Men should live in harmony with Nature and its environment but that is now being threatened with the "massification" phenomena. In the awesome vastness of the universe, the earth is although a tiny speck but it still abounds in beauty and freshness to invigorate the humanity from the toils of their lives. 'The forests - the special feature of our earth are fact disappearing to make room for our growing numbers, destroying in the process the habitat of birds and animals leading to their extinction, the destruction is also affecting our river system, our life blood on earth, causing incalculable havoc. The climatic changes affecting life that must follow are yet a matter of scientific speculation. Men's destruction of his environment is not confined to land only. Increasing discharges of chemicals and wastes of industries into the rivers and the sea are endangering aquatic life. Disaster over the leakage of harmful and lethal gas and chemicals are not infrequent as in Bhopal and other places. Nature is now raped through pollution in the air, water, health, and loss of common resources. A national environmental policy and ecological plan must be promoted by law so that Men and Nature love and live in
harmony. As quoted hereunder, "We must disprove W.S. Gilbert; Man is Nature's sole mistake and prove Mathew Arnold;..............A man becomes aware of his life's flow and hears its winding murmur;

and he sees

The meadows where it glides,

the sun, the breeze.

And there arrives a lull in the hot race

Wherein he doth forever chase

That flying and elusive shadow, rest.

An air of coolness plays upon his face,

And in unwanted calm pervades his breast.

And then he thinks he knows

The hills where life rose,

And these where it goes".  

11.2. It is the biosphere which maintains our sustenance. We stand to gain by preservation and lose by pollution. Life will be secured if Nature is given the free play, Law and humanism should stand side by side and rule of law should defend the rule of life. Accordingly environmental pollution must be controlled and thus the Constitution provided in Articles 48A and 51A (g) as follows:

* V.R. Krishna Iyer- Human Rights & The Law
a) Article 48A: Protection and improvement of environment and safeguarding of forests and wild life—
"The States shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country". (b) Art.51A(g): "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".

II.3. There is a beautiful commentary on Wild Life Day which runs that 'The conservation of wild life has acquired urgency for it is relevant for human survival. Such are the linkages between various species in nature that the elimination of any one species creates problems in others sooner or later. Human kind has already destroyed many species and as such man should not do more harm. India has seen oneness in life. Justice Krishna Iyer wanted that children were required to know more about indigenous flora and fauna so that they could feel the oneness and wholeness of life to contribute to a better future for all living creatures." There are Wild Life Board and Animal Welfare Board but none could minimise the growing offence and cruelty to animals. Torture in circus, macabre bull fights, the slaughter of cattle.
savage cutting of necks of animals all these are too terrible to bear. Section 11 (l)(a) of the Prevention of Cruelty to Animals Act forbids unnecessary cruelty.

10.4 * As back as 1972, The United Nations Declaration on the Human Environment, Stockholm proclaimed, inter alia, that a) Man is both creature and moulder of his environment, which gives him physical sustenance and affords him the opportunity for intellectual, moral, social and spiritual growth. In the long and tortuous evolution of the human race on this planet a stage has reached when, through the rapid acceleration of science and technology, man has acquired the power to transform his environment in countless ways and on an unprecedented scale. Both aspects of man's environment, the natural and the man made, are essential to his well being and to the enjoyment of basic human rights - even the right to life itself. The protection and improvement is a major issue which affects the well being of people and economic development throughout the World, it is the urgent desire of the people of the whole world and the duty of all Government.

*) The United Nations Declaration on the Human Environment, Stockholm, 1972 -
a) The natural resources of the earth, including the air, water, land, flora and fauna and especially representative samples of natural ecosystems, must be safeguarded for the benefit of present and future generations through careful planning and management, as may be appropriate.

b) The capacity of the earth to produce vital renewable resources must be maintained and whenever practicable be restored or improved.

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

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

*  *  *

e) Appropriate national institutions must be entrusted with the task of planning, managing or controlling the environmental resources of States with a view to enhancing environmental quality.
f) Science and technology as part of their contribution to economic and social development must be applied to identification, avoidance and control of environmental risks and the solution of environmental problems and for the common good of mankind.

11.5 In India, since 19th Century several enactments have been made to control environmental pollutions. But their enforcement has lukewarm response and the reasons being that the governmental machinery at the executive level set up for the control of the environment pollution and the respective Board's view in the matters were not found so alert and respectful of their purpose.

11.6 Unthinking exploitation of natural resources on one hand and rapid urbanisation and unruly proliferation of industrial units and slums worse compounded by open waste drains and flows, pose great dangers far beyond the quality of life and may render life almost unliveable.

All these should prompt the Government to impart big thrust to measures and programmes aimed at preservation of environment through optimisation of scientific natural resources and insistence on thorough check of environmental aspects before any industrial, river valley or
irrigation project is undertaken. Environment clearance should be a must for guaranteeing all aspects of environment. Dr. T.N. Khoshoo, a leading environmentalist while delivering the 'Ninth Guru Prasad Chatterjee Award' advocated a six point "dharma of ecology" for Government and individuals to protect the environment and that the same should be adopted on a priority basis in all programmes devoted to conservation and development.

The principles are:

a) Regenerability of the life support system by protecting the renewable resources and conserving non-renewable resources.

b) Fair sharing of resources, means and products of development between and within nations of the world.

c) Bringing about awareness regarding hidden social, economic and environmental costs of consumerism and over use of resources.

d) Adopting willingly sustainability as a way of life by encouraging frugality and fraternity,

e) Meeting all genuine Societal needs, and legitimate aspirations of the people by blending economic and environmental imperatives to alleviate poverty.
f) Halting and reversing the armament build up for sustainable peace and environment.

11.47. The environmental crisis is an outward manifestation of the crisis of human mind and spirit. In the larger context, the environment encompasses the whole wellbeing of all life on our planet.

11.48. In the matter of legal control of environmental pollution reference may be traced back to the enactments made in India since British India with those in the Democratic Republic and it appears that the control of pollution, among others, mainly relates to the use of water whether the same be in the sea shore or in the city or town or in the serai or in the rivers or spring or lakes besides the pollution in drainage, drinking water, destruction of forests, flora and fauna and loss of balance in the environment by pollution in biosphere. Of the enactments in this regard we have our reference on record Share Nuisance (Bombay and Kolaba) Act 1853 empowering Collector to remove nuisance below high water mark in the Bombay-Harbour. Oriental Gas Company Act of 1857 provided for penalty against water pollution. The Serais Act 1867 provides for maintenance of standard as
to the quality of consumable water. The Northern India Canal and Drainage Act, 1873 under Section 70 contained, inter-alia, offence in fouling canal water. Obstruction in Fairways Act of 1881 prohibited throwing of rubbish in any fairway leading to a port. Indian Ports Act, 1908 regulated water pollution by oil. The Inland Steam Vessels Act, 1917 provided use of fresh water for the passengers mandatory. Indian Forest Act, 1927 made poisoning of forest water punishable u/s 26(1). Bengal and Smoke Nuisance Act 1905, Criminal Procedure Code 1898 (later 1973) and the Indian Penal Code 1860/72 are the major enactments to this end which provides inter-alia, offence in respect of those persons who corrupt or foul water of any public spring or reservoir (Sec. 277 and 290), Sec. 426 of the Code refer to punishment for those causing destruction of any property or any such change in the property or situation thereof or diminishes its value or utility or affects it injuriously. In Babulal -Vs- Ghanshyamdas Birla, the directors and manager of the Gwalior Silk Mills although prosecuted under Sections 268, 269, 277, 288 and 290 of the IPC for polluting the Chambal River by putting waste into it but the same
could not be attributed to them in the absence of overt act and mens rea... on their part. Sections 133 and 144 provide powers to stop nuisance or noxious activity. All forms of nuisance like pollution on land, contamination of water, noise aggression, noxious discharge into atmosphere etc. can be interdicted and after Ratlam Municipality Case, the ways and means for effective relief panacea are wide open through public interest litigations. Delhi Municipal Corporation Act, 1957 under sections 241, 242, 250, 354, 356 etc. provided for inter-alia, measures against pollution. The Merchant Shipping Act, 1958 enacted pursuant to an International Convention of 1954 deals with marine pollution. Water (Prevention and Control of Pollution) Act, 1974 controls water pollution through regulation and development of inter state rivers as expedient in the public interest. The Act is enacted under Article 252 of the Constitution and it has Constituted Central Board and State Boards for enforcement. There are Air (Prevention and Control of Pollution) Act, 1981, The Wild Life (Protection) Act, 1972. The Forest Conservation Act, 1980, Environment Protection Act, 1986 etc. and some of the legislations have empowered public directly to approach Courts of Law for their violation, through public interest litigations.
11.49. As it is already observed that the narrow concept of "Cause of action" and/or "person aggrieved" and/or individual litigation is becoming an old idea in some jurisdictions asking for social relief through participative justice. Now men have changed their views upon relative importance of the requirements of Society against that of the individual in public interest cases. Class actions, representative proceedings and different organisations with special purpose and set objectives are coming to Courts for social relief on behalf of the community. Without going to the legality of Standing, the Courts are required to hear the grievances and after getting satisfied, if required, amicus curiae may be appointed and directions may be issued to the State to collect the fuller facts. According to Justice V.R.Krishna Iyer, the compulsive commitment of the Constitution to social justice is a command to the Court to release on procedural legalism where human rights are in peril and pro bono action seeks collective justice. The Human Law and Justice arise from Constitutional perception in refutation of old colonial habitation. The Judges on the summit Court should be alerted about the ideological import of the Preamble. 'We, the People of India' walk a
different street. It was held in A.B.S.K. Sangh -Vs-
Union of India and others as under : 149

"Our current processual jurisprudence is not of 
individualistic Anglo-Indian mould. It is broad based and 
people oriented and envisions access to justice, through 
class actions, public interest litigation and represent­
tative proceedings. We have no hesitation in holding 
that the narrow concept of cause of action and person 
aggrieved and individual litigation is becoming 
obsolescent in some jurisdiction".

11.10. Now noise has become a problem of importance 
to an industrial society as a result of the extensive use 
of machinery. Modern industries use machines, vehicles 
and processes which consume large amount of energy. The 
human ear is constantly being assailed by man made sounds 
from all sides and there remains a few populous areas 
where relative quite prevails. If may change a man's 
psychology, cause heart attack, hypertension, ulcers 
and damage hearing besides other series of ailments. 
According to experts, "Noise, like smog, is slow agent 
of death. If it is continued the next 30 years as it has 
for the last 30, it could become lethal". It is therefore 

149. AIR 1981 SC 298
essential to control noise. Although, in India, there is no separate legislation like Noise Pollution Prevention Act to control noise as in other countries like England, Japan, etc. Only Workmen's Compensation Act provides for compensation for absolute deafness.

11.11. Thus, protection of environment, keeping the Ocean, air, flora and fauna free from pollution is a global requirement. The Courts must come out of their traditional shells and take recourse to openness of the world requirement of participative justice to ensure real justice through public interest litigations with the changing society and its environment.

11.12. a) It is also a fact that law and litigation cannot guarantee unless a well informed citizenry and militantly mobilised public opinion exist. This condition calls for legal entitlement to information from public sources.

    b) Investigative jurisprudence should thrive and people should be made aware through public interest litigation to secure justice for the benefit of mankind.
We know that Stockholm Declaration of 1972, following the United Nations Conference on Human Environment which aroused world's consciousness on the need for preservation of environment, was the felt necessity for India to adopt some measures for environmental protection. After the enactments of the Water (Prevention and Control of Pollution) Act, 1974 and The Air (Prevention and Control of Pollution) Act, 1981 as amended in 1987, the Environment (Protection) Act 1986 came into being centralising the powers in one authority. Now, the responsibility for protection and improvement of environment is vested in the Central Government. The Act provides for steps a) to prevent apprehended pollution, b) to regulate handling of hazardous substances and c) to seize any equipment, industrial plant or material object with a view to preventing and mitigating environmental pollution. The Act enables to issue directions to any person unlike those under the Water and Air Acts in which directions were from the Central Govt. to Central Board and therefrom the State Boards. The Environment Act provides for fixation of standards of quality of air, water, and soil. It was observed that the Environment Act is an improvement over the prior legislations like Water and Air Act inasmuch as it casts on the polluter or the
potential polluter a duty to take remedial or preventive measure and to assist the authorities.

11.14. The Environment Act imposes on 'any person, officer, or State Government or other authority' the duty to furnish information when it is called for. Under the Water Act, the Board has to approach a court and obtain an order restraining the potential polluter from discharging the effluent. Under the Air Act, the Board has power to mitigate the emission.

11.15. The above Acts have provisions for imprisonment upto 5 years and fine upto Rs. 1 lakh and additional fine upto Rs. 5,000/- each day for continuous violation. Under section 58 of Water (Prevention and Control of Pollution) Act, 1974, there is a bar of jurisdiction by which no civil court shall have jurisdiction to entertain any suit or proceeding in matter of Appellate authority under this Act or no injunction shall be granted by the court against any action taken under this Act. Similarly under Sections 22 of the Environment (Protection) Act, 1986, no civil court shall have any jurisdiction to entertain any suit or proceeding in respect of anything done, action taken, or
order or direction issued by the Central Government in pursuance of functions under the Act. All these provisions, although have taken away the legal rights on infringement of the provisions of Act but they are not deterrent in taking measures under the provisions of the constitution by way of public interest litigation in violation of the fundamental rights.

11.16. In a recent Calcutta Wetlands case, on the basis of petitions filed by the people United for Better Living In Calcutta (PUBLIC), and the Indian National Trust for Art and cultural Heritage and on a reference to a report on the management of Urban and peri-urban lands prepared by the Institute of wetland Management and Ecological Design against reckless draining of Wetlands and filling such marshy lands as a growing threat to the eco-system, especially to the east of the over expanding city of Calcutta without identification and proper delineation of outstanding wetlands in the Calcutta Metropolitan area which must be protected, preserved and exempted from planning for building development sites. Honourable Mr. Justice Umesh Chandra Banerjee of Calcutta High Court passed on interim order on January 14, 1992 temporarily banning use of the above wetlands on the eastern side of Calcutta in view of the aforesaid contentions of the petitioner.

11.16. Although there is no statutory binding, the environmental impact assessment is done on selective basis by the Central Govt. Department of Environment and Forest. At the time of Industrial licencing, the licensing authority can take into consideration the environmental impact before granting approval. The boards for Control of pollution under Water and Air Acts can also while giving consent after enquiry, impose conditions to mitigate the evil effects on environment.

11.17. It is the people or the public, who are the immediate victims of environmental hazards, who should be apprised of vital and relevant information about the environmental impact, otherwise their freedom of information and expression may be disrespected and as such the public participation may be a guarantee of fairness and an effective check against arbitrariness in environmental decision making. Accordingly, the Acts should have provision for environmental impact assessment upon participation by the public to ensure fairness and control in decision making processes in the matter. In the Chapter IV pf the Air (P & C of Pollution) Amendment Act, Section 31A has been inserted empowering the Board to issue directions
11.18. In environmental matters, it has been noticed that industries inherently dangerous or hazardous owe an absolute duty and no exceptions or limitations to the rule under Rylands -Vs- Fletcher would be permissible. Bhopal Gas disaster Case is an example on this point. In the Ganga Water Pollution Case, M.C.Mehta prayed for directions to all those responsible for the pollution of the river Ganga to get protection from the pollution of the river as of right under Article 21 of the Constitution on the basis of Articles 51A(g) and 48A of the said Constitution. The High Court of Andhra Pradesh in T.Demodar Rao -Vs- 3.O.Municipal Corporation, Hyderabad held violation of Article 21 when slow poisoning was caused by the environmental pollution and spoliation. In Sachchidanand Pandey -Vs- State of West Bengal lack of awareness of the problem of environment was argued in making an allotment of land for the construction of Five-star hotel at the expanse of zoological gardens in Calcutta.

11.19. In India, the Department of Environment, Forests and Wildlife is now responsible for environmental impact

150. (1987) 2 SCC 295
assessment. The Planning Commission has recognised the need to intensify efforts to promote environmental education. Incidentally, reference may be made to The World Commission on Environment and Development of the United Nations set up in 1983, sponsored by G.H. Brundtland, Prime Minister of Norway towards "Global agenda for change" which would ensure that human progress would be sustained through development without bankrupting the resources of future generations. Delhi United Technologies Corporation, 151 scherturh -Vs- Traum 152 and Gulf Oil Corporation, Vs Gilbert 153 are some notable cases in the above connection.

In a bid to solution against certain problems through public interest litigations in S.B. Civil Writ petition No. 1/79 in the High Court of Rajasthan - Taj Rajdan -Vs- Union of India & ors. 154 the petitioner a member of the wild life preservation society of India and a fellow of world Pheasant Association and also a member of the Zoo Advisory Committee, Udaipur moved the High Court of Rajasthan for preservation of the great Indian Bird Bustard to protect and improve natural environment including wild life and to have a compassion for living creatures.

151. 632 F 2d 1027,
152. 589 F 2d 1156,
153. 330 US 501 at 508-9
154. 33 Civil Writ Petition No.1/79
The Wildlife (Protection) Act 1972 (No. 53 of 1972) and Article 40A and 51A(g) of the Constitution of India were referred to.

In Vijay Mehta Vs State of Rajasthan, the petitioner asked for relief against inundation of the many parts of Pali, Nagpur, Jodhpur and Barman Districts in which it was not possible to convey information in regard to flood through All India Radio and other written messages by the Govt. which caused loss of lives and property by being caught unawares. In the above proceedings, Articles 14, 21, 48 and 51A(g) of the Constitution of India and commission of Enquiry Act was referred to.

Further in S.B. Civil Writ petition No. 698/80155 - Sampat, Raj Jain Vs Rajasthan State Board for the prevention, control of Water Pollution, Jaipur, the petitioner, a secretary, Bakhatnagar Magrik Mandal, Jodhpur alleged that virus hepatitis was prevailing in the city of Jodhpur in a most virulent manner and thousands of such cases occurred and proved fatal in some cases but the State Board was found not to discharge mandatory obligations on its part despite complaints and reports.

155. SB Civil Writ Petition 698/80
of such cases. In the matter, Articles 14 and 50 of the Constitution and also Articles 5 and 235 of the Constitution were referred to and the petitioner asked for independence of the Judiciary which constitutes basic structure of the constitution and also claimed separation of the Judiciary and that budgetary allocation of the Judiciary be at the disposal of the High Court, and this state should not charge court fees. The points were raised in the concerned S.B.Civil Writ petitions Nos. 3101 to 3103 of 1984.*

On October 3, 1991, The Supreme Court of India, on review petition, upheld the validity of the 470 million settlement in the Bhopal Gas Leak disaster of 1984 but set aside its direction quashing all criminal liability and directed to proceed with the prosecution. The five Judge constitution comprising the Chief Justice Mr. R.N. Mishra, Mr. Justice K.N. Singh, Mr. Justice M.N. Vakastachaliah, Mr. Justice A.M. Ahmad and Mr. Justice N.D. Ojha. The Court by 4:1 majority said 'if the settlement

*PJL - A profile by Marudhar Mridul
*Vide Appendix 'D'
fund is found to be insufficient, the deficiency is to be made good by the Union of India. The Supreme Court also laid down certain guidelines for disbursing claims of the affected people in the Bhopal gas tragedy and in that way the court suggested that the claims commissioner should invariably order the amount of compensation be invested in long terms deposits taking each case separately in case of minors, illiterates, semi-literate, injured persons allowing withdrawals in emergent cases for the benefit of them.

11.20. In India, under the Ministry of Environment & Forests, there is a Central Pollution Control Board. In each State, there is a State Pollution Control Board. The Central Board has set up zonal offices for co-ordination with the various State Pollution Boards. This ministry has various programmes of activities. At the inception of all cases, there is a study on the environment impact assessment. The study may relate to easy sphere of activities e.g., water pollution, vehicular pollution, industrial pollution, air pollution, pollution by waste water, oil drilling, fibre industry and other pollution prone industrial activities. In the practical implementation of the programmes, there are visible lack of
co-ordination between the Central and State functionnaires and moreover the law enforcement authorities of the State in most cases were not helpful in fulfilling the objectives under the Acts. Despite all these we have seen that in West Bengal, Dunbar Mill, Shyamnagar, 24 Parganas, West Bengal, and Shri Rampur Distilleries at Shri Rampur, West Bengal among others could not function due to violation of environmental laws. However, it is apparent that in fulfilment of the purposes enshrined for the control of pollution all out co-operation right from every citizen to the highest authorities of the land are required to be more conscious for undoing pollution at every step. The public should have information and access to the causes of impediments in the implementation of the programmes by the Government so that cases of redress towards removal of the impediments through public interest litigation may be easier to help people from the disastrous consequences of imminent danger to their lives.

The recent meet at Rio De Janeiro beginning on June 3, 1992 of the Earth Summit on global environment policy brought certain new dimensions for the protection of the earth. A restructured Global Environmental Facility (GEF) was required to be set up under the aegis of the World Bank. In a message on the occasion of 'World Environment Day' on June 5, 1992, The Prime Minister of India stressed on the theme "only one earth - care and share".
the Monopolis and Restrictive Trade Practices Act, 1969 as amended in 1984 and 1986 are the major focus in bringing about public interest through Consumers' Protection. Sale of Goods Act, 1930, Agricultural Produce (Grading and Marketing) Act, 1937, as amended in 1986, Drugs and Cosmetics Act 1940 are some of the enactments prevailing at the time of British India to guard against the interest of the consumers of the then India. Lastly, the Consumer Protection Act, 1986 provides for better protection of the Consumers and establishment of Consumers Councils and other authorities for the settlement of Consumer-disputes. The Act is applicable to all goods as defined under Section 2(7) of the Sales of Goods Act, 1930 and services as defined in Section 2(1) of the Consumer Protection Act'86 which includes facilities in connection with banking, financing, Insurance, transport, Processing, supply of electrical or other energy, board or lodging or both entertainments, amusements or the purveying of news or other information. The Consumer here has been defined to mean any person who buys or hires goods for any consideration, paid or promised and exclude a person who obtains goods for resale or any other commercial purpose. The term person includes a firm, a Hindu Undivided Family, a Co-operative
Society and every other association of persons whether registered or not. The special feature of the Act is that it is applicable even to enterprises in the public sector, financial institution and co-operative societies. The provisions of the Act are applicable in addition to those in other laws.

12.2. The Act has provided for the establishment of Consumer Councils and other authorities for the settlement of Consumer disputes. The Council is to perform an advisory role to promote and protect the right of the Consumers; such as the right to be informed about the quality, quantity, potentiality, purity, standard and price of goods, right to be assured access to a variety of goods of competitive prices, right to be heard at appropriate forums right to be seen redressal against unfair trade practices or unscrupulous exploitation of Consumers and right to consumer education. The Act envisages the establishment of advisory as well as adjudicatory bodies both at the Central and State levels. It further provides those adjudicatory bodies at the District, States and National levels. At the District level, the claim for compensation is not to exceed
Rupees One lakh. A complaint can be filed by a Consumer, any voluntary consumers' association registered under the Co-Operative Act or any other laws of the Central or any State Government. In this connection, Bombay Grahak Panchayat which confers Protection to 11,000 families as being members of co-operative Society by allowing 15% rebate on cost in their consumable articles. It may relate to any allegation into any loss or damage suffered as a result of unfair trade practice or that the goods or services suffered from any defect, in the quality, quantity, purity or prescribed standard. The former has to decide complaint after hearing the parties and, if necessary, after seeking a report from the appropriate laboratory. The proceedings before the forum are judicial proceedings and it is vested with the powers of a civil court in various matters concerning its procedure in the disposal of complaints. The order of the forum is appealable to the State Consumer District redressal Commission (State Commission) within 30 days from the date of the order. By the order of the District forum, the defects in the goods or services, can be removed or replaced or price be returned or compensation be paid for loss or injury suffered. Section 13 (3) of the Act provided that the proceedings be not called in
any Court on the ground that the natural justice has not been complied with, if the prescribed procedure has been followed. The State Commission has the original jurisdiction to deal with claims not exceeding ₹10/- (Ten) lakh. The Commission shall consist of a person as its President, who is or has been a Judge of High Court appointed by the State Govt. and two other members who shall be persons of ability, integrity, and standing having knowledge, experience, or capability in dealing with the problems relating to economics, law, commerce, accounting, industry or public affairs or administration. One of the members has to be a woman. Section 17(b) confers powers on the State Commission to correct jurisdictional errors i.e., failure to a exercise jurisdiction, exercising jurisdiction not vested in it or acting illegally or with material irregularity in exercise of its jurisdiction. The illegality or irregularity may arise when the district forum decides a question without giving an opportunity to be heard to the party affected by the order or where the procedure adopted in dealing with the complaint is opposed to the principle of natural justice. This power of judicial
review to issue a writ of certiorari to correct errors of law and jurisdiction committed by lower Courts or Tribunals is available under Act 226 of the Constitution with the High Court. The National Commission has original jurisdiction in respect of complaints exceeding Rs.10/- (ten) lakh. Like State Commission, the National Commission has powers of judicial review and it is constituted with a Supreme Court Judge as its President along with four other non-official members, of them one being woman having ability as stated in the case of State Commission. The orders of the District forum, State and National Commissions are enforceable in the same manner as a decree or order of a court. It appears that there is no provision at these levels for declaratory, compensatory or injunctive relief as in Civil Courts for matters under Contract Act, 1872. Sale of Goods Act, 1930 Specific Relief Act. Further the Control of unfair Trade practices is conferred under Sections 36A to 36E of Monopolies and Restrictive Trade Practices Act. Moreover, the Constitutional powers under Articles 226 and 227 in respect of the High Courts to supervise the acts of the Lower Courts and tribunals are also there. As there are a number of administrative and quasi-judicial bodies under
different consumer protection legislations efforts should be made to harmonise the functions of those authorities in the public interest.

12.3. In August, 1988, a Division Bench of Bombay High Court had directed the State's Food and Drugs Administration to seize all stocks of the Controversial E.P. Potte (as estrogen-progestrone combination drug) that was formulated for certain Gynaecological disorders but is more widely abused as a pregnancy test or even presumed to be an aid to abortion as this drug was banned by the Union Home Ministry following public enquiries conducted by the Drug Controller of India on the instructions of the Supreme Court which, in turn, was responding to demands made by women's and some voluntary health organizations. It might be recalled that there were violent demonstrations before the hearings held by the Drug Controller in different Cities.

12.4. In Bangalore, in 1981 there was a liquor tragedy in which over 300 lives were lost. Accordingly, the State Government took decision in bottling the liquor under the Karnataka Excise (bottling of liquor) Rules, 1967. Subsequently, there were allegations in a
public interest litigation that a person closely related to the Chief Minister was among the 'chosen eight' for the 50 crore largesse and the said person was negotiating with distilleries and contractors to sell his rights for Rs.7 crores. The High Court of Karnataka ruled that 'we are convinced that the impugned decision of the Govt. is unlawful, capricious and Subversive of rule of law' and characterised the case as shocking to judicial conscience. Upholding the High Court's verdict, Mr. Justice Chinnapa Reddy of the Supreme Court described the action of Mr. Hegde's Government as an unusual, wilful and perverse exercise of power for the distribution of the State's largesse.

12.5. In the interest of the General Public, Essential Commodities Act, 1955, Essential Commodities (Special Provisions) Act, 1981 were passed for the Control of Production, supply and distribution of the trade and commerce in commodities which are specified in the Acts to be essential commodities. The object of the Act is to check inflationary trend in price, and to ensure equitable distribution of the essential commodities. In the first category, essential commodities like coal, textiles, iron and steel may be put and in the second
category may be put the food stuff, cattle fodders and others. Rikhi Ram -Vs- State of Haryana AIR 1975.

Section 3 of the Act is the crucial and most important section empowering the Central Government whenever it is necessary or expedient to do so, for maintaining or increasing supplies of any essential commodity or for securing the equitable distribution and the availability at fair prices of the essential commodities. The Section contemplated that it confers powers to make a regulation or prohibition in so far as such regulation or prohibition does not violate any fundamental rights granted by the Constitution of India - Vide Narendra Kumar -Vs- Union of India.

12.6. The Trade and Merchandise Marks Act, 1958 aims at protecting the interests of owners of trade marks as well as interests of the public. Whenever it is found that a trade mark offered for registration is desirable, and there is no bar to it and its registration is not likely to injure the public interest it must normally be taken on the register of trade marks.

12.7. The Foreign Exchange Regulation Act 1973 is
also enacted, inter-alia, to conserve the foreign exchange
resources of the country and to utilise the same in the
interests of the economic development of the country
and that is also in the interest of the general public,
Industrial and trading activities having foreign partici-
pation are also controlled in the interest of the
consumers under guidelines for the administration of
Section 29 of the Act.

12.8. The Industries (Development and Regulation) Act,
1951 is enacted to implement the industrial policy and
to regulate and develop important industries besides
planning and future development of new undertakings.
Consequent upon the judgment of Bombay High Court in the
Case of Shri Vindhya Paper Mills and Another -Vs- Union
of India and others and the subsequent inclusion in 1984
with new Section 11B, it is now with the Central Govt.
to ascertain which of the ancillary and small Scale
industrial undertakings need supportive measures to
maintain harmony and to control common good.

12.9. The Monopolies and Restrictive Trade Practices
Act, 1969 as amended in 1984 is enacted to provide that
the operation of the economic system does not result in the concentration of economic power to the common detriment; (b) to prohibit monopolistic and restrictive trade practices and (c) to provide for incidental matters.

Public interest has been made the touchstone in the implementation of the Act. The M.R.T.P. Commission has been given ample opportunity to serve the Consumers. The Act has opened the vistas of hectic industrial operations reducing unemployment of men and materials, enhancing national product, income and wealth and achieving industrial targets in terms of product and services.

12.10. The genesis of the Act, 1969 can be traced to our Constitution. Article 39(b), forming part of the Directive Principles of State Policy, enjoins upon the State to secure "that the ownership and control of the material resources of the community are so distributed as best to subserve the Common good" and Article 39(c) directs to ensure that 'the operation of the economic system does not result in concentration of wealth and the means of production to the common detriment".
12.11. The basic feature and paramount consideration which pervades throughout the M.R.T.P. Act are the public interest and common good. The Act aims at controlling the concentration of economic power or prohibiting monopolistic or restrictive trade practices only when the concentration of economic power or exercise of monopolistic, or restrictive trade practice is prejudicial to public interest.*

12.12. "We need not strike at the concentration of economic power as such, but should do so only when it becomes a menace to the best production (in quality and quantity) or to fair distribution. Monopolies and restrictive trade practices must be curbed except when they conduce to the common good. *

The Government tabled a statement on Industrial Policy in both Houses of Parliament on July 24, 1991. The Statement has substantially reduced the requirement for various types of industrial approvals. To implement this policy statement in respect of Industrial licensing, Notification No. 477 (E) dated 25th July, 1991, has been issued under the Industries (Development & Regulation) Act, 1951. Under this Notification, industrial undertakings have been exempted from the operation of *Monopolies Enquiry Commission Report, Page 159.
Sections 10 (requirement of registration of existing industrial unit), 11 (requirement of licensing of new industrial undertakings), 11A (license for the production of new articles) and 13 (requirement of licensing for effecting substantial expansion). Licensing is abolished for all industrial undertakings including MRTP/FE
d Companies and Small Scale Sector and ancillary industries (having investment less than Rs. 60 lakhs and Rs. 75 lakhs). To meet the objectives of the policy, Foreign Exchange Regulation Act, 1973 and Monopolies and Restrictive Trade Practices Act, 1969 have undergone changes with necessary amendments. In order to invite foreign investment in high priority sectors (Appendix I industries) direct foreign investment up to 51% foreign equity has been allowed with automatic approval for technology agreement related to above industries. In the matter of MRTP companies, pre-entry scrutiny of investment decisions has been dispensed with. The prior Governmental approvals, for expansion of existing undertakings and establishment of new undertakings are eliminated. The provisions relating to merger, amalgamation and take over have since been repealed. The newly empowered MRTP Commission has been empowered to require investigation suo moto or on complaints.
received from individual consumers or classes of consumers. Thus the Government is pledged to launching re-invigorated struggle for social and economic justice to build democratic, socialist and forward looking India.

12.13. The Govt. and the M.R.T.P. Commission act and function in the discharge of their duties under the Act, subject to the doctrine of public interest. Consideration of public interest pervade in all proceedings under the Act. Sections 21(3)(a), 22(3)(a), 27(1), 31(2), 37(1) have the use of the expression 'public interest'. Section 32 deals with monopolistic or restrictive trade practice when to be deemed prejudicial to public interest. Section 32 provides the presumption as to public interest in any proceeding before the Commission under section 37. If it is found that concentration of economic power or exercise of any monopolistic or restrictive trade practice is not prejudicial to public interest restrictive then it is permitted. The M.R.T.P. Act provides for a dual machinery for implementation of its provisions being Central Government and the Monopolies and Restrictive Trade Practices Commission. It is for the Central Govt. to ensure that the operation of the economic system does not result in the concentration of economic power to the common detriment and to
control the monopolistic undertakings and monopolistic practices. The role of the Commission in these areas is only of an advisory nature. But the Commission has independent powers to inquire into restrictive trade practices. The Commission can make an enquiry on the application of the Registrar of Restrictive Trade Agreements, the Central Government, the State Government or a Trade or Consumer Association. The Commission also suo-moto enquires to any restrictive trade practice.

Any person aggrieved by an order of the Central Govt. or the Commission, may prefer an appeal to the Supreme Court on one or more of the grounds specified in Section 100 of the Code of Civil Procedure 1908.

12.14. Thus it appears that in the sphere of economic legislations all disputes are public interest litigations taken up by the Government itself on the failure of compliance with the statutory provisions and in some cases the Trade or Consumers' Associations are given standing to ask for relief on the breach of statutory provisions.

12.15. In the matter of public utility services like transportation, communications, energy and other communicating facilities in the nature of water supply,
irrigation etc. which contain collective consumption processes. There arises certain collective consumer grievances in respect of rates and the quality of services rendered by them. The Motor Vehicles Act, 1939 in its section 43(i), the State Govt. is required to give directives in the matter of fixation of rates. Before any notification is published in this regard the affected interests are given a hearing to put forward their objections and suggestions. The representatives of the interests affected include within its compass users' or consumers' associations, trusts etc. Similarly under Section 17 of the Road Transport Corporations Act 1950, the State Govt. is to constitute advisory councils consisting, inter-alia, the members of the public on various functions. With regard to power supply, there are two statutes namely — The Indian Electricity Act, 1910 and Electric Supply Act, 1948. The Electricity Supply provides for the constitution of consultative councils comprising, inter-alia, Consumers' representatives to advise the electricity Boards, Section 16 empowers the State Govt. to set up such Councils in each State. A Division Bench of Andhra Pradesh High Court in Akhila Bharat Grahak Panchayat -Vs- Andhra Pradesh State Electricity Board, although held that it was not obligatory for the Board to consult the consultative
council under Sec. 16(5) of the Electricity Supply Act, granted locus standi to the petitioner to challenge the validity of the Order of the Board enhancing the tariff. The Courts have liberalised the scope of locus standi in entertaining grievances resulting from the action and inaction of public utilities. But in practice the tariffs are determined unilaterally and consumers are not given any opportunity to represent against the increase suggested by the licenses in the proceedings before the Rating Committee and this issue was raised in Subhash Oil Industries - Vs- State of Uttar Pradesh where the plea for fair hearing to the consumer was negativised with the contention that the Authority under the Act was presumed in law to be acting for the benefit of the Consumers and to protect their interest. It was felt that to provide an adequate opportunity of being heard to the Consumers' Organisations in the proceedings before the Rating Committee the Act should be amended accordingly. The idea of an 'ombudsman' institution for Consumer grievances as in U.K. arising out of ineffectiveness of statutory Consumer Councils, may be worth experimenting in India. The said body may be responsible to the Parliament or the Legislature as the case may be.

158. AIR 1983 AP 283
159. AIR 1975 All 19
in India for Consumers grievances. In this regard, the Madhya Pradesh State Govt. has already taken steps for appointing Consumer 'Ombudsman' for the redressal of Consumers' grievances.

12.16. On the basis of certain complaints and information received and the applications filed by the Director General of Investigation and Registration, the M.R.T.P. Commission had issued temporary injunction restraining various soft drinks manufacturers, including Parle Exports' Private Limited from using P.V.O. in the soft drinks. Previously products of Pyoma Industries called 'Rasna' along with other products like 'Thumps Up' were similarly injunction.* It is mentionable that there has been significant changes in the M.R.T.P. Act '69 by the Amendment Act of 30 of 1984 in which, first, power has been conferred on the Commission to grant temporary injunction, if it is proved that as a result of any monopolistic, restrictive or unfair trade practice, there is likelihood of public interest being prejudiced (U/S, 12A). Secondly, the aggrieved consumer who sustains loss or damage as a result of monopolistic, restrictive, or unfair trade practice has been given the right to file

an application for compensation U/S 12 B. Thirdly, the provisions on unfair trade practices have been included for the first time in Part B of Chapter V by amending title of the Chapter and adding Sections 36A to 36E.

12.17. The M.R.T.P. Commission is armed with provisions to dispense with technicalities of the law. Under Section 18 of the M.R.T.P. Act the Commission has the power to regulate the procedure and conduct of its business. In Telco and Hindusthan Lever Limited it was observed that the technical rules of Indian Evidence Act can only weaken the powers of the Commission. The Sahar Committee had also recommended such simplification of the proceedings before the Inquiry. In Mohindra & Mohindra Ltd. -Vs- Union of India it was observed that the Commission would be more consonant with justice in considering submission before it had the technical and legalistic approach been dispensed with. In Voice -Vs- Delhi Bottling Co. -Vide UTPE No.151/1986 it was observed that U/S 10 and U/S 36(B) of the Act the complainant as of right, has power to file complaint and

160. (1977) 47 Comp. Cases 520
161. AIR 1979 SC 798
to prosecute and to do everything to prove his case. The Director General as parens patriae is given overall charge of the proceedings before the Commission as Attorney General to appear before any Court of India.

12.18. In the public interest, it needs to be mentioned that the Commission should retard the growth of systematically false advertising campaign through the media and that the Commission should have powers in imposing fines to restrain M.R.T.P./R.T.P/U.T. Practices at the instance of general public and Consumers' association on their complaints and also further it should have powers to award costs to the affected consumers otherwise it would be of no avail in the interest of the general mass of the country, for the otherside being big Corporate sectors, are more powerful to outweigh all measures desirable for the relief of the general community.

* In a recent three day national convention the Consumer Unity and Trust Society, Calcutta, has stressed on strengthening the rights of the consumers. It was pointed out that 35% of the country's population was denied the basic needs and another 40% went without surplus income and the consumers were being harassed in every way. Now different types disputes are coming up

in redress of grievances before the Disputes Redressal Commissions, Mentionable some of them are found reported in P. Nagbhusana Rao - Appellant vs Union Bank of India and Another - Respondent162 where A.P. State Consumer Disputes Redressal Commission, Hyderabad, allowed adequate compensation including penal damages to the aggrieved for inordinate delay in premature enaashment of Fixed Re-investment certificate against the Bank for loss and injury suffered by the appellant.

In Rishi Pal Gupta - Appellant vs Vice Chairman, Delhi Development Authority - Respondent*, State consumer Disputes Redressal Commission, Delhi stopped the DDA to take up a plea for non-availability of plot under 'Rohini Residential Scheme' on ground of promissory estoppel under section 115 of the Evidence Act 1872. In similar other cases in Dr. Devinder Gupta - Appellant vs. General Manager, Srinagar 163. Respondent held at J & K Divisional Forum, Jammu, constituted under the J & K consumer Protection Act 1987 telephone was ordered to be restored during the proceedings and inflated bill was held to be excessive because of defect in the meter and other fault.

162. (1991) 1 Consumer protection Judgements 352
12.19. It is gathered from the State Commission, West Bengal*, that during 1990 out of 891 cases about 300 and odd were heard and disposed of and in those disputes, problems and grievances about the consumption of electricity and telephone charges take out the bulk with the remaining in other matters. In the matter of giving relief, the Council of District Forum can award up to a sum of Rupees below one lac whereas, the State Council has power to give relief from Rs. 1 lakh to 10 lakhs. The steps for ensuring compliance with the orders of the State Council are the orders for contempt of Court and realisation of decreetal dues through processes under the Public Demands Recovery Act. In the State of West Bengal the State Council solved many public interest litigations requiring social reliefs for the victims and sufferers of Behala Rape seed adulteration Scandal case by awarding damages (a High Court lawyer got about a sum of Rs. 3.5 lakhs besides others according to standing in each case) and by ordering more distributin of Kerosine per rationcard in place of 1/2 seer on the State Food & Supplies Department. The Council

* On an interview with the President, State Commission Dr. Jyotirmoyee on 3.4.92
also gave relief for a sum of Rs. 1.5 lakhs to a Doctor who was aggrieved by a decision of the State Health Deptt. In this connection, it may be referred that the Government is also considering bringing all goods and services including health services under the purview of the Consumer Protection Act through suitable amendments. The Government is also considering the recommendations of the National Consumer Protection Council and revamping Public Distribution System in all States besides implementation of land reforms, strengthening of Co-operative movement and streamlining the anti-poverty programmes like the Jawahar Rozgar Yojna and Integrated Rural Development Programme.*

Further, the State Consumer Protection Council also viewed that it should have greater power of injunction and the scope in regard to public interest litigation settlement should be enlarged by suitable amendments to bring within its area the basic dispute as to landlord and tenant and industrial dispute matters as the existing machineries for the settlement of these disputes in their domain are being found inadequate, long drawn and time consuming.

*The Statesman, April 11, 1992