (Popularly known as “*Oleum Gas Leak Case*”) – The Supreme Court treated the right to live in pollution free environment as a part of fundamental right to life under Art. 21 of the Constitution. Further the A.P. High Court in *T. Damodar Rao vs. S.O., Municipal Corporation, Hyderabad*, (AIR 1987 A.P. 171) laid down that right to live in healthy environment was specially declared to be part of Art. 21 to the Constitution.

Article 24: Article 24 of the Constitution speaks about exploitation of child labour. It says that “No child below the age of 14 years shall be employed to work in any factory or mine or engaged in any other hazardous employment” this provision is certainly in the interest of public health and part of the environment. Further, Art. 39 (e) and 39 (f) under Directive Principles of State Policy provide for the protection of the health and strength of children below the age of 14 years.

In *People's Union for Democratic Rights vs. Union of India*, (AIR 1982 SC 1473), the Supreme Court held that the prohibition under Art. 24 could be enforced against any one, be it the State or private individual.

In pursuance of this obligation, parliament enacted the Child Labour (prohibition and Regulation) Act, 1986. The Act prohibits specifically the employment of children in certain industries.

Directive Principles of State Policy:- Part IV of the Constitution, Containing Articles 36 to 51, deals with Directive Principles of State Policy. The directive principles form the fundamental feature and are designed to achieve socio economic goals.

Art. 39 (a), which was inserted by the Constitution 94th Amendment Act, 1976 provides for Equal Justice and Free Legal Aid. It promotes justice on the basis of equal opportunities. It imposes an imperative duty upon the State to provide free legal aid to the poor litigant so as to secure him equal protection of laws against his well – to – do opponent.

1. Equal right of men and women to adequate means of livelihood.
2. Distribution of ownership and control of the material resources community to the common good.
3. To ensure that the economic system should not result in concentration of wealth and means of production to the common detriment.
4. Equal pay for equal work for both men and women.
5. To protect health and strength of workers and tender age of children and to ensure that they are not forced by economic necessity to entire avocations unsuited to their age or strength; and
6. 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.

Article 39(b):- The expression ‘material source’ under Art. 39 (b) means all things, which are capable producing wealth for the community. It includes those, which are already vested in the State but also in

the hands of private individuals. Further, the expression 'distribution' in Art. 39 (b) does not mean that one's property is taken over and is distributed to others. It also includes nationalization which is an effective means to prevent concentration of wealth in a few hands so as to benefit the society at large.

Article 39(1):- Art. 39(1) was amended by the Constitution (42nd Amendment) Act, 1976 with a view to emphasize the constructive role of the State with regard to children.

Article 47:- Art. 47 provides that the State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties. The improvement of public health also includes the protection and improvement of environment without which public health cannot be assured.

Article 48:- It deals with organization of agriculture and animal husbandry. Art. 48 directs the State to take steps to organize agriculture and animal husbandry on modern and scientific lines. In particular, it should take steps for preserving and improving the breeds and prohibiting the slaughter of cows and calves and other milch and draught cattle.

Article 49:-It deals with protection of monuments and places and objects of national importance. Art. 49 requires the State to protect c-very 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.

5. Fundamental Duties (51-A):- Art. 51-A was added under the Constitution (42nd Amendment) Act. 1976, which deals with 'Fundamental Duties' under Part IV-A. Art. 51 -A enlists ten fundamental duties designed for restructuring and building a welfare society 'State

Art. 51 -A(g) specifically deals with the fundamental duty with respect to environment. It provides "it shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wild life and to have compassion for living creatures. (To put it simply Art. 51-A(g) refers to the fundamental duty of every citizen to protect and improve 'natural environment'.

Environment Protection through Public Interest Litigation

The Indian judiciary adopted the technique of public interest litigation for the cause of environmental protection in many cases. The Supreme Court & High Courts shaded the inhibitions against refusing strangers to present the petitions on behalf of poor and ignorant individuals. The basic ideology behind adopting PIL is that access to justice ought not to be denied to the needy for the lack of knowledge or finances In PIL a public spirited individual or organization can maintain petition on behalf of poor & ignorant individuals.

In the area of environmental protection, PIL has proved to be an effective tool. In *Rural Litigation and Entitlement Kendra vs. State of U.P.* (1) the Supreme Court prohibited continuance of mining operations terming it to be adversely affecting the environment.

In **Indian Council for Enviro-Legal Action vs. Union of India** (2), the Supreme Court cautioned the industries discharging inherently dangerous Oleum and H acid. The court held that such type of pollution infringes right to wholesome environment and ultimately right to life.

In another case *M.C. Mehta vs. Union of India* (3) the Supreme Court held that air pollution in Delhi caused by vehicular emissions violates right to life under Art. 21 and directed all commercial vehicles operating in Delhi to switch to CNG fuel mode for safeguarding health of the people.

In *Church of God (Full Gospel) in India vs. KKR Majestic Colony Welfare Association* (4) the Supreme Court observed that noise pollution amounts to violation of Art.21 of the Constitution.

In landmark case **Vellore Citizens' Welfare Forum vs. Union of India** (5) the Supreme Court allowed standing to a public spirited social organization for protecting the health of residents of Vellore. In this case the tanneries situated around river Palar in Vellore (T.N.) were found discharging toxic chemicals in the river, thereby jeopardising the health of the residents. The Court asked the tanneries to close their business.

The matter must require a legal remedy and be of public interest, which means it must:

- a) Affect a significant number of people not just the individual or;
- b) raise matters of broad public concern or;
- c) impact on disadvantaged or marginalized group, and
- d) it must be a legal matter which requires addressing *pro bono publico* ('for the common good')

In Tanzania, in *Mtikila-Vs-Attorney General* [H.C.C.S No. 5 of 1993] the judge observed that:

"It is not the type of litigation which is meant to satisfy the curiosity of the people, but it is a litigation which is instituted with a desire that the Court would be able to give effective relief to the whole or a section of the society...the condition which must be fulfilled before public interest litigation is entertained

by the Court is that the court should be in a position to give effective and complete relief. If no effective relief can be granted, the court should not entertain public interest litigation.”

An action can be brought for public interest litigation under the following:

1. Environmental degradation
2. Violation of basic human rights of the poor
3. Content or conduct of government policy
4. Compel municipal authorities to perform a public duty
5. Violation of religious rights or other basic fundamental rights.

Public interest litigation has been used as an effective tool to control acts of environmental degradation. In Uganda for example, civil societies have been active in compelling government and private organizations to observe measures to protect the environment. In *TEAN Vs Ag and NEMA* [Misc. Application No. 39 of 2001], court forced a tobacco company to increase the size of the cigarette warning on cigarette packs and advertisements; the court also held that public smoking pollutes the environment and is a danger to the health of non smokers. In India smoking was held to be a violation of the right to life of non-smokers in *Ramakrishnan and others Vs State of Kerala* [AIR 1999 Kerala 385], while in *Enviro-Legal Action Vs Union of India* [1996] 2 LRC 226, the Indian supreme court held that uncontrolled pollution of water sources and air by industrial wastes was a threat to right to life.

What is common with all the above court actions was that they were brought by individuals against a violation or a threat of environmental destruction. This has made public interest litigation part of and partial to environmental protection.

Importance

Public interest litigation is important because of several factors. Important among these are:

- In most developing countries, the legal regime of environmental laws is weak and the laws are difficult to enforce and sometimes ambiguous. Public interest litigation has helped bridge this gap.
- Public interest litigation is important where the government is not willing to promote/protect the environment. The government may not be willing to prosecute those who violate environmental laws and at times the government is a violator of environmental laws. In some jurisdictions an injunction can be brought to compel or stop the government from degrading the environment.

- In most developing countries governments lack resources to prosecute and investigate all the criminal cases that take place within its jurisdiction. Public interest litigation enables individuals to bring action on behalf of the community, a role the government may not play.
- Where criminal remedies are not enough, e.g. a fine may be too small compared to the amount of environmental degradation. A civil suit is well suited for orders such as restitution and compensation which may not be provided for by criminal laws of a country.
- Where criminal remedies are not enforceable, e.g. where a crime is committed by a company and yet the punishment for the crime is imprisonment, it becomes hard to punish the company.

Litigation on behalf of the public can be brought as a tort under negligence, nuisance and the rule of strict liability in *Rylands Vs Fletcher*.

Topic: law of torts

In recent years, one of the most salient aspects of environmentalism has been the environmental justice movement and its complaints of discrimination against the poor and racial minorities in the administration and enforcement of the nation's environmental laws. One of the most severe criticisms has been the claim that environmental laws were not merely doing too little for the poor and people of colour but that they were in fact the cause of some of the racism and injustice. Given this background, the question arises "what could have been" if the environmental regulatory revolution had not happened – if Congress had not enacted the major environmental statutes of the 1970s and if President Nixon had not created the Environmental Protection Agency (EPA). In particular and most relevant to the focus of this symposium on tort law and environmental protection is the question: How might environmental justice activists have fared within the confines of tort law? This essay is premised on a counterfactual world in which tort law principles govern pollution and environmental protection concerns rather than the existing environmental laws. The discussion focuses specifically on the effects of federal pesticide laws, the problem of causation in toxic torts and other environmental harms, and the problem of dignitary harms.

A **tort**, in common law jurisdictions, is a civil wrong that unfairly causes someone else to suffer loss or harm resulting in legal liability for the person who commits the tortious act, called a *tortfeasor*. Although crimes may be torts, the cause of legal action is not necessarily a crime, as the harm may be due to negligence which does not amount to criminal negligence. The victim of the harm can recover their loss as damages in a lawsuit. In order to prevail, the plaintiff in the lawsuit must show that the actions or

lack of action was the legally recognizable cause of the harm. The equivalent of tort in civil law jurisdictions is delict.

Legal injuries are not limited to physical injuries and may include emotional, economic, or reputational injuries as well as violations of privacy, property, or constitutional rights. Torts comprise such varied topics as auto accidents, false imprisonment, defamation, product liability, copyright infringement, and environmental pollution (toxic torts). While many torts are the result of negligence, tort law also recognizes intentional torts, where a person has intentionally acted in a way that harms another, and in a few cases (particularly for product liability in the United States) "strict liability" which allows recovery without the need to demonstrate negligence.

Tort law is different from criminal law in that:

- (1) torts may result from negligent but not intentional or criminal actions and
- (2) tort lawsuits have a lower burden of proof such as preponderance of evidence rather than beyond a reasonable doubt. Sometimes a plaintiff may prevail in a tort case even if the person who caused the harm was acquitted in an earlier criminal trial. For example, O.J. Simpson was acquitted in criminal court and later found liable for the tort of wrongful death.

Topic: Law of crimes

The endorsement of criminal liability on corporation is the twentieth century phenomena, as we can see that in the modern world corporation has affected the lives of people in the positive and as well as in the negative ways because individuals owe a duty to the corporations not to harm or injure others in society without justification, so do companies owe a duty not to poison our water and food, not to pollute our rivers, beaches and air, not to allow their workplaces to endanger the lives and safety of their employees and the public, and not to sell commodities, or provide transport, that will kill or injure people. Imposing adequate controls over multinational conduct and achieving accountability by multinationals for their conduct both at home and abroad should be a major objective of every industrialized power. In the criminal law, corporate liability determines the extent to which a corporation as a fictitious person can be liable for the acts and omissions of the natural persons it employs. In India many disasters were done by the corporations: For Instance -Uphar Cinema Tragedy or thousands of scandals and white collar crimes that needed immediate concern. But despite the so many

disasters the law was unwilling to impose criminal liability upon the corporations and this is because of two reasons:

1. That the corporations cannot have the mens rea or guilty mind to commit an offence, and
2. The corporations cannot be imprisoned.

In India the provision of corporate criminal liability was emerged in the very famous Bhopal gas tragedy and directions were issued in this.

The Indian Constitution provides necessary directives and powers for framing and enforcing environmental legislation. The Ministry of Environment and Forests (MoEF), the Central Pollution Control Board (CPCB) and State Pollution Control Boards (SPCBs) form the regulatory and administrative core.

Administrative Issues The powers of the Environment (Protection) Act have been exercised by the Central Government through the Ministry of Environment and Forests (MoEF). However, the monitoring mechanism for implementation of the Act is still undefined, although for the various regulations enforcement institutions have been enlisted. Also in several areas of environmental concern, such as vehicular-pollution control, the MoEF has no decisive role, since it is implemented by a separate Ministry through the Motor Vehicles Act. In general, environmental issues are on the concurrent list which means that they are included in jurisdiction of both Central and State Governments. The local bodies, in turn, have certain responsibilities. Central Government gives the policy guidelines, but the implementation of environmental laws and regulations is a state responsibility. Every state and union territory has a Department of Environment. States also have the State Pollution Control Board (SPCB) whose activities are coordinated by the CPCB. The SPCB can be seen as an executing agency of the Department of Environment – together they manage the implementation of environmental laws on a state level. Apart from coordinating the activities of SPCBs the CPCB is advising the Central Government in all the matters related to protection of environment. As it is stated in the Constitution of India, it is the duty of the state (Article 48 A) to 'protect and improve the environment and to safeguard the forests and wildlife of

the country'. The major instrument with the State to check environmental degradation is undoubtedly regulation. The country has adopted almost all environmental protection Acts and rules enforced in developed countries. The government has formulated comprehensive legislation to enable the institutions like pollution control boards to effectively protect the environment. There are around 30 acts and rules related to environment.

Environmental Legislations

- The Water (Prevention and Control of Pollution) Act, 1974
- Air (Prevention and Control of Pollution) Act, 1981
- Protection of Forests and Wild Life
- The Wild Life (Protection) Act, 1972
- The Environmental (Protection) Act, 1986
- Public Liability Insurance Act, 1991
- The National Environment Tribunal Act, 1995
- The National Appellate Environmental Authority Act, 1997

UNIT II

Prevention and Control of Water and Air Pollution

Topic: The Water (Prevention and Control of Pollution) Act, 1974

Water Pollution - Definition

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

Central and State Pollution Control Boards – Constitution, Powers and Functions

Chapter II of The Water (Prevention and Control of Pollution) Act, 1974 deals with the Central and State Pollution Control Boards – Constitution, Powers and Functions

Constitution of Central Board

(1) The Central Government shall, with effect from such date (being a date not later than six months of the commencement of this Act in the States of Assam, Bihar, Gujarat, Haryana, Himachal Pradesh, Jammu and Kashmir, Karnataka, Kerala, Madhya Pradesh, Rajasthan, Tripura and West Bengal and in the Union Territories) as it may, by notification in the Official Gazette, appoint, constitute a Central Board to be called the Central Pollution Control Board to exercise the powers conferred on and perform the functions assigned to that Board under this Act.

(2) The Central Board shall consist of the following members, namely,-

(a) a full-time Chairman, being a person having special knowledge or practical experience in respect of matters relating to environmental protection or a person having knowledge and experience in

administering institutions dealing with the matters aforesaid, to be nominated by the Central Government;

(b) such number of officials, not exceeding five], to be nominated by the Central Government to represent that government;

(c) such number of persons, not exceeding five to be nominated by the Central Government, from amongst the members of the State Boards, of whom not exceeding two shall be from those referred to in clause (c) of sub-section (2) of section 4;

(d) such number of non-officials, not exceeding three, to be nominated by the Central Government, to represent the interests of agriculture, fishery or industry or trade or any other interest which, in the opinion of the Central Government, ought to be represented;

(e) two persons to represent the companies or corporations owned, controlled or managed by the Central Government, to be nominated by that government;

(f) a full-time member-secretary, possessing qualifications, knowledge and experience of scientific, engineering or management aspects of pollution control, to be appointed by the Central Government.

(3) The Central Board shall be a body corporate with the name aforesaid having perpetual succession and a common seal with power, subject to the provisions of this Act, to acquire, hold and dispose of property and to contract, and may, by the aforesaid name, sue or be sued.

Constitution of State Boards

(1) The State Government shall, with effect from such date as it may, by notification in the Official Gazette, appoint, constitute a 10[State Pollution Control Board, under such name as may be specified in the notification, to exercise the powers conferred on and perform the functions assigned to that Board under this Act.

(2) A State Board shall consist of the following members, namely,-

(a) A Chairman, being, a person having special knowledge or practical experience in respect of 5[matters relating to environmental protection] or a person having knowledge and experience in administering institutions dealing with the matters aforesaid, to be nominated by the State Government.

(b) such number of officials, not exceeding five to be nominated by the State

Government to represent that government;

(c) such number of persons, not exceeding five, to be nominated by the State Government from amongst the members of the local authorities functioning within the State;

(d) such number of non-officials, not exceeding three to be nominated by the State Government to represent the interests of agriculture, fishery or industry or trade or any other interest which, in the opinion of the State Government, ought to be represented;

(e) two persons to represent the companies or corporations owned, controlled or managed by the State Government, to be nominated by that government;

(f) a full-time member-secretary, possessing qualifications, knowledge and experience of scientific, engineering or management aspects of pollution control, to be appointed by the State Government.

(3) Every State Board shall be a body corporate with the name specified by the State Government in the notification under sub-section (1), having perpetual succession and a common seal with power, subject to the provisions of this Act, to acquire hold and dispose of property and to contract, and may, by the said name, sue or be sued.

(4) Notwithstanding anything contained in this section, no State Board shall be constituted for a Union Territory and in relation to a Union Territory, the Central Board shall exercise the powers and perform the functions of a State Board for that Union Territory

Powers And Functions

(1) Save as otherwise provided by or under this Act, a member of a Board, other than a member-secretary, shall hold office for a term of three years from the date of his nomination:

(2) The Central Government or, as the case may be, the State Government may, if it thinks fit, remove any member of a Board before the expiry of his term of office, after giving him a reasonable opportunity of showing cause against the same.

(3) A member of a Board, other than the member-secretary, may at any time resign his office by writing under his hand addressed- (a) in the case of the Chairman, to the Central Government or, as the case may be, the State Government; and (b) in any other case, to the Chairman of the Board; and the seat of the Chairman or such other member shall thereupon become vacant.

(4) A member of a Board, other than the member-secretary, shall be deemed to have vacated his seat if he is absent without reason, sufficient in the opinion of the Board, from three consecutive meetings of the Board, 5[or where he is nominated under clause (c) or clause (e) of sub-section (2) of section 3 or under clause (c) or clause (e) of sub-section (2) of section 4, if he ceases to be a member of the State Board or of the local authority or, as the case may be, of the company or corporation owned, controlled or managed by the Central Government or the State Government and such vacation of seat shall, in either case, take effect from such date as the Central Government or, as the case may be, the State Government may, by notification in the Official Gazette, specify.

(5) A casual vacancy in a Board shall be filled by a fresh nomination and the person nominated to fill the vacancy shall hold office only for the remainder of the term for which the member in whose place he was nominated.

(6) Meetings of Boards: A Board shall meet at least once in every three months and shall observe such rules of procedure in regard to the transaction of business at its meetings as may be prescribed:

(7) A Board may constitute as many committees consisting wholly of members or wholly of other persons or partly of members and partly of other persons, and for such purpose or purposes as it may think fit.

(8) Delegation of powers to Chairman: The Chairman of a Board shall exercise such powers and perform such duties as may be prescribed or as may, from time to time, be delegated to him by the Board.

Sections 16 and 17 deal with the powers and functions of the Central Board.

16. Functions of Central Board

- (1) Subject to the provisions of this Act, the main function of the Central Board shall be to promote cleanliness of streams and wells in different areas of the States.*
- (2) In particular and without prejudice to the generality of the foregoing function, the Central Board may perform all or any of the following functions, namely,-*
- (a) advise the Central Government on any matter concerning the prevention and control of water pollution;*
 - (b) co-ordinate the activities of the State Boards and resolve disputes among them;*
 - (c) provide technical assistance and guidance to the State Boards, carry out and sponsor investigations and research relating to problems of water pollution and prevention, control or abatement of water pollution;*
 - (d) plan and organise the training of persons engaged or to be engaged in programmes for the prevention, control or abatement of water pollution on such terms and conditions as the Central Board may specify;*
 - (e) organise through mass media a comprehensive programme regarding the prevention and control of water pollution;*

15[(ee) perform such of the functions of any State Board as may be specified in an order made under sub-section (2) of section 18;]

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- (f) collect, compile and publish technical and statistical data relating to water pollution and the measures devised for its effective prevention and control and prepare manuals, codes or guides relating to treatment and disposal of sewage and trade effluents and disseminate information connected therewith;*
- (g) lay down, modify or annul, in consultation with the State Government concerned, the standards for a stream or well:*
PROVIDED that different standards may be laid down for the same stream or well or for different streams or wells, having regard to the quality of water, flow characteristics of the stream or well and the nature of the use of the water in such stream or well or streams or wells;
- (h) plan and cause to be executed a nation-wide programme for the prevention,*

control or abatement of water pollution;

(i) perform such other functions as may be prescribed.

(3) The Board may establish or recognise a laboratory or laboratories to enable the Board to perform its functions under this section efficiently, including the analysis of samples of water from any stream or well or of samples of any sewage or trade effluents.

17. Functions of State Board

(1) Subject to the provisions of this Act, the functions of a State Board shall be-

(a) to plan a comprehensive programme for the prevention, control or abatement of pollution of streams and wells in the State and to secure the execution thereof;

(b) to advise the State Government on any matter concerning the prevention, control or abatement of water pollution;

(c) to collect and disseminate information relating to water pollution and the prevention, control or abatement thereof;

(d) to encourage, conduct and participate in investigations and research relating to problems of water pollution and prevention, control or abatement of water pollution;

(e) to collaborate with the Central Board in organising the training of persons engaged or to be engaged in programmes relating to prevention, control or abatement of water pollution and to organise mass education programmes relating thereto;

(f) to inspect sewage or trade effluents, works and plants for the treatment of sewage and trade effluents and to review plans, specifications or other data relating to plants set up for the treatment of water, works for the purification thereof and the system for the disposal of sewage or trade effluents or in connection with the grant of any consent as required by this Act;

(g) to lay down, modify or annul effluent standards for the sewage and trade effluents and for the quality of receiving waters (not being water in an inter-State stream) resulting from the discharge of effluents and to classify waters of the State;

(h) to evolve economical and reliable methods of treatment of sewage and trade effluents, having regard to the peculiar conditions of soils, climate and water resources of different regions and more especially the prevailing flow characteristics of water in streams and wells which render it impossible to attain even the minimum degree of dilution;

(i) to evolve methods of utilisation of sewage and suitable trade effluents in

agriculture;

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(j) to evolve efficient methods of disposal of sewage and trade effluents on land, as are necessary on account of the predominant conditions of scant stream flows that do not provide for major part of the year the minimum degree of dilution;

(k) to lay down standards of treatment of sewage and trade effluents to be discharged into any particular stream taking into account the minimum fair weather dilution available in that stream and the tolerance limits of pollution permissible in the water of the stream, after the discharge of such effluents;

(l) to make, vary or revoke any order-

(i) for the prevention, control or abatement of discharges of waste into streams or wells;

(ii) requiring any person concerned to construct new systems for the disposal of sewage and trade effluents or to modify, alter or extend any such existing system or to adopt such remedial measures as are necessary to prevent, control or abate water pollution;

(m) to lay down effluent standards to be complied with by persons while causing discharge of sewage or sullage or both and to lay down, modify or annul effluent standards for the sewage and trade effluents;

(n) to advise the State Government with respect to the location of any industry the carrying on of which is likely to pollute a stream or well;

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

(2) The Board may establish or recognise a laboratory or laboratories to enable the Board to perform its functions under this section efficiently, including the analysis of samples of water from any stream or well or of samples of any sewage or trade effluents.

Water Pollution Control Areas

The State Government, after consultation with, or on the recommendation of the State Board, is of opinion that the provisions of this Act need not apply to entire State, it may, by notification in the Official Gazette, restrict the application of this Act to such area or areas as may be declared therein as water pollution, prevention and control area or areas and thereupon the provisions of this Act shall apply only to such area or areas.

Each water pollution, prevention and control area may be declared either by reference to a map or by reference to the line of any watershed or the boundary of any district or partly by one method and partly by another. The State Government may, by notification in the Official Gazette- alter any water pollution, prevention and control area whether by way of extension or reduction; or define a new water pollution, prevention and control area in which may be merged one or more water pollution, prevention and control areas, or any part or parts thereof.

Sample of effluents – Procedure; Restraint order

A State Board or any officer empowered by it in this behalf shall have power to take for the purpose of analysis samples of water from any stream or well or samples of any sewage or trade effluent which is passing from any plant or vessel or from or over any place into any such stream or well.

Section 21 of the Act deals with it. The result of any analysis of a sample of any sewage or trade effluent taken under sub-section (1) shall not be admissible in evidence in any legal proceeding unless the provisions of sub-sections (3), (4) and (5) are complied with. Subject to the provisions of sub-sections (4) and (5), when a sample (composite or otherwise as may be warranted by the process used) of any sewage or trade effluent is taken for analysis under sub-section (1), the person taking the sample shall-

- (a) serve on the person in charge of, or having control over, the plant or vessel or in occupation of the place (which person is hereinafter referred to as the occupier) or any agent of such occupier, a notice, then and there in such form as may be prescribed of his intention to have it so analysed;
- (b) in the presence of the occupier or his agent, divide the sample into two parts;
- (c) cause each Part to be placed in a container which shall be marked and sealed and shall also be signed both by the person taking the sample and the occupier or his agent;
- (d) on the request of the occupier or his agent, send the second container-

When a sample of any sewage or trade effluent is taken for analysis and the person taking the sample serves on the occupier or his agent a notice under clause (a) of sub-section (3) and the occupier or his agent who is present at the time of taking the sample does not make a request for dividing the sample into two parts as provided in clause (b) of sub-section (3), then, the sample so taken shall be placed in a container which shall be marked and sealed and shall also be signed by the person taking the sample and

the same shall be sent forthwith by such person for analysis to the laboratory referred to in sub-clause (i) or sub-clause (ii), as the case may be, of clause (d) of sub-section (3).

Consent requirement – Procedure, Grant/Refusal, Withdrawal

Provision regarding existing discharge of sewage or trade effluent

Where immediately before the commencement of this Act any person was discharging any sewage or trade effluent into a stream or well or sewer or on land, the provisions of section 25 shall, so far as may be, apply in relation to such person as they apply in relation to the person referred to in that section subject to the modification that the application for consent to be made under sub-section (2) of that section shall be made on or before such date as may be specified by the State Government by notification in this behalf in the Official Gazette.

Refusal or withdrawal of consent by State Board

A State Board shall not grant its consent under sub-section (4) of section 25 for the establishment of any industry, operation or process, or treatment and disposal system or extension or addition thereto, or to the bringing into use of a new or altered outlet unless the industry, operation or process, or treatment and disposal system or extension or addition thereto, or the outlet is so established as to comply with any conditions imposed by the Board to enable it to exercise its right to take samples of the effluent.

Citizen Suit Provision

Any person aggrieved by an order made by the State Board under section 25, section 26 or section 27 may, within thirty days from the date on which the order is communicated to him, prefer an appeal to such authority (hereinafter referred to as the Appellate Authority) as the State Government may think fit to constitute: PROVIDED that the Appellate Authority may entertain the appeal after the expiry of the aforesaid period of thirty days if such authority is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time. An Appellate Authority shall consist of a single person or three persons as the State Government may think fit, to be appointed by that government.

The form and manner in which an appeal may be preferred under sub-section (1), the fees payable for such appeal and the procedure to be followed by the Appellate Authority shall be such as may be prescribed.

On receipt of an appeal preferred under sub-section (1), the Appellate Authority shall, after giving the appellant and the State Board an opportunity of being heard, dispose of the appeal as expeditiously as possible.

If the Appellate Authority determines that any condition imposed, or the variation of any condition, as the case may be, was unreasonable, then-(a) where the appeal is in respect of the unreasonableness of any condition imposed, such authority may direct either that the condition shall be treated as annulled or that there shall be substituted for it such condition as appears to it to be reasonable;

(b) where the appeal is in respect of the unreasonableness of any variation of a condition, such authority may direct either that the condition shall be treated as continuing in force unvaried or that it shall be varied in such manner as appears to it to be reasonable.

Topic: Air (Prevention and Control of Pollution) Act, 1981

Air Pollution – Definition

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

Central and State Pollution Control Boards – Constitution, Powers and functions

The Central Board for the Prevention and Control of Water Pollution constituted under section 3 of the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974), shall, without prejudice to the exercise and performance of its powers and functions under this Act, exercise the powers and perform the functions of the Central Board for the Prevention and Control of Air Pollution under this Act.

In any State in which the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974), is in force and the State Government has constituted for that State a State Board for the Prevention and Control of Water Pollution under section 4 of that Act, such State Board shall be deemed to be the State Board for

the Prevention and Control of air Pollution constituted under section 5 of this Act and accordingly that State Board for the Prevention and Control of Water Pollution shall, without prejudice to the exercise and performance of its powers and functions under that Act, exercise the powers and perform the functions of the State Board for the Prevention and Control of Air Pollution under this Act.

Constitution of State Boards.

In any State in which the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974), is not in force, or that Act is in force but the State Government has not constituted a State Board for the Prevention and Control of Water Pollution under that Act, the State Government shall, with effect from such date as it may, by notification in the Official Gazette, appoint, constitute a State Board for the Prevention and Control of Air Pollution under such name as may be specified in the notification, to exercise the powers conferred on, and perform the functions assigned to, that Board under this Act.

A State Board constituted under this Act shall consist of the following members, namely:-

(a) A Chairman, being a person, having a person having special knowledge or practical experience in respect of matters relating to environmental protection, to be nominated by the State Government:

Provided that the Chairman be either whole-time or part-time as the State Government may think fit;

(b) Such number of officials, not exceeding five, as the State Government may think fit, to be nominated by the State Government to represent that government;

(c) Such number of persons, not exceeding five, as the State Government may think fit, to be nominated by the State Government from amongst the members of the local authorities functioning within the State;

(d) Such number of non-officials, not exceeding three, as the State Government may think fit, to be nominated by the State Government to represent the interest of agriculture, fishery or industry or trade or labour or any other interest, which in the opinion of that government, ought to be represented;

(e) Two persons to represent the companies or corporations owned, controlled or managed by the State Government, to be nominated by that Government;

(f) A full-time member-secretary having such qualifications knowledge and experience of scientific, engineering or management aspects of pollution control as may be prescribed, to be appointed by the State Governments Provided that the State Government shall ensure that not less than two of the members are persons having special knowledge or practical experience in, respect of matters relating to the improvement of the quality of air or the prevention, control or abatement of air pollution.

Every State Board constituted under this Act shall be a body corporate with the name specified by the State Government in the notification issued under section 5(1), having perpetual succession and a common seal *on* with power, subject to the provisions of this Act, to acquire and dispose of property and to contract, and may by the said name sue or be sued.

Functions of Central Board.

(1) The main functions of the Central Board shall be to improve the quality of air and to prevent, control or abate air pollution in the country.

(2) In particular and without prejudice to the generality of the foregoing functions, the Central Board may-

(a) Advise the Central Government on any matter concerning the improvement of the quality of air and the prevention, control or abatement of air pollution;

(b) Plan and cause to be executed a nation-wide programme for the prevention, control or abatement of air pollution;

(c) To co-ordinate the activities of the State and resolve disputes among them;

(d) To provide technical assistance and guidance to the State Boards, carry out and sponsor investigations and research relating to problems of air pollution and prevention, control or abatement of air pollution;

And to perform such of the function of any State Board as may, be specified in and order made under sub-section (2) of section 18

(e) To plan and organise the training of persons engaged or to be engaged in programmes for the prevention, control or abatement of air pollution on such terms and conditions as the Central Board may specify;

(f) To organise through mass media a comprehensive programme regarding the prevention, control or abatement of air pollution;

(g) To collect, compile and publish technical and statistical data relating to air pollution and the measures devised for its effective prevention, control or abatement and prepare manuals, codes or guides relating to prevention, control or abatement of air pollution;

(h) To lay down standards for the quality of air.,

(i) To collect and disseminate information in respect of matters relating to air pollution;

(j) To perform such other functions as may be prescribed.

(3) The Central Board may establish or recognise a laboratory or laboratories to enable the Central Board to perform its functions under this section efficiently.

(4) The Central Board may-

(a) To delegate any of its functions under this Act generally or specially to any of the committees appointed by it;

(b) To do such other things and perform such other acts as it may think necessary for the proper discharge of its functions and generally for the purpose of carrying into effect the purposes Of this Act.

Functions of State Boards.

The functions of a State Board shall be-

(a) To plan a comprehensive programme for the prevention, control or abatement of air pollution and to secure the execution thereof-,

(b) To advise the State Government on any matter concerning the prevention, control or abatement of air pollution;

(c) To collect and disseminate information relating to air pollution;

(d) To collaborate with the Central Board in organising the training of persons engaged or to be engaged in programmes relating to prevention, control or abatement of air pollution and to organise mass-education programme relating thereto;

(e) To inspect, at all reasonable times, any control equipment, industrial plant or manufacturing process and to give, by order, such directions to such persons as it may consider necessary to take steps for the prevention, control or abatement of air pollution;

(f) To inspect air pollution control areas at such intervals as it may think necessary, assess the quality of air therein and take steps for the prevention, control or abatement of air pollution in such areas;

(g) To lay down, in consultation with the Central Board and having regard to the standards for the quality of air laid down by the Central Board, standards for emission of air pollutants into the atmosphere from industrial plants and automobiles or for the discharge of any air pollutant into the atmosphere from any other source whatsoever not being a ship or an aircraft: Provided that different standards for emission may be laid down under this clause for different industrial plants having regard to the quantity and composition of emission of air pollutants into the atmosphere from such industrial plants;

(h) To advise the State Government with respect to the suitability of any premises or location for carrying on any industry which is likely to cause air pollution;

- (i) To perform such other functions as may be prescribed or as may, from time to time, be entrusted to it by the Central Board or the State Government;
- (j) To do such other things and to perform such other acts as it may think necessary for the proper discharge of its functions and generally for the purpose of carrying into effect the purposes of this Act.

Consent Requirement – Procedure, Grant/Refusal, Withdrawal

Failure to comply with the provisions of section 21 or section 22 or with the directions issued under section 31A.

(1) whoever fails to comply with the provisions of section 21 or section 22 or directions issued under section 31 A, shall, in respect of each such failure, be punishable with imprisonment for a terms which shall not be less than one year and six months but which may extend to six years and with fine, and in case the failure continues, with an additional fine which may extend to five thousand rupees for every day during which such failure continues after the conviction for the first such failure.

(2) If the failure 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 shall not be less than two years but which may extend to seven years and with fine.

Section 31 deals with the *Penalties for certain acts.*

Whoever-

- (a) destroys, pulls down, removes, injures or defaces any pillar, post or stake fixed in the ground or any notice or other matter put up, inscribed or placed, by or under the authority of the Board, or*
- (b) obstructs any person acting under the orders or directions of the Board from exercising his powers and performing his functions under this Act, or*
- (c) damages any works or property belonging to the Board, or*
- (d) fails to furnish to the Board or any officer or other employee of the Board any information required by the Board or such officer or other employee for the purpose of this Act, or*
- (e) fails to intimate the occurrence of the emission of air pollutants into the atmosphere in excess of the standards laid down by the State Board or the apprehension of such occurrence, to the State Board and other prescribed authorities or agencies as required under sub-section (1) of section 23, or*
- (f) in giving any information which he is required to give under this Act, makes a statement which is false in any material particular, or*

(g) for the purpose of obtaining any consent under section 21, makes a statement which is false in any material particular shall be punishable with imprisonment for a term which may extend to three months or with fine which may extend to 29ten thousand rupees or with both.

Air Pollution Control Areas

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

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

- (a) alter any air pollution control area whether by way of extension or reduction ;
- (b) declare a new air pollution control area in which may be merged one or more existing air pollution control areas or any part or parts thereof.

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

The State Government may, after consultation with the Sate Board, by notification in the Official Gazette, direct that with effect fr6m such date as may be specified therein, no appliance, other than an approved appliance, shall be used in the premises situated in an air pollution control area : Provided that different dates may be specified for different parts of an air pollution control area or for the use of different appliances.

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

Power to give instructions for ensuring standards for emission from automobiles.

With a view to ensuring that the standards for emission of air pollutants from automobiles laid down by the State Board under clause (g) of subsection (1) of section 17 are complied with, the State Government shall, in consultation with the State Board, give such instructions as may be deemed necessary to the concerned authority in charge of registration of motor vehicles under the Motor Vehicles Act, 1939 (Act 4 of 1939), and such authority shall, notwithstanding anything contained in that Act or the rules made thereunder be bound to comply with such instructions.

Sample of effluents – Procedure; Restraint order

Power to take samples of air or emission and procedure to be followed in connection therewith.

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

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

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

- (a) serve on the occupier or his agent, a notice, then and there, in such form as may be prescribed, of his intention to have it so analysed;
- (b) in the presence of the occupier or his agent, collect a sample of emission for analysis;
- (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;
- (d) send, without delay, the container to the laboratory established or recognised by the State Board under section 17 or, if a request in that behalf is made by the occupier or his agent when the notice is served on him under clause (a), to the laboratory established or specified under sub-section (1) of section 28.

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

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

Citizen Suit Provision

- (1) Any person aggrieved by an order made by the State Board under this Act may, within thirty day from the date on which the order is communicated to him, prefer an appeal to such authority (hereinafter referred to as the Appellate Authority) as the State government may think fit to constitute. Provided that the Appellate Authority may entertain the appeal after tile expiry of the said period of thirty days if such authority is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.
- (2). The Appellate Authority shall consist of a single person or three persons as the State Government may think fit to be appoint by the State Government.
- (3) The form and the manner in which an appeal may be preferred under subsection (1), the fees payable for such appeal and the procedure to be followed by the Appellate Authority shall be such as may be prescribed.
- (4) On receipt of an appeal preferred under sub-section (1), the Appellate Authority shall, after giving the appellant and the State Board an opportunity of being heard, dispose of the appeal as expeditiously as possible.

Notwithstanding anything contained in any other law, im. subject to the provisions of this Act, and to any directions that the Central Government may give in this behalf, a Board may, in the exercise of its powers and performance of its functions under this Act, issue any directions in writing to any person, officer or authority, and such person, officer or authority shall be bound to comply with such directions.

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

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

UNIT – III

Protection of Forests and Wild Life

Topic: Indian Forest Act, 1927

Kinds of forest – Private, Reserved, Protected and Village Forests

The Indian Forest Act, 1927 was largely based on previous Indian Forest Acts implemented under the British. The most famous one was the Indian Forest Act of 1878. Both the 1878 act and the 1927 one sought to consolidate and reserve the areas having forest cover, or significant wildlife, to regulate movement and transit of forest produce, and duty leviable on timber and other forest produce. It also defines the procedure to be followed for declaring an area to be a Reserved Forest, a Protected Forest or a Village Forest. It defines what is a forest offence, what are the acts prohibited inside a Reserved Forest, and penalties leviable on violation of the provisions of the Act.

Reserved Forest is an area mass of land duly notified under the provisions of India Forest Act or the State Forest Acts having full degree of protection. In Reserved Forests all activities are prohibited unless permitted. Reserved Forest is notified under section 20 of the Indian Forest Act, 1927 [Act 16 of 1927] or under the reservation provisions of the Forest acts of the State Governments of the Indian Union. The manner in which a Reserved Forest, shortly written as RF, has to be constituted is described in section 3 to 20 of the Act. It is within power of a State Government to issue a preliminary notification under

section 4 of the Act declaring that it has been decided to constitute such land, as specified in a Schedule with details of its location, area and boundary description, into a Reserved Forest. such a notification also appoints an officer of the State Government, normally the Deputy Commissioner of the concerned district, as Forest Settlement Officer. The Forest Settlement Officer fixes a period not less than three months, to hear the claims and objections of every person having or claiming any rights over the land which is so notified to be reserved. He conducts inquiries into the claims of rights, and may reject or accept the same. He is empowered even to acquire land over which right is claimed. For rights other than that of right of way, right of pasture, right to forest produce, or right to a water course, the Forest Settlement Officer may exclude such land in whole or in part, or come to an agreement with the owner for surrender of his rights, or proceed to acquire such land in the manner prescribed under the Land Acquisition Act, 1894 [Act 1 of 1894]. Once the Forest Settlement Officer settles all the rights either by admitting them or rejecting them, as per the provisions of the Act, and has heard appeals, if any, and settled the same, all the rights with the said piece of land [boundaries of which might have been altered or modified during the settlement process] vest with the State Government. Thereafter, the State Government issues notification under section 20 of the Indian Forest Act, 1927 declaring that piece of land to be a Reserved Forest.

Protected Forest an area or mass of land notified under the provisions of India Forest Act or the State Forest Acts having limited degree of protection. In Protected Forests all activities are permitted unless prohibited. Protected Forest is an area or mass of land, which is a reserved forest, and over which the Government has property rights, declared to be so by a State Government under the provisions of the section 29 of the Indian Forest Act, 1927. It does not require the long and tedious process of settlement, as in case of declaration of a reserved forest. However, if such a declaration infringes upon a person's rights, the Government may cause an inquiry into the same; but pending such inquiries, the declaration cannot abridge or affect such rights of persons or communities. Further, in a protected forest, the Government may issue notifications declaring certain trees to be reserved, or suspend private rights, if any, for a period not exceeding 30 years, or prohibit quarrying, removal of any forest produce, or breaking of land etc. Indian forest act was established in 1927 for the protection of all the flora and fauna.

Village Forest is constituted under section 28 of the Indian Forest Act, 1927. The Government may assign to any village community the rights over a land which may not be a part of a reserved forest for use of the community. Usually, forested community lands are constituted into Village Grazing

Reserve [VGR]. Parcels of land are so notified are marked on the settlement revenue maps of the villages.

The Forest (Conservation) Act, 1980

The Parliament has enacted the Forest (Conservation) Act, 1980, to check further deforestation and conserve forests and to provide for matters connected therewith or ancillary or incidental thereto. This Act has five Sections which deal with conservation of forests. The Act was enacted with the twin objectives under Section 2 of restricting the use of forest land for non-forest purposes, and preventing the de-reservation of forests that have been reserved under the Indian Forest Act, 1927. However, in 1988 the Act was further amended to include two new provisions under Section 2, where it sought to restrict leasing of forest land to private individuals, authority, corporations not owned by the Government, and to prevent clear felling of naturally grown trees.

The Act empowers the Central Government to constitute a committee to advise the Government with a grant of approval under Section 2, as also on any other matter connected with the conservation of forest and referred to it by the Central Government. The Act provides for the punishment of imprisonment, extendable to fifteen days for the contravention of the provisions of the Act.

The Act provides for punishment of offenders from the Government Departments, including Head of the Departments and authorities. However, these persons can escape criminal liabilities if they can prove that the offence was committed without their knowledge, They had exercised all due diligence to prevent the committing of such offence.

Topic: The Wild Life (Protection) Act, 1972

Authorities to be appointed and constituted under the Act

Appointment of Director another officers.

(1) The Central Government may, for the purposes of this Act appoint

(a) a Director of Wildlife Preservation;

(b) Assistant Directors of Wildlife Preservation; and

(c) such other officers and employees as may be necessary.

(2) In the performance of his duties and exercise of his powers by or under this Act, the Director shall be subject to such general or special directions, as the Central Government may, from time to time, give.

(3) The Assistant, Directors of Wildlife Preservation and other officers and employees appointed under this section shall be subordinate to the Director.

(4) Appointment of Chief Wildlife Warden and other officers –

(i) The State Government may, for the purposes of this Act, appoint –

(a) a Chief Wildlife Warden;

(b) Wildlife Wardens; One Honorary Wildlife Warden in each district;

(c) such other officers and employees as may be necessary.

(ii) In the performance of his duties and exercise of his powers by or under this Act, the Chief Wildlife Warden shall be subject to such general or special directions, as the State Government may, from time to time, give.

(iii) The Wildlife Warden, the Honorary Wildlife Warden and other officers and employees appointed under this section shall be subordinate to the Chief Wildlife Warden.

Power of delegate – (1) The Director may, with the previous approval of the Central Government, by order in writing delegate all or any of his powers and duties under this Act to any officer subordinate to him subject to such conditions, if any, as may be specified in the order.

(2) The Chief Wildlife Warden may, with the previous approval of the State Government by order in writing, delegate all or any of his powers and duties under this Act, except those under Cl.(a) of sub-section (1) of Sec.11, to any officer subordinate to him subject to such conditions, if any, be specified in the order.

(3) Subject to any general or special, direction given or condition imposed by the Director or the Chief Wildlife Warden, any person, authorised by the Director or the Chief Wildlife Warden to exercise any, powers, may exercise those powers in the same manner and to the same effect as if they had been conferred on that person directly by this Act and not by way of

delegation.

Constitution of the Wildlife Advisory Board.

(1) The State Government, or, in the case of a Union Territory, the Administrator, shall, as soon as may be after the commencement of this Act, constitute a Wildlife Advisory Board consisting of the following member, namely:

- (a) the Minister in charge of Forest in the State or Union Territory, or, if there is no such Minister, the Chief Secretary to the State Government, or, as the case may be, the Chief Secretary to the Government or the Union Territory, who shall be the Chairman;
- (b) two members of the State Legislature or, in the case of a Union Territory having a Legislature, two members of the legislature of the Union Territory, as the case may be;
- (c) Secretary to the State Government, or the Government of the Union Territory, in charges of Forests;
- (d) The Forest Officer in charge of the State Forest Department, by whatever designation called, ex-officio;
- (e) an officer to be nominated by the Director;
- (f) Chief Wildlife Warden, ex-officio;
- (g) Officers of the State Forest Government not exceeding five
- (h) such other person, not exceeding ten, who, in the opinion of the State Government, are interested in the protection of Wildlife, including the representatives of tribals not exceeding three.

Hunting of Wild Animals

Prohibition of Hunting. – No person shall hunt any wild animal specified in Schedule, I, II, III and IV except as provided under section 11 and section 12. 1

Hunting of Wild animals to be permitted in certain cases.–

(1) Notwithstanding anything contained in any other law for the time being in force and subject to the provisions of Chapter IV –

- (a) the Chief Wildlife Warden may, if he is satisfied that any wild animal specified in Sch. 1 has become dangerous to human life or is so disabled or diseased as to be beyond recovery, by order in writing and stating the reasons therefor, permit any person to hunt such animal or cause animal to be hunted;

(b) The Chief Wildlife Warden or the authorised officer may, if he is satisfied that any wild animal specified in Sch. II Sch, III or Sch. IV has become dangerous to human life or to property (including standing crops on any land) or is so disabled or diseased as to be beyond recovery, by order in writing and stating the reasons therefor, permit any person to hunt such animal or cause such animal to be hunted.

(2) The killing or wounding in good faith of any wild animal in defence of oneself or of any other person shall not be an offence;

Provided that nothing in this sub-section shall exonerate any person who, when such defence becomes necessary, was committing any act in contravention of any provision of this Act or any rule or order made thereunder.

(3) Any wild animal killed or wounded in defence of any person shall be Government property.

Protection of Specified Plants

17A. Prohibition of picking, uprooting, etc., of specified plants. – Save, as otherwise provided in this Chapter, no person shall –

(a) willfully pick, uproot, damage destroy, acquire or collect any specified plant from any forest land and area specified, by notification, by the Central Government,

(b) possess, sell, offer for sale, or transfer by way of gift or otherwise, or transport any specified plant, whether alive or dead, or part or derivative thereof :

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

17B. Grant of permit for special purpose–. The Chief Wild Life Warden may with the previous permission of the State Government, grant to any person a permit to pick, uproot, acquire or collect from a forest land or the area specified under section 17A or transport, subject to such conditions as may be specified therein, any specified plant for the purpose of

(a) education;

- (b) scientific research.,
- (c) collection, preservation and display in a herbarium of any scientific institutions; or
- (d) propagation by a person or an institution approved by the Central Government in this regard.

17C. Cultivation of specified plants without licence prohibited. – (1) No person shall cultivate a specified plant except under, and in accordance with a licence granted by the Chief Wild Life Warden or any other officer authorised by the State Government in this behalf :

Provided that nothing in this section shall prevent a person, who, immediately before the commencement of the Wild Life (Protection)

Amendment Act, 1991, was cultivating a specified plant, from carrying on such cultivation for a period of six months from such commencement, or where he has made an application within that period for the grant of a licence to him, until the licence is granted to him, or he is informed in writing that a licence cannot be granted to him.

(2) Every licence granted under this section shall specify the area in which and the conditions, if any, subject to which the licensee shall cultivate a specified plant.

17D. Dealing in specified plants without licence prohibited. - (1) No person shall, except under and in accordance with a licence granted by the Chief Wild Life Warden or any other officer authorised by the State Government in this behalf, commence or carry on business or occupation as a dealer in a specified plant or part or derivative thereof :

Provided that nothing in this section shall prevent a person, who, immediately before that commencement of the Wild Life (Protection) Amendment Act, 1991, was carrying on such business or occupation for a period of sixty days from such commencement, or where he has made an application within that period for the grant of a licence to him, until the licence is granted to him or he is informed in writing that a licence cannot be granted to him.

(2) Every licence granted under this section shall specify the premises in which and the conditions, if any, subject to which the licensee shall carry on his business.

17E. Declaration of stock.– (1) Every person cultivating, or dealing in, a specified plant or part or derivative thereof shall, within thirty days, from the date of commencement of the Wild Life (Protection) Amendment Act, 1991, declare to the Chief Wild Warden or any other officer authorised by the State Government in this behalf, his stocks of such plants and part or derivative thereof, as the case may be, on

the date of such commencement.

(2) The provisions of sub-section (3) to (8) (both inclusive) of section 44, section 45, section 46 and section 47 shall, as far as may be, apply in relation to an application and a licence referred to in section 17C and section 17D as they apply in relation to the licence or business in animals or animal articles.

17F. Possession, etc., of plants by licensee. - No licensee under this chapter shall

(a) keep in his control or possession

(i) any specified plant, or part or derivative thereof in respect of which a declaration under the provisions of section 17E has to be made, but has not been made;

(ii) any specified plant, or part or derivative thereof which has not been lawfully acquired under the provisions of this Act or any rule, or order made thereunder;

(b) (i) pick, uproot, collect or acquire any specified plant, or

(ii) acquire, receive, keep in his control, custody or possession, or sell, offer for sale or transport, any specified plant or part or derivative thereof,

except in accordance with the conditions subject to which the licence has been granted and such rules as may be made under this Act.

17G. Purchase, etc., of specified plants.— No person shall purchase, receive or acquire any specified plant or part or derivative thereof otherwise than from a licenced dealer:

Provided that nothing in this section shall apply to any person referred to in section of 17B.

17H. Plants to be Government property. —(1) Every specified plant or part or derivative thereof, in respect of which any offence against this Act or any rule or order made thereunder has been committed,

shall be the property of the State Government, and, where such plant or part or derivative thereof has been

collected or acquired from a sanctuary or National Park declared by the Central Government, such plant or part or derivative thereof shall be the property of the Central Government.

(2) The provisions of sub-sections (2) and (3) of section 39 shall, as far as may be, apply in relation to the specified plant or part or derivative thereof as they apply in relation to wild animals and articles referred to in sub-section (1) of that section.

Protected Area

An Act to provide for the protection of Wild animals, birds and plants and for matters connected therewith or ancillary or incidental thereto.

“National Park” means an area declared, whether under sec.35. or sec.38 or deemed, under sub-section (3) of sec.66. to be declared, as a National Park

“notification” means a notification published in the official Gazette; “permit” means a permit granted under this Act or any rule made thereunder; “Person” includes a firm; “prescribed” means prescribed by rules made under this Act; recognised zoo” means a zoo recognised under section 38H; “reserve forest” means the forest declared to be reserved by the State Government

“sanctuary” means an area declared, whether under sec. [26(A)5] or sec 38, or deemed, under sub section (3) of Sec.66 to be declared, as a wildlife sanctuary;

Trade or Commerce in wild animals, animal articles and trophies; Its prohibition

Chapter V of the Wildlife Act deals with Trade or Commerce in wild animals, animal articles and trophies.

Section 39. Wild Animal, etc. to be Government property. –

(1) Every –

*(a) wild animal, other than vermin, which is hunted under Sec. 11 or sec.29 or sub-section (6) of sec 35 or kept or [bred in captivity or hunted] in contravention of any provisions of this Act or any rule or order made thereunder, or found dead, or killed by [***] mistake;*

(b) animal article, trophy or uncured trophy or meat derived from any wild animal referred to in Cl.(a) in respect of which any offence against this Act or any rule or order made thereunder has been committed;

[2(c) ivory imported into India and an article made from such ivory in respect of which any

offence against this Act or any rule or order made thereunder has been committed.

(d) vehicle, vessel, weapon, trap or tool that has been used for committing an offence and has been seized under the provision of this Act.]

shall be the property of the State Government and, where such animal is hunted in a sanctuary or National Park declared by the Central Government such animal or any article, trophy, uncured trophy or meat [derived from such animal or any vehicle, vessel, weapon, trap, or tool used in such hunting, 3] shall be the property of Central Government.

(2) Any person who obtains, by any means, the possession of Government property, shall, within forty-eight hours of obtaining such possession, report it to the nearest police station or authorised officer and shall, if so required, hand over such property to the officer in charge of such police station or such authorised officer, as the case may be.

(3) No person shall, without the previous permission in writing of the Chief Wildlife Warden or the authorised officer.

(a) acquire or keep in his possession, custody, or control, or

(b) transfer to any person, whether by way of gift, sale or otherwise, or

(c) destroy or damage such Government property.

UNIT – IV

General Environmental Legislations

Topic: Environmental (Protection) Act, 1986

Meaning of ‘Environment’, ‘Environment Pollutant’, ‘Environment Pollution’

“environment” includes water, air and land and the interrelationship which exists among and between water, air and land, and human beings, other living creature, plants micro organism and property;

“environment pollutant” means any solid, liquid or gaseous substance present in such concentration as may be, or tend to be injurious to environment.

“environment pollution” means the presence in the environment of any environmental pollutant.

Powers and Functions of Central Govt.

The Central Government shall have 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

In particular and without prejudice to the generality of provision of section 3(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 Government, officer and other authorities-

(a) Under this Act, or rules made thereunder: or

(b) Under any other law for the time being in force which is reliable to the objects of this Act:

(ii) Planning and extension of 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 : Provide that different standards for emission or discharge may be laid down under this clause from different sources having regard to quantity or composition of the emission or discharge of environmental pollutants from such sources:

(v) restrictions of areas in which any industries, operations or process, or class of industries, operations or process shall not be carried out or shall be carried out subject to certain safeguard.

(vi) laying down procedures 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, material and substance as you likely to cause environmental pollution.

- (ix) carrying out and sponsoring investigations and research relating to problems of environmental pollution.:
- (x) inspection of any premises, plants, equipment, machinery, manufacturing or other processes, materials or substances and giving by order, of such direction to such authorities officers and persons as it may consider necessary to take steps, for prevention, control and abatement of environmental pollution.
- (xi) establishment or recognition of environmental laboratories and institute to carry out functions entrusted to such environmental laboratories and institute under this Act;
- (xii) collection and dissemination of information in respect of matters relating to environmental pollution;
- (xiii) preparation of manual, codes or guide 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 provision of this Act

The Central Government may, if it consider it necessary or expedient so to do for the purposes of this Act, by the order, published in the official Gazette, constitute or authorities or authorities by such name 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 the section 5) of The Central Government under this Act and for taking measure with respect to such of the matter referred to 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 the powers or perform the functions or take the measures so mentioned in order as if such authority or authorities had been expedient by this Act to exercise those powers perform those functions of take such measures.

Citizen Suit Provision

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 thereunder.

Section 19. No court shall take cognizance of any offence under this Act except on complaint made by
(a) the Central Government or any authority or officer authorised in this behalf by that Government ; or
(b) any person who has given the 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 of the officer authorised as aforesaid.

Section 20. The Central Government may in relation to its functions under this Act, from the time to time require any person, officer, State Government or 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.

Section 21. All the members of the authority, constituted, if any under section 3 and all officer 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 the public servants within the meaning of the section 21 of Indian Penal Code.

Section 22. No civil court shall have jurisdiction enter win any suit or proceeding in respect of any thing 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.

Section 23. Without prejudice to the provision of subsection (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 notification, such of its powers and functions under this Act except to power to constitute an authority under sub-section (30) of section 3 and to make rule under the section 25 as it may deem necessary or expedient. To any officer, Central Government or other authority.

Section 24. (1) Subject to provision of sub-section (2), the provision 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 offender found guilty of such offence shall be liable to be punished under the other Act and not under this Act.

Section 25. (1) The Central Government may, by notification in the official Gazette, make rule for carrying out the purposes of this Act.

(2) In particular and with out prejudice to the generality of the fore-going power, such rule may provide for

all or any of the following matters namely:-

(a) the standards in excess of which environmental pollutants shall not be discharge or emitted under section 7

(b) the procedure in the accordance with the safeguards in compliance with which hazardous substance shall be handled or cause 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 prescribed standards shall be given and to whom all assistance shall be bound to be rendered under the subsection (1) of section 9;

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

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

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

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

(h) the manner in which the offence and of the intention to make complaint to the Central Government shall be given under the 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 .

Section 26. 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 session or the successive sessions aforesaid, both Houses agree in making any modification in 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 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.

Topic: Principle of ‘No fault’ and ‘Absolute Liability’

There are many activities which are so dangerous that they constitute constant danger to person and property to others. The law may deal with them in two ways. It may prohibit them altogether. It may allow them to be carried on for the sake of social utility but only in accordance with statutory provisions laying down safety measures and providing for sanctions for non-compliance-through the doctrine of strict liability. The undertakers of the activities have to compensate for the damage caused irrespective of any carelessness on their part. The basis of liability is the foreseeable risk inherent in the very nature of the activities. In this aspect, the principle of strict liability resembles negligence which is also based on foreseeable harm. But the difference lies in that the concept of negligence comprehends that the foreseeable harm could be avoided by taking reasonable precautions and so if the defendant did all that which could be done for avoiding the harm, he cannot be held liable except possibly in those cases where he should have closed down the undertaking. Such a consideration is not relevant in cases of strict liability where the defendant is held liable irrespective of whether he could have avoided the particular harm by taking precautions. **The rationale behind strict liability is that the activities coming within its fold are those entailing extraordinary risk to others, either in the seriousness or the frequency of the harm threatened**

The Strict Liability rule had its origins in nuisance but for most of the 20th century was probably regarded by the majority of lawyers as having developed into a distinct principle. Now it seems to have returned to what are regarded as its roots: it is a “sub species of nuisance”. But on balance it still merits some separate treatment. Liability under the rule is strict in the sense that it relieves the claimant of the burden of showing fault; however, it is far from absolute since there are a number of wide ranging differences. In *Rylands v Fletcher* in 1868, the House of Lords laid down the rule recognizing ‘No fault’ or ‘Strict Liability’, i.e., even if the defendant was not negligent or rather, even if the defendant did not intentionally cause the harm he could still be held liable under the rule.

The facts of the case were as follows. The defendant was a mill owner, and he employed some independent contractors who were apparently competent, to construct a reservoir on his land to provide water for his mill. In the course of work the contractors came upon some old shafts and passages on the defendant’s land. They communicated with the mines of the plaintiff, a neighbour of the defendant, although no one suspected this, for the shafts appeared to be filled with earth. The contractors did not block them up, and when the reservoir was filled the water from it burst through the old shafts and flooded the plaintiff’s mines. It was found as a fact that the defendant had not been negligent, although the contractors had been. But the House of Lords held the defendant liable.

The basis of liability in the above case was the following rule propounded by Blackburn,

“We think that the rule of law is, that the person who for his own purposes brings on his lands and keeps there anything likely to do mischief if it escapes, must keep it in at his peril, and if he does not do so, is *prima facie* answerable for all the damage which is the natural consequence of its escape. He can excuse himself by showing that the escape was owing to the plaintiff’s default; or perhaps that the consequence was of *vis major*, or the act of god; but as nothing of this sort exists here, it is unnecessary to inquire what excuse would be sufficient.”

The justification for the above -stated rule was explained in the following words:-

“The general rule, as stated above, seems on principle just. The person whose grass or corn is eaten down by the escaping cattle of his neighbour, or whose mine is flooded by the water from his neighbour’s reservoir, or whose cellar is invaded by the filth on his neighbour’s privy, or whose habitation is made unhealthy by the fumes and noisome vapours of his neighbour’s alkali works, is damnified without any fault of his own; and it seems reasonable and just that the neighbour who has brought something on his own property which was not naturally there, harmless to others so long as it is confined to his own

property, but which he knows to be mischievous if it gets on his neighbour's land should be obliged to make good the damage which ensues if he does not succeed in confining it to his own property. But for his act in bringing it there, no mischief could have accrued, and it seems but just that he should at his peril keep it there so that no mischief may accrue, or answer for the natural and anticipated consequences. And upon authority, this we think is established to be the law whether the things so brought be beasts, or water, or filth, or stench."

To the above rule laid down by Blackburn, J., in the Court of Exchequer Chamber, another important qualification was made by the House of Lords when the case came before it. It was held that for the liability under the rule, the use of land should be "non-natural" as was the position in *Rylands v Fletcher* itself.

For the application of the rule therefore the following three essentials should be there:

- (1) Some dangerous thing must have been brought by a person on his land.
- (2) The thing thus brought or kept by a person on his land must escape.^[6]
- (3) It must be non-natural use of land.

Public Liability Insurance Act, 1991

An Act to provide for public liability insurance for the purpose of providing immediate relief to the persons affected by accident occurring while handling any hazardous substance and for matters connected therewith or incidental thereto.

LIABILITY TO GIVE RELIEF IN CERTAIN CASES ON PRINCIPLE OF NO FAULT

Where death or injury to any person (other than a workman) or damage to any property has resulted from an accident, the owner shall be liable to give such relief as is specified in Schedule for such death, injury or damage.

In any claim for relief under sub-section (I) (hereinafter referred to in this Act as claim for relief), the claimant shall not be required to plead and establish that the death, injury or damage in respect of which the claim has been made was due to any wrongful act, neglect or default of any person.

The National Environment Tribunal Act, 1995

The National Environment Tribunal Act 1995 has been repealed by The National Green Tribunal Act 2010.

National Green Tribunal Act, 2010 (NGT) is an Act of the Parliament of India which enables creation of a special tribunal to handle the expeditious disposal of the cases pertaining to environmental issues. It was enacted under India's constitutional provision of Article 21, which assures the citizens of India the right to a healthy environment.

The legislature Act of Parliament defines the National Green Tribunal Act, 2010 as follows,

"An Act to provide for the establishment of a National Green Tribunal for the effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment and giving relief and compensation for damages to persons and property and for matters connected therewith or incidental thereto".

On 18 October 2010, Justice Lokeshwar Singh Panta became its first Chairman. Currently it is chaired by Justice Swatanter Kumar since 20 Dec 2012.

The Tribunal's dedicated jurisdiction in environmental matters shall provide speedy environmental justice and help reduce the burden of litigation in the higher courts. The Tribunal shall not be bound by the procedure laid down under the Code of Civil Procedure, 1908, but shall be guided by principles of natural justice. The Tribunal is mandated to make and endeavour for disposal of applications or appeals finally within 6 months of filing of the same. Initially, the NGT is proposed to be set up at five places of sittings and will follow circuit procedure for making itself more accessible; New Delhi is the Principal Place of Sitting of the Tribunal and Bhopal, Pune, Kolkata and Chennai shall be the other 4 place of sitting of the Tribunal.

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Topic : The National Appellate Environmental Authority Act, 1997

Constitution, powers and functions

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.

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

Section 3 of the National Appellate Environmental Authority Act, 1997 deals with it.

(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.

Text Books

1. Environmental Law & Policy in India – Shyam Diwan, Armin Rosencranz
2. Environmental Law in India – P. Leelakrishnan

Statutes

1. The Water (Prevention and Control of Pollution) Act, 1974
2. The Air (Prevention and Control of Pollution) Act, 1981
3. The Indian Forest Act, 1927
4. The Forest (Conservation) Act, 1980

5. The Wild Life Protection Act, 1972
6. The Environment (Protection) Act, 1986
7. The Public Liability Insurance Act, 1991
8. The National Environment Tribunal Act, 1995
9. The National Environment Appellate Authority Act, 1997

References:

1. Environmental Law in India – Gurdip Singh
2. Environmental Administration, Law and Judicial Attitude – Paras Diwan, Peeyushi Diwan