PART II
CHAPTER IV
CONSTITUTIONAL AND STATUTORY PERSPECTIVES

The Indian Constitution

The Constitution of India is called the precursor of the new Indian renaissance with a number of notable features. However, it did not envisage the need for protecting environment except the duty cast on the State to improve public health for which protection of the environment is a *sin qua non*. Though by that time the ramifications of industrialisation became eminent and emerged as a significant issue of developed countries after independence, our Constitution framers projected industrial and agricultural expansion as our dynamic national policy aiming at continuous increase in production by all possible means.

In the Constitution of India, as it originally stood, the power to control industrial activities are scattered and classified on the basis of its national significance and public interest without the due regard to the resultant environmental

2. Constitution of India, Article 47 provides for the improvement of public health as one of the primary duties of the State.
3. For example in countries like U.K. and U.S.A. Pollution Control Laws were enacted as early as 1948.
4. Supra. Chapter 3 foot note 3, p.64.
hazards. This may be so because the environmental awareness was later development in India. Environmental legislative powers are available under all the three lists.

The Forty Second Amendment is a landmark. It introduced specific provisions for the protection of environment then making India one among the few countries whose constitution contains explicit provisions for environment. India, being a participant in the Stockholm Conference held in 1972 implemented the recommendations laid down in the Stockholm Declaration not only by enacting specific legislation for the protection of environment but also by inserting certain significant provisions in the Constitution.

5. Supra. n.2. Schedule VII. List I (1) Entry 7: Industries declared by law to be necessary for the purpose of defence or for the prosecution of war. (2) Entry 52: Industries the control of which by the Union is declared by Parliament by law to be expedient in the public interest.

List II-Entry 24: Industries subject to the provisions of entries 7 and 52.

List III-Entry 36 and 37: Factories and Boilers

Entry 33: Trade and Commerce in and the production, supply and distribution of

(a) the products of any industry where the control of such industry by the Union is declared by Parliament by law to be expedient in the public interest, and imported goods of the same kind as such products;

(b) food stuffs including edible oil seeds and oils;

(c) cattle fodder, including oil cakes and other concentration;

(d) raw cotton whether ginned or unginner and catch seeds and (e) raw jute.

6. Id. List I - Entry 52, 53, 54, 55 and 57

List II- Entry 5, 14, 17, 18, 21, 24 and 25


7. See infra nn.8 and 9.
The Directive Principles of State Policy are enshrined in Part IV of the Constitution in the form of instructions to the Government providing guidelines for action mostly implemented by legislation. The forty second amendment cast a duty on the state for protecting and improving the quality of environment at all levels. The provision says,

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

It has become obligatory on the part of the Government to provide measures for controlling and preventing pollution caused by industries.

Apart from the directives to the State another new Article provides for certain fundamental duties of the citizens of India. It says,

"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."

These constitutional provisions are said to be not justiciiable. They do not create any justiciable right in favour of the individual. However, many are the judicial attempts to read these provisions into the fundamental rights. Today the picture is clear. The right to environment has been evolved by the

8. *Id.*, Article 48A.
9. *Id.*, Article 51-A (g).
Now both the government and the governed are duty bound to take steps for achieving the good. Moreover other rights such as right to work, trade or business are tested on the touch stone of 'protection of the environment'. Judicial attempt is to elevate the environment protection to a higher pedestal by diverse approaches.

In *Rural Litigation and Entitle Kendra v. State of U.P.* the Supreme Court explicitly acknowledged preservation of environment and keeping the ecological balance unaffected as a task which both the government and every citizen must undertake.

Justice Ranganath Misra observes,

"It is a social obligation and it is a fundamental duty of every citizen as enshrined in Article 51A(g) of the Constitution".

Supreme Court in *Sachidananda Pandey v. State of West Bengal* stressed the court’s responsibility. Justice Chinnappa Reddy observed:

"Whenever a problem of ecology is brought before the Court, the Court is bound to bear in mind Article 48A of the Constitution and Article 51A (g) when the Court is called upon to give effect to the Directive Principles and Fundamental Duty, the Court is not to shrug its shoulders and say that priorities are a matter of policy and so it is a matter for the policy making authority".

10. For details see *infra*. Chapter 7, pp.165-168
11. *Id.*, pp.176-178
One of the M.C. Mehta cases dealt with pollution caused by automobiles and industries in Delhi. In this case the Supreme Court emphasised the need for a clear perception and imaginative planning. It found that the incorporation of protection of environment in the Directive Principles as an obligation of the State and of the fundamental duties in Article 51A as a mandate to the citizens indications of the constitutional recognition of the importance of environment on life. Sustained effort and result oriented strategic action such as campaign for general awakening of the people are essential in order to implement law and restore a balance in the ionospheric disturbance. Again, right to social justice is a fundamental right because socio-economic and cultural rights are the means to achieve other rights such as right to human dignity and right to development and are relevant to realise the basic aspirations of meaningful right to life.

In Ambika Quarry Works v. State of Gujarat the Supreme Court recognised the right of the people to hygienic environment. The environmental balance was weighed against the need for

16. Id., p.429.
18. 1986 (2) SCALE 1037.
limestone quarrying for industrial purposes. The court observed that the obligation to the society must predominate over the obligation to individual.

The High Courts did not lag behind in emphasising the social justice obligations under the Directive Principles and Fundamental Duties. Rajasthan High Court even tried to identify the 'right of the citizens' under Article 51A which otherwise is generally called the duties of the citizen. The Court even went to the extent of saying that the constitutional obligation cast on the 'citizen' in particular is to create real citizens of the country.

Similarly, Gujarat High Court held that by giving notice to the polluters, the Municipal Commissioner has simply reminded them of their fundamental duty. Fundamental right is not an absolute right and even in the absence of Article 51A(g) no one can claim absolute right to carry on business.

Andhra Pradesh High Court also interpreted Article 48A as imposing an obligation on the government including the courts to protect the environment.

19. L.K.Koolwal v. State, A.I.R. 1988 Raj. 1. The court held that it creates a right in favour of the citizen to move the court to see that the state performs its duties faithfully in accordance with the law of the land.

20. Id., p.4.


High Court of Kerala found the articulation enshrined in Article 51A(g) as substantiating the right to life under Article 21 as pure air and sweet water are essentials for substance of life.\textsuperscript{23} In \textit{Lakshmipathy v. State of Karnataka} the High Court held that if the constitutional obligations are not discharged by due enforcement by administrative agencies, the court cannot turn a Nelson's eye.\textsuperscript{24}

The High Court of Kerala tried to interpret a public nuisance in the constitutional perspective saying that right to life is far more than the right to animal existence and under Article 51A(g) it is a fundamental duty to protect and improve the natural environment.\textsuperscript{25}

Thus judicial attempts elevated the protection of environment from the Directive Principles and Fundamental Rights to a separate independent right without which right to life under Article 21 will become futile. The right to life comprehends, \textit{inter alia}, right to environment, right to health care and right to adequate health delivery system. A.P. High Court preferred to treat slow poisoning and spoilation as an offence equally serious as a violent extinguishment of life amounting to violation of Article 21 of the Constitution.\textsuperscript{26}

\textsuperscript{23} Mathew Lukose v. Kerala State Pollution Control Board and Others, (1990) (2) K.L.T. 717.
\textsuperscript{24} Lakshmipathy v. State, A.I.R. 1992 Ker.57. The Court found "Fundamental duties are intended to promote people's participation in restructuring and building a welfare society and the Directive Principle under Part IV are intended to build the edifice of welfare state environment and its preservation is a subject matter of both thus emphasising the importance given to it by our Constitution".
\textsuperscript{25} Madhavi v. Thilakam, 1988 (2) K.L.T. 730.
\textsuperscript{26} \textit{Supra}, n.22.
Thus the enthusiasm of the courts to mould the right to life, initiated in the *Olga Tellis* case\(^{27}\) turned out to be the starting point for wider judicial interpretation to bring the right to environment as part of right to life. These are dealt with in detail later in this thesis.\(^{28}\) The conclusion arrived is that the paradigm "right to environment" is a judicial coinage in the light of human rights and a reflection of the international attempts to stimulate legal recognition of environmental protection. The right to life under environmental protection refers more to the deprivations of life than the threat to life.

The above referred cases reveal that the Supreme Court has percolated the ideas of directive principles of State policy into right to life guaranteed under Article 21. Such interpretations are eminent jurists\(^{29}\) and in the context of environment protection, the question is whether there can be an individual right to environment. This is significant because an attempt to protect an individual's right will invariably result in curtailing the right of another. And, if we look at the matter in the *Olga Tellis* perspective, the judicial approach to industrial


\(^{28}\) See infra, Chapter 7.

\(^{29}\) Mahendra P. Singh, "Are Articles 15 (4) and 16 (4) fundamental rights", (1994) 3 S.C.C. (J.), p.32 at p.37. The learned jurist expressed his view based on the recent judgements of the Supreme Court that a justiciable right is accruing from the directive principles of state policy.
pollution has further specified the right to life saying no one can have a livelihood at the cost of the environment.\(^{29}\) Again, the incidents occurring time and again point to the nexus that industrial pollution even within the permitted limits may turn out to be a risk to life.\(^{30}\)

Apart from the provisions discussed above, where the constitutional provisions are explicitly amended or interpreted for incorporating the urgent need for protecting the environment, policy makers made use of other provisions to bring out statutes specifically for the protection of environment.\(^{31}\) These statutes are

29. For details see infra Chapter 7, pp.34,35.
30. Minamata incident in Japan and Chernobyle Nuclear Plant accident in USSR etc.
31. Parliament enacted Water (Prevention and Control of Pollution) Act 1974 by empowering it to do the same making use of Article 252 of the Constitution. Again in the wake of Stockholm Conference in 1972 Parliament used its power under Article 253 to enact the Air (Prevention and Control of Pollution) Act, 1981 and Environment (Protection) Act, 1986. Art.252 deals with power of the Parliament to legislate for two or more states by consent and adoption of such legislation by any other state. Art.253 deals with legislation for giving effect to international agreements. The Preambles to both laws (Air Act and Environment (Protection) Act) state that these acts were enacted to implement the decisions reached at the United Nations Conference on Human Environment held at Stockholm in 1972.
presently the spinal cord of legal control of industrial pollution. They are statutes exclusively for the purpose of controlling pollution used extensively for proceeding against polluting industries.

Water and Air Acts

U.N. Conference on Human Environment in 1972 provided a focal point for the gathering of environmental concern of the 1960s that took a serious turn after the publication of the book 'Silent Spring' in 1962.32 Though there was difference of opinion between the developed and developing countries upon the environmental issues, Stockholm Declaration had its influence throughout the world.33 National attempts to implement the principles laid down in the light of those recommendations was the first step adopted and India did not lag behind in the task. Thus the Central Government in 1972 itself established a National Committee on Environmental Planning and Co-operation (NCEPC) as an apex advisory body in all matters relating to environmental protection and improvement.34

33. Id., pp.5-7. For example, Brazil characterized the hue and cry for pollution as a plot to hamer the industrialisation of the south.
34. The committee was set up on Human Environment under the Chairmanship of Pitamber Pant, Member, Planning Commission to prepare its report. NCEPC was set up in February 1972 in the Department of Science and Technology.
Later, after the forty second amendment, the Government felt the need for assessing the environmental protection already adopted and those requiring further attention. Tiwari Committee constituted for this purpose in its Report\textsuperscript{35} noted some major shortcomings and suggested recommendations.\textsuperscript{36} Establishment of a Department of Environment and Replacement of NCSPC by a National Committee on Environmental Planning (NCEP) are the two major steps in the administrative process of environmental protection\textsuperscript{37} culminating in the creation in 1985 of the Ministry of Environment and Forest as its focal point.

Similarly, the seed of Water Pollution Bill 1969 germinated into the sapling in 1974. The Water (Prevention and Control of Pollution) Act 1974 was thus enacted. This is the first

\textsuperscript{35} Tiwari Committee Report, Department of Science and Technology, Government of India (15th September 1981).

\textsuperscript{36} Id., pp.19-24. See also Chatrapati Singh, "Legal Policy for Environmental Protection", in P. Leeakrishnan et.al., (Eds) Law and Environment, 26 at p.27. The Report identified nearly 200 laws having relevance for environmental protection. The report summarised that (1) many of the laws are outdated (2) They lack statements of explicit policy objectives; (3) They are mutually inconsistent (4) They lack adequate provisions for helping the implementing machinery (5) There is no procedure for reviewing the efficacy of the laws. And recommended for -

(1) Comprehensive review and reformation of Central and State Acts (2) New legislation for areas of action not covered by the present laws (3) The introduction of 'Environment Protection' in the concurrent list of the Seventh Schedule.

statute exclusively for the prevention and control of pollution. But however, though it was enacted just after the Stockholm Declaration the Act did not express any loyalty towards this global declaration. The decisions made at the United Nations Conference on Human Environment took sometime more for implementation and in 1981 the Air (Prevention and Control of Pollution) Act 1981 was enacted invoking the Central Government's power under Article 253.

It will not be an exaggeration to say that seven years of experience with the Water Act did not add anything to this new one and it is a mere replica of the other, having the same powers, same procedure and almost the same enforcement mechanism. Therefore, a combined assessment of these two legislation in the perspective of sustainable development is possible.


As early as 1962, the Ministry of Health had appointed an expert committee on water pollution which recommended that Union as well as State laws on the subject be enacted. In 1963, the Central Council on Local Self-government recommended the enactment of a single law by Parliament. Thus the prevention of Water Pollution Bill 1969 was introduced in the Rajya Sabha after six states had adopted the required enabling resolution. In August 1970, the Rajya Sabha referred the Bill to a joint committee which modified it in many respects and then presented it to Parliament in 1972. The Bill was passed by Parliament in 1974 which took the form of the Water (Prevention and Control of Pollution) Act 1974 (Water Act 1974)

39. Preamble the Water Act, 1974. No reference is made to the Stockholm conference in the preamble or long title of this Act although later laws on pollution and on environment protection specifically owe their origin to and get inspiration from Stockholm. Also see Objectives stated therein as maintaining and restoring the wholesomeness of water.

40. Supra. n.31.
Pollution Control Boards are constituted under Water Act. The same boards are empowered to look into the questions coming under the Air Act. The jurisdiction of these boards do not stop here. Prior and later legislations regard the agencies capable of looking after functions envisaged under them. The fact is that the boards consist of nominated members, with only

41. Water Act, 1974, Ch.II Section 3. The Central Government is entrusted with the constitution of a Central Pollution Control Board whereas State Governments are to constitute State Pollution Control Boards by notification in the Official Gazette to exercise the powers conferred on and perform the functions assigned to them under the Act.

42. Id., It is the same Board constituted under Section 3 of the Water Act to exercise and perform the powers and functions under the Air Act according to Section 3 of Air Act. Similarly the "Central Board" under the Environment (Protection) Act, 1986 means the Central Board for Prevention and Control of Water Pollution constituted under Section 3 of the Water Act. Environment (Protection) Rules 1986 Section 2 (b) Definitions.

43. (1985) 1 Comp.L.J. 14. For example the Government had announced vide Press Note No.17 (1984) series dated 7.12.1984 a list of 20 industries causing high pollution, and it was stated that the conversion of letter of intent into industrial licence will take place, only if, apart from other prescribed conditions, the environmental conditions as set out in the notification have been fully satisfied. And the certificate from the concerned State Pollution Control Board is one of these pre-conditions laid.

44. According to Sections 3 and 4 of both Water Act and Air Act, the Central Board and State Boards consisted of 15 members nominated by the Central Government and State Government respectively excluding the Chairman and the member secretary.
the Chairman and the Secretary as the full time office bearers. The functions of the Central Pollution Control Board are more advisory, supervisory, co-ordinating and planning in nature while the State Boards are to implement the Act procedurally by laying down standards, giving consent, inspecting occasionally the premises and enforcing the law through penal measures. The power to give directions for the closure, prohibition or regulation of any industry, operation or process or the stoppage or regulation of supply of electricity, water or any other service is a new and additional function acquired by the Board after 1987 and 1988 Amendments of the Air Act and Water Act respectively.

45. Though the Chairman of the Central Pollution Control Board necessarily is to be a full time chair, it need not be same for the State Board. It may either be a whole time or part-time as the State Government may think fit as per the Amendment Act 44 of 1978.

46. The full time member secretary possessing qualifications, knowledge and experience of scientific, engineering or management aspects to be appointed by the Central Government or the State Government, as the case may be, is a new substitution by Act 53 of 1989 and Act 47 of 1987 amending Water Act and Air Act respectively.

47. Id., Section 16 of the both Acts.

48. Id., Section 17 of both Acts.

49. Id., Section 31A of Air Act and Section 33A of Water Act. The power to give directions is actually the power of the Central Government under the Environment (Protection) Act, 1986 incorporated as well under the Water Act and Air Act by the 1988 and 1987 amendments respectively.
Laying down standards and implementing the standards through consent procedure are the main administrative measures under these statutes for Prevention and Control of Pollution. Laying standards is one of the functions of the Pollution Control Boards and an important aspect of controlling industrial pollution.

Standard fixing may be used as a guideline or it may be used as a means of defining what an individual or firm may do. Evolving standards is a lengthy process of trials, rectifications, surveillance, feedback and revisions because collecting data on the environmental effects of many pollutants is difficult.

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50. Standard means the maximum levels of various pollutants to be permitted in water, air and soil, work place or other locations. An adequate set of standards should specify what contaminants will be regulated and what variation in levels and combinations will be accepted in different pollutant categories. Thus defining standards amounts to declaring what public will consider to be "pollution". Walter A. Rosenbaum, Environmental Politics and Policy (1991) p.172.

51. Section 16 (2) (h) and Section 17 (g) of Act deals with the provision of standard fixing by Central Pollution Control Board and State Pollution Control Board while Section 16 (2) (g) and 17 (1) (g), (k) and (m) deals with similar functions under the Water Act.

52. Simon Ball and Stuart Bell, Environmental Law p.66.

53. S. Sundaramoorthy, "Water Pollution Control Concepts and Misconcepts" in National Seminar on Environmental Pollution, (1976) held at Kochi (6-8 May) p.221.

For, environmental damages caused by pollutants vary from case to case depending upon the nature of the receiving medium or the location of the industry.
Data may sometimes even be absent or fragmentary. \(^{54}\) It required quantifying the contaminants in relation to the Environment. \(^{55}\)

Standards are basically of two types. \(^{56}\) (1) Environmental quality standards or ambient standards and (3) Effluent or emission standards. \(^{57}\) They are not mutually exclusive and co-exist in the control programmes today.

\(^{54}\) Supra. n.50.

\(^{55}\) Dr.G.M.Saxena, "Standards for Environmental Pollution - How Arrived At" National Seminar on Environmental Pollution, (1976) op. cit., p.346.

\(^{56}\) Frederick Anderson, et.al., Environmental Improvement through Economic Incentives (1977), p.3. See also supra. nn. 50,52 and 55.

\(^{57}\) Id., Ambient standards: Ambient standard is a legal specification of minimum conditions which must be met for some indicator of environmental quality at a specified location in one of the environmental media. For example, an ambient standard may state that dissolved oxygen averaged over a 24 hour period at a selected river mile point must not fall below 4 parts per million more than one day per year. Effluent standards are requirements (either by weight of materials or concentrations) set on the quality characteristics of the actual discharges. It prescribes the maximum level of individual contaminants that can be permitted to be discharged from the industry or by the community.
The standards are fixed for the quality of environment generally. These may relate to any particular medium such as air or water. The standard fixing takes into account many factors. It considers the maximum tolerance of human, plant, animal and aquatic life to individual contaminants. The maintenance of the environmental quality is a governmental effort starting right from the installation of an industry. This task is to be achieved by fixing emission or effluent standards prescribing the maximum levels of individual contamination permitted from each industry. It may vary from industry to industry. The conformity is measured by reference to what is emitted rather than the effect on the receiving medium. Such standard fixing may be of different types, emission standards, process standards or product standards.

All these are interrelated and equally important for maintaining the quality of environment. Location, concentration of industries in a particular place, raw materials

58. Supra. n.52 at pp.66-70.

The environmental quality standards include -
1) setting air quality standards for the maximum, or minimum concentration of any specified substance in air; or
2) setting water quality standards for the concentration of specified pollutants in "controlled waters".

59. Id., p.68.

Emission standard thus deals with the concentration of waste products for eg. the maximum content of a particular substance in a liquid discharge from a pipe or sewer and in the gaseous discharge from a chimney or exhaust pipe. Process standards may be imposed either by stipulating precisely the process which may be carried on or by setting performance requirements such as technology used, raw materials or the height of a factory chimney. Product standards specify the characteristics of an item produced. For eg. requirement for labelling environmentally friendly products.

60. Id., p.69
used, nature of technology, nature of emission, etc. are the ingredients considered by authorities for the fixing of standards. 61

Thus under the Water Act, the Central Pollution Control Board is to lay down standards for a stream or well in consultation with the State Government concerned. 62 The functions of the State Boards include laying down annual effluent standards for the sewage and trade effluents and for the quality of receiving waters. They classify waters of the state. 63 They also lay down standards of treatment of sewage and trade effluents to be discharged into any particular stream 64 or the standards to be complied with by persons causing such discharge. 65

Fixing standards is a compromise arrived at for effectively balancing environment and development and ISI started working on Water Pollution and Air Pollution in 1972. Under the Air Act the

61. Supra, n.55. It is a process done through active collaboration of all interested concerned, namely Government Departments manufactures, technical bodies etc.

62. Water Act, 1974 Section 16 (2) (g). 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.

63. Id., Section 17 (g).

64. Id., Section 17 (k). It is to be done 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.

65. Id., Section 17 (m).
Central Pollution Control Board lays down standards for the quality of the air while the State Boards lay down standards for emission of air pollutants into the atmosphere from industrial plants and automobiles or any other source. Thus the ISI standards for the disposal industrial effluents into the streams and rivers give the specification of the industrial effluents allowed for discharge into the water courses.

Indian standards for environmental pollution control have already been published on air pollution, water pollution and noise pollution. This includes the tolerance limits for industrial effluents of varying nature discharged into different media. Standards for effluents are not only dynamic but also vary from industry to industry. Both Water Act and Air Act carry out the procedural implementation of the pollution control measures through the consent mechanism as provided by these Acts.

66. Air Act, Section 16 (2) (h).
67. Id., Section 17 (1) (g). It is to be done in consultation with the Central Board and having regard to the standards for the quality air laid down by the Central Board. Different standards for emission may be laid down under this clause for different industrial plants having regard to the quality and composition of emission of air pollutants into the atmosphere from such industrial plants.
68. For details see G.N.Saxena, op.cit., pp.350-353.
69. S.N.Jain, "Legal Control of Water Pollution in India", in S.L.Agarwal (Ed.), Legal Control of Environmental Pollution (1980) p.28.
70. Water Act and Air Act Section 25 (4)(a) and Section 21(5) respectively.
Different standards for different industries in different localities demand additional measures for effective implementation of environmental statutes. The requirement that consent should be obtained from the authorities inter alia provide adequate vigilance over the industries. Because, while granting consent orders, the Boards may lay down conditions as to the quality of effluents discharged. It is a licence valid for such period as may be specified and is to be renewed after that, therefore conditional and dependant on the proper and effective management of pollutants during that period. Moreover, the fact that State Board can cancel or review the conditions from time to time and conditions are to be complied with strictly, enable the Board to have full control over the activities.

All enterprises are thus prohibited from operating without the consent of the Board. Consent is necessary both for new outlets and new discharges as well as existing discharge of sewage or trade effluents. State Pollution Control Board is the consenting authority to whom is submitted the application for consent containing particulars regarding the proposed construction, installation or operation of the establishment or of any

71. Ibid.
72. Ibid.
73. Water Act and Air Act, Section 27 and 21 (5) (6) respectively.
74. Water Act, Section 24.
75. Water Act, Section 25 and 26 and Air Act, Section 21.
76. Ibid.
treatment and disposal system or of any extension or addition to them. It may make an inquiry before granting consent and shall, unless given or refused earlier, be deemed to have been given unconditionally on the expiry of the period of four months. Thus 'consent mechanism' is the central theme of these Acts. It is the focal point controlling the working of these Acts. But the Acts do not specifically provide for public participation in the implementation of the Act except for Section 49 (1)(b).

Administrative Powers

Administrative powers include the powers for the routine functioning of the consent mechanism and emergency measures.

When we speak of the powers, it is to be noted that the system is hierarchical in nature. The two Acts are basically different.

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77. Water Act and Air Act Section 25(3) and 21(3).
78. Su pra. n.62 Section 25 (7). Air Act is silent about this provision.
80. Section 18 of both Water and Air Acts provides power to give directions. In the performance of the functions under the Act, the Central Board shall be bound by such directions in writing as the Central Government may give to it and every State Board shall be bound by such directions in writing as the Central Board or State Government may give to it. Provided that where there is inconsistency between the two, the matter shall be referred to Central Government for its decision.
in their enactment and therefore application.\textsuperscript{81} Thus when the Water Act is applicable to only those states that by resolution adopt the Act, Air Act is applicable to whole of India. But the Water Act restricts its application within the State to such area or areas as may be declared therein while Air Act is applicable to those air pollution control areas declared so by the State. Thus in effect both are applicable to only the declared pollution control areas.\textsuperscript{82}

For its proper functioning, the Board is empowered to supervise the water courses,\textsuperscript{83} collect information\textsuperscript{84} and give directions to polluting industries to furnish information about the pollution control measures adopted.\textsuperscript{85} Taking samples,\textsuperscript{86} entering any place for inspection\textsuperscript{87} and getting the result of analysis\textsuperscript{88} are other functions.

\textsuperscript{81} Supra. n.32.
\textsuperscript{82} Water Act and Air Act Section 19.
\textsuperscript{83} Water Act and Air Act Section 29(1).
\textsuperscript{84} Water Act Section 20(2).
\textsuperscript{85} Section 20(3), 25 of Air Act.
\textsuperscript{86} Water Act Section 21 and Air Act Section 26.
\textsuperscript{87} Section 23 Water Act and Section 24 of Air Act.
\textsuperscript{88} Id., Section 22 and Air Act Section 27.
In order to ensure proper functioning through consent mechanism, the State Board may itself execute or cause to be executed those works for fulfilling the conditions laid down in the consent order and recover the expenses from the person concerned. 89

When an emergency situation comes due to the presence of any poisonous, noxious or polluting matter and the Board is of the opinion that immediate action should not be delayed, the Board may for reasons to be recorded in writing carry out the operations such as removing that matter, remedying or mitigating any pollution caused, or issuing orders restraining or prohibiting the discharge or the insanitary use of the stream or well. 90 But in case of apprehended pollution the Board is incompetent to take emergency measures but will have to get a court order. 91

The main criticism against these legislation is based mainly on the factor that the Boards had no direct power to take action against the polluters. Their functional freedom came to be criticised looking at the structural and procedural provisions. 92 Considering these matters seriously and also

89. Id., Section 30.
90. Id., Section 32 (1).
91. Id., Section 33.
to bring them in line with the Environment (Protection) Act 1986, both these Acts were amended in 1987 and 1988. The Amendments incorporated the inclusion of a noteworthy power of the Boards to issue any direction and the person or authorities to whom direction is given shall be bound to comply with such directions. Perhaps, the only limitation on this is the power given to Central Government to give binding directions to the board.

A three tier system of environmental authorities at the rural, urban and district levels will be desirable. This will help, co-ordinate the activities of the existing board. It is also desirable that the name of the board is changed into environment protection board in order to reflect the holistic approach in its functions.

As in any other legislation, enforcement of Water and Air Acts is done mainly by making use of criminal sanctions. There is a separate chapter for this purpose aiming implementation that is prompt and adequate. Getting consent according to the procedure laid and complying standards and conditions under this

93. Water Act, Section 33A and Air Act Section 31A. This power includes the power to direct the closure, prohibition or regulation of any industry, operation or processes or the stoppage or regulation of supply of electricity, water or other service. According to one author it is a sweeping power and its position under Section 33 enhances the powers of the Board in cases of an apprehended pollution.


94. Ibid.


96. Water Act, Chapter VII and Air Act, Chapter VI "Penalties and Procedure".
consent are the primary duties insisted under these statutes. Providing information where ever necessary, following the prohibitory orders in emergency situations and apprehended pollution and complying with directions by the Board are those other obligations to be followed strictly and failure of which attract penalty and procedure as prescribed under these Acts.

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97. Water Act, Section 25 and 26 and Air Act Section 21.

98. Id., under Section 29(2) and (3) the State Board can seek information from any person or industry as to the abstraction of water orders charge of effluents as well as information regarding the construction, installation or operation of any establishment or of any disposal system and such other particulars as may be necessary.

99. Water Act Section 32 and 33.

100. Water Act Section 33A and Air Act 31A.

101. Thus Water Act prescribed punishment upto three months imprisonment or fine upto ten thousand rupees or both with additional fine extending upto five thousand rupees per day of continuance for failure to comply with any direction under Section 20. (Section 41 (1). For violation of Sections 24, 25 and 26 under the Water Act and Sections 21 and 22 under Air Act the minimum punishment prescribed is one year and six months to maximum of six years with fine (Water Act Section 43, 44 41(2) and Air Act Section 37 (1)). In case the failure continues additional fine extending to five thousand for every day and enhanced penalty after previous conviction - imprisonment for not less than 2 year extending upto seven year and with fine. Similarly failure to comply with directions under Water Act Section 32, or 33A and Air Act 31A also attract the same quantum of penalty.

Water Act Section 42 and Air Act Section 38 penalises those activities done in order to obstruct the functioning of the Pollution Control Board. Latest amendments to these Act (1987 and 1988) have added new provision "penalty for contravention of certain provisions of the Act". (Water Act Section 45A and Air Act Section 39) The purpose is to meet contingencies. Thus the provision enable a penal action wherever no such penalty has been provided by these Acts explicitly.
Publication of the names of offenders is an additional measure to stress the fact that in environmental law it is really the threat of stigma on which the very employment of criminal law is based.\textsuperscript{102} Offences by companies as well as Government departments also attract punishment under these Acts.\textsuperscript{103} The cognizance of offences under these Act shall be taken only on a complaint made by the Board or any officer authorised in this behalf or any person giving sixty days notice.\textsuperscript{104} Avoiding the jurisdiction of the civil court is to restrict unnecessary interference by injunctions, etc. delaying the preventive measures adopted under these Acts.\textsuperscript{105}

Thus the Water Act and Air Act provide to a great extent for the control of industrial pollution. But the inadequacy of these Acts is projected by the fact that even in the wake of these elaborate provisions for control mechanism, relief from water or air pollution is sought preferably by making use of the writ jurisdiction of even common law remedy of nuisance.\textsuperscript{106} Why?

\textsuperscript{102.} K.N. Chandrasekharan Pillai, op. cit., p.179.
\textsuperscript{103.} Water Act Section 47 and 48 and Air Act Section 40 and 41.
\textsuperscript{104.} Water Act Section 49 and Air Act Section 43.
\textsuperscript{105.} Air Act Section 46.
\textsuperscript{106.} The case law traced in the \textit{supra}, chapters 6 and 8 show that still the preference is for the other remedies than remedy under these special statutes for environmental protection.
A critical evaluation of these statutes shows that the latest amendments have strengthened the provisions considerably, especially the Pollution Control Board and increased the quantum of punishment. But the general criticism is still that the provisions under them could be manipulated to the advantage of the defendant and Amendment did not change the scheme and phraseology to avoid such instances. Moreover, the policy adopted by the Pollution Control Board is persuasion rather than prosecution.

Grassroot Problems

The inadequacy of these statutes can be attributed to the fundamental mistake in assessing the environmental problems that are different from the policy envisaged. The observations

108. M.R.Garg and N.S.Tiwana, "Enforcement of Environmental Law and Management of Pollution Control" in R.K.Sapru (Ed) Environmental Management (1987), p.103. This is because industries still consider it a unnecessary burden imposed on them and the authorities for the control of pollution find it difficult the prosecute the big industrialists for their position in the society.
109. Chhatrapati Singh, op.cit. p.27
It was a macro-level analysis arriving at conclusions, by merely looking at the formal characteristics and not relating itself to the actual socio-economic conditions at the implementation level. The main recommendations did not include the need for improving environmental statute to overcome the inherent deficiencies in the implementation process. Therefore, it is concluded by the author that Tiwari Report failed to really get in to the heart of the problems.
in the Tiwari Committee Report do not reflect the actual problem confronted.110

The fact remains that the Tiwari Committee Report stressed the need for laws to protect environment with an administrative machinery to implement them but neglected the preventive measures and concentrated on laws to abate pollution.111 There can be noted a deviation from the industrial policy envisaged for laws merely purported to carry out the control of pollution by various measures.112 The factors such as a rational industrial location policy, decentralization of industries as envisaged under the Industrial Policy Statements,113 incentives for the implementation of such policies, the problems involved in the control of pollution caused by cottage and small industries etc were totally neglected114 on framing the provisions of the Water and Air Act.

This mistake continued to project itself even through the latest Amendments, for the law makers did not consider it

110. Supra. n.35.
112. Ibid.
113. For details of the industrial policies adopted from time to time see supra. chapter 3.
114. The framers of these laws failed to examine the causes of the problem of air and water pollution and arrived at the need for statutory regulation because no remedy was available.
necessary to change the schemes and particulars of procedures within these Acts. Therefore, they cover only those violations done knowingly\textsuperscript{115} leaving out negligent actions whereas pollution by industries is caused more by negligence than by any intention to do so. The amendment in 1988 did not exclude the mental element. Yet these amendments inserted new sections to both Acts to bring those offences not mentioned specifically within the ambit of penalties and punishments.\textsuperscript{116} Another criticism is that the fine imposed is a meager amount for an industry which in turn can be transferred to the consumers of their industrial products. It therefore, diminishes the deterrent value of criminal sanction. Again, the onus of proof and the quantum of evidence required for conviction are not clear leaving the courts to evolve their own criteria.

The Amendments to various provisions of Water Act and Air Act in 1988 and 1987 have strengthened the Pollution Control Boards considerably and increased the quantum of punishment.\textsuperscript{117}

\textsuperscript{115} Water Act Section 24. See also K.N. Chandrasekharan Pillai, \textit{op.cit.}, p.175 at p.180 and G.Sadasivan Nair, "Environmental Offence: Crime against Humanity" in P.Leelakrishnan, \textit{et.al.}, (Eds) \textit{Law and Environment} (1991) p.185. The author suggests a grading of offences into three or four categories on the basis of mens rea involved in the commission or omission of the act.

\textsuperscript{116} Water Act, Section 45A and Air Act, Section 39.

\textsuperscript{117} 1987-88 Amendments have introduced new sections (Section 31A and 33A respectively). The pollution Control Boards have the power now to issue directions to any person, officer or authority who shall be bound to comply with such directions which includes the closure, prohibition or regulation of any industry, operations or process or the stoppage or regulation of supply of electricity, water or any other service. Similarly, the quantum of punishment has been increased to imprisonment for 3 months and fine upto then thousand and addition fine of five thousand per day for continuation of the offence.
But still the provisions are such that they could be manipulated to the advantage of the defendants. Again the dictum 'prevention is better than cure' is yet to be recognised and preventive measures such as environmental impact assessment and emergency powers are still foreign.

Environment Act and Control of Industrial Pollution

Environment (Protection) Act 1986 is the most prominent legislative response to the environmental crisis revealed by Bhopal and its aftermath. It is a short legislation with twenty six sections concentrating more on general highlights of policy envisaged leaving the elaborate procedural measures to be supplemented from time to time through Rules framed under it. If we look at this Act from the perspective of controlling industrial pollution, it will not be wrong to conclude that though it is entitled as environment protection legislation, it is taken as another legislation for the control of pollution.

118. K.N.Chandrasekharan Pillai, op.cit., p.179.
119. For under Section 33 of Water Act the PCB has approached the court for restraining apprehended pollution of water. Again no provision is there for an environmental impact assessment. For details see N.S.Chandrasekharan, op.cit., 87 p.159.
But, at the same time, it is quite different from the other two legislation the Water Act and the Air Act. It concentrates powers in the Central Government which can take all such measures as are necessary for the protection of environment and can constitute authorities and appoint officers for this purpose.\(^{122}\) It is a forward step to implement decisions taken at Stockholm in 1972.\(^{123}\) It is called an umbrella legislation.\(^{124}\)

The Environment Act begins with an inclusive definition of 'environment'. But the definition of 'environment' pollutant has been circumscribed and confined to solid, liquid and gaseous substances\(^{125}\) and from thereon, all the terms are defined only from the angle of industrial activities.\(^{126}\) Similarly, the

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122. Environment (Protection) Act 1986 Sections 3 and 4. According to one author these powers are only to take measures for environmental protection. According to him, the legal status of 'measures' and the legal effect of these measures taken are not clear since the phraseology employed does not conform to the usual phraseology. P.N.Dakshi, Environment (Protection) Act, 1986 (III) 1992 p.6.

123. The Objects and Reasons of the Environment Protection Bill is that the legislative initiative is for implementing the decisions of the Stockholm Conference.

124. Rosencranz, op.cit., p.68. For it is designed to provide a framework for Central Government coordination of the activities of various Central and State activities established under previous laws such as Water Act and Air Act.

125. The definition of 'environment pollutant' leaves out noise, radioactive pollutants etc. Synchronising with the inclusive definition of 'environment'. It should have been "anything that disturbs the environment". See also Upendra Baxi, op.cit., p.6, and G.Kurup, "Environment (Protection)Act: A Scientist's View", 1987 C.U.L.R. 12.

126. See Environment (Protection) Act 1986 Section 2(c)-(g) and read the terms such as 'handling', 'hazardous substance', 'occupier', etc.
measures envisaged under the legislation give an impression towards an 'environment protection' goal, but the substantive provision in the Act seem to have shifted gradually towards control of industrial pollution. The most important provision of this Act, which was subsequently added into the Water and Air Acts by amendments is the power to give directions. The rule making power also includes specifically the power to make rules towards reducing industrial pollution. Thus, Central Government enjoys sweeping powers for protecting and improving the quality of environment and preventing controlling and abating environmental pollution.

But the powers of the administrative mechanism envisaged under the Act are limited to fixing of standards and monitoring

127. Id., Section 3 (1) and (2) lays down the measures for the purpose of protecting and improving the quality of environment. Substantial part of Section 3(2) aim at control of industrial pollution by measures such as laying down emission or discharge standards, restricting the location of industries; procedures for prevention of accidents, safeguards for handling hazardous substances; inspection, examination etc of premises and polluting materials and establishing environmental laboratories.

128. Id., Section 5. The Government may issue direction which includes the direction for the closure, prohibition or regulation of any industry, operation or process or stoppage or regulation of the supply of electricity or water or any other services.

them by inspection and by taking and analysing the samples. There is no consent granting provision, the most important weapon for control of pollution under the Water and Air Acts. The miscellaneous provisions under chapter IV of the Environment Act are also inclined towards controlling industrial pollution.

The Act has strengthened the penal provisions and ensured locus standi of citizens to complaint against alleged offences. But the overriding effect given to other Acts in case of overlapping jurisdiction has blown off the strength of penal provisions and reduced it to a provision compared to "a barking dog that never bites."

130. Id., Sections 7-17. Chapter III of the Act covers only measures for the prevention, control and abatement of environmental pollution or to say industrial pollution. The main topics dealt with are (1) persons carrying on industry, operation etc not to allow emission or discharge of environmental pollutants in excess of the prescribed standards, (2) handling of hazardous substances with procedural safeguards, (3) furnishing information to authorities and agencies, (4) power of entry and inspection, (5) power to take samples, (6) Environmental laboratories, (7) Government Analysts, (8) Reports of Government Analysts, (9) Penalty for contravention of the provisions of this Act, and Rules, Orders and Directions, (10) offences by companies and (11) offences by Government Departments.

131. Id., Section 25 provides the list of matters for which the Central Government may provide rules. All of them are exclusively directed towards avoiding industrial pollution.

132. Id., Section 15. Imprisonment for upto five years or fine to one lakh or both with an increased fine or five thousand rupees per day if failure or contravention continues.

133. Id., Section 19.

134. Id., Section 24. Where any act or omission constitutes an offence punishable under this Act as well as under any other Act, then the offender shall be liable to be punished under the other Act and not under this Act.
Citizens suits are possible but can be filed only after giving a sixty days notice. Locus standi of the citizens has been ensured but public participation in decision making is not specifically provided. Preventive measures may seem to be out of reach since environmental impact assessment, economic incentives and active public participation etc could not find any place within this legislation. However, these things could be done by framing delegated legislation. It is also criticized as an enabling legislation drafted with misconceived contention.

A review of the provisions show that the Environment Act supplements the other two statutes, Water Act and Air Act.

Multiplicity of regulatory agencies to which the Central

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135. P.G.Kurup, "Environmental Protection Act: A Scientist's View" [1987] C.W.I.R. 12 at p.14. The Act is drafted with the misconceived contention that protection and improvement of environment are synonymous to abatement of pollution. Pollution is misconceived to be environment quality degradation caused by discharge of pollutants and pollutants are misunderstood as substances injurious to the environment.

136. Many of the provisions are common in the three Acts. For a comparative assessment of the different sections of these three Acts see n.18 in N.S.Chandrasekharan, et.al., 268 at p.261.

137. For example Department of Environment has assumed the role of the rule making on behalf of the Central Government. Through notifications from time to time the Government has authorised officers empowering them under different sections such as:

1) E.P. Notification S.O.394(E) dtd 16.1.1987-under Section 19, the Central Government authorized the officers and authorities with the jurisdiction for cognizance of offences.

2) E.P. Notification S.O.83(E) dtd 16.2.1987-under Section 10 Central Government empowers the persons listed with power of entry and inspection.

3) E.P. Notification S.O.84(E) dtd 16.2.1987-under Section 11 Central Government empowers the same officers above mentioned with power of taking samples.
Government has delegated powers under the Environment Protection Act may seem to have reduced the effect of this Act considerably. The effort to centralize the powers did not become fruitful. However, it may be said that a sort of co-operative federalism works in the sectors where the operation of the new Environment Act has its impact. Though it is within the powers of Central Government to constitute any authority or authorities for this purpose, the fact that no such authority has been constituted reduced the seriousness of this Act, for it is being managed by the same authority dealing pollution matters under the Water Act and Air Act.

1. **Delegated Legislation under the Environment Act**

**Environment (Protection) Rules**

The rule making power is the Samson's strength used extensively for supplementing and stuffing those rudimentary provisions\(^{138}\) as well as for filling the gaps and making the Act a powerful weapon against environmental degradation due to industrial pollution. The Environment (Protection) Rules 1986 published after six months stands side by side with the Act elaborating those enabling provisions laying down procedure for

\(^{138}\) Id., sections 6 (1) and (2).
Implementation. Its significance is great because these Rules recognise pollution control boards as authority to implement the standards fixed, with power to specify more stringent standards if necessary. The idea rated to some extent by providing the list of factors to be taken into consideration while prohibiting or restricting the location of industries and prescribing the procedure that included information and public participation.

139. Environment (Protection) Rules 1986 laid down procedure for taking samples (R.6), procedure for submission of samples for analysis and the form of laboratory report thereon (R.8) functions of environmental laboratories (R.9), qualifications of Government Analyst (R.10), manner of giving notice (R.11) etc. Later by notification No. S.O. 83(E) dt. Feb. 16, 1987, the Central Government empowered the persons listed under Section 10 of the Act. This list contains 59 officers appointed under various acts to have this power. Again, by notification No. S.O. 84(E) dt. 16th Feb. 1987, the Central Government empowered the same officers to take samples under Section 11 of the Act.

140. Id., Rule 3 (1) and (2). Schedule I lays down the list of industries, parameters and standards for effluents in detail. This list is amended from time to time adding new categories into it.

141. Id., R.5. Rules provide the factors to be considered while locating industries and give the procedure to be followed prohibiting or restricting the location of industries. They also allow public participation by giving sixty days time for filing objection before the Central Government imposes such prohibition or restrictions. Rules were used later for restricting the location of industries in the coastal area as well as imposing environmental clearance by the Central Government for the expansion or modernisation or new projects.
Again, duty is cast on the person in charge of the place in case of apprehended pollution to intimate the same to authorities concerned and the Central Government is to take special care while prohibiting or restricting the handling of hazardous substances. Though the definition of environmental pollutant did not cover noise, the ambient air quality standards in respect of noise is fixed from different areas at different times.

142. *Id.*, R.12. In case of discharge of environmental pollutants in excess of the prescribed standards or in case of apprehended pollution due to accident or unforeseen act or event, intimation shall be given to
1) the district or regional officer in charge of emergency or disaster relief operations;
2) the Central Board or a State Board, as the case may be, and its regional officers having local jurisdiction by delegated powers under Section 20, 21, 23 of the Water Act and Section 24 of the Air Act; and
3) the Statutory authorities or agencies if gives the list of authorities appointed under various Acts and having jurisdiction in case of pollution disasters.

143. *Id.*, R.13. R.13(2) envisages public information and public participation by providing for notification and filling objections by interested persons before imposing any prohibition or restriction. This is a step in the right direction, an improvement from that of the Water Act and Air Act which even after the latest amendments provide only for moving the court giving sixty days notice alleging an offence of pollution caused.

144. *Id.*, Schedule III inserted by G.S.R.1063(E) dt. 26th December 1989 categorises different areas - industrial, commercial, residential and silent zones and fixes the standard of noise permissible both during the day and at night.
Apart from the Environment (Protection) Rules, preventive and monitoring devices envisaged in detail through those notifications from time to time has increased the significance of this umbrella legislation in controlling industrial pollution.

2. **Management and Handling of Hazardous Wastes**

Hazardous Wastes (Management and Handling) Rules 1989 are applicable to the hazardous wastes listed therein in the Rules. Those who generate hazardous waste beyond the permitted quantity shall ensure proper handling and disposal of such waste without any adverse effect by proper collection, reception, treatment, storage and disposal. In order to generate or store such waste, one should get an authorisation from the State Pollution Control Board. State Pollution Control Board enjoys wide powers under these rules. State Pollution Control Board is the authority to

146. R.2. These rules apply to hazardous wastes specified in the Schedule as well as
   (a) waste water and exhaust gases as covered under the Water Act and Air Act;
   (b) wastes arising out of the operation from ships beyond five kilometres as covered under Merchant Shipping Act, 1958 and rules thereunder; and
   (c) radioactive wastes as covered under the provisions of Atomic Energy Act, 1962 and rules thereunder.
147. Id., Hazardous, Wastes (Management and Handling) Rules 1989. The Schedule gives the categories of hazardous wastes, types of wastes and regulatory quantities. The eighteen categories of hazardous wastes with permitted quality (Kilogramme per year) is given in detail.
149. Id., R.5.
grant permission for the handling and disposal of hazardous waste. Application to be submitted to the Board which shall satisfy that the operator of a facility or an occupier possesses appropriate facilities, technological capabilities and equipments to handle hazardous waste and issue authorisation. But it can be done only after giving reasonable opportunity of being heard. The Board also has the power to cancel or suspend authorisation which otherwise is valid for two years subject to renewal or revocation. The Board can also give directions to the persons whose authorisation has been suspended or cancelled for the safe storage of the hazardous waste. The occupier and operator of a facility shall send annual return to the State Pollution Control Board. In case of import of hazardous waste also, pollution control board is to examine each case on merit before allowing the same. In addition to this, the State Government or a person authorised is entrusted with specific functions. These rules permit import of hazardous waste for processing or reuse as a raw material only, not for dumping or disposal.

150. The State Pollution Control Board may, after giving reasonable opportunity of being heard, refuse to grant any authorisation.

151. Id., R.8. The State Government or the person authorised by it shall undertake a continuing programme to identify the sites and compile and publish periodically an inventory of disposal sites within the State for the disposal of hazardous waste after undertaking an environmental impact study.

152. Id., R.11. The exporting country or exporter shall communicate in Form 6 to the Central Government.
3. **Hazardous Micro-organism**

The **Hazardous Micro-organism Rules, 1989**\(^{153}\) is to protect the environment, nature and health in connection with the application of genetotechnology and micro-organisms.\(^{154}\) Among other things these rules are applicable in specific cases to production, manufacturing, processing, storage, import, etc of Genetically Engineered products as well as the production, manufacture etc of drugs and pharmaceuticals and food stuffs, distilleries and tanneries etc which make use of micro-organisms and genetically engineered micro-organisms one way or the other.\(^{155}\) For the implementation of the object, these rules envisage the constitution

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154. Indiscriminate use of genetotechnology and micro-organisms may ultimately result in health hazards. For in genetic engineering new combinations of genetic materials are made which naturally do not occur. The whole process being something beyond the natural processes every possibility is there for ill effects or consequences to health as well as environment.

155. Id., R.2 (4) (c) and (d).
of different committees at different levels with different functions such as advisory, monitoring, planning, approval and inspection. Thus implementation starts at the grass roots.

156. Ibid., R.4. This committees constituted are
1) Recombinant DNA Advisory Committee (RDAC)
2) Review Committee on Genetic Manipulation (RCGM)
3) Institutional Bio-safety Committee (IBSC)
4) Genetic Engineering Approval Committee (GEAC)
5) State Biotechnology Co-ordination Committee (SBCC)
6) District Level Committee

157. Ibid., These committees are to function under authorities such as RDAC: Department of Biotechnology
RCGM: Department of Biotechnology
IBSC: Constituted by an occupier or any person including research institutions handling micro-organisms and genetically engineered organisms
GEAC: Department of Environment, Forests and Wild Life
SBCC: State Government
Dist. Level Committee: Under District Collectors.

158. Ibid., Thus RDAC is the Advisory Committee, to recommend suitable and appropriate safety regulations after reviewing developments in Biotechnology at national and international levels.
RCGM monitor the safety related aspects in respect of ongoing research projects and activities involving genetically engineered organisms and hazardous micro-organisms.
IBSC-Prepare an up to date on-site emergency plan and make available copies to the Dist. Level Committee/State Biotechnology Co-ordination Committee and Genetic Engineering Approval Committee.
GEAC-Approval of activities involving large scale use of hazardous micro-organisms and recombination in research and industrial production from environmental angle. It is also responsible for approval of proposals relating to release of genetically engineered organisms and products into the environment including experimental field trials.
SBCC—to inspect, investigate and take punitive action in case of violations of statutory provisions. It shall also review periodically the safety and control measures in various industries institutions handling such organisms.
Dist. Level Committee—Shall visit the installations engaged in such activities, formulate information find out hazards and risks associated with each of these installations and coordinate activities with a view to meeting any emergency. Also prepare an off-site emergency plan. Also submit regularly its report to the State Biotechnology Co-ordination Committee, Genetic Engineering Approval Committee.
under the supervision of hazardous micro-organisms and genetically engineered organisms is ensured by measures like approval, prohibition and licensing. Industrial production in which such organisms are generated or used requires the consent of GEAC with respect to the discharge of such things into the environment. Deliberate or unintentional release is restricted and is permissible only in exceptional case.

In cases requiring immediate action, in order to prevent any damage to the environment, nature or health, the District and State Level Committee may take necessary steps and charge the expenses from the person responsible for such damage. But the power exempting occupiers or persons from certain obligations is with the Ministry of Environment thus restricting the powers of other authorities.

159. Id., R.7(1). Thus without approval no person shall import, export, transport, manufacture, process, use or sell any such organisms.
(2) These rules also restrict that the use of such things shall be allowed only in laboratories or inside laboratory areas notified by the Ministry of Environment and Forest for the purpose under Environment (Protection) Act, 1986.
(3) Licence is mandatory for the operation or use of such organisms mentioned in the Schedule for scale up or pilot operations.

160. Id., R.8.
162. Id., R.10, 11.
163. Id., R.15.
164. Id., R.20 reads:
"The Ministry of Environment and Forests shall, wherever necessary exempt only occupier handling a particular micro-organism, genetically engineered organisms from rules 7.11".
4. **Manufacture, Storage and Import of Hazardous Chemicals**

These rules regulate industrial activities in which operation of processes involve hazardous chemicals or isolated storage or pipelines in which there is involved a quantity of hazardous chemicals. It is the duty of authorities concerned to inspect the industrial activity and submit annual report on the compliance of rules by the occupiers to the Ministry of Environment and Forests. It is the responsibility of the occupier to identify the major accident hazards and take preventive steps such as providing information, training and equipments including antidots necessary to ensure their safety. Occupier is to notify the occurrence of major accidents on the site to the authority concerned, who in turn shall undertake full analysis of the accident and send information to the Ministry of Environment. The occupier shall also notify to the authority steps taken to avoid any repetition of such occurrence on a site. These rules envisage control over the use or storage of hazardous chemicals by insisting that an

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166. Id., R.2(h)(i,ii,iii). The Schedule I attached gives a long list of hazardous chemicals while Schedule II gives a list of isolated storage at installations.

167. Id., R.3.


169. Id., R.5. The Report shall be send within 90 days to the Ministry.

170. Ibid.
industrial activity shall be undertaken only after getting approval from the authority concerned.\textsuperscript{171} Existing activities as well as those making charges in the threshold quantities also has to submit report to the authority.\textsuperscript{172} A safety report has to be prepared containing all types of informations\textsuperscript{173} Thus it is noteworthy that in industrial activities concerned are to be alert always. This includes preparation of on-site emergency plan by the occupier\textsuperscript{174} and off-site emergency plan by the authority.\textsuperscript{175} Right to information has been protected by the provision that information has to be given to persons liable to be affected by a major accident.\textsuperscript{176} Again import of such hazardous chemicals is brought under the control of authorities.\textsuperscript{177}

5. Eco Mark

The scheme for labelling environmentally friendly products is designed to enthuse the manufacturers of products to reduce

\begin{itemize}
  \item \textsuperscript{171} Id., R.7.
  \item \textsuperscript{172} Id., R.8. This report has to be submitted within three months after the date of coming into operation of these rules. Id., R.9.
  \item \textsuperscript{173} Id., R.10. After the commencement of the Manufacture, Storage and Import of Hazardous, Chemicals (Amendment) Rules, 1984, the occupiers of both the new and existing, industrial activity shall carry out an independent safety audit. Id., R.10 (h).
  \item \textsuperscript{174} Id., R.13.
  \item \textsuperscript{175} Id., R.14.
  \item \textsuperscript{176} Id., R.14 and 16.
  \item \textsuperscript{177} Id., R.18.
and eliminate pollution at the manufacturing stage, to give them incentive and to guarantee the consumers environmentally friendly products.

Notification For Labelling Environment Friendly Products\textsuperscript{178} elaborates the Government scheme on labelling products.\textsuperscript{179} It is a national policy of fixing environment standards for household and other consumer products.\textsuperscript{180} The objectives\textsuperscript{181} show that the scheme envisaged is specifically for control of industrial pollution by preventive measures. Thus 'ECOMARK' is awarded to products in order to promote the use of such products by encouraging and

\begin{itemize}
\item \textsuperscript{179} Ibid. Any product which is made, used or disposed of in a way that significantly reduces the harm it would otherwise cause the environment could be considered as Environment Friendly Product.
\item \textsuperscript{180} Ibid.
\item \textsuperscript{181} Id., paragraph 2. The specific objectives of the scheme include:
\begin{enumerate}
\item To provide an incentive for manufacturers and importers to reduce adverse environmental impact of products.
\item To reward genuine initiatives by companies to reduce adverse environmental impact of their products.
\item To assist consumers to become environmentally responsible in their daily lives by providing information to take account of the environmental factors in their purchase decisions.
\item Ultimately to improve the quality of the environment and to encourage the sustainable management of resources.
\end{enumerate}
\end{itemize}
educating consumers for the same which in turn will compel manufacturers to adopt environment friendly devices in the manufacturing processes. This programme is implemented through a three tier administrative mechanism. There are three stages leading to the award of the ECOMARK -
(1) a steering committee set up in the Ministry of Environment and Forests determines product categories for coverage under the Scheme and formulate strategies for promotion, implementation etc in the working of the scheme;
(2) a Technical Committee set up in the Central Pollution Control Board identifies the specific product to be selected and the individual criteria to be adopted.
(3) the Bureau of Indian Standards assesses and certifies the products and draws up a contract with the manufacturers, allowing the use of the label, on payment of a fee.

These committees are constituted with administrators, scientists and Directors of eminent institutions to study. They formulate, identify and recommend strategies and criteria for the eco labelling, whereas the Bureau of Standards implement the scheme by assessing each product for its quality. Thus manufacturers of products falling under notified categories have to apply for and get the ECOMARK for their product through

182. *Id.*, para 3.
testing and certification by the Bureau of Indian Standards. 184 Considering the environmental impact 185 criteria for various products have already been fixed under this scheme. 186 The logo for ECOMARK has already been adopted. 187

184. Id., para 4.
185. The products are examined in terms of environmental impact such as:
   a) least potentiality for pollution in production, usage and disposal;
   b) recycleability and biodegradable nature of the product
   c) contribution to the saving of non-renewable resources and
   d) reduction of the adverse primary criteria...
186. Products for which the criteria have been finally notified are soaps, detergents, papers and paints. Products for which the draft criteria have been notified and which will be finalised after considering objections and suggestions are (1) plastics, aerosols, wood substitutes, edible oil, tea and coffee, lubricating oils, textiles, diaper etc, packaging I, beverages infant food, processed food and vegetable products, electrical and electronic goods, cosmetics, preservatives and food additives, packaging II dry cell and lead acid batteries, pesticides, insecticides bioxides weedicides and drugs.
187. See Appendix 6.
6. National Awards

The Government instituted this scheme of National Awards as an incentive to provoke a competitive spirit among industries by encouraging them to take significant steps for the prevention of pollution. The categories of highly polluting industries as well as small scale industries are elucidated. This notification is a step to enhance the voluntary involvement of industries in prevention and control of pollution. Thus the industries have to introduce an environmental protection system with environmental audit programme. The notification also lays down the

188. Notification No. G.S.R. 736(E) dt. August 26, 1992 in the Gazette of India, Extra-Part II Section 3 (i) dt. 26th August 1992 p.3-4; 1992 C.C.L. p.550. The Award granted each year, will be in the form of a trophy and a citation which will be retained permanently by the awardee.

189. Id., para 2. The measures for the prevention of pollution such as use of clean technology, conservation of natural resources, preventing the generation of pollutants, product reformation or substitution to avoid its environmental impact etc.

190. Id., para 4.

191. Id., para 7. Such as a policy defined for the units as a whole, an environmental programme for the site concerned and a management system defining the organisational measures and working procedures.

192. Ibid. The environmental audit programme includes the preparation of an environmental statement on the problems brought to light during the environmental review, figures on the units performance, summary of the policy, programmes and objectives pursued at the site and information on the intentions and steps taken to achieve these objectives. This information is to be made a part of the Report of the Board of Directors in the Annual Statement of Accounts of the Unit.
criteria for deciding the eligibility for the award. The selection committee review the nominations for the awards forwarded by the Pollution Control Board of the State and winners will have the privilege of issuing to their employee lapel pins, ties or other distinctive badges with the symbol ENV in a circle embossed on their letter heads and advertisements. They can also use this symbol in their letter heads and only advertisement issued by them. An overall assessment of this notification shows that it not only is an incentive but also gives the industries a chance of self-assessing their environmental programmes which is important in the effective implementation of pollution control.

193. Id., para 8 and 9. It is an assessment of the measures taken by the unit in this direction, soundness of the approach, means for abatement such as reduction, reuse, recycling or any beneficial use of waste generated; substantial and steady reduction in the effluents and emissions in the year etc. Quantitative and qualitative control of pollution and measurable environmental impact on the environment are the significant major criteria for the selection while meeting the standards prescribed is the prime factor for such eligibility.

194. Id., para 12. The Committee consists of 11 members from different strata.

195. Id., para 10 and 11. State Pollution Control Board where the unit is located is the authority for sponsoring nominations.

7. **Coastal zone regulation**

Notification on coastal Regulation Zone, 1991\(^{197}\) is aimed at protecting coastal areas and ensuring environmentally friendly use of, and activities in, such areas.\(^{198}\) It ensures the control of industrial pollution by restricting industrial activities in the declared coastal Regulation Zone.\(^{199}\) This restriction includes prohibition of certain activities\(^{200}\) and regulation of those permissible activities.\(^{201}\) Thus setting up of industries except those directly related to sea front or directly needing foreshore facilities are prohibited. Other prohibited activities having significance in the control of industrial pollution vary from control of manufacturer, handling, storage, or disposal of hazardous substances, setting of units or mechanisms for disposal of wastes and effluents, discharge of untreated wastes and effluent from industries, dumping of ash from thermal power stations, etc.

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198. Ibid.
199. Ibid. Coastal Regulation Zone includes the coastal stretches of seas, bays, estuaries and creeks which are influenced by tidal action (in the landward side) upto 500 metres from the High tide line and the land between the Low Tide Line and the High Tide Line.
200. Id., para 2.
201. Id., Annexure 1.
For the purpose of regulating those permitted activities, a clearance from the Ministry of Environment and Forests is made mandatory. The coastal states and Union Territories shall prepare Coastal Zone Management Plan identifying and classifying the coastal stretches within their respective territories in accordance with the guidelines. The coastal zones are classified into four categories on the basis of its environmental significance.

The development or construction activities in different categories of CRZ areas are to be regulated by the concerned authorities in accordance with the norms laid down by the notification.

8. Environmental Audit

The programme for an audit report is made compulsory by the Environment (Protection) Second Amendment Rules.

202. Category I - Ecologically sensitive areas and Area between the Low Tide Line and High Tide Line.
Category II - Developed areas upto or close to the shore.
Category III - Areas that are relatively undisturbed not coming under either Category I or II.
Category IV - Coastal stretches in the Andaman, Lakshadweep and small islands except those designated as CRZ-I, II or III.

203. The norms laid down do not permit any new construction within 500 metres of High Tide Line. No construction activity except the one for carrying treated effluents and waste discharges into the sea, facilities for carrying sea water for cooling purposes, etc will be permitted between Low Tide Line and High Tide Line. The norms permit only reconstruction of the authorised buildings subject with the existing norms in the category II while restricted and regulated use of category III is possible. The norms are prescribed specially for category IV permitted very restricted use of such areas.
1992. The attempt is to promote a self-declaration by the industries every year as to the extent of control of pollution. The programme enables the industry to render voluntary information. By amendment, the expression 'audit report' has later been changed to 'environmental statement'. According to one author, the very thought of environmental audit is premature and a misnomer because, to be an audit it must be an independent certification.

204. Notification No.G.S.R.329 (E) dt.13th March.1992 in 1992 C.C.L. III p.178. Thus a new Rule 14 is added which inserts "the submission of environmental audit report - Every person carrying on an industry, operation or process, requiring under S.25 of Water Act, 1974 or under Section 21 of the Air Act or authorisation under the Hazardous Wastes (Management and Handling) Rules, 1989 shall submit an environmental audit report for the financial year..."

205. Ibid. The Form V contains 9 parts (A to I) requiring data such as water and raw material consumption, pollution generated, hazardous wastes, solid wastes, characteristics of the hazardous waste and solid waste, the impact of the pollution control measures on conservation of natural resources and consequently the cost of production.


207. 1993 C.C.L. p.244.

The audit report, a periodic document to evaluate the work in the environmental perspective identify the lacunae in perception and also will be a source of information to the general public. But the programme of environmental auditing introduced as a statutory requirement by the amendment to the Environment (Protection) Rules, 1986 is very brief and lack the procedure as well as the phases of the process to be followed by the industries. Later, efforts are made by industries in collaboration with NEERI and Pollution Control Board to evolve a criteria for the preparation of auditing.

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209. International Chamber of Commerce (ICC) defines the environmental auditing as “A management tool comprising a systematic, documented, periodic and objective evaluation of how well environmental organization, management and equipment are performing with the aim of helping to safeguard the environment by (1) Assessing compliance with company policies, which would include meeting regulatory requirements”. As given in R.R. Naik and G. Subramaniam, "Case Study and Benefits of Environmental Auditing at Cochin Refineries Limited" paper presented at Workshop on Environment Audit (30th April 1993 Kochi) by confederation of Indian Industry (Southern Region) Kerala.

210. At the above mentioned workshop the participants agreed to this fact. Both, the Environmental Scientists and the Industry representatives considered the pros and cons of this auditing and concluded that such an auditing has many advantages.

211. The Amendment contains just a declaration, the format in the Appendix A.
of this report. Thus the programme if properly carried out, is no doubt an important tool in the efficient management of environmental work assessment in industry and also a response to public request for greater industry involvement in environmental protection task. But diversity of industrial activities calling for technical expertise drawn from different disciplines and the demand for an unbiased professional body of experts for the same are impediment at present for the implementation of this programme.

9. Environment Impact Assessment

The long cry of environmentalists and academicians at last reached the law makers and notification under Environment

212. Thus a workshop was held on 30th April, 1993 at Kochi by the Confederation of Indian Industry (Southern Region) Kerala participating industries, NEERI, Kerala Pollution Control Board as well as Academicians from Cochin University. Industrialists highlighted the difficulties that they find in preparing such a report, while NEERI came forward to trace the evolution on Environmental Audit and assess the advantages and disadvantages of such an auditing. Cochin Refineries Limited came out to educate the participants the way in which or the procedure followed by them to prepare such a report. Both NEERI and Cochin Refineries Limited put forward 'Guidelines' to be followed by the industries in preparing the report thus filling to some extent the deficiency, op.cit., p.209.


(Protection) Act and Environment (Protection) Rules introduced the process of environmental impact assessment. Factors like distribution of powers between the Centre and States projected itself since Central interference on State subjects in the name of environmental protection essentially invited the charge of the notification eroding state powers. Such impediments delayed the process for nearly two years — when at last in 1994 the final notification on Environmental Impact Assessment came into being.

Environmental clearance notification identified problems like destruction of natural resources and pollution affecting the health and very survival of living beings. Protection and improvement of the quality of environment by control of pollution and restricting developmental activities to the carrying


capacity of the eco-system are the goals to be achieved by proper
Environment Impact Assessment and necessary Environment Management
Plan.\textsuperscript{218}

Generally speaking, the expansion or modernisation of any
activity if the pollution load is to exceed the existing one or
new projects listed in Schedule I\textsuperscript{219} require an environmental
clearance by the Central Government in accordance with the proce­
dure specified in the notification.\textsuperscript{220} But the application of this
notification is restricted by the exemption clause\textsuperscript{221} and an environ­
mental clearance in the strict sense is mandatory only for items,
4, 6, 8, 11, 15, 18, 20, 22, 23, 24 and 26 irrespective of the

\textsuperscript{218} Supra, n.216. These goals are to be achieved by careful
assessment of a project proposed to be located in any
area for the prevention, elimination or mitigation of
the adverse impact right from the inception stage of
the project.

\textsuperscript{219} Id., The Schedule I gives a list of 29 items.

\textsuperscript{220} Id., para 4 of the notification contains the procedure
in detail:
1) The procedure consists of submission of the application
by the desiring person in the proforma specified in
Schedule along with an Environmental Impact Assessment
Report and an Environment Management Plan to the
Secretary Ministry of Environment and Forest, New Delhi.
2) Evaluation and assessment of the same by the Impact
Assessment Agency with a committee of experts as per
Schedule III.
3) Impact Assessment Agency will prepare a set of reco­
mendations based on various factors.
4) Grant or reject the application within a period of
ninety days, valid for a period of five years from
commencement of the construction or operation.

\textsuperscript{221} Id., para 3.
amount invested. In the case of site specified projects, preliminary site clearance from the Central Government is compulsory while initiating any investigation and surveys. The notification also provides for public participation and information to a certain extent.

Public Liability Insurance Act, 1991

The object of this Act is to safeguard the interest of the victims of accidents as well as enable the industry to discharge its liability in settling claims arising out of major accidents.

The common law liability of the owner to give relief to any victims

222. Ibid.

223. Id., The site clearance is mandatory for (a) mining, (b) pit-head thermal power stations, (c) hydro-power, major irrigation projects and/or their combination including flood control, (d) ports and harbours (excluding minor ports), (e) for prospecting and exploration of minerals above 500 hectares.

224. Id., para 2. Thus the set of recommendations prepared by the Impact Assessment Agency shall be made available subject to the public interest to the concerned parties or environmental groups on request. Similarly, comments of the public may be solicited, if so decided by the Impact Assessment Agency. Public shall be provided access to the summary of the reports/Environmental Management Plans subject to the public interests.

225. Public Liability Insurance Act, 1991 (Act 5 of 1991) in 1991 C.C.L. II p.45. The objectives of the Act is to provide immediate relief which would not prevent the victims to go to court for claiming larger compensations.
is given a statutory recognition, the long felt need projected throughout judicial review of environmental problem. Bhopal tragedy has accelerated this long felt necessity to shape such a statutory provision.

The Public Liability Insurance Act is a double edged weapon for, in addition to the relief to the victims, other than workers, the Act envisages a scheme aiming at reducing the burden of the owners of industrial entities. It is a no fault liability. Thus, the duty of the owners to insure and liability to pay damages are the two important features of the

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226. Thus, growth of hazardous industries and accompanying risk from accidents to the public and the unwillingness of the industrialists to readily compensate, necessitated the legislative interference to provide a mandatory insurance for compensating the victims of hazardous industrial processes. See Karkara's commentaries on Public Liability Insurance Act, (1991), p.1.

227. Section 4. Duty of owner to take out insurance policies. Thus those who handie by starting new industry or already having such industries before the commencement of this Act shall take out insurance policy to insure against liability to give relief under Section 3 (1).

228. Section 3 (1) provides that 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 relief as specified in the Schedule. Section 3(2) proclaims it as a 'no fault liability' for, the claimant shall not be required to plead and establish that the death, injury or damage was due to any wrongful act, neglect or default of any person.
Act thereby providing interim compensation in cases of industrial accidents. The District Collector is the authority to implement the provisions of this Act by following the procedure for the same. An application for claim for relief may be made not just by the person who has sustained injury. This right to claim


'Accident' means an accident involving a fortuitous, sudden or unintent occurrence while handling any hazardous substance resulting in continuous or intermitted or repeated exposure to death of, or injury to, any person or damage to any property but does not include an accident by reason only of war or radio activity.

230. Sections 5 and 7. The District Collector is to - (1) verify the occurrence of such accident, (2) cause publicity to be given for inviting application under Section 6 (1), (3) receive the application, (4) give notice of the applicant to the owner, (5) give the parties an opportunity of being heard, (6) hold an inquiry into the claim and make an award determining the amount of relief specifying the person or persons to whom such amount shall be paid.

231. Section 6 application for claim may be made - (1) by the person who has sustained the injury, (2) by the owner of the property to which the damage has been caused. (3) where death has resulted from the accident, by all or any of the legal representatives of the deceased or (4) by any agent duly authorised by such person or owner of such property or all or any of the legal representatives of the decease, as the case may be.
compensation is in addition to any other right to claim compensation, for, it is only an interim relief.\textsuperscript{232} The Central Government can authorise any person with the power to call for\textsuperscript{233} information, entry and inspection or search and seizure in addition to its power to give directions similar to that under the other three environmental statutes.\textsuperscript{234} Again cognisance of offence is left with the Central Government or any authority or officer

\textsuperscript{232} Section 8. By Notification No. 780(E) dtd Nov. 15, 1991 this power is delegated to the State Government to exercise it with their respective jurisdiction and the Central Pollution Control Board for the whole of India subject to revocation in public interest.

\textsuperscript{233} Section 9 - 11. This power to give directions is the same as similar provision under Water Act, Air Act and Environment (Protection) Act which includes the power to direct:

(a) prohibition or regulation of the handling of any hazardous substance or

(b) stoppage or regulation of the supply of electricity, water or any other service. By notification No. S.O. 779 (E) dtd November 15, 1991 the Central Government delegated this power to the respective State Governments subject to revocation at any time.
authorised in this behalf by that Government. 235

Penalty for the contravention of provisions or failure to comply with any direction under section 12 is high 236 and the Schedule elaborates the rate of interim compensation for injury.

235. By notification No. 282 (E) dated March 19, 1993 the Central Government authorised the officers and authorities listed in the table for the purpose with the jurisdiction under Section 13(1) and Section 18(a), 1993 C.C.L. p.317. It contains the list II officers and authorities such as

1) Any Director, Joint Secretary, Adviser or Additional Secretary to the Government of India in the Department of Electricity and Fire - (Whole of India).
2) The Chairman or Member - Secretary of Central Pollution Control Board (Whole of India).
3) The Government of the State represented by the Secretary to the State Government in charge of Environment (Whole of India).
4) The Chairman or Member-Secretary of State Pollution Control Board (Whole State).
5) The Chairman or Member Secretary of Union Territories.
6) District Collector - (Whole District)
7) Regional Officers of the Central Pollution Control Board who have delegated powers under Section 20, 21 and 23 of Water Act and Section 24 of Air Act - Area of laid by Central Board.
8) Regional Officers of State Pollution Control Board who have delegated powers under Section 20, 21 and 23 of Water Act - Area as laid by State Board.
9) Regional Officers of the State Pollution Control Board who have delegated powers under Section 24 of Air Act - Area as laid down by the State Board.
10) Any regional/zonal Officers or a Director in charge of a Regional Zonal Office of the Ministry of E & F - Zonal Regional Area as laid down by Ministry of E&F.
11) Joint Director (Legal) in the Department of E&F - whole of India.

236. Section 14. The Act prescribes imprisonment for a term not less than one year and six months extending upto six years or with fine not less than one lakh or both for contravening Section 4 (1) and (2) and direction under Section 12.
sustained or loss of property.237 Public Liability Insurance (Amendment) Act, 1992238 added a new Section 7-A which confirmed the liability further by the establishment of an Environment Relief Fund by the Central Government239 to which every owner shall, together with the amount of premium, pay through the insurer an amount not exceeding the amount of premium.240 The Collector is authorised to pay relief from this fund and the owner shall deposit such amount as directed by the Collector.241 But, at the same time, the maximum extent of liability is limited.242 The

Schedule states:
1) Reimbursement of medical expenses upto a maximum of Rs.12,500 in each case
2) For fatal accidents the relief will be Rs.25,000/- per person in addition to medical expenses if any upto Rs.12,500/-
3) For permanent total or permanent partial disability or other injury or sickness, the relief will be (a) medical expenses upto Rs.12,500/- in each case and cash relief on the basis of percentage of disablement as certified by a physician. The relief for total permanent disability will be Rs.25,000/-
4) For loss of wages due to temporary partial disability, a fixed monthly relief not exceeding Rs.1000/- per month upto a maximum 3 months.

237. Supra. n.4.
238. Section 7A.
239. Id., Amendment of Section 7. Thus the provision which was only an alternative measure has been made a compulsory one by the amendment.
240. Ibid.
241. Ibid.
Extent of Liability - The maximum aggregate liability of the insurer to pay relief under an award to the several claimants arising out of an accident shall not exceed Rs.5 crores and in case of more than one accident, it shall not exceed Rs.15 crores.
In case the award exceeds the total amount of the amount of insurance, the sum shall be met from Relief Fund and in case it falls short, the amount shall be met by the owner.
Central Government has specified also the quantities for which or exceeding which every owner handling hazardous substances shall have to take insurance policies as per the Act. Everything said and done, this Act is still in clutches for it provides only for immediate interim relief whereas the final liability of the owner will depend on existing regime of tortious liability which requires fault or negligence on the part of the owner to be proved.

National Environmental Tribunal

This Act as it is clearly stated in the objective is a statutory recognition of the strict liability for damages arising out of accidents. But the Act restricts itself to hazardous industrial process. Thus the owner of the industry is liable to pay compensation for death or injury to any person other than a workman. There is no need to plead and establish the wrongful act. It is actually a forward step for implementing PIL, 1991 which provides for interim compensation. This Tribunal is to be established at the national level. Members include judicial members, technical members, chairperson-man and Vice-Chairpersons as the Central Government may deem fit. Within this Tribunal may be formed benches consisting of one Judicial-Member and one Technical Member. The constitution of the Tribunal shows that it is envisaged to be a body of eminent jurists and technical personalities. This act takes away the jurisdiction of courts to deal with claim for compen-

244. Objectives and reasons in National Environmental Tribunals Act, 1995 (Bare Act).
sation in industrial accidents. Supreme Court is given appellate authority. Schedule contains the list of heads under which compensation can be claimed which includes death, injury, loss of wages, damages to private property to name a few.246

The evaluation of these legislative attempts and delegated legislation to protect the environment shows that the need for a comprehensive legislation to control pollution is yet remaining. Though EP Act was hailed as an umbrella legislation it is at best a paper tiger meant to assuage the feeling of environmentalists.247

Many of the provisions are neither property defined nor clearly drafted to deal with the essential problems related to environmental protection.248

245. Id., Section 24.
246. Schedule under Section 3 (1).
248. Id., p.35. Section 26 defining 'environment pollutant' is inadequate. The inadequacy is realized even by the draftsman as seen from section 6 (2) (b) where the words including noise' is introduced to qualify the term "environmental Pollutants". The limitation of the definition to the three states of matter which causes pollution is another aspect; the fourth state, viz., "plasma" used in advanced scientific and technological experiments and which is at the threshold of industrial use is left out. This may present problem of regulation in view of the present definition".
to water pollution. Among these regulation of groundwater need special mention.\textsuperscript{249} In India we still do not have a comprehensive legislation to regulate pollution of ground water and defect through has been pinpointed in the academic circle \textsuperscript{250} and is yet to be rectified.

\textsuperscript{249} Alice Jacob, "Development of Ground Waters: Need For Legal Regulation", 32 J.I.L.I. (1990) 540 at p.542.

\textsuperscript{250} Id., p.543. It is time that the State enact legislation for the development of ground waters taking into account physical and hydro-geological consideration.