CHAPTER-VIII

THE ENFORCEMENT OF REMEDIES
8.1 Introduction

Need for environmental protection and the role the law and the courts can play is an admitted fact. What is needed today is that, there should be an effective enforcement machinery to enforce the laws and legal standards. The laws will become meaningful only when they provide necessary remedies to the aggrieved person. An individual, who has suffered any injury due to pollution, has a number of remedies, both statutory and non-statutory. They are:

(1) Common Law Remedies;

(2) Constitutional Remedies; and

(3) Statutory Remedies.

8.2 Common Law Remedies

8.2.1 Tort Action Against the Polluter

Actions brought under tort law are among the oldest of the legal remedies to abate pollution. Most pollution cases in tort law fall under the categories of nuisance, negligence and strict liability. To these traditional categories, the Supreme Court has added a new class, based on the principle of ‘absolute liability’. This norm was developed by the Court in the post-Bhopal period in response to the spread of hazardous industries and was later adopted by the legislature.
The rules of tort law were introduced into India under British rule. Initially, disputes arising within the presidency towns of Calcutta, Madras and Bombay were subjected to common law rules. Later Indian Courts outside the presidency towns were required by the Acts of British Parliament and Indian Laws to reconcile disputes according to justice, equity and good conscience where there was no applicable statutes. Consequently, in suits for damages for torts (civil wrong), Courts followed the English common law in so far as it was consonant with these principles. By the eighteenth century, Indian Courts had evolved a blend of tort law adapted to the Indian conditions. Common law based tort rules continue to operate under Article 372 of the Indian Constitution, which ensured the continuance of existing laws.

8.2.2 Damages and Injunction

A plaintiff in tort action may sue for damages or injunction; or both. Damages may be either 'substantial' or 'exemplary'. Substantial damages are awarded to compensate the plaintiff for the wrong suffered. The purpose of such damage is restitution i.e. to restore the plaintiff to the position he or she would have been, in if the tort had not been committed. Such damages, therefore, correspond to a fair and reasonable compensation of the injury. Exemplary

1 Common Law refers to the customary law of England derived from judicial decisions, in contrast with legislative enactments.
3 Damages are the compensation payable for the commission of a tort.
4 Shyam Divan, Armin Rosencranz, supra note 2, p.88-89.
damages are intended to punish the defendant for the outrageous nature of his or her conduct, as for instance, when he or she persists in causing a nuisance after being convicted and being fined for it.  

The House of Lords has ruled that exemplary damages can be allowed in three categories of cases. The first category is oppressive, arbitrary or unconstitutional action of the Government or its servants. Cases in the second category are those in which, the defendant’s conduct has been calculated by him to make a profit for himself, which may well exceed the compensation payable to the plaintiff. Third category consists of cases in which exemplary damages are expressly authorized by the statute.

The object of the Court in awarding such a type of damages is to deter the wrongdoer. The deterrence objective has recently prompted the Supreme Court to add a fresh category to the type of cases where exemplary damages may be awarded, viz., when harm results from an enterprise’s hazardous or inherently dangerous activity. In the Sriram Gas Leak case, where oleum gas leaked from a unit of the Sriram Foods and Fertilizer Industries and injured a few Delhi citizens, the Court observed that, in such cases, ‘compensation must be correlated to the magnitude and capacity of the enterprise because such compensation must have a

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5 J.C. Galstaun v. Dunia Lal Seal, (1905) 9 CWWE 612, 617.
deterrent effect. The larger and more prosperous the enterprise, the greater must be the amount of compensation payable by it... .

Shyam Divan and Armin Rosencranz have opined that the damages awarded in tort actions in India are notoriously low, and pose no deterrent to the polluter. Lengthy delays in the adjudication of cases combined with chronic inflation dilute the value of any damages that a successful plaintiff may receive consequently. Although in theory damages are the principal relief in a tort action, in practice injunctive reliefs are more effective in abating pollution. Accordingly, litigation strategies must shift away from the conventional common law emphasis on damages. Lawyers in India intent on abating pollution may seek temporary injunction against the polluter followed by a perpetual injunction on decree. 

8.2.3 Injunction

An injunction is an order of a Court restraining the commission, repetition, or continuance, of a wrongful act of the defendant. To entitle a party to an injunction, he must prove either damage or apprehended damage. The apprehended damage must involve imminent danger of a substantial kind or injury that will be irreparable. An injunction may take either a negative or positive

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8 Id, at 1099.
9 Shyam Divan, Armin Rosencranz, supra note 2, p.89.
form. It may require a party to refrain from doing a particular thing or do a particular thing.\textsuperscript{11} Injunctions are granted at the discretion of the Court.

An aggrieved person may seek either temporary or permanent injunctions. A permanent injunction restrains a party forever from doing the specified act and can be granted only on merits at the conclusion of the trial after hearing both the parties to the suit.\textsuperscript{12} A temporary or interim injunction, on the other hand, restrains a party temporarily from doing the specified act and can be granted only until the disposal of the suit or until the further orders of the Court. It is regulated by the provisions of Order 39 of the Code of Civil Procedure, 1908\textsuperscript{13} and may be granted at any stage of the suit.\textsuperscript{14}

The grant or refusal of a temporary injunction is governed by three well-established principles:

(i) the existence of a \textit{prima facie} case (showing on the facts that the plaintiff is very likely to succeed in the suit);

(ii) the likelihood of irreparable injury (an injury that cannot be adequately compensated for in damages) if the injunction is refused; and

\textsuperscript{11} \textit{Mahadev v. Narayan}, (1904) 6 Bom. L.R. 123.

\textsuperscript{12} Section 37 (2), Specific Relief Act 1963.

\textsuperscript{13} Section 37 (1) Specific Relief Act 1963.

\textsuperscript{14} Rule 1 of order 30 provides that temporary injunctions may be proved where it is provided: (a) that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution, of a decree, or (b) that the defendant threatens, or intends, to remove or dispose of his property with a view to defrauding his creditors, or (c) that the defendant threatens to dispossess the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit or (d) where the defendant is about to commit a breach of contract, or other injury of any kind or (e) where the court is of the opinion that the interest of the justice so requires.
(iii) that the balance of convenience requires the issue of injunction (a showing that inconvenience to the plaintiff if temporary injunction is withheld exceeds the inconvenience to the defendant if he or she is restrained).\textsuperscript{15}

If the damages do not adequately provide relief or where the injunction would prevent multiplicity of proceedings, the Court may permanently restrain the defendant from continuing an act. Thus, where hazardous dust from a brick-grinding machine polluted the air of a neighboring medical practitioner's consulting room, the polluter was permanently restrained from operating the machine.\textsuperscript{16} Thus injunction could be an effective remedy in cases of environmental pollution.

**8.2.4 Nuisance, Negligence, Strict Liability and Absolute Liability**

**8.2.4.1 Nuisance**

Nuisance as a tort means an unlawful interference with a person's use or enjoyment of land, or some right over, or in connection with it. Acts interfering with comfort, health or safety are the examples of it. The interference may be in any way, e.g., noise, vibrations, heat, smoke, smell, fumes, water, gas, electricity, excavation or disease producing germs.\textsuperscript{17}

Thus the two essential features of nuisance are—firstly, for an actionable nuisance, the conduct of the defendant must be unreasonable and secondly, the

\textsuperscript{15} Shyam Divan, Armin Rosencranz, \textit{supra} note 2, p.91.


\textsuperscript{17} \textit{Bhanwarlal v. Dhanraj}, AIR 1973 Raj 212, 216.
nuisance must continue for some time and it must not be momentary. Thus, nuisance includes offensive smells, water pollution and also air pollution. Hence, nuisance which affects the rights of the general public may be considered as a public nuisance.

Thus it has been rightly stated that a public nuisance is an unreasonable interference with a general right of public and it is both a tort and a crime. The remedies for public nuisance are: (1) a criminal prosecution for the offence of causing public nuisance; (2) a criminal proceeding before a magistrate for removing a public nuisance; (3) a civil action by the Advocate General or by two or more members of the public with permission of the Court, for a declaring an injunction or both.

A private nuisance on the other hand is a substantial and unreasonable interference with the use and enjoyment of land, or some right over, or in connection with it.

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18 A person is guilty of public nuisance who does any act, or is guilty of an illegal omission, which causes any common injury, danger or annoyance to the public or the people in general who dwell or occupy property in the vicinity or which must necessarily cause injury, obstruction, danger or annoyance to persons who may have occasion to use any public right. Sec.268 of IPC 1860. Thus, nuisance is a public nuisance if it interferes with the quality of life of a class of persons who come within its neighborhood.

19 Section 268, IPC 1860.


21 Section 91 of the Code of Civil Procedure 1908. In the absence of special damage this is the only available civil remedy. A private action can be maintained against a public nuisance where the plaintiff has suffered particular damage beyond that suffered by all the other persons affected by the nuisance.

For remedies regarding private nuisance, the plaintiff can claim both damages as well as injunctive reliefs. In cases of a continuing cause of action, such as pollution of a stream by factory wastes, the proper course is to sue for an injunction. Repeated actions for damages may be brought to recover the loss sustained up to the date of the Court's decree but future losses, which are contingent on the continuance of the wrong, are not usually awarded. Damages offer poor relief as the plaintiff would be compelled to bring successive actions, ordinarily, therefore, courts grant the plaintiff an injunction where a nuisance exists or is threatened, unless he or she is guilty of improper conduct or delay.

In *Municipal Council Ratlam v. Vardhi Chana*, the Supreme Court for the first time treated an environmental problem differently from an ordinary tort or public nuisance. In this case, the Court held that budgetary constraints did not absolve municipality from performing its statutory obligation. It compelled and issued proper directions to the municipalities to provide proper sanitation, and drainage thereby enabling the poor to live with dignity.

Although, in *Ratlam*, the Court played a very activist role, the *Ratlam* judgment remains on paper.

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23 Discussed above, supra note.
24 Shayam Divan, Armin Rosencranz, supra note 2, p.91.
26 Ibid.
8.2.4.2 Negligence

In most of the cases of environment pollution the dominant cause is negligence on the part of the authorities. To prevent environmental pollution a person may bring an action for negligence.\(^27\) In an action for negligence, an aggrieved person has to prove:

(i) A legal duty to exercise due care on the part of the party complained of towards the party complaining the former's conduct within the scope of the duty;

(ii) Breach of the said duty; and

(iii) Consequential damages.\(^28\)

It is also necessary that, there is a link between negligent act and injury caused to the plaintiff, which might be often very difficult to prove in pollution cases.

8.2.4.3 Strict Liability

Where environment pollution is caused by hazardous industries strict liability can be imposed. The principle of strict liability was evolved in England more than a century ago, in *Rylands v Fletcher.*\(^29\) However strict liability is

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\(^{29}\) (1866) LR & HL 330. It was held in this case that, the person who, for his own purposes, brings on his land and collects and keeps there anything likely to do mischief if it escapes, must keep it at his peril and if he does so, is *prima facie* answerable for all the damage, which is the natural consequence of its escape.
subject to a number of exceptions that considerably reduces the scope of its operation. Exceptions for rule of strict liability' are –

(i) an act of God (nature disasters such as an earthquake or flood);

(ii) the act of a third party;

(iii) the plaintiff's own fault;

(iv) the plaintiff's consent;

(v) the natural use of land by the defendant; and

(vi) statutory authority.

8.2.4.4 Absolute Liability

Absolute liability for the harm caused by industry engaged in hazardous and inherently dangerous activity is a newly formulated doctrine. This rule was evolved in *M.C. Mehta v. Unions of India*. The principle was further applied in cases like *Bhopal litigation*, *Indian Council of Enviro Legal Action v. U.O.I.*, etc. Unlike strict liability the doctrine of absolute liability does not admit of any exceptions. This doctrine imposes greater responsibility on those who establish hazardous industries, as they cannot escape liability for any loss or injury they may cause to the public.

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30 AIR 1987 SC 1086. Popularly known as Shriram gas leak case. Facts and judgment are discussed in chapter II and chapter V. p.
31 *Union Carbide Corporation v. U.O.I.*, AIR 1990 SC 273. Facts are discussed in chapter II & chapter V.
32 AIR 1996 SC 1446.
An action for remedies under Tort law is an important legal tool for control of pollution. However it still remains untapped inspite of having great potential in providing remedies.

### 8.3 Constitutional Remedies - The Writ Jurisdiction

A right without a remedy does not have much substance. The Fundamental Rights guaranteed by the Constitution would have been worth nothing had the Constitution not provided an effective mechanism for their enforcement.  

The Supreme Court has interpreted Article 21, which guarantees the fundamental right to life and personal liberty, to include the right to a wholesome environment. Accordingly, a litigant may assert his or her right to a healthful environment against the state, by a writ petition to either Supreme Court or a High Court.

Articles 32 and 226 of the Constitution of India empower the Supreme Court and the High Courts, respectively, to issue directions or orders or writs, including writs of habeas corpus, mandamus, prohibition, quo warranto or

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35 The power to issue writs has been borrowed in India from England, where the prerogative writs have been issued for centuries. Prior to the adoption of Constitution, the three High Courts at Calcutta, Madras and Bombay had the power to issue these writs under the Charter Act of 1861. Other High Courts did not possess this power. The Constituent Assembly, which created India's Constitution, saw these writs as an effective means of enforcing fundamental rights, and consequently conferred on the Supreme Court and all the High Courts the power to issue these writs.
certiorari. In environmental matters, generally writs of mandamus, certiorari and prohibition are resorted to.

Writs of Mandamus, Prohibition and Certiorari

8.3.1 Writ of Mandamus

Court can issue a writ of mandamus to command action by a public authority when an authority vested with a power and wrongfully refuses to exercise it. A mandamus can also be issued to undo what has been done in contravention of a statute. This writ can be issued against an administrative, quasi-judicial or judicial authority.\(^{36}\) The function of mandamus is to keep the public authorities within the limits of their jurisdiction while exercising public functions.\(^{37}\)

An applicant seeking a mandamus must show that the duty sought to be enforced is a duty of a public nature (i.e., a duty created under the Constitution, a statute or some rule of common law) and that the duty is mandatory and not discretionary in nature. Normally a mandamus does not lie against a private individual, but it might be issued where it is proved that the individual was colluding with a public authority.\(^{38}\) Before a mandamus is issued, the Court must


\(^{37}\) Birendra Kumar *v.* India, AIR 1983, Cal 273.

\(^{38}\) Sohan Lal *v.* U.O.I., AIR 1957 SC 529, 532.
be satisfied that the petitioner had demanded justice and that the concerned authority had refused the demand. 39

For instance, a mandamus would lie against a municipality that fails to construct sewers and drains, clean streets and clear garbage. Likewise, a state pollution board may be compelled to take an action against an industry discharging wastes or pollutants above permissible level. 40

In Rampal v. State of Rajasthan,41 writ process was used in securing government action to improve the urban environment. In this case, the petitioners residing in Mundara Mohalla, situated in the town of Mandal in Bhilwara District, Rajasthan contended that, the surroundings of the houses where they live, was totally covered with filth and garbage. The stagnant water, which had collected in the common chowk of the Mundara Mohalla, became the breeding place of mosquitoes and insects and caused the spread of diseases. The petitioner also contended of not having a proper drainage system, which resulted in the growth of mass and insects, and leading to spread of epidemics.

The petitioner sought remedy by invoking the jurisdiction of Court for the writ of mandamus against the municipal board for removal of filth and garbage,

40 Shyam Divan, Armin Rosencranz, supra note 2, p.124.
41 AIR 1981 Raj 121.
dirty water and construction of proper sewers and drainage for the discharge of such water, as the municipal board did not take any steps in this matter.42

The Court upheld the contention of the petitioners and directed the Municipal Board, Mandal to remove the filth and garbage, construction of proper sewers and drains and remove the cause of public nuisance in the locality, within a period of three months.43

8.3.2 Writs of Certiorari and Prohibition

The writs of certiorari and prohibition are designed to restrain the public authorities from acting in excess in their authority. Certiorari is an order to an inferior Court or quasi-judicial body to transmit the record of pending proceedings to the superior Court for its review. Prohibition prevents a lower Court or tribunal from assuming a jurisdiction, which it does not possess. Certiorari and prohibition are now regarded as general remedies against an improper exercise of power by administrative as well as quasi-judicial authorities.44

The writs of certiorari and prohibition are issued where an authority (1) acts in excess of jurisdiction; (2) acts in violation of the rules of natural justice; (3) acts under a law which is unconstitutional; (4) commits an error apparent on the face of

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42 Under Section 98 of the Rajasthan Municipalities Act 1959, Municipal Board is vested with a duty to make reasonable provisions for cleaning public streets, places and sewers and all places not being private property and removing filth, rubbish or other offensive matter and constructing drains, drainage, sewers etc.

43 Rampal v. State of Rajasthan, see supra note 40.

44 M.P.Jain & S.N.Jain, supra note 35, p.525.
the record; and (5) reaches further findings that are not supported by the evidence.45

8.3.3. Articles 32 and 226 – a comparison

The Supreme Court’s jurisdiction under Article 32 is more limited than the jurisdiction of the High Courts under Article 226. Article 32 guarantees the right to the enforcement of fundamental rights through the Supreme Court. Moreover, Article 32 is itself a fundamentals right and, therefore, cannot be abridged by legislation. An indispensable condition for invoking the Supreme Courts jurisdiction under Article 32 is the violation of a fundamental right conferred in part-III of the Constitution. Thus, an illegal government action that does not infringe a fundamental right cannot be challenged in writ proceedings under Article 32. In contrast, the writ jurisdiction of the High Courts under Article 226 may be invoked not only for the enforcement of a fundamental right but for ‘any other propose’ as well. Ordinary legal rights may also be asserted through a writ petition in the High Court. For instance, although the freedom of trade, commerce and intercourse embodied in Article 301 is not a fundamental right and, therefore, cannot be enforced in a petition under Article 32,46 such a right may be enforced in a High Court under Article 226. Invoking the High Court writ jurisdiction is the most popular method to obtain judicial review of administrative action. Article 226 cannot be curtailed by legislation, since it is a constitutional provision. Thus

45 Ibid.
the Supreme Court and the High Court have concurrent jurisdictions for the enforcement of fundamental rights. A person complaining of an infringement of fundamental rights may seek redress in either forum. 47

8.4 Public Interest Litigation

Supreme Court and the High Courts are empowered to deal with public grievances and order for appropriate solutions for violation of fundamental rights by the state. Where a state action affects the rights of the public in general, any member of the public can file a writ petition under Articles 32 or 226. This new type of remedy available to a person is called as 'public interest litigation'. Most of the environmental disputes in India fall within this class.

In a public interest case, the subject matter of litigation is typically a grievance against the violation of basic human rights of the poor and helpless or about the content or conduct of government policy. In public interest litigation both the party structure and the matters in controversy are sprawling and amorphous, to be defined and adjusted or readjusted, as the case may be adhoc, according as the exigencies of the emerging situations; the relief to compensation which, sometimes, it also is. The pattern of relief need not necessarily be derived logically from the rights asserted or found. More importantly, the Court is not merely a passive, disinterested umpire or onlooker, but has a more dynamic and

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47 Shyam Divan, Armin Rosencranz, supra note 2, p.129.
positive role with the responsibility of organizing the proceedings, moulding the relief, and implementation there of.  

8.4.1 Liberalization of 'Locus Standi' in PIL

Public Interest Litigation is a logical result of liberalizing the rule of Locus Standi. Normally only a person aggrieved, who is adversely affected or injured, can activate the judicial process. This is true of writ jurisdiction as well as of the powers of the Court to issue injunctions or declaratory orders.

However, access to justice is an intrinsic problem facing a majority of third-world countries today. Poverty, ignorance and inaccessibility of vast masses in these countries posed a problem of justice before them, forcing the judiciary to evolve a new strategy as it was realized that unless justice was ensured to them by the society, freedom would have no relevance and social justice will be meaningless. In the context of growing demand to protect the weaker sections of the society, to conserve public resources to direct and, if necessary, to correct the exercise of public powers, and ensure just and fair working of the executive government, relaxation in the rule of standing proved unavoidable.

Accordingly, the Apex Court has relaxed the traditional rule of *locus standi*. As a result any member of the public acting *bonafide*, and having sufficient interest in instituting an action for redressal of public wrong or public injury can invoke the jurisdiction of the Court to seek relief on behalf of the public.

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As early as in 1982, in *S.P. Gupta v. U.O.I.*\(^{50}\) Bhagawati J., stated:

“Any member of the public having sufficient interest can maintain an action for judicial redress for public injury arising from breach of public duty or from violation of some provision of the Constitution or the law and seek enforcement of such public duty and observance of such constitutional or legal provision”.

Public interest litigation should not, however, be used by a petitioner as a means to grind a personal axe. The petitioner should not be inspired by malice or a design to malign others, or be actuated by selfish or personal motives or by political or oblique considerations. He should be acting *bonafide* and with a view to vindicate the cause of justice.\(^{51}\)

The procedural requirements of litigation that ensure fairness and uniformity at the trial of conventional, adversarial lawsuits may not be necessary in PIL cases. Judges like to view PIL as collaborative effort between the Court, citizen and the public official, where procedural safeguards have a diminished utility and may be relaxed to enable relief.\(^{52}\)

For instance, the Supreme Court and the High Courts frequently treat letters written to individual judges or Court as writ petitions.\(^{53}\) Occasionally, the Courts have relaxed procedural rules in other respects as well. In the *Shriram Gas Leak*

\(^{50}\) (Judges Transfer case), AIR 1982 SC 149, 194.


\(^{53}\) Often called as epistolary jurisdiction. However, recently, the practice of treating letters written to individual judges as writ petitions has been deprecated. The proper course is to address letters to the Court.
the Supreme Court allowed an unconnected cause of action to be urged, without requiring amendments to the petition. The original petition sought the closure of Shriram’s Hazardous industrial plant and its relocation away from Delhi’s populated localities. While the petition was pending, oleum gas escaped from the plant and harmed some persons, who filed applications for compensation in the original ‘closure and relocation’ writ petition. Shriram urged the Court not to decide the issue arising from the compensation claim, since no such claim had been made in the original petition, nor had the petitioner amended the petition to incorporate a compensation plea. The Court overruled this objection, stating that a ‘hyper technical approach’ that defeated the ends of justice was inappropriate in PIL cases.  

In environmental pollution cases, now, availing the remedy through PIL has become common since it is not very expensive, nor time consuming, and also does not involve complicated procedural technicalities. It also helps those people who belong to the lower rungs of the society who are unable to seek protection of Courts either because they cannot afford to pay costs of litigation or because their injuries are such immediate concern to them that they do not have patience to wait for years to get redress. The PIL has come, as a boon to a common citizen is cases of environmental pollution. Large number of PIL have been successfully filed in the apex court.

55 Ibid.
8.5 Statutory Remedies

In addition to common law and constitutional remedies discussed above, the Parliament has also provided remedies to an aggrieved person in environmental pollution cases under various statutes. These statutory remedies are briefly discussed under the following headings.

(1) Remedies under Environment (Protection) Act, 1986.

(2) Remedies under the Public Liability Insurance Act, 1991.


(4) Remedies under the Air Act and Water Act.

8.5.1 Remedies under the Environment Protection Act of 1986

The Environment (Protection) Act 1986 (EPA) was enacted under the provisions of Art.253 of the Constitution with a view to implementing the decisions of the United Nations Conference on the Human Environment held at Stockholm in 1972. The EPA was formulated since it was felt that general legislation is needed for environmental protection and to fill in the lacunae in the existing legal provisions relating to environmental hazards. Co-ordination of the activities of the various regulatory agencies, creation of authorities with adequate powers for environmental protection, regulation of discharge of environmental pollutants and handling of hazardous substances, speedy response in case of
accidents threatening the environment and provision for punishments are the objects of the legislation.  

Section 15 of the Environment Protection Act deals with the remedial relief. Failure to comply with, or contravention of the provisions of EPA, or the rules made, or order or directions issued, are punishable with imprisonment which may extend to five years or with a fine upto one lakh rupees or both. An additional fine of upto five thousand rupees for every day during failure or contravention after the conviction can also be levied. Any person can go in for a prosecution after issuing a 60-day notice to the Central Government or the authority or the authorized officer.

If the offence is committed by a company, then every person who, at the time the offence was committed, or every person who is responsible for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. If the offence is committed with the consent or neglect on the part of, any director, manager, secretary or other officer of the company, such directors, manager, secretary or other officer shall also be deemed to be guilty of

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57 Section 57 (1) EPA 1986.
58 Section 15 (2) EPA 1986.
59 Section 19 EPA 1986.
60 Section 16(1) EPA 1986.
that offence and shall be liable to be proceeded against and punished accordingly.61

If the offence is committed by the Department of any Government, the Head of the Department shall be deemed to be guilty of the offence and shall be liable to be punished. If the offence is committed with the consent of any other person, he shall also be liable to be prosecuted and punished.62

However, the remedial relief provided under the Environment Protection Act is often compared with a barking dog that never bites.63 There is a provision that if an act or omission under the Environment Protection Act is an offence under any other Act, the offender can be proceeded under that Act and not under Environment Protection Act.64 This provision reduces the deterrent effect of the enhanced fine and takes the wind out of the sail of the law.65

8.5.2 Remedies under the Public Liability Insurance Act, 1991

This Act was passed with an object to provide immediate relief to the person affected by the accidents while handling any hazardous substances and for matters connected therewith or incidental thereto.

61 Section 16 (2) EPA 1986.
62 Section 17 (1), EPA 1986. However, the provision does not apply if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.
64 Section 24(1) EPA 1986.
The Act enunciates the principle of 'no-fault liability' by imposing liability upon the owner of the hazardous facility, abolishing all the defences available to him, making him liable for death or other injury to any person other than the workmen or for damage to the property.66

The Collector of the District has been empowered to invite applications for relief to be awarded under the Act in case an accident occurs. Claims up to Rs.25,000 may be filed before the District Collector. A claim for relief shall be disposed off expeditiously, say within three months of the receipt of the application for relief.67

8.5.3 Remedies under National Environmental Tribunal Act 1997 (NETA)

This Act also like Public Liability Insurance Act, (PLIA), provides a summary remedy to the victims of hazardous industrial accident.68 While under PLIA, only claims up to Rs.25,000 may be filed before the District Collector, under NETA, National Environmental Tribunal69 has the jurisdiction to entertain and awards larger amount of compensation.70

67 Sections 5 and 6, Public Liability Insurance Act, 1991. Any aggrieved person, legal representative or duly authorized agent can claim for relief if he had suffered any loss/damage from the occurrence of the accident involving hazardous substance.
68 Section 3, NETA, 1991.
69 The Central Government has constituted the National Environment Tribunal under Section 8 of NETA to exercise the jurisdiction, powers and authority conferred on it by NETA.
70 Sections 22 and 23 of NETA, 1991.
8.5.4 Remedies under the Air Act and Water Act

The Central Pollution Control Board and the State Pollution Control Boards under the Air Act as amended in 1987 and the Water Act as amended in 1988 are responsible for the enforcement of the provisions of these Acts. The Central Pollution Control Board constituted under the Water (Prevention and Control of Pollution) Act, shall exercise the powers and perform the functions of Central Pollution Control Board for the prevention and control of air pollution. Further, in any state in which the Water (Prevention and Control of Pollution) Act, 1974, is in force and the state government has constituted for that state a state pollution control board under section 4 of that Act, such state board shall be deemed to be the state board for the prevention and control of Air pollution.

The Central Pollution Control Board consists of following members

(a) a full-time chairman, being a person having special knowledge or practical experience in respect of matters relating to environmental protection or a person having knowledge and experience in administering institutions dealing with above matter, to be nominated by the Central Government;

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

(c) such number of persons, not exceeding five, to be nominated by the Central Government, from amongst the members of the State Boards, of whom not

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71 Section 3 of the Water (Prevention and Control of Pollution) Act, 1974.
72 Section 5 of the Water (Prevention and Control of Pollution) Act, 1974.
exceeding two shall be from those refused to in clause (c) of sub-section (2) of section 4;\textsuperscript{73}

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

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

(f) a full-time member-secretary, possessing qualifications, knowledge and experience in scientific, engineering and management aspects of pollution context to be appointed by the Central Government.\textsuperscript{74}

The State Pollution Control Board consists of following members

(a) a chairman, being a person having special knowledge or practical experience in matters relating environmental protection or a person having knowledge and experience in administering institutions dealing with the above matters, to be nominated by the State Government.\textsuperscript{75}

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

\textsuperscript{73} For details of clause (c) of sub-section (2) of section 4, see infra note 78.
\textsuperscript{74} Sub-section (2) of section\textsuperscript{3} of Water (Prevention and Control of Pollution) Act.
\textsuperscript{75} The Chairman may be either whole-time or part-time as the state government may think fit.
(c) Such number of persons, not exceeding five, to be nominated by the State Government from amongst the members of the local authorities functioning within the state;

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

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

(f) A full-time member-secretary, possessing qualification, knowledge and experience of scientific engineering or management aspects of pollution control to be appointed by the state Government.76

Although a citizen can avail the remedy under both these laws, due to some basic infirmities present in these laws, seeking prosecution under them is a difficult task. For example, under section 49 of the Water Act and under section 43 of the Air Act, no court shall take cognizance of any offence under these Acts, except on a complaint made by –

(a) a Board or any officer authorized in this behalf by it; or

76 Section 4 of the Water (Prevention and Control of Pollution) Act. In the Union Territory, the Central Board shall exercise the powers and perform the functions of State Board for that Union Territory. However the central Board may delegate all or any of its functions to such person or body of persons as the Central Government may specify
(b) any persons who has given notice of not less than sixty days, of the alleged
offence and of his intention to make a complaint, to the Board or officer
authorized in this behalf.  

There appears to be no rationale behind giving sixty days prior intimation
of alleged offence and intention to make complaint to the Board. Such conditions
make it difficult on the part of the citizen to avail the remedies. Although under
both the provisions, citizen can require the pollution control boards to disclose
relevant internal reports, the importance of the section is negotiated by making the
further provision that, in the interest of the public, the Board may refuse to make
any such report available to such person.  

Besides, sampling requirements under the pollution control laws, which
confer the power to draw the effluent samples exclusively upon government
officials, discourages those seeking to launch private prosecution. Pollution
control boards officials from Tamil Nadu, Karnataka and Maharashtra confirm
that until January 1999, there were no successful private prosecutions in their
states.  

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77 Sub-section (1) of Section 49 of Water Act and Sub-section (1) of Section 43 of Air Act.
78 Sub-section (2) of Section 49 of Water Act and Sub-section (2) of Section 43 of Air Act.
79 Section 21 of Water Act and Section 26 of the Air Act.
80 Shyam Divan, Armin Rosencranz, supra note 2, p.133.
8.6 Conclusion

The above discussion reveals that, an aggrieved person in environmental pollution cases, can seek the remedy either under law of torts or can seek constitutional remedies energized by Public Interest Litigation. Apart of common law and constitutional remedies, Parliament has also provided special channels of redress under various statutes like, The Environmental Protection Act, The Public Liability Insurance Act, The National Environmental Tribunal Act, The Air Act and The Water Act. The various remedies available to an individual make the rights secured to him, more meaningful and effective.