CHAPTER - 4

SPECIAL LAWS AND ADMINISTRATIVE MACHINERY FOR
POLLUTION CONTROL AND ENVIRONMENTAL
PROTECTION

"And God said, Let there be a firmament in the midst of the waters, and let it divide the waters from the waters. And God made the firmament, and divided the waters which were under the firmament from the waters which were above the firmament: and it was so. And God called the firmament Heaven, And the evening and the morning were the second day." Genesis 1:6-8.

OUR ATMOSPHERE COMPONENTS

The "Heaven" mentioned here as being created by God on the second day refers to our atmospheric heaven. It includes the air we breathe, and upon which life on earth depends. A 12-mile-thick layer wrapped around our planet, the atmosphere consists of about 78% nitrogen, 21% oxygen, and 1% argon, helium, carbon dioxide, and other gases. It also harbors a fair amount of water vapor and an unwarranted amount of pollution. As this mixture is inhaled into the lungs, about a fifth of the oxygen is retained while the rest is exhaled along with carbon dioxide and water vapor1.

With the unbridled economic and industrial growth that post-Independence India has witnessed has come unplanned urbanisation and a growing population pressure. All this is bound to have its effects on the environment. Air and water pollution from emissions and industrial activity has considerably deteriorated natural surroundings. Inadequate waste management and industrial effluence has made the country's rivers major carriers of chemical and water-borne diseases. This has left not only humans at risk, but also the country's biodiversity, as virtually every day, some species or another falls under threat or goes extinct.

India has three types of biodiversity zones - forests, wetland and marine and is home to about 33 per cent of the world's species of plants and animals. Altogether, India has 372 main species of mammals, 1,224 main species of birds, 408 main species of reptiles, 197 main species of amphibians, 2,546 main species of fish, and 47,000 species of plants. Quite a few of these are endemic and not found anywhere else in the world. A nation's biodiversity is its most priceless treasure, and no country can afford to let it go desecrated.

Urban India is among the most polluted places on earth. With economic growth and middle-class prosperity, the number of commercial and personal vehicles has risen significantly, leading to excessive emissions and air pollution. While in metropolitan areas, checks and regulations for vehicle and industrial emission of greenhouse gases are generally enforced, they are non-existent in other major towns.

Toxic wastes from industrial activity and of late electronic waste from discarded computer and mobile phone parts are the main causes of surface pollution. Many industrial nations use countries like India to dump their hazardous waste, where it is then recycled into other uses and become potential health hazard time bombs. The overwhelming use of plastic products are also great causes of pollution that can have adverse health effects.

Unmanageable human and industrial waste are the main reasons for surface water pollution. While many rural areas lack even the most basic sanitation facilities, even the urban areas that do have them generate sewage that goes untreated into water bodies. A greater risk comes from industrial effluents - hazardous chemicals that are simply dumped into rivers. Excessive use of pesticides and fertilizers also pollute the groundwater from which most drinking water is drawn. Waste disposal also causes great pollution on stagnant water bodies such as lakes and ponds, rendering them unfit for human and animal activity.
Such widespread air and water pollution causes considerable risk to human health. Air pollution is the main cause of respiratory diseases while water pollution affects us directly through the water we drink and indirectly through the food we eat. Lead and arsenic poisoning are also some grave environmental risks that humans face. While human beings are in a position to assess the danger that faces them, the country's biodiversity is ruthlessly mowed down by progress and economic development. Urban areas today are all but devoid of any wildlife and native greenery. Industrial effluents have far-reaching effects on wildlife, and many native species are dying out simply due to excessive contamination of their habitats and food sources.

Rapid and unplanned urbanization as well as expansion of agriculture has caused biodiversity habitats to dwindle due to encroachment. Human-animal conflicts are a regular feature in not only rural areas, but in urban areas as well, as hunting and grazing grounds are cut down, migration routes are snapped and water bodies are filled in. An upsurge in the need of timber for housing and furniture has caused once abundant forests to be cut down, and whatever government regulations exist are flouted by the well-entrenched timber mafia. It has often been the case that newly introduced flora and fauna species, be it intentionally or unintentionally, have edged out their native counterparts, causing them to die out. Imported and genetically modified crops for agriculture and fish for aquaculture can create havoc with native species by hybridization.

There are many substances in the air which may impair the health of plants and animals (including humans), or reduce visibility. These arise both from natural processes and human activity. Substances not naturally found in the air or at greater concentrations or in different locations from usual are referred to as pollutants. Air pollution is the modification of the natural characteristics of the atmosphere by a chemical, particulate matter, or biological agent. The atmosphere is a complex, dynamic natural gaseous system that is essential to support life on

\[\text{See, http://nposonline.net/environment.shtml}\]
planet Earth. Stratospheric ozone depletion due to air pollution has long been recognized as a threat to human health as well as to the Earth's ecosystem.

Worldwide air pollution is responsible for large numbers of deaths\(^3\) and cases of respiratory disease. While major stationary sources are often identified with air pollution, the greatest sources of emissions is actually mobile sources, mainly automobiles.\(^4\) Gases such as carbon dioxide, which contribute to global warming, have recently gained recognition as pollutants by climate scientists, while they also recognize that carbon dioxide is essential for plant life through photosynthesis.

### 4.1 PREVENTION AND CONTROL OF AIR POLLUTION

The air (prevention and Control of Pollution) Act 1981 was enacted to implement the decisions taken at the United Nations conference on the Human Environment held in Stockholm in 1972.\(^5\) At the conference it was decided that the participants take appropriate steps for the preservation of natural resources which included the preservation of the quality of air and the control of air pollution. The Air (Prevention and Control of Pollution) Act 1981 applies to the whole of India. Further the Air (Prevention and Control of Pollution) Amendment Act 1987 provided for stiffer penalties and conferred powers on the administration to direct the closure of a defaulting industry or to stop its supply of electricity or water. The principal regulatory instrument to control industrial emissions is the command and control regime framed under the Air (Prevention and Control of Pollution) Act 1981 and the rules framed under that Act. The Supreme Court of India and the High Courts in the states have issued directions in public interest litigations to supplement air pollution control measures. With the exception of the provisions in relation to radio-active air pollution under the Atomic Energy Act

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\(^3\) See, Air Pollution, Heart Disease and Stroke, http://www.americanheart.org/presenter.jhtml?identifier=4419

\(^4\) National Research Council: Committee on Air Quality Management in the United States, Board on Environmental Studies and Toxicology, Board on Atmospheric Sciences and Climate, Division on Earth and Life Studies (2004). *Air Quality Management in the United States.*

\(^5\) The Air (Prevention and Control of Pollution) Act 1981 preamble.
1962, the provisions of the Air (Prevention and Control of Pollution) Act 1981 must have overriding effect in relation to any other enactment.\(^6\)

The Air (Prevention and Control of Pollution) Act 1981 requires the Central Board constituted under the Water (Prevention and Control of Pollution) Act 1974\(^7\) to exercise the requisite powers and perform the requisite functions for the prevention and control of air pollution. Where a state government has constituted a state board (‘a state pollution control board’)\(^8\) under the Water (Prevention and Control of Pollution) Act 1974, such board will be deemed to be the state board for the prevention and control of air pollution and will exercise the powers and perform the functions of such a board.\(^9\)

4.1.1 Functions of the Central Board\(^{10}\):

The main functions of the Central Board are to improve the quality of air and to prevent, control or abate air pollution in the country. These functions are in addition to the functions of the Central Board under the Water (Prevention and Control of Pollution) Act 1974. The particular and without prejudice to the generality of the foregoing functions, the Central Board may:

1. Advise the Central Government on any matter concerning the improvement of the quality of air and the prevention, control or abatement of air pollution.
2. Plan and cause a nation-wide programme to be executed for the prevention, control or abatement of air pollution.
3. co-ordinate the activities of the state and resolve disputes among them;
4. provide technical assistance and guidance to the state boards, carry out and sponsor investigations and research relating to problems of air pollution and prevention, control or abatement of air pollution;

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6 The Air (Prevention and Control of Pollution) Rules 1982.
7 Ie under the Water (Prevention and Control of Pollution) Act 1974 s 3.
8 Ie under the Water (Prevention and Control of Pollution) Act 1974 s 4.
5. Perform such of the function of any state board as may be specified in any order;

6. plan and organize the training of persons engaged or to be engaged in programmes for the prevention, control or abatement of air pollution on such terms and conditions as the Central Board may specify;

7. organize a comprehensive programme regarding the prevention, control or abatement of air pollution through mass media;

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

9. Lay down standards for the quality of air;

10. collect and disseminate information in respect of matters relating to air pollution;

11. Perform such other functions as may be prescribed.

The Central Board may establish or recognize laboratories to enable it to efficiently perform its functions. The Central Board may:

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

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

4.1.2 Functions of State Boards:

The functions of a state board must be the following, subject to the provisions of the Air (Prevention and Control of Pollution) Act 1981 and without prejudice to the performance of its functions, if any, under the Water (Prevention and Control of Pollution) Act 1974:

(1) to plan a comprehensive programme for the prevention, control or abatement of air pollution and to secure the execution thereof;
(2) to advise the state government on any matter concerning the prevention, control or abatement of air pollution;

(3) to collect and disseminate information relating to air pollution;

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

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

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

(7) to lay down, in consultation with the Central Board and having regard to the standards for the quality of air laid down by the Central Board, standards for emission of air pollutants into the atmosphere from industrial plants and automobiles or for the discharge of any air pollutant into the atmosphere from any other source whatsoever not being a ship or an aircraft. However, different standards for emission may be laid down for different industrial plants having regard to the quantity and composition of emission of air pollutants into the atmosphere from such industrial plants; s 17(1) (g) proviso.

(8) to advise the state government with respect to the suitability of any premises or location for carrying on any industry which is likely to cause air pollution;

(9) to perform such other functions as may be prescribed or as may, form time to time be entrusted to it by the Central or the state government.
(10) To do such other things and to perform such other acts, as it may think necessary, for the proper discharge of its functions and generally for the purpose of carrying into effect the purposes of this Act.

(11) It is the duty of a state board to prescribe and publish standards after having regard to health hazards and other relevant factors. The state board has no power to exempt any particular industrial plant or class of plants from the purview of the Act. A state board may establish or recognize laboratories to enable it to efficiently perform its functions.

4.1.3 Air pollution Rules:

The Central Government has framed rules dealing with the procedure for the transaction of business of the Central Board and its committees, the temporary association of persons with the Central Board, the forms of the budget, annual report and account of the Central Board and other miscellaneous matters. The Central Government has also framed rules in respect of the Union Territories. These rules provide for the appointment of consultants, the notification of air pollution control areas, procedures for the consent applications, procedures for taking samples, the functioning of the state air laboratory, procedure in respect of appeals, procedures relating to directions issued under the Air (Prevention and Control of Pollution) Act 1981 and other miscellaneous matters.

Several state governments have framed rules under the Air (prevention and Control of Pollution) Act 1981. Generally, these state rules deal with the terms and conditions of service of the chairman and other members of the state board, the procedures for the transaction of business of the state board and its committees, the temporary association of persons with the state board, the powers and duties of the chairman and the member-secretary of the state board, the procedure for the consent applications, the procedure in respect of appeals, the procedure in respect of directions issued under the Air (Prevention and Control of Pollution) Act 1981 and other miscellaneous matters.

12 Mahabir Coke Industry v Pollution Control Board AIR 1998 Gau 10 at 17-18.
14 The Air (Prevention and Control of Pollution) Act 1981 S 17 (2).
Pollution Act) 1981 forms in respect of the budget, annual account and consent register of the state board and the functions to be performed by the state board\(^\text{15}\).

### 4.1.4 Air Pollution Control Areas:

A state government may notify any area or areas within the state as air pollution control areas after consulting the state board, by notification in the official gazette, in such manner as may be prescribed. The state government, in consultation with the state board and by notification in the official gazette, is empowered to alter an air pollution control area, whether by extension or reduction or to declare a new air pollution control area in which one or more existing air pollution control areas or parts thereof may be merged\(^\text{16}\). However, within a declared air pollution control area, neither the board nor the state government may exempt a polluter from the purview of the Air (Prevention and Control of Pollution) Act 1981\(^\text{17}\). Where the state board failed to produce the official gazette declaring the air pollution control area and a local newspaper notifying the declaration before the magistrate, the industry was acquitted of the offence\(^\text{18}\).

The state government may prohibit the use of such fuel where the state government after consulting the state board is of the opinion that the use of any fuel other than an approved fuel in any air pollution control area may cause or is likely to cause air pollution. This may be effected through a notification in the official gazette with effect from such date, being not less than three months from

\(^{15}\) The state governments include the States of Andhra Pradesh (Andhra Pradesh Air (prevention and Control of Pollution) Rules 1982), Assam (Air (prevention and Control of Pollution) Assam Rules 1991), Bihar (Bihar Air (prevention and Control of Pollution) Rules 1983), Gujarat (Gujarat Air (Prevention and Control of Pollution) Rules 1983), Haryana (Haryana Air (Prevention and Control of Pollution) Rules 1983), Karnataka (Karnataka Air (prevention and Control of Pollution) Rules 1983), Kerala (Kerala Air (prevention and Control of Pollution) Rules 1983), Madhya Pradesh (Madhya Pradesh Air (Prevention and Control of Pollution) Rules 1983), Maharashtra (Maharashtra Air (Prevention and Control of Pollution) Rules 1983), Meghalaya (Meghalaya Air (Prevention and Control of Pollution) Rules 1988), Orissa (Orissa Air (prevention and Control of Pollution) Rules 1983), Tamil Nadu (Tamil Nadu Air (Prevention and Control of Pollution) Rules 1983), Uttar Pradesh (Uttar Pradesh Air (prevention and Control of Pollution) Rules 1983) and West Bengal (West Bengal Air (Prevention and Control of Pollution) Rules 1983).

\(^{16}\) The Air (Prevention and Control of Pollution) Act 1981, Sec. 19(2).

\(^{17}\) K Muniswamy Gowda v. State of Karnataka (1998) 3 Kant LJ 594

the date of publication of the notification, as may be specified in such notification. The state government may direct that with effect from such date as may be specified therein, no appliance will be used in the premises situated in an air pollution control area other than an approved appliance, after consultation with the state board, by notification in the official gazette. However, different dates may be specified for different parts of an air pollution control area or for the use of different appliances. If the state government, after consultation with the state board, is of the opinion that the burning of any material, not being fuel, in any air pollution control area or part thereof may cause or is likely to cause air pollution, it may prohibit the burning of such material in such area or part thereof, by a notification in the official gazettes\(^{19}\).

4.1.5 **Vehicular pollution regulations:**


The Motor Vehicles Act 1988 empowers the Central Government to prescribe emission standards for vehicles and to frame rules regulating the construction, equipment and maintenance of motor vehicles in relation to the emission of smoke, visible vapour, sparks, ashes, grit or oil. The Central Government may also make rules to reduce noise emitted or caused by vehicles and for the installation of catalytic converters in prescribed classes of vehicles. Rules relating to matters dealing with the protection of the environment are required to be made after consulting the Union Ministry dealing with environment. A person committing a breach of the prescribed air pollution standards is liable to be punished with a fine of Rs. 1000 for a first offence and Rs. 2000 for subsequent offences.

\(^{19}\) The Air (Prevention and Control of Pollution) Act 1981, Sec. 19(5).
The Central Motor Vehicle Rules 1989 prescribe national emission levels for diesel and petrol driven vehicles. Every motor vehicle is required to be maintained and driven so as to comply with the standards prescribed. The manufacturer of the vehicle is required to certify that every new vehicle conforms to the prescribed standards and that the vehicles are designed and constructed to meet these emission levels.

Vehicles that are more than a year old must carry a valid 'pollution under control' certificate issued by the state government's authorized agent. The certificate is valid for a period of six months or such shorter period that may be prescribed by the state government. The certificate is required to be carried in the vehicle and produced on demand to designated officers.

Where there is a reason to believe that emission norms or the 'pollution under control' certificate requirement is not complied with, designated officers are empowered to require the driver of a vehicle to get the automobile emission tested. Where the vehicle does not meet emission standards, the driver or person in charge of the vehicle must rectify the defect within in seven days. The failure to rectify the defects attracts a fine of Rs. 1000 on the owner of the vehicle respect of a first offence and a fine of Rs. 2000 for subsequent offences. The primary agency for the enforcement of vehicular emission norms is the Motor Vehicles Department established by the state government under the Motor Vehicles Act 1988.

The Environment (Protection) Act 1986 adopts a broadly consistent regulatory model. Emission standards in respect of motor vehicles have also been issued under the Environment (Protection) Rules 1986. The Central Government has empowered the state and Regional Transport Authorities constituted under the Motor Vehicles Act 1988 to inspect motor vehicles and collect samples for the purposes of analysis under the Environment (Protection) Act 1986. The State and Regional Transport Authorities are also empowered under the Environment (Protection) Act 1986 to enter any place for the purpose of performing any function entrusted to the authorities by the Central Government and to conduct
entrusted to the authorities by the Central Government and to conduct entrusted to
the authorities by the Central Government and to conduct search and seizure
operations.

The Air (Prevention and Control of Pollution) Act 1981 empowers the
state board to lay down standards of air pollutants released by automobiles\textsuperscript{20} in
consultation with the Central Board. The state government in consultation with
the state board is required to instruct the vehicle registration authority under the
Motor Vehicles Act 1988 to ensure that automobile emission norms are complied
with the authority is obliged to comply with such instructions.

4.2 PREVENTION AND CONTROL OF WATER POLLUTION

The principal statutory instruments to regulate water pollution are the
Water (Prevention and Control of Pollution)\textsuperscript{21} Act 1974 and the rules framed
under that Act by the Central and state governments. Parliament has enacted the
Water (Prevention and Control of Pollution) Cess Act 1977 to fund the
enforcement agencies responsible for preventing and controlling water pollution.
The legislative framework for controlling marine pollution is provided by the
Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other
Maritime Zones Act 1976. Lakes and groundwater resources in India are largely
unregulated.

The water (Prevention and Control of Pollution) Act 1974 was the first
national legislation to deal comprehensively with pollution. It was passed to
prevent the discharge of domestic and industrial effluents into water courses
without adequate treatment, since untreated discharges were rendering the streams
unsuitable as a source of drinking water, for supporting fish life and for use in
irrigation. The fundamental objective of the Water (Prevention and Control of

\textsuperscript{20} The Air (Prevention and Control of Pollution) Act 1981 Sec. 2 (2); 'automobile' means any
vehicle powered either by internal combustion engine or by any method of generating power
to drive such vehicle by burning fuel.

\textsuperscript{21} The provisions of the Water (Prevention and Control of Pollution) Act 1974 override any
other enactment; Water (Prevention and Control of Pollution) Act 1974 s 60.
Pollution) Act 1974 is to provide clean drinking water to the citizen. The intention behind the Water (Prevention and Control of Pollution) Act 1974 is to prevent pollution of water and to restore water to its natural state, after industrial use.

Initially the Water (Prevention and Control of Pollution) Act 1974 extended to the 12 states that had passed enabling resolutions and the union territories. It now extend to all the remaining states since these states have adopted the Act.

4.2.1 Central and State Boards for the Prevention and Control of Water Pollution

The Central Government has constituted the Central Board 'The Central Pollution Control Board') to exercise the powers conferred on its and to perform the functions assigned to it under the Water (Prevention and Control of Pollution) Act 1974. The state governments are required to constitute a state board ('State pollution control board') to exercise the powers and perform the functions assigned to such a board under the Water Act.

The Board is a body corporate having perpetual succession and a common seal with power to acquire, hold and dispose of property. It also has rights to contract and to see and be sued.

4.2.2 Function of Central Pollution Control Board

The main function of the Central Board ('the Central Pollution Control Board') is to promote cleanliness of stream and wells in different areas of the states. Without limiting the scope of its main function, the Central Board is required to advise the Central Government on any matter concerning the

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24 The Water (Prevention and Control) Act 1974 Sec 3 (1).
26 The Water (Prevention and Control of Pollution) Act 1974, Sec. 2 (j): 'stream' includes: (i) river; (ii) water courses, whether flowing or for the time being dry; (iii) inland water, whether natural or artificial; (iv) sub-terranean waters; (v) sea or tidal waters to such extent or as the case may be, to such point as the state government may notify.
prevention and control of water pollution; co-ordinate the activities of the state boards ('the state pollution control boards') and resolve disputes among them, provide technical assistance and guidance to the state boards; carry out and sponsor investigations and research relating to problems of water pollution and prevention, control or abatement of water pollution; plan and organize the training to persons engaged in programmes for the prevention, control or abatement of water pollution on terms and conditions specified by the Central Board; organize through mass media a comprehensive programme regarding the prevention and control of water pollution; perform such of the functions of any state board as may be specified in an order passed by the Central Government; collect, compile and publish technical and statistical data relating to water pollution and the measures devised for its effective prevention and control and prepare manuals, codes or guides\textsuperscript{27} relating to treatment and disposal of sewage and trade effluents\textsuperscript{28} and disseminate information in respect of matters relating to water pollution; lay down, modify or annul in consultation with the state government, the standards for a stream or well; plan and cause to be executed a nation wide programme for the prevention, control or abatement of water pollution and perform such other functions as may be prescribed. While laying down standards, different standards may be prescribed 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 laying down standards for the discharge of pollutants, the pollution control boards must have regard to the state of the industry and the extent to which pollution can take place without an adverse environmental impact. By prescribing the standards and enforcing them, a balance is struck between industrialization and preservation of the environment.

\textsuperscript{27} The Water (Prevention and Control of Pollution) Act 1974 s 2(g): 'sewage effluent' means effluent from any sewage system, sewage disposal work sand include sullage from open drains.

\textsuperscript{28} The Water (Prevention and control of Pollution) Act 1974 s (2) (k): 'trade effluent' includes any liquid, gaseous or solid substance which is discharged from any premises used for carrying on any industry, operation or process, or treatment and disposal system, other than domestic sewage, See Rajasthan State Electricity Board v Cess Appellate Committee (1991) 1 SCC 96 at 101 (whether recycled water returned to a stream is a 'trade effluent' is a mixed question of law and fact).
The Central Board may establish or recognize laboratories to enable it to efficiently perform its functions including the analysis of samples of water from any stream or well or of samples of any sewage or trade effluents.

4.2.3 Functions of State pollution Control Boards

A state board ('a state pollution control board') is required to plan a comprehensive programme for the prevention, control or abatement of pollution of streams and wells in the state and secure the execution thereof; advise the state government on any matter concerning the prevention, control or abatement of water pollution; collect and disseminate information relating to water pollution and its prevention, control or abatement; encourage, conduct and participate in investigations and research relating to problems of water pollution and its prevention, control and abatement; collaborate with the Central Board ('the Central Pollution Control Board') in organizing the training of persons engaged in programmes relating to the prevention, control or abatement of water pollution and to organize mass education programmes; inspect sewage and trade effluents and to review plans, specifications or other data relating to plants set up for the treatment of water, works for the purification of water and the system for the disposal of sewage or trade effluents and for the quality of receiving waters, other than water in an inter-state stream, resulting from the discharge of effluents and to classify waters of the state; evolve economical and reliable methods of treatment of sewage and trade effluents, having regard to the peculiar conditions of soils, climate and water resources of different regions and especially the prevailing flow characteristics of water in streams and wells which render it impossible to attain even the minimum degree of dilution; to evolve methods of utilisation of sewage and suitable trade effluents in agriculture; evolve efficient methods of disposal of sewage and trade effluents on land as are necessary on account of the predominant conditions of scant stream flows that do not provide for the major part of the year the minimum degree of dilution; lay down standards of treatment of sewage and trade effluents to be discharged into any particular stream having

regard to the minimum fair whether dilution available in that the stream and the
tolerance limits of pollution permissible in the water of the stream, after the
discharge of such effluents; make, vary or revoke any order for the prevention,
control or abatement of discharges of waste into streams or wells or requiring any
person to construct new systems for the disposal of sewage and trade effluents or
to modify any such existing system or to adopt remedial measures necessary to
prevent, control or abate water pollution; lay down effluent standards to be
complied with by persons while causing discharge of sewage or sullage or both
and to lay down, modify or annual effluent standards for the sewage and trade
effluents; advise the state government with respect to the location of any industry
which is likely to pollute a stream or well; and perform such other functions that
may be prescribed or entrusted to it by the Central Board or the state government.
The state board has jurisdiction to deal with pollution at a particular point in the
state, even in respect of an inter-state river. The Central Board and the state
boards are required to ensure that municipalities comply with the provisions of the
Water (Prevention and Control of Pollution) Act 1974.30

A state board may establish or recognize laboratories to enable it to
efficiently perform its functions including the analysis of samples of water from
any stream or well or of samples of any sewage or trade effluents.

4.2.4 Restrictions on New Outlet and New Discharges:

Without the prior consent of the state board (‘the state pollution control
board’), no person may establish or take any steps to establish any industry,
operation or process or any treatment and disposal system or any extension or
additional thereto, which is likely to discharge sewage or trade effluents into a
stream or well or sewer or on land or bringing into use any new or altered outlet31

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31 A ‘new or altered outlet’ means any outlet which is wholly or partly constructed on or after
the commencement of the Water (Prevention and Control of Pollution) Act 1974, or which is
substantially altered after such commencement: Water (Prevention and Control of Pollution)
Act 1974, Sec. 25(8)(a). ‘Outlet’ includes any conduit pipe or channel carrying sewage or
trade effluents or any other holding arrangement which causes or is likely to cause pollution:
The Water(Prevention and Control of Pollution) Act 1974, Sec 2(d).
for such discharges; or being to make any such new discharge of sewage. Hence, the industry ought not to obtain approval from the local government, nor secure land use changes nor proceed with civil works or the installation of machinery until the state board grants consent. Where an industry takes these measures without consent to establish the unit, it cannot claim equities. An industry discharging effluents must obtain consent even where the trade effluent is discharged into a municipal drain. However, a person in the process of establishing any industry, operation or process immediately before the commencement of the Water (Prevention and Control of Pollution) Amendment Act 1988 for which no consent was necessary prior to such commencement, may continue to do so for a period of three months from such commencement or where he has made an application for consent, within three months, until the disposal of such application. An application for consent of the state board is required to be made in the prescribed form and must be accompanied by the prescribed fee.

On receiving an application for consent, the state board may make an inquiry and in making such inquiry is required to follow the prescribed procedure. When granting consent, the state board must have regard to the pollution that would result from the industrial activity. The state board may grant its consent or may refuse consent for reasons that are required to be recorded in writing. The grant or refusal of consent is at the discretion of the state board. Hence, the state board was justified in refusing consent where the factory was located in a thickly populated area and there were complaints against the factory. The consent may be granted subject to conditions relating to the point of discharge of the sewage or trade effluent or as to the use of the outlet or any other outlet for discharge of sewage. In the case of a new discharge, the board may specify conditions relating

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34 The Water (Prevention and Control of Pollution) Act 1974, Sec. 25(1) proviso.
35 Re Bhavani River-Sakthi Sugars Ltd. (1998) 6 SCC 335.
36 Mahabir Soap and Gudakhu Factory v. union of India AIR 1995 Ori 218.
to the nature and composition, temperature, volume or rate of discharge of the effluent from the land or premises from which the discharge or new discharge is to be made. The consent order may specify the period for which it is granted. Once an industry receives a consent from the state board, it is incumbent upon that industry to comply with the conditions mentioned in the consent order and to put up effluent treatment plants within the time prescribed 37.

Where a person establishes any industry, operation or process or any treatment and disposal system or any extension or addition thereto or a new outlet or new discharge without the consent of the state board, the board may serve notice on such person imposing any such conditions as it might have imposed, had an application for consent been made.

A state board is required to maintain a register containing particulars of the conditions imposed in each consent. The conditions recorded in the register are conclusive proof that the consent was granted subject to such conditions. The portion of the register relating to any outlet or to any effluent from any land or premises must be kept open to inspection at all reasonable hours by any person interested in or affected by such outlet, land or premises or by his authorised representative.

Where a complete application for consent is made to the state board, the consent is deemed to have been given unconditionally four months after the application is made, unless it has been given or refused within that period. It is not open to the state board to refuse consent once the deemed consent comes into operation38.

Where an industry discharging untreated effluents at the time when the Water (Prevention and control of Pollution) Act 1974 commenced refuses to obtain consent, it is liable to be prosecuted39. A state board has been directed to

38 Vijaynagar Education Trust v. Karnataka State Pollution Control Board, Bangalore AIR 2002 Kant 123
extend its consent to a distillery and the distillery permitted to restart the manufacturing process under a scheme prescribed by the court. The scheme envisages a set of measures to minimize and eliminate the water pollution.

4.2.5 Prohibition on Polluting a Stream or Well:

A person is prohibited from knowingly causing or permitting any poisonous or noxious or polluting matter to enter, directly or indirectly, into a stream, well, sewer or on land. A person may not knowingly cause or permit any other matter to enter into any stream that may tend, either directly or in combination with similar matters, to impede the flow of water of the stream in a manner leading to or likely to lead to a substantial aggravation of pollution. However, a person is not guilty of an offence but mere having done or caused to be done any of the following act:

1. constructing, improving or maintaining in or across or on the bank or bed of any stream any building, bridge, weir, dam, sluice, doc, pier, drain or sewer or other permanent works which he has a right to construct, improve or maintain;

2. depositing any materials on the banks or in the bed of any streams for the purpose of reclaiming land or for supporting, repairing or protecting the bank or bed of such stream, provided that such materials are not capable of polluting the stream;

3. putting any sand or gavel or other natural deposit which has followed from or has been deposited by the current of such stream, into any stream,

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41 The Water (Prevention and Control of Pollution) Act 1974, Sec. 24(1)(a): the poisonous, noxious or polluting character of any matter is required to be determined in accordance with standard laid down by the state board.
42 The Water (Prevention and Control of Pollution) Act 1974, Sec. 24(1)(a).
43 The Water (Prevention and Control of Pollution) Act 1974, Sec. 24(1)(b).
44 The Water (Prevention and Control of Pollution) Act 1974, Sec. 24(2)(a).
45 The Water (Prevention and Control of Pollution) Act 1974, Sec. 24(2)(b).
46 The Water (Prevention and Control of Pollution) Act 1974, Sec. 24(2)(c).
4. causing or permitting, with the consent of the state board, the deposit accumulated in a well, pond or reservoir to enter into any stream\textsuperscript{47}.

The state government may exempt any person from prohibition referred to above, after consulting the state board or on its recommendation\textsuperscript{48}. The exemption is required to be notified in the official gazette and may be granted subject to conditions specified by the state government\textsuperscript{49}. The exemption may be altered, varied or amended by a notification published in the official gazette\textsuperscript{50}.

\textbf{4.2.6 Existing Discharge of Sewage or Trade Effluents:}

The provisions relating to securing the previous consent of state pollution control board extend to a person who was discharging any sewage or trade effluent into a stream or well or sewer or on land immediately before the commencement of the Water(Prevention and Control of Pollution) Act 1974. However, in such a case, the application for consent must be made on or before the date notified by the state government in the official gazette. Where an industry discharging untreated effluent at the time when the Water (Prevention and Control of Pollution) Act 1974 commenced refuses to obtain consent, it is liable to be prosecuted\textsuperscript{51}.

\textbf{4.2.7 Water Pollution, Prevention and Control Area:}

The state government may notify any area or areas within the state as water pollution, prevention and control areas after consulting the state board or on its recommendation. Upon the areas being notified in the official gazette, the application of the Water (Prevention and Control of Pollution) Act 1974 is restricted to such areas with in the state. Each water pollution, prevention and control area is required to be declared either by reference to a map or by reference to the line of any watershed or the boundary of any district or by combination of these methods. The state government is empowered to alter a water pollution,

\textsuperscript{47} The Water (Prevention and Control of Pollution) Act 1974, Sec. 24(2)(d).
\textsuperscript{48} The Water (Prevention and Control of Pollution) Act 1974, Sec. 24(3).
\textsuperscript{49} The Water (Prevention and Control of Pollution) Act 1974, Sec. 24(3).
\textsuperscript{50} The Water (Prevention and Control of Pollution) Act 1974, Sec. 24(3).
prevention and control area whether by extension or reduction, or to declare a new water pollution, prevention and control area in which one or more existing water pollution, prevention and control areas or parts thereof may be merged.

While the state government may restrict the operation of the Water (Prevention and Control of Pollution) Act 1974 to particular area, the state has no power to exempt a particular industry within the zone prohibited for the location of polluting industries.\footnote{Andhra Pradesh Pollution Control Board-II v. M V Nayudu (2001) 2 LRI 657, (2001)2 SCC 62 at p 69-70.}

4.3 OFFENCES, PENALTIES AND PROCEDURES

4.3.1 Offences by Companies

Where an offence is committed by the company\footnote{When used with reference to offences by companies, the expression 'company' means any body corporate and includes a firm or other association of individuals: the Water (Prevention and Control of Pollution) Act 1974, Sec. 47 explanation (a).} every person who at the time when offence was committed, was in charge of and was responsible to the company for the conduct of the business of the company, as well as the company, is deemed to be guilty of the offence and is liable to be proceeded against and punished. However, where a person proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of the offence, he must not be liable to any punishment.

Where an offence is committed by the company and it is proved that the offence was committed with the consent or connivance of or attributable to any neglect on the part of any director, manager, secretary or other officer of the company, such person is also deemed to be guilty of that offence and is liable to proceeded against and punished.

A complaint files by the board against the director and secretary of the company which was discharging effluents without obtaining consent, must be examined\footnote{J S Huja v. State (1989) Cr LJ 1334.} by the magistrate and ought not to be quashed by the High Court...
under the Code of Criminal Procedure 1973\textsuperscript{55}. The complaint may be amended to implede the managing director of a company when it was shown at the trial that he was responsible for the violation\textsuperscript{56}. A sleeping partner in a firm who did not participate in the running of business was liable to be acquitted in a prosecution against a firm\textsuperscript{57}. Junior officers and staff who are not responsible for the conduct of the day-to-day business of the company are not liable to be convicted for an offence by the company\textsuperscript{58}.

4.3.2 Offences by Government Departments:

Where an offence under the Water (Prevention and Control of Pollution) Act 1974 is committed by any department of government, the head of the department is deemed to be guilty of the offence and is liable to be proceeded against and punished\textsuperscript{59}. However, where the head of the department proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of the offences, he must not be liable to any punishment.

4.3.3 Cognizance of Offences\textsuperscript{60}

A court is prevented from taking cognizance of any offence under the Water (Prevention and Control of Pollution) Act 1974, except on a complaint made by board or any officer authorized by the board; or any person who has given a notice of not less than 60 days of the alleged offence and of his intention to make a complaint to the board or its authorized officers in the prescribed manner. An offence under the Act may not be tried by a court inferior to that of metropolitan magistrate or a judicial magistrate of the first class. Where a complaint has been made by a person, other than the board or its authorized officers, the board is required to make available the relevant reports in its

\textsuperscript{55} The Code of Criminal Procedure 1973, Sec. 482.
\textsuperscript{58} Haryana PPollution Control Board v. Bharat Carpet Ltd (1993) For LT 97.
\textsuperscript{59} The Water(Prevention and Control of Pollution) Act 1974, Sec. 48.
\textsuperscript{60} See, Water(Prevention and Control of Pollution) Act 1974, Sec. 49.
possession to such person. However, a board may refuse disclosure where it considers the disclosure to be against public interest.

A judicial magistrate of the first class and a metropolitan magistrate are empowered to pass a sentence of imprisonment exceeding two years or a fine exceeding two thousand rupees on any person convicted of an offence under the Water (Prevention and Control of Pollution) Act 1974.

Having regard to the enormous injury which noxious effluents inflict on public health, the harm caused to aquatic life and adverse impact on the life and health of animals, courts must promptly deal with prosecution under the Water (Prevention and Control of Pollution) Act 1974. A criminal complaint will not be quashed on a technical defect such as mis-description of the polluter’s name or where the designation of the person in-charge of the polluting unit is incorrectly stated in the complaint. A complaint against the manager of a polluting factory will not be quashed merely because it does not enumerate how the manager was responsible for the operations of the plant or how she violated the statutory provisions. These questions must be considered at the trial. Where the board itself is the complainant, there is no need for a resolution sanctioning the prosecution but an authorizing resolution is necessary where an officer of the board field an complaint. Technical flaws and procedural infirmities ought not to hamper the prosecution. The failure to produce the written sanction of the board permitting prosecution along with the complaint, would not bar a magistrate from taking cognizance of the complaint. A complaint alleging that all the

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directors of a company were in charge of the business of the company, without specifically identifying particular directors, is not bad on that count alone\textsuperscript{67}.

4.4 WATER CESS

The Water (Prevention and Control of Pollution) Cess Act 1977 was enacted\textsuperscript{68} to provide funds for the Central Board and the state boards. The purpose of the Water (Prevention and Control of Pollution) Cess Act 1977 is to realize money from those whose activities lead to pollution and who must bear the expenses of the maintenance and running of the board\textsuperscript{69}. The Act levies a cess or tax on water consumed\textsuperscript{70} by specifies industries\textsuperscript{71} and every local authority\textsuperscript{72}. The specified industries and local authorities are required to pay the cess in respect of water consumed for industrial cooling, spraying in mine pits or boiler feed; domestic purposes; processing of which results in water pollution by biodegradable water pollutants; and processing which results in water pollution by water pollutants which are not easily bio-degradable and are toxic.

The Water (Prevention and Control of Pollution) Cess Act 1977 is a fiscal statute and the provisions must be strictly construed to determine whether liability is fastened on a particular industry. Whether a particular industry is taxable is to be judged by the pre-dominant purpose and process carried on by the industry and

\textsuperscript{70} ‘Consumption of water’ includes supply of water. Water used for cooling the turbines and equipment of a thermal power station and discharged back in the river from which it was drawn amounts to the consumption of water for the levy of water cess: Water (Prevention and Control of Pollution) Cess Act 1977, Sec 3(3) explanation. See Delhi Electric Supply Undertaking v. Central Board for the Prevention and Control of Water Pollution(1995) Supp (3) SCC 385.
\textsuperscript{71} ‘Specified industry’ means any industry listed in Sch. 1: Water (Prevention and Control of Pollution) Cess Act 1977 Sec.2(c).
\textsuperscript{72} ‘Local authority’ means a municipal corporation, municipal council, cantonment board or any other body entrusted with the duty of supplying water under the law by which the body was constituted: Water (Prevention and Control of Pollution) Cess Act 1977 Sec. 2(a).
not by any ancillary or incidental process\textsuperscript{73}. Hence the manufacture of rayon grade pulp\textsuperscript{74}, the manufacture of sugar from sugar cane\textsuperscript{75}, the processing of latex\textsuperscript{76}, the manufacture of locomotives, engines and so on, and the manufacture of biscuits, bread and milk powder\textsuperscript{77} are not covered by the levy. However, a manufacturer of glass products\textsuperscript{78} would be covered by the ‘ceramic industry’ and would be liable to pay water cess\textsuperscript{79}. An industry manufacturing cardboard or hardboard was liable to pay water cess since it was covered by the heading ‘paper industry’\textsuperscript{80}. The raw material used in the manufacture of the board was the same as that used to manufacture paper\textsuperscript{81}.

However, where the cess was collected from an industry what was not covered by the levy and writ petitions were filed within a reasonable time, the amount collected without the authority of law was liable to be refunded\textsuperscript{82}.

4.5 POLLUTION OF OTHER WATER BODIES

4.5.1 Lakes:

There is no specific environmental legislation to protect fresh water lakes; the courts have issued protective directions in public interest litigations. In order to prevent environmental degradation around lakes, it may be necessary to limit construction activity, prohibit mining operations and restrict recreation and

\textsuperscript{74} Andhra Pradesh State Board for Prevention and Control of Water Pollution v. Andhra Pradesh Rayons Ltd. AIR 1989 SC 611.
\textsuperscript{75} Saraswati Sugar Mills v. Haryana State Board, AIR 1992 SC 224.
\textsuperscript{76} Harrisons Malayalam Ltd. v. Kerala State Pollution Control Board, AIR 1992 Ker. 168 at p. 175.
\textsuperscript{77} Britannia Industries Ltd. v. Tamil Nadu Pollution Control Board (2000) 9 SCC 68.
\textsuperscript{78} Sri Durga Glass Works, Ferozabad v. Union of India AIR 1997 All. 179,(1997) 30 All. LR 241.
\textsuperscript{79} Water (Prevention and Control of Pollution) Cess Act 1977, Sch. 1 Entry No. 8.
\textsuperscript{80} Water (Prevention and Control of Pollution) Cess Act 1977, Sch. 1 Entry No. 11.
\textsuperscript{81} Chandra Enterprises v. Cess Appellate Committee (1991) All. LJ 729 at p. 730.
\textsuperscript{82} Uttar Pradesh Pollution Control Board v. Kanoria Industrial Ltd. AIR 2001SC 787,(2001) 2 JT 103, 2001(2) LRI 727.
tourism\textsuperscript{83}. Preventive measures to protect lakes are required to be taken keeping in view the carrying capacity of the ecosystem operating in the surrounding area. Where severe environmental degradation around Nainital Lake was noticed, the court issued remedial directions to prevent further despoliation and to improve the environment\textsuperscript{84}.

4.5.2 Groundwater:

The Central Government has been directed to constitute the Central Ground Water Board as a statutory authority under the Environment (Protection) Act 1986\textsuperscript{85} having regard to the depleting ground water levels, dwindling surface water resources and the deterioration in surface and ground water quality, with the power to issue appropriate directions\textsuperscript{86} and take penal action\textsuperscript{87}.

Since the exploitation of ground water has an impact on a person’s fundamental right to life\textsuperscript{88}, his right to dig bore wells can not be restricted by an executive fiat. This right may be restricted or regulated by an Act of the legislature\textsuperscript{89}. A scheme to pump out water on the Lakshadweep Islands that threatened to cause saline intrusions in the fresh water table was enjoined until the scheme was reviewed and modified by the Central Government\textsuperscript{90}. Deep underground water belongs to the state and the doctrine of public trust extends to this resource. The holder of land has a right to use underground water but he cannot pollute the water and cause damage to neighbouring agricultural fields\textsuperscript{91}.

There is no national statute regulating ground water resources. Andhra Pradesh has introduced a licensing system to protect ground water resources in the

\textsuperscript{85} The Environment (Protection) Act 1983, Sec. 3(3).
\textsuperscript{86} The Environment (Protection) Act 1983, Sec. 5.
\textsuperscript{88} Constitution of India, Art. 21.
\textsuperscript{89} Puttappa Honnappa Talvar v. Deputy Commissioner, Dharwar AIR 1998 Kant. 10 at p. 11.
\textsuperscript{90} Attakoya Thangal v. Union of India, (1990) 1 Ker. LT 580.
\textsuperscript{91} Madireddy Padma Rambabu v. District Forest Officer, EG District AIR 2002 AP 256 at p. 267.
In Andhra Pradesh, a person may sink a well in the vicinity of a public drinking water source only after being permitted by the designated authority. The authority is required to obtain the advise of a geologist in the state ground water department before issuing the licence. Where water drawn from hand pumps sunk by the state contains excessive fluoride which cause bone diseases, deformities and dental fluorosis; the state was directed to extend free medical treatment and compensation to the affected persons.

4.6 ENVIRONMENTAL PROTECTION AND ENVIRONMENT PROTECTION ACT

The law to protect the environment in India has grown rapidly after the Bhopal gas leak disaster of December 1984. The main purpose of enacting the Environment (Protection) Act 1986 is to create an authority or authorities with adequate powers to control pollution. Such authorities have to be constituted to address the environmental grievances raised before the courts. The body of law has expanded primarily through the articulation of legal principles by the Supreme Court and a wide range of rules, regulations and notifications issued under the Environment (Protection) Act 1986. While statutes in specific fields such as forest conservation, wild life protection, water pollution and air pollution preceded the Environment (Protection) Act 1986, this Act empowered the Central Government to comprehensively deal with all facets of any environmental problem. The wide scope of the Environment (Protection) Act 1986 has resulted in an overlap of authority and jurisdiction in fields that were regulated by previous statutes. The environment (Protection) Act 1986 has resulted by previous

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92 Andhra Pradesh Ground Water (Regulation for Drinking Water Purposes) Act 1996.
93 Ibid., Sec. 3
95 On 3 December 1984, 40 tonnes of highly toxic Methyl Isocyanate (MIC) escaped from Union Carbide’s chemical plant in Bhopal in the worst industrial accident in history; see generally Shyam Divan and Armin Rosencrantz Environment Law and Policy in India (2nd End.)
The Environment (Protection) Act 1986 is an enabling statute, generally defining the essential legislative policy of environmental protection and then delegating task of framing appropriate regulations, policies and programmes to attain the statutory object to the federal executive. A vast body of subordinate legislation has been famed under the Environment (Protection) Act 1986 covering subjects such as emission norms and effluent standards as well as hitherto unregulated fields such as hazardous substance regulation, coastal protection, environment impact assessment, prevention of noise pollution, protection of eco-sensitive areas, regulation of garbage disposal and restrictions on the use of plastic bags.

The provisions of the Environment (Protection) Act 1986 and the rules or orders issued under the Act have an overriding effect in relation to any other enactment. Hence, the Coastal Regulation Zone Notification 1991 issued under the Environment (Protection) Act 1986 overrides the local town planning laws. However, where any act or omission constitutes an offence punishable under the Environment (Protection) Act 1986 and also under any other Act, then the offender is liable to be punished under the other Act and not under the Environment (Protection) Act 1986.

**Power to take Measures to Protect the Environment:** The Central Government is empowered to take all measures that it considers necessary or expedient for protecting and improving the quality of the environment and preventing, controlling and abating environmental pollution. Without limiting the scope of its wide powers, the Central Government is specifically empowered to implement the following measures:

1. co-ordinate actions of the state governments, officers and other authorities under the Environment (Protection) Act 1986 or rules made under the Act or under any other law which is relatable to the objects of the Act;

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(2) Plan and execute national programmes for the prevention, control and abatement of environment pollution;

(3) Lay down standards for the quality of environment in its various aspects;

(4) Lay down standards for emission or discharge of environmental pollutants. However, different standards for emission or discharge may be prescribed for different sources having regard to the quality or composition of the emission or discharge of environmental pollutions from such sources.

(5) Restrict industries, operations or processes or any class of industries, operations or processes in any area or subject the industries, operations or processes to certain safeguards;

(6) Lay down procedures and safeguards for the prevention of accidents that may cause environmental pollution and remedial measures for such accidents;

(7) Lay down procedures and safeguards for the handling of hazardous substances;

(8) Examine manufacturing processes, materials and substances that are likely to cause environmental pollution.

(9) Carry out and sponsor investigations and research relating to problems of environmental pollution;

(10) Inspect any premises, plant, equipment, machinery, manufacturing or other processes, material or substances and issue orders to authorities, officers or persons to take steps to prevent, control and abate environmental pollutions.

(11) Establish or recognize environmental laboratories and institutes to carry out the functions entrusted to such laboratories and institutes under the Environment (Protection) Act 1986.

(12) Collect and disseminate information in respect of matters relating to environmental pollution;
(13) Prepare manuals, codes or guides relating to the prevention, control and abatement of environmental pollution; and

(14) Adopt measures in respect of such other matters as the Central Government consider necessary or expedient for the purpose of effectively implementing the Environment (Protection) Act 1986.

**Standard of Emission and Discharge:** The standards for emission or discharge of environmental pollutions are prescribed by the Environment (Protection) Rules 1986. National ambient air quality standards in respect of noise and other pollutants have been fixed after providing for an adequate margin of safety to protect public health, vegetation and property. Polluters are required to meet industry-specific standards prescribed for designated industries or where no specific standards are applicable, general standards for discharge of environmental pollutants. New motor vehicles are required to meet emission norms and noise limits. Consumer durables such as air conditioners, refrigerators and air coolers and some types of construction equipment are also required to meet the prescribed noise level.

**Prohibition or Restriction on Industrial Locations:** The Environment (Protection) Rules 1986 set out the factors that the Central Government may consider while prohibiting or restricting the location of industries, processes and operations and the procedure that is required to be followed before imposing any such prohibition or restriction. The procedure for taking samples, the functions of environmental laboratories, the qualification of government analyst, the manner of giving notice of an intended prosecution are some of the factors that the Central Government must consider while prohibiting or restricting the handling of hazardous substances.

Every person carrying on a certain type of industry, operation or process is under an obligation to file an annual environmental statement to the concerned state pollution control board as prescribed by the Environment (Protection) Rules 1986. The authorities must be informed in case of an excess discharge of
environmental pollutant. Where there is likelihood of a grave threat to the environment, the Central Government may dispense with the requirement of providing an opportunity of showing cause to the affected party. Where the opportunity of showing cause has been granted, it does not include a personal hearing and an opportunity to file a written objection is permissible.

4.6.1 Protection Against Hazardous Substances:

A hazardous substance means any substance or preparation which by reason of its chemical or physio-chemical properties or handling is liable to cause harm to human beings, other living creatures, plants, micro-organisms, property or the environment. The Hazardous Wastes (Management and Handling) Rules 1989 have been enacted in order to strengthen the hazardous wastes disposal regime. The rules apply to following designated categories of wastes that are considered hazardous:

1. wastes generated by processes;
2. wastes substances with concentration limits; and
3. wastes to be applied only in case of exports and imports.

Permit System for Handling and Disposal of Hazardous Wastes: The rules prescribe a permit system administered by state pollution control boards or designated committee in respect of union territories for the handling and disposal of hazardous wastes. The collection, reception, treatment, transport, storage or disposal of hazardous wastes must be authorized in terms of the prescribed procedures. The procedure for packaging, labeling and transportation of hazardous wastes is regulated by the rules. The state governments are required to compile and publish an inventory of hazardous wastes disposal sites.

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100 Mahabir Soap and Gudakhu Factory v. Union of India AIR 1995 Ori. 218 at p. 223.
Import and Export of Hazardous Wastes: The import of hazardous wastes into India and export of hazardous wastes from India for dumping and disposal are prohibited.\(^\text{103}\) The import and export of hazardous wastes for the purpose of recycling and reuse is permitted, subject to the prescribed safeguards. The Ministry of Environment and Forests at the Centre is designated as the nodal agency to permit trans-boundary movement of hazardous wastes. The rules provide for the consequences of illegal traffic in hazardous wastes and the liability of occupier, transporter and operator of a facility where damages has resulted from improper handling or disposal of hazardous wastes.

Municipal Solid Waste Management: The Municipal Solid wastes (Management and Handling) Rules 2000 define ‘municipal solid wastes’ as wastes that includes commercial and residential wastes generated in a municipal or notified area in either solid or semi-solid form. They exclude industrial hazardous wastes but include treated bio-medical wastes. The Municipal Solid wastes (Management and Handling) Rules 2000 apply to every municipal authority for the collection, storage, transportation, processing and disposal of municipal wastes. The rules were framed in the course of a public interest litigation to tackle the problem municipal solid wastes disposal in major cities of India.\(^\text{104}\) It is not permissible for a municipal corporation to dump garbage in a public park, in violation of the rules.\(^\text{105}\) The rules specify the responsibility of municipal authorities, the state governments and pollution control boards with regard to the management and disposal of municipal solid wastes. The rules


prescribes an implementation schedule\textsuperscript{106} and lay down procedures for the collection, transport and treatment of municipal solid wastes.

4.6.2 Protection of Coast and Coastal Areas:

On 19 Feb. 1991 the Central Government issued the Coastal Regulation Zone Regulations\textsuperscript{107} (CRZ Regulations) under the Environment (Protection) Act 1996 and the Environment (Protection) Rules 1986. The Ministry of Environment and Forest at the Centre, the governments of the coastal states the union territories and the other designated authorities are responsible for monitoring and enforcing the CRZ Regulations within their respective jurisdiction. The CRZ Regulations have an overriding effect and prevail over the law made by the legislatures of the states and local town planning regulations\textsuperscript{108}. The regulation operates prospectively and have no effect on the projects that commenced before the regulations were brought into force\textsuperscript{109}.

The purpose of CRZ regulations is to protect the ecologically fragile coastal areas and to safeguard the aesthetic qualities and uses of the sea coast. 'Ecologically sensitive' and important areas are identified under the regulations and includes national parks, marine parks, sanctuaries, reserve forests, wildlife habitats, mangroves, coral reefs, areas close to breeding and spawning grounds of fish and other marine life, areas of outstanding natural beauty or historic importance, heritage areas, areas rich in genetic diversity, areas likely to be inundated due to the rise in sea level consequences upon global warming and such other areas as may be declared by the union government or concerned authorities in the states and union territories\textsuperscript{110}. The CRZ regulations cover coastal stretches of seas, bays, estuaries, creeks, rivers and backwaters which are influenced by

\footnotesize{$\textsuperscript{106}$ See The Municipal Solid Wastes (Management and Handling) Rules 2000 rr 4(2)-(3) and Sch. 1.}

\footnotesize{$\textsuperscript{107}$ The principal notification containing the Coastal Regulation Zone Regulation 1991 was published in the Gazette of India vide SO 114(E)(19 February 1991).}

\footnotesize{$\textsuperscript{108}$ Overseas Chinese Cuisine (India) Pvt. Ltd. v. Municipal Corpn of Greater Bombay (1999)(101) 3 Bom LR 610.}

\footnotesize{$\textsuperscript{109}$ Sneha Mandal Co-operative Housing Society Ltd: v. Union of India AIR 2000 Bom 121 at 131.}

\footnotesize{$\textsuperscript{110}$ The Coastal Regulation Zone Regulations 1991, r 6(1)(i).}
tidal action up to 500 metres from the high tide line and the land between the low tide and the high tide line. The distance from the high tide line extends to both sides in the case of rivers, creek and backwaters as notified in the coastal regulation management plans. However, the zone of regulation in such cases is at least 100 metres or the width of the creek, river or backwater whichever is less. The amendments\textsuperscript{111} that reduces the width of the zone from 100 metres to 50 metres in respect of rivers, creeks and backwaters was held to be illegal since it was contrary to the object of Environment (Protection) Act 1986\textsuperscript{112}. Rivers, creeks and backwaters are regulated up to the distance to which the tidal effect of the sea is experienced in the rivers, creeks or backwaters. The CRZ regulations do not cover stretches of the coast that are continuously submerged both during high tide and low tide\textsuperscript{113}.

**Restrictions on Construction in Coastal Regulation Zone:** Restrictions on development and construction activities are specified for each category of the coastal regulation zone. Subject to certain exceptions, no new construction is permitted in coastal regulation zone (CRZ-I) areas. Construction activity in the coastal regulation zone II (CRZ-II) must conform to the ‘floor space index’ or floor area ration norm that existed on the date of the CRZ Regulations\textsuperscript{114}. Construction on a plot in the CRZ-II zone is permitted on the landward side of an imaginary building line that connects the structure on adjacent plots. However, if a structure crosses the imaginary building lines, it would contravene the Coastal Regulation Zone Regulations 1991\textsuperscript{115}. The norms for development activities in Coastal Regulation Zone III (CRZ-III) areas are more stringent than those prescribed for CRZ-II areas. The construction of beach resorts and hotels falling in CRZ-III areas require the prior approval of the Ministry of Environment and Forest at the Centre. Moreover, such beach resorts ad hotels are required to

\textsuperscript{111} i.e. the Coastal Regulation Zone Regulations 1991 amendment dated 18 August 1994.
\textsuperscript{113} Jacob Vadakkancherry v. State of Kerala AIR 1998 Ker 114.
\textsuperscript{115} Sneha Mandal Co-operative Housing Society Ltd. v. Union of India AIR 2000 Bom 121 at 129.
conform to the prescribed development guidelines. Hence, construction of a hotel within the CRZ-III areas is permissible where the Central Government clears the project after taking environmental consideration into account. A special set of development norms is prescribed for coastal stretches in the islands classified under the Coastal Regulation Zone IV (CRZ-IV).

4.6.3 Environment Impact Assessment:

The Environment Impact Assessment Regulations 1994 (the EIA Regulations 1994) were issued under the Environment (Protection) Act 1986. The EIA Regulations 1994 are prospective and the prescribed procedure does not apply to the projects that commenced prior to 27 January 1994.

The EIA Regulations covers 30 specified industries. The Ministry of Environment and Forests at the Centre is the impact assessment agency responsible for conducting the environment impact assessment and granting project clearance in respect of specified industries. The Central Government, in exercise of its powers under the Environment (Protection) Act 1986, has delegated the responsibility for granting environmental clearance in respect of certain types of thermal power projects to the state governments.

Every new designated project and every expansion or modernization of an existing designated project, where the pollution load after the expansion or modernization would exceed the exiting pollution load, is required to take environmental clearance from the Central Government in accordance with the procedure prescribed in the EIA Regulations 1994. The construction work relating to the setting up of the project is prohibited until environmental and site clearance is obtained.

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117 Coastal Regulation Zone Regulations 1991, r. 6(2).
119 The Environment Impact Regulations 1994 Paras1,2 and Sch. 1.
Mandatory Public Hearing: The Environmental Impact Regulations 1994 (the EIA Regulations) mandate a public hearing\textsuperscript{120} and require the project authority to submit an environmental impact assessment report, an environment management plan and details of the public hearing to the impact assessment agency. In certain cases, the impact assessment agency may obtain the opinion of a committee of experts. The venue of public hearing must be near to the site of proposed project. A public notice of hearing must be published in at least two newspapers, one of which must be in the vernacular language of the locality and widely circulated in the region around the project. The first public hearing must be held at least 30 days after the newspaper notice. A summary of the environmental impact assessment report in the local language and the report itself must be made available to the concerned citizens. The minutes of the public hearing must be supplied to the citizens at the request and the gist of environmental clearance must be published in the newspapers in which the notice of the public hearing was given\textsuperscript{121}.

Appeals against Order of Impact Assessment Agency: A person aggrieved by an order granting environmental clearance under the EIA Regulations 1994 is entitled to prefer an appeal before the National Environmental Appellate Authority\textsuperscript{122}. A petition challenging an infrastructure project on environmental grounds must be made within a reasonable period of the environmental clearance being granted. Where the petition is filed at belated stage after vast amount have been expended on the project, the petition is liable to be rejected on the ground of laches. The role of the courts in reviewing infrastructural projects is limited. The conception of a project, the decision to undertake a project and the manner of executing the project are policy decisions. A court will not transgress into field of policy decisions. Where the system for execution is not arbitrary, the only role of the court is to ensure that the system works in the manner envisaged\textsuperscript{123}.

\textsuperscript{120} The Environmental Impact Regulations 1994 para 2(1) and Sch 4.
\textsuperscript{121} Centre for Social Justice v. Union of India AIR 2001 Guj. 71.
\textsuperscript{122} See, The National Environmental Appellate Authority Act 1997 Sec. 11.
\textsuperscript{123} Narmada Bachao Andolan v. Union of India (2000)4 LRI 696.
4.6.4. Noise Pollution:

The Noise Pollution (Regulation and Control) Rules 2000 were framed by the Central Government in the exercise of its powers under the Environment (Protection) Act 1986.\(^{124}\)

Noise adversely affects vulnerable sections of society such as the aged and the children. Noise may cause hearing loss or deafness, high blood pressure, depression, fatigue and annoyance.\(^{125}\) Excessive noise can increase cardiac ailments and may lead to neurosis and nervous breakdown. Government authorities must educate the public in respect of the adverse impacts of noise and must take measures to abate noise pollution.\(^{126}\) The Noise Pollution (Regulation and Control) Rules 2000 regulate and control noise producing and generating sources with the object of maintaining the ambient air quality standards in respect of noise. The rules recognize that increasing ambient noise levels in public places from various sources such as industrial activity, construction activity, generator sets, loud speakers, public address systems, music systems, vehicular horns and other mechanical devices have a deleterious effect on human health and on the psychological well-being of the people.\(^{127}\) There is a lack of awareness among citizens as well as the implementation authorities about the rules.

**Regulation and Control of noise:** The Noise Pollution (Regulation and Control) Rules 2000 restrict the use of loud speakers and public address systems\(^{128}\) and provide that certain activities in silence zones such as playing music or using sound amplifiers constitute offences under the provisions of the Environment (Protection) Act 1986.\(^{129}\) The right to profess and practice a religion is subject to public health and thus, restrictions on the use of loudspeakers apply to those

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\(^{124}\) See the Environment (Protection) Act 1986 ss 3(2)(ii), 6(2)(b) and 25.


\(^{127}\) See the Noise Pollution (Regulation and Control) Rules 2000 preamble.

\(^{128}\) See the Noise Pollution (Regulation and Control) Rules 2000 r 5.

\(^{129}\) See the Noise Pollution (Regulation and Control) Rules 2000 r 6.
conducting religious activities. Similarly, the use of noisy firecrackers has been restricted by the court. 

It is the responsibility of the designated authority to enforce noise pollution control measures and to ensure that noise levels to no exceed the ambient air quality standards. Where the noise level exceeds the ambient noise standards by 10 dB(A), a person may make a complaint to the authority and the authority is then required to take action against the violator. The authority may issue a written order preventing, prohibiting, controlling or regulating the source of noise where it is satisfied on the basis of a report of an officer in charge of a police station or other information that he directions are necessary to prevent annoyance, disturbance, discomfort or injury to any person.

4.6.5 Restrictions on Industrial and Development Activities:

In response to specific environmental threats, the Central Government has restricted all industrial and development activity in certain regions. These restrictions are region-specific and have been imposed under The Environmental (Protection Act 1986 and the Environment (Protection) Rules 1986. Each set of restrictions is contained in a separate notification issued in respect of the

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131 RE Noise Pollution-Implementation of the laws for restricting use of loud speakers and high volume producing sound systems v Union of India (2001) 6 Scale 283


133 ‘DB(A)Leq’ denotes the time weighted average in the level of sounds in decibels on scale A which is relatable to human hearing: Noise Pollution (Regulation and Control) Rules 2000 Sch.

134 See the Noise Pollution (Regulation and Control) Rules 2000 r 7.

135 See the Noise Pollution (Regulation and Control) Rules 2000 r 8. Also see generally (230) Police and Emergency Services.

136 See, The Environment (Protection) Act 1986 Sec. 3(2)(v).
following areas: Murud-Janjira\textsuperscript{137}; Doon Valley\textsuperscript{138}; Antop Hill\textsuperscript{139}; Dahanu\textsuperscript{140}; Aravali Range\textsuperscript{141}; Kaziranga\textsuperscript{142} and Mahabaleshwar\textsuperscript{143}.

Specific authorities established under the Environmental Protection Act, 1986 supplement the restrictions and are responsible for protecting the environment in their jurisdiction\textsuperscript{144}. Special authorities have been established in respect of the Dahanu Taluka\textsuperscript{145}; aquaculture in the coastal regions\textsuperscript{146}; and the trapezium area around the Taj Mahal\textsuperscript{147}.

4.7 FOREST PROTECTION LAWS

The British Government consolidated the law relating to forests and forest produce with the Indian Forest Act 1927\textsuperscript{148}. When India gained independence, forests were placed on the state list of the Constitution\textsuperscript{149} and individual forest departments continued to regulate forests in accordance with the Indian Forest Act 1927, as implemented by the state regulations. In 1976, the subject ‘forests’ was transferred from the state list to the concurrent list of the Constitution\textsuperscript{150}.

The Indian Forest Act 1927 provides state government the jurisdiction over both public and private forests and facilitates the extraction of timber for profit. Those public forests in which state governments have a proprietary interest, are divided into three categories namely, reserved forests, village forests and protected forests. Although the Act deals specially with reserved forests,

\textsuperscript{137} SO 20 (E) (6 January 1989).
\textsuperscript{138} SO 102 (E) (1 February 1989).
\textsuperscript{139} SO 136 (E) (9 February 1990).
\textsuperscript{140} SO 416 (E) (20 June 1991).
\textsuperscript{141} SO 319 (E) (7 May 1992).
\textsuperscript{142} SO 481 (E) (5 July 1996).
\textsuperscript{143} SO 52 (E) (17 Jan 2001).
\textsuperscript{144} See, The Environment(Protection) Act 1986, Sec. 3(3).
\textsuperscript{145} Dahanu Taluka Environment Protection Authority SO 884 (E) (19 December 1996).
\textsuperscript{146} SO 88 (E) (6 February 1997).
\textsuperscript{147} Taj Trapezium Zone (Prevention and Control) Authority SO 350 (E) (13 May 1998).
\textsuperscript{148} The Indian Forest Act 1927 statement of objects and reasons.
\textsuperscript{149} Constitution of India, Sch. 7 List 2
\textsuperscript{150} Constitution of India, Sch 7 List 3
village forests and protected forests, the preamble and other provisions of the Act are wide enough to cover all categories of forests\(^{151}\).

State government\(^{152}\) may constitute any forest-land or wasteland as a reserved forest: which is the property of the government; or over which the government has proprietary rights; or in respect of which the government is entitled to receive forest produce. The state government may, by notification in the official gazette, direct that, any forest or any portion of the forest, reserved under the Act must cease to be a reserved forest from a date fixed by such notification.

A government of any state is not authorized to make any order or to do anything in relation to any property not vested in that state or otherwise prejudice any rights of the Central Government or the government of any other state without the consent of the government concerned.

Any one doing anything against the authority in reserved forest can be punished and the forest-produce must be used as per the direction. Cattle trespassing in a reserved forest or in any portion of a protected forest that has been lawfully closed to grazing must be deemed to be cattle doing damage to a public plantation and may be seized and impounded as such by any forest or police officer. Any one can be punished for trespass to reserved forest. Unauthorized grazing of cattle is nothing but theft of forest-produce and so such cattle may be confiscated\(^{153}\).

Forest-produce\(^{154}\) has been interpreted to include fish\(^{155}\), wood oil\(^{156}\), bamboo matting\(^{157}\) and include articles prepared from bamboo chips\(^{158}\), dung

\(^{151}\) Mulamchand Ratilal v. State of Madiya Pradesh AIR 1960 MP 152.

\(^{152}\) The Indian Forest Act 1927, Sec. 3.

\(^{153}\) Kama Laxman Gawali v. State of Maharastra 1990 Cri LJ 163 (Bom.).

\(^{154}\) see, Aliyakutty Paul v. State of Kerala (1995) 2 Ker. LT 93 [ 'forest-produce' was defined to include articles that are normally found in the forest and which constitute the spontaneous and wild growth in forest].

\(^{155}\) State of Uttar Pradesh v. District Judge, Bijnor AIR 1981 All. 205.

\(^{156}\) Khushboo Enterprises, Calicut v. Forest Range Officer, 1993 Cri. LJ 1100 (Ker.).

\(^{157}\) State of Maharastra v. Suresh Rameshwardas Lohiya, 1993 Cri. LJ 1557 (Bom.).

droppings from licensed grazing cattle\textsuperscript{159}, coffee, cardamom, areca nut, pepper and rubber\textsuperscript{160}. By implication, forest-produce includes not just what is grown on or collected from government property, but also that grown on or collected from private property\textsuperscript{161}.

4.7.1 Forest Conservation Act 1980:

The Forest (Conservation) Act provides jurisdiction to the Central Government over all forests and forest-land\textsuperscript{162}, including private forest and forest-land\textsuperscript{163}. The Forest (Conservation) Act 1980 which was amended in 1988 to incorporate important aspects of the National Forest Policy 1988, check deforestation that ultimately results in ecological imbalance\textsuperscript{164}. A ‘forest’ is to be understood according to its dictionary meaning and covers all statutory recognized forests, whether designated as reserved, protected, private\textsuperscript{165} or otherwise and the term ‘forest-land’ will not only include forest as understood in the dictionary sense but also any area recorded as forest in the government record, irrespective of the ownership\textsuperscript{166}. In one instance, the Supreme Court directs that the proceeds of the sale of seized timber and of manufactured and deposited timber and the amounts received as penalties from the seven north east states governments, must be credited to the respective state revenues. From the amount collected, state governments were to utilize 50 percent to raise forest plantations for and by tribal populace and the remaining could go in the government coffers for other developmental works. Similarly, in another instance the Supreme Court directs the Central Government to draw up a comprehensive scheme on reforestation and to utilize 50 percent of sale proceeds deposited in a separate

\textsuperscript{159} Barkat v. State of Madhya Pradesh, AIR 1987 MP 162
\textsuperscript{160} Aliyakutty Paul v. State of Kerala (1995) 2 Ker. LT 93
\textsuperscript{162} T N Godavarman Thirumulkpad v. Union of India AIR 1997 SC 1228; see also Colorock Private Ltd v. Director of Mines and Geology (1990) LT 10 (AP)( if the land was not designated a forest land in the revenue records, it would also affect the application of Forest (Conservation) Act 1980; if the forest Department was of the opinion that the land in question is a forest-land, then it is not open to revenue department to take a contrary view).
\textsuperscript{163} Samantha v. State of Andhra Pradesh AIR 1997 SC 3297.
\textsuperscript{164} T N Godavarman Thirumulkpad v. Union of India AIR 1997 SC 1228
\textsuperscript{165} Samantha v. State of Andhra Pradesh AIR 1997 SC 3297
\textsuperscript{166} T N Godavarman Thirumulkpad v. Union of India AIR 1997 SC 1228
bank, for doing so\textsuperscript{167}. In yet another case, the Supreme Court issued a show cause notice to the central Government asking, in light of the Constitution of India, as to why the Central Government should not bear the expenses of maintaining the natural forests and forest covers\textsuperscript{168}.

\textbf{ADMINISTRATION OF ENVIRONMENTAL LAWS}

4.8 \textbf{THE PUBLIC LIABILITY INSURANCE ACT, 1991}

Industrial activities, particular hazardous industrial activities are resulting into more and more accidents causing damage to person and property, to the people in general and workers in particular. In order to protect life and property, some measure was needed and for this purpose, the present Act came into being. The Statement of Objects and Reasons of the Act provides as follows:

"The growth of hazardous industries, processes and operations in India has been accompanied by the growing risks from accidents, not only to the workmen employed in such undertakings, but also innocent members of the public who may be in the vicinity. Such accidents lead to death and injury to human beings and other living beings and damage private and public properties. Very often, the majority of the people affected are from the economically weaker sections and suffer great hardships because of delayed relief and compensation. While workers and employees of hazardous installations are protected under separate laws, members of the public are not assured of any relief except through long legal process. Industrial units seldom have the willingness to readily compensate the victims of accident and the only remedy now available for the victim is to go through prolonged litigation in a Court of Law. Some units may not have the financial resources to provide even minimum relief.

It is felt essential, therefore, to provide for Mandatory Public Liability Insurances for installations and handling hazardous substances to provide minimum relief to the victims. Such an insurance, apart from safeguarding the

\textsuperscript{168} T N Godavarman Thirumulkpad v. Union of India (2001) 1 Scale 422.
interests of the victims of accident would also provide cover and enable the industry to discharge its liability to settle large claims arising out of major accidents. If the objective of providing immediate relief is to be achieved, the mandatory public liability insurance should be on the principle of “no fault” liability as it is limited to only relief on a limited scale. However, availability of immediate relief would not prevent the victims to go court for claiming larger compensation.”

With the above aim, the Act was enacted. From its reading, it is clear that the makers of this law had in mind the Bhopal Gas disaster case and Shri Ram Gas Leak or Oleum Gas Leak case. This is an Act to provide for public liability insurance for the purpose of providing immediate relief to the persons affected by accident occurring while handling hazardous substance and for matters connected therewith or incidental thereto. It came into force on April 1, 1991. It was amended in 1992 to make it more effective. It is, thus, a ‘Special Law’

**Liability to give Relief:** The liability to give relief, under the Act\(^{169}\), is based on ‘no fault’ principle. Act 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 such relief as is specified in the Schedule for such death, injury or damage. The claimant while making a claim for relief shall not be required to plead and establish that death, injury or damage in respect of which the claim has been made, was due to any wrongful act, neglect or default of any person.

The Schedule provides relief as follows:

(i) Reimbursement of medical expenses incurred up to a maximum of Rs. 12,500 in each case,

(ii) For fatal accidents, the relief will be Rs. 25,000 per person in addition to

\(^{169}\) The Public Liability Insurance ACT, 1991, Sec. 3.
reimbursement of medical expenses, if any, incurred on the victim up to a maximum of Rs. 12,500.

(iii) For permanent total or permanent partial disability or other injury or sickness, the relief will be- (a) reimbursement of medical expenses incurred, if any, up to a maximum of Rs. 12,500 in each case, (b) cash relief on the basis of percentage of disablement as certified by an authorised physician, the relief for total permanent disability will be Rs. 25,000.

(iv) For loss of wages due to temporary partial disability which reduces the earning capacity of the victims, there will be a fixed monthly relief not exceeding Rs. 1,000 per month up to a maximum of 3 months; provided that the victim has been hospitalised for a period exceeding 3 days and is above 16 year of age.

(v) Up to Rs. 6,000, depending on the actual damage, for any damage to private property.

The right to claim relief under this section is in addition to any other right to claim compensation in respect of death, injury or damage to any property under any other law for the time being in force.\footnote{170}{The Public Liability Insurance ACT, 1991, Sec. 8 (10)} However, where the owner liable to give claim for relief, is also liable to pay compensation under any other law, the amount of such compensation shall be reduced by the amount of relief paid.\footnote{171}{Ibid., Sec.8 (2)}

**Procedure for Claim for Relief:** For this purpose, Section 6 of the Act makes provision. An application for claim for relief may be anyone of the following persons

(a) the person who has sustained injury;

(b) the owner of the property to which the damage has been caused;

(c) all or any of the legal representatives of the deceased;

\footnote{170}{The Public Liability Insurance ACT, 1991, Sec. 8 (10)}
\footnote{171}{Ibid., Sec.8 (2).}
any agent duly authorised by such person or owner of such property.

In case of legal representatives, it is desirable that all should be joined in the application for relief. Application should be made in representative character. But the legal representatives who have not so joined shall be impleaded as respondents to the application. Application shall be made to the Collector and it must be made within 5 years of the occurrence of the accident. If the period of 5 years has expired without the application being made, it will become time barred.

Application for compensation shall be made to the Collector in Form 1 provided in the Public Liability Insurances Rules, 1992 accompanied by relevant documents establishing the claim.

Section 5 of the Act provides that whenever it comes to the notice of the Collector that an accident has occurred at any place within his jurisdiction, he shall specify the occurrence of such accident and cause publicity to be given for inviting application for award of compensation.

On receipt of an application for a claim for compensation, the Collector shall, after giving notice of application to the owner, and after giving parties the opportunity of being heard, hold an inquiry into the claim, or each of the claims and may make an award determining the amount of relief which appears to him to be just specifying the person or persons to whom such amount of relief shall be paid.  

The Collector is required to deliver copies of the award to the parties concerned within a period of 15 days from the date of the award.

When the award is made:

(a) the insurer, who is required to pay any amount in respect of the award, shall, within a period of 30 days of the date of announcement of award, deposit the amount fixed in the award, in the manner directed by the Collector;

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172 The Public Liability Insurance ACT, 1991, Sec. 7(1).
173 Ibid., Sec. 7(2).
(b) the Collector shall arrange to pay from the Relief Fund to the person or persons making claim, the amount determined by him in the manner specified in the Scheme;

(c) the owner shall, within such period, deposit such amount in such manner as the Collector may direct.

While holding the enquiry, the Collector is to follow such summary procedure as he thinks fit. The Collector shall have all the powers Court for the purpose of taking evidence on oath and of enforcing the attendance of witnesses and of compelling the discovery and production of documents and material objects and for such other purposes as may be prescribed, and the Collector shall be deemed to be a Civil Court for all the purposes of Section 195 and Chapter 26 of the Code of Criminal Procedure, 1973.174

Rule 5 of the Public Liability Insurance Rules, 1991 provides that the collector shall have all the powers of a civil court for the following purposes, namely:

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

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

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

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

(f) dismissing an application for default or proceeding ex parte;

(g) setting aside any order of dismissal of any application for default or any order passed by it ex parte;

174 Ibid., Sec. 7(5).
(h) inherent powers of a civil court as saved under section 151 of the Code of Civil Procedure, 1908.

Where the insurer or the owner fails to deposit the amount payable under award within a period of 30 days from the date of announcement of award, such amount shall be recoverable from the person in default as an arrears of land revenue or of public demand. A claim for relief shall be disposed of as expeditiously as possible and every endeavour shall be made to dispose of such a claim within 3 months of the receipt of application for the relief.175 In case the owner is likely to remove or dispose of his property with a view to evading payment of the amount of award, the Collector may grant a temporary injunction under Order 39, Rules 1 to 4 of C.P.C., 1908 to restrain such act.

**Duty of Owner:** Section 4 of the Act provides that it shall be the duty of every owner to take out one or more insurance policies providing for insurance whereby he is insured against liability to give relief. He is required to take out policies before he starts handling any hazardous substance. Where the business was commenced before the commencement of the Act, the owner must take out the policy within one year from the commencement of the Act. Section 4(2) requires that the policy so obtained be renewed from time to time before the expiry of the period of the policy so that it may remain in force throughout the period during which such handling is continued.

No insurance policy taken out by an owner shall be for an amount less than the amount of the paid-up capital of the undertaking handling any hazardous substance, and owned or controlled by that owner, and more then the amount, not exceeding Rs. 50 crore, as may be prescribed. For this purpose, 'paid-up capital means in the case of an owner not being a company, the market value of all assets and stocks of the undertaking on the date of contract of insurance.176

The liability of the insurer under one insurance policy shall not exceed the amount specified in the terms of the contract of insurance in that insurance

175 The Public Liability Insurance ACT, 1991, Sec. 7(7).
policy. Under Section 2-C, the owner is required to deposit, in addition to the amount of premium, a further amount, not exceeding the amount of premium for being credited to the Relief Fund and the insurer shall remit this amount to the Relief Fund in such manner and within such period as may be prescribed and where he fails to do so, remit the further amount it shall be recoverable as arrears of land revenue or of public demand.

The Central Government may, by notification, exempt from the liability the following owner, namely:

(a) the Central Government;
(b) the State Government;
(c) any corporation owned or controlled by the Central Government or a State Government; or
(d) any local authority.

4.8.1 Powers of Central Government:

Under the Act, the Central Government may exercise the following powers:

(i) Power to call for information: Under Section 9, the owner shall be bound to submit any information to be required by the person authorised by the Central Government for the purpose of ascertaining whether any requirements of this act or of any rule/direction given under this Act have been complied with.

(ii) Powers of entry and inspection: According to Section 10, the Central Government may authorise any person to enter and inspect any place, premises or vehicles where hazardous substance is handled at all reasonable time and with necessary assistance.

(iii) Power of search and seizure: Section 11 provides that a person who is authorised by the Central Government in this behalf, may enter into and search a

177 Ibid., Sec. 4 (2-B).
place, premises or vehicle, other than railways, seize hazardous substance, require
the owner not to remove or part with hazardous substance, dispose of the seized
substance, and recover expenses incurred on doing so.

(iv) Power to give directions: According to Section 12, any owner, or any
person, officer, authority or agency, shall be bound to comply with such
directions as may be issued by the Central Government.

(v) Power to make application to Courts for restraining owner from
handling hazardous substances.—The Central Government, or any person,
authorized by it may make an application to a Court not inferior to that of a
Metropolitan Magistrate or a Judicial Magistrate of First class for restraining such
owner has been handling of hazardous substances if it is of the view that the
owner has been handling hazardous substance in contravention of any provision
of this Act.178

The Court while making an order restraining the owner from handling the
hazardous substance, it may, order:

(a) such owner to desist from such handling;
(b) authorise the Central Government to implement the direction in such
manner as may be specified by the Court.179

All expenses incurred in this regard shall be recoverable from the owner
as an arrear of land revenue or of public demand.

4.8.2 Penalties:

Sections 14 to 17 of the Act deal with the penalties. The F-27 provisions
are as follows:

1. Whoever contravenes Section 4 (1), 4 (2), 4 (2-A), 4 (2-C) or Section 12,
shall be punishable with imprisonment for a term which shall not be less

178 The Public Liability Insurance ACT, 1991, Sec. 13 (1).
179 Ibid., Sec. 13(3).
than one year and six months but which may extend to six years, or with fine which shall not less than one lakh rupees, or with both.

2. Who has already been convicted once and is convicted for or subsequent offence, shall be punishable with imprisonment for a term which shall not be less than 2 years, but which extend to 7 years and with fine which shall not be less than one lakh rupees.

3. A person below the age of 18 years may get the protection of the Probation of Offenders Act, 1958 (Section 14).

4. If any owner fails to comply with direction under Section 9, or order under Section 11, or obstructing any person in discharge of his functions under Section 10 or 11 shall be punishable with imprisonment which may extend to three months, or with fine which may extend to 10,000 rupees, or with both

5. Where the offence is committed by the company, every person who at the time offence was committed was directly in charge of and was responsible to the company for the conduct of the business of the company as well as the company shall be deemed to be guilty and shall be proceeded against and punished. However, the person liable to be punished may be exonerated if he proves that he offence was committed without knowledge or that the exercised all due diligence to prevent the commission of such offence.

Where the offence of the company is proved to have been committed with the consent, or connivance of or attributable to any neglect on the part of any director, manager, secretary or other officer, he shall also be deemed to be guilty of the offence and shall be proceeded against and be punished.

6. Where an offence is committed by any Department of Government, the Head of the Department shall be deemed to be guilty of the offence and shall be proceeded against and punished. But he can escape punishment 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.

4.8.3 Cognizance of Offence:

The Court cannot take *suo moto* cognizance of an offence committed within the meaning of this Act. According to Section 18, no Court shall take cognizance of any offence except on a complain made by:

(a) by the Central Government, or any authority, or officer authorised by the Central Government; or

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

4.8.4 Power to Delegate:

Power to delegate its powers and functions is to the Central Government under Section 19 of the Act. The power may be delegated subject to conditions or unconditionally.

4.8.5 Protection of Action taken in Good Faith:

Section 20 provides, no prosecution or other legal proceeding shall lie against the Government or any person, officer, authority or other agency in respect of anything which is done or intended to be done in good faith in pursuance of this Act, or the rules made, or orders, or directions issued thereunder.

4.7.6 Other Provisions:

Section 21 empowers the Central Government to constitute an advisory committee on the matters relating to the insurance policy under the Act which shall consist of:

(a) three officers representing the Central Government;

(b) two persons representing the insurers;
(c) two persons representing the owners; and

(d) two persons from amongst the experts of insurance or hazardous substances.

All such members shall be appointed by the Central Government. One of the three officers representing the Central Government shall be nominated as chairman by it.

**Overriding effect:** This Act is given an overriding effect. The provisions of this Act and rules, according to Section 22, shall have effect notwithstanding anything inconsistent therewith contained in any other law.

**Power to make rules:** Section 23 empowers the Central Government for this purpose.

### 4.9 THE NATIONAL ENVIRONMENT TRIBUNAL ACT, 1995

In order to make the provisions of the Environment (Protection) Act, 1986 more effective, sub-section (3) of Section 3 of the Act itself has provided for the constitution of an authority or authorities. In addition, the United Nations Conference on Environment and Development held at Rio de Janeiro in June, 1992 has called upon the nations, who had participated in it, to develop National Laws regarding liability and compensation for the victims of pollution and other environmental damage. Since India being one of the participant nations, it was its bounden duty to implement the commitment given by it to the community of nations. To fulfill this obligation, a bill to this effect was introduced in 1992 in Parliament but was passed by both the Houses in 1995 and received the assent of the President of India on 17th June, 1995 and became the law of the land as “The National Environment Tribunal Act, 1995 (29 of 1995).”

#### 4.9.1 Statement Objects and Reasons:

The Statement of Objects and Reasons reads as follows:

“The principle of strict civil liability in accident case arising from the activities involving hazardous substances has been highlight case by the Supreme
Court of India. An enterprise engaged in activities with potential threat to the health and safety of the persons residing in the surrounding areas of the factory owes an absolute duty community to ensure that no harm is caused to anyone on account of hazardous and inherently dangerous nature of such activities. Cases seeking compensation for damage to human health, property and environment, particularly contamination of sub-surface water are increasing. There is also an increasing trend in the number of industrial disasters.

The United Nations Conference on Environment and Development held at Rio de Janeiro in June, 1992, in which India participated, has also called upon the States to develop National Laws regarding liability and compensation for the victims of pollution and other environmental damage.

It is deemed expedient to develop and codify the principle of strict civil liability in respect of all such cases where damage is caused while handling hazardous substances. It is proposed to establish a National Environment Tribunal for effective and expeditious disposal of cases arising from certain industrial accidents and disasters with a view to providing effective and expeditious relief and compensation for damage to human health, property and environment.”

According to the Supreme Court, an enterprise engaged in activities with potential threat to the health and safety of the persons residing in the surrounding areas of the factory owes an absolute duty to the community to ensure that no harm is caused to anyone on account of hazardous and inherently dangerous nature of such activities.

4.9.2 Objectives:

The long title and preamble of the Act specifies the following objectives of the Act:

(a) To provide:

(i) for strict liability for damages arising out of any accident while handling any hazardous substances;
(ii) for the establishment of a National Environment Tribunal for effective and expeditious disposal of cases arising from such accidents;

(iii) with a view to giving relief and compensation for damage persons, property and the environment and for matte connected therewith incidental thereto.

(b) to fulfil the commitment given at Rio de Janeiro in June, 1992 to develop national laws regarding liability, compensation for victims of pollution and other environmental damages;

(c) to implement the Rio de Janeiro decisions relating to protection of environment and payment of compensation for damages to persons, property and environment while handling hazardous substances.

Shriram Gas Leak case, the Supreme Court has highlighted the concept of 'absolute' or 'no fault' liability which is rigorous than the concept laid down in Ryland v. Fletcher commonly known as the principal of 'Strict liability'. This Act has used the phrase 'Strict Civil Liability', which, 'not fault' liability, because Section 3 of the Act uses the expression 'no fault'.

**Application:** This Act applies to the whole of the country. However, Section (2) empowers the Central Government to fix different dates for different States or part thereof. Under this scheme different dates for different States were prescribed.

4.9.3 **Important Definitions:**

**Accident:** Accident\(^{180}\) means an accident involving a tortuous or sudden or unintended occurrence while handling any hazardous substance resulting in continuous or intermittent or repeated exposure to death of or injury to, any person or damage to any property or environment but does not include an accident by reason only of war or radioactivity\(^{180}\). This definition is exclusively meant for this Act only. This is not a general definition of accident. If an accident takes

\(^{180}\) The National Environmental Tribunal Act 1995, Section 2(a).
place while handling any hazardous substance and the outcome of the accident is
continuous or intermittent or repeated exposure to death of or injury to any person
or damage to any property or environment, it is an accident within the meaning of
‘accident’ under this Act. However, an accident by reason only of war or
radioactivity is not an accident for the purposes of this Act.

So far as accident in general is concerned, it has been defined by Greene
M.R. in Makin Ltd. v. L. & NE Rly, as follows:

“One out of the ordinary course of things, something so unusual as not to
be looked for by a person of ordinary prudence.”

It does not apply to anything which either party might have avoided. Handling: This definition is given in relation to hazardous substances. Handling means manufacturing, processing, treatment, package, storage, transportation by vehicle, use, collection, destruction, conversion, offering for sale, transfer, or the like of such hazardous substance. Broadly speaking, any activity in relation to hazardous substance amounts to handling.

Hazardous Substance: ‘Hazardous substance’ means any substance or preparation which is defined as hazardous substance in the Environment (Protection) Act, 1986 and exceeding such quantity as may be specified by the Central Government under the Public Liability Insurance Act, 1991.

The Public Liability Insurance Act, 1991 defines hazardous substance to mean any substance or preparation which, by reason of its chemical or physico-chemical properties or handling, is liable to cause harm to human beings, other living creatures, plants, micro-organisms, property or the environment and exceeding such quantity as may be specified by the Central Government under the Act. Expanding the scope of the Act, Court has held that electricity is a hazardous substance within the meaning of this Act

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181 (1943) 1 All E.R. 362.
182 Manindra Nath Mukherjee v. Mathura Das Chaturbhuj, (1945) 49 CWN 82.
183 Ibid., Section 2(e).
184 Ibid., Section 2(f).
Owner: Owner\textsuperscript{186} means a person who owns or has control over handling any hazardous substance at the time of accident and includes:

(i)  in the case of a firm, any of its partners;
(ii) in the case of an association, any of its members;
(iii) in the case of a company, any of its directors, managers secretaries or other officer who is directly incharge of, and responsible to the company for the conduct of the business of the company.

This Act does not define the expression ‘occupier’ which occurs in the Environment Protection Act, 1986. The purpose, probably, is to held owner or person standing in the shoes of owner liable for payment of damages whereas occupier, cannot be held responsible.

4.9.4 Provisions Relating to Compensation:

The provisions relating to compensation are contained in Chapter II which consists of 5 Sections stretching from Section 3 to Section 7. Section 3 fixes the liability to pay compensation on the principle of ‘no fault’. This ‘no fault’ concept is adopted from Sri Ram Gas Leak age\textsuperscript{187} case. Where death of, or injury to any person (other than a workman) or damage to any property or environment has resulted from an accident, the owner shall be liable to pay compensation\textsuperscript{188}. Compensation shall be payable under all or any of the heads specified in the Schedule. The Schedule contains as many as 14 heads. The significant thing in this respect is that the claimant shall not be required to plead and establish that the death, injury or damage, in respect of which the claim has been made was due to any wrongful act, neglect or default of any person.\textsuperscript{189} Where, however, death, injury or damage caused by an accident cannot be attributed to any individual activity, but is the combined or resultant effect of several such activities, operations and processes, the Tribunal shall have power to apportion the liability

\textsuperscript{186} Ibid., Section 2(o).
\textsuperscript{188} Ibid., Section 3(1).
\textsuperscript{189} Ibid., Section 3(2).
for compensation amongst those responsible for such activities, operations and processes on an equitable basis.\textsuperscript{190}

**Who can make application for claim of compensation?** An application for claim of compensation, according to Section 4(1), can be made by anyone of the following persons:

(a) the person who has sustained the injury;
(b) the owner of the property to which the damage has been caused;
(c) where death has resulted from the accident by all or any of the legal representatives of the deceased;
(d) by any agent duly authorised by such person or owner of such property or all or any of the legal representatives of the deceased;
(e) by any representative body or organisation functioning in the field of environment and recognised by the Central Government in this behalf, under all or any of the heads specified in the Schedule; or
(f) by the Central Government or a State Government or a local authority under all or any of the heads specified in the Schedule.

But where all the legal representatives of the deceased have not joined in any such application for compensation, the application shall be made on behalf of or for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined shall be impleaded as respondents to the application.

However, making of application is not always necessary. According to Section 4(2), the Court may *suo motu* take up such cases for consideration if it is satisfied that the genuine cause for taking action exists.

In addition to making an application for claim for compensation, the applicant may also make an application before the Tribunal for additional relief

\textsuperscript{190} Ibid., Section 3(3).
under the Public Liability Insurance Act, 1991. But this additional relief is subject to the following conditions:

(a) no application shall be made if the relief has been received by the claimant earlier; or

(b) an application by the claimant was made to the Collector which is pending and has not been withdrawn. Every application shall be made to the Tribunal and shall contain such particulars and shall be accompanied by such documents and such fee, not exceeding one thousand rupees which may be fixed by the Government. But a person whose annual income is below the prescribed limit is not required to pay the fee.

Limitation period: The period of limitation fixed for filing application is 5 years from the date of occurrence of the accident. The Act191 provides that:

“No application for compensation shall be entertained unless it is made within five years of the occurrence of the accident.”

4.9.5 Powers and Jurisdiction of Tribunal:

According to the provisions of the Act192, the Tribunal shall have, and exercise the same jurisdiction, powers and authority in respect of the matters specified in the Public Liability Insurance Act, 1991 as the Collector has and may exercise and, for this purpose, the provision of the Act shall have effect subject to modification that Collector means Tribunal. However, for the purposes of discharging its functions under the Act, the Tribunal shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 while trying a suit in respect of the following matters:

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

b) requiring the discovery and production of document;

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191 Ibid., Section 4(6).
192 Ibid., Section 4(4).
c) receiving evidence on oath;
d) requisitioning any public record and document or copy of such record or document from any office subject to Sections 123 and 124 of the Evidence Act, 1872;
e) issuing commissions for the examination of witnesses documents;
f) reviewing its decisions;
g) dismissing an application for default or deciding it ex parte;
h) setting aside any order of dismissal of any application for default or any order passed by it ex parte; and
(i) any other matter which is to be or may be prescribed Section 5(4).

Procedure of Tribunal: Section 5 of the Act throws light on it. On receipt of an application under Section 4(1), the Tribunal may, after such inquiry, as it may deem fit, reject the application summarily. If, however, the Tribunal does not reject application for compensation it may, after giving notice of the application to the owner and after giving the parties an opportunity of being heard, hold an inquiry into the claim of each of the claims and may make an award determining the amount of compensation which appears to be just and specifying the person or persons to whom such amount of compensation shall be paid

Section 5(3) exonerates the Tribunal from the technicalities of the Code of Civil Procedure. It shall, however, be guided by the principles of natural justice and the provisions of this Act and rules. The Tribunal is free to regulate its own procedure including the fixing of places and times of its inquiry.

Making of Interim Orders: The Act does not empower the Tribunal to make interim orders at its own sweet will. The Tribunal can not make interim orders by way of injunction or stay or in any other manner unless:

Ibid., Section 6.
(a) Copies of such application and of all documents in support of the plea for such interim order are furnished to the party against whom such application is made or proposed to be made; and

(b) Opportunity is given to such party to be heard in the matter.

But in exceptional circumstances the Tribunal can make interim orders even when above conditions are not complied with if it is satisfied for reasons to be recorded in writing that it is necessary so to do for preventing any loss or damage, being caused to the applicant which cannot be adequately compensated in money. But any such interim order, if it is not sooner vacated, shall cease to have effect on the expiry of a period of 14 days from the date on which it is made unless the said requirements have been complied with before the expiry of that period and the Tribunal has continued the operation of the interim order.

Reduction of amount of relief paid under any other law: According to Section 7, where in respect of death of or injury to any persons or damage to any property, the owner, liable to pay compensation under this Act, is also liable to pay any amount as relief under the Public Liability Insurance Act, 1991 or any other compensation under any other the amount of compensation payable under this Act shall be reduced by the amount of relief and other compensation paid under any other law.

4.9.6 Constitution of National Tribunal:

Constitution of National Tribunal and Benches thereof: The provisions to this effect are contained from Sections 8 to 18 dealing with various aspects of Constitution of National Tribunal and its Benches. Section 8 of the Act empowers the Central Government to establish National Tribunal and confer on it such jurisdiction, powers and authority as it may deem fit.

Composition of Tribunal and its Benches: Section 9 of the Act deals with this subject. According to it, the Tribunal shall consist of a chairperson and
such number of vice-chairpersons, Judicial members and Technical members as the Central Government may deem fit.\textsuperscript{194}

**Bench:** A Bench shall consist of one judicial member and one technical member. The Bench, subject to other provisions of this Act, may exercise the jurisdiction, powers and authority of the Tribunal. Subject to other provisions of this Act, the Benches of the Tribunal shall ordinarily sit at New Delhi which shall be known as principal Bench and at such other places as the Central Government may, by notification, specify.

**Functions of Chairperson**\textsuperscript{195}: A chairperson may exercise the following functions:

1. he discharges the function of the Judicial Member or the Technical Member of the Bench to which he is appointed;

2. he may discharge, in addition, the functions of the Judicial member or Technical member of any other Bench.

3. he may transfer the vice-chairperson or other member from one Bench to another Bench.

4. he may authorise the vice-chairperson or Judicial member or the Technical member appointed to one Bench to discharge also the functions of the vice-chairperson or, as the case may be, the Judicial member or the Technical member of another Bench.

5. he may for the purposes of securing that any case or cases which having regard to the nature of the question involved, requires or require, in his opinion or under the rules made by the Central Government, in this behalf, to be decided by a Bench composed of more than two members, issue such general or special orders, as he may deem fit. But every Bench constituted in pursuance of this clause shall include at least one Judicial member and one Technical member. The chairpersons or any other

\textsuperscript{194} The Public Liability Insurance ACT, 1991, Sec. 9(1).

\textsuperscript{195} See, *Ibid.*, Section 9(3).
member authorised by the chairperson may function as a Bench consisting of a single member and exercise the jurisdiction powers and authority of the Tribunal in respect of such classes of cases or such matters pertaining to such classes of cases, as the chairperson may, by general or special order, specify. But if at any stage of the hearing it appears to the chairperson or to such Member that the case matter is of such a nature that it ought to be heard by a Bench consisting of two members, it may, transferred to such Bench as the chairperson may deem fit.

(6) he shall exercise such financial and administrative powers may be vested in him.\textsuperscript{196} He may also delegate these powers to Vice-chairperson or any other officer of the Tribunal with or without condition.

(7) he may transfer case from one Bench to another.\textsuperscript{197}

4.9.7 Jurisdiction and Proceedings of the Tribunal:

Bar of jurisdiction: According to Section 19, from the date of the commencement of this Act, no Court or other authority except the Tribunal shall have, or be entitled to exercise, any jurisdiction, powers or authority to entertain any application or action for any claim for compensation which may be entertained or dealt with by the Tribunal. Thus, since the enforcement of this Act, the jurisdiction of all Courts and Tribunals except the Environment Tribunal is barred and they cannot entertain any application relating to environment pollution.

Power to transfer cases from one Bench to another: This power is conferred on the chairperson under Section 20 of the Act. He can transfer a case from one Bench to another either at the application of a party to the dispute or on his own motion. When there is an application to transfer the case, he will give notice to the parties and only after hearing them, if they so desire, he will transfer the case.

\textsuperscript{196} \textit{Ibid.}, Section 16.
\textsuperscript{197} \textit{Ibid.}, Section 20.
Decision to be taken by majority: Section 21 provides that the decision of a Bench shall be taken according to the opinion of the majority. Where, however, members are equally divided, they shall state the point or points on which they differ and make a reference to the chairperson who shall either hear the point or points himself, or refer the case for hearing on such point or points by one or more of the other members and such point or points shall be decided according to the opinion of the majority of members who have heard the case including there who first heard it.

Deposit of amount payable for damage to environment: Section 22 lays down that if any amount is deposited under the direction of the Tribunal on the ground of any damage to environment, that amount shall be remitted to the authority specified under the Public Liability Insurance Act, 1991 for being credited to the Environmental Relief Fund established under that section. This amount may be utilised in such manner and for such purposes of environment as may be prescribed.

Execution of award, etc.: (1) According to Section 23, an award made by the Tribunal shall be executable by the Tribunal as a decree of Civil Court and for this purpose, it shall have all the powers of a Civil Court. (2) The Tribunal may get its orders or awards executed through Collector of the place where accident has taken place and the Collector shall execute the order in the same manner as if it were an order made by him under the Act. (3) Where the owner liable to pay or deposit the amount fails to do so by the specified date, the said amount shall be recovered from him as an arrear of land revenue or of public demand.

Appeal.: Section 24 deals with appeals. An appeal shall lie against any award or other order, not being an interlocutory order of the Tribunal to the Supreme Court only on one or more of the grounds specified in Section 100 of the Code of Civil Procedure. But no appeal shall lie against an award or other order made by the Tribunal with the consent of the parties. Every appeal shall be preferred within a period of 90 days from the date of award or other award appealed against. However, the Supreme Court may entertain the appeal even after the expiry of the
said period of 90 days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time.

Where under the award or order of the Tribunal, an amount has to be deposited by a party, no appeal shall be entertained by the Supreme Court unless the amount is deposited with the Supreme Court in the manner greeted by it.

4.9.8 Miscellaneous:

**Penalty:** Section 25 of the Act provides for penalty for failure to comply with the orders of the Tribunal. According to this provision, the person failing to comply with the orders of Tribunal shall be punishable with imprisonment for a term which may extend to 3 years, or with fine which may extend to ten lakh rupees, or with both. The purpose of providing such a high pecuniary punishment is to deter the owner from polluting the environment.

**Offences by Companies:** Section 26 makes provision in this regard:

(1) Where any offence under this Act is committed by a company every person who, at the time the offence was committed was directly in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company shall be deemed to be guilty of the offence and shall be liable to be punished. However, no such person shall be liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Where an offence under this Act has been committed by a company and it is proved, that the offence was committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary, or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.
For the purposes of this section, the expression company is given very wide meaning so as to include any body corporate and it also includes a firm, or other association of individuals. Similarly, a director means a partner as well.

**Nature of proceedings before Tribunal:** Section 27 provides that all proceedings before Tribunal shall be deemed to be judicial proceedings within the meaning of Sections 193, 219 and 228 of the Indian Penal Code, 1860.

**Protection of action taken in good faith:** Section 29 provides that no suit, prosecution or other legal proceeding shall lie against the Central Government or against the Chairperson, Vice-chairperson or other member of the Tribunal, or any other person authorised by any of them for anything which is in good faith done or intended to be done in pursuance of this Act, or any rule or order made thereunder. This saving clause is essential for the effective functioning of the Act as well as the rules made under it.

**Overriding effect of the Act:** According to Section 30 of the Act, except as provided in the Public Liability Insurance Act, 1991, the provisions of this Act shall have the effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force, or in any instrument having effected by virtue of any law other than this Act.

Section 31 deals with power to make rules.

**The Schedule:**

Heads under which compensation for damages may be claimed. —

a) Death;

b) Permanent, temporary, total or partial disability or other injury or sickness;

c) Loss of wages due to total or partial disability or permanent or total disability;

d) Medical expenses incurred for treatment of injuries or sickness;

e) Damages to private property;
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f) Expenses incurred by the Government or any local authority in providing relief, and rehabilitation to the affected persons;

g) Expenses incurred by Government for any administrative or legal action, or to cope with any harm or damage, including compensation for environmental degradation and restoration of the quality of environment;

h) Loss to Government or local authority arising out of, or connected with the activity causing any damage;

i) Claims on account of any harm, damage or destruction to the fauna, including milch and drought animals and aquatic fauna;

j) Claims on account of any harm, damage or destruction to flora including aquatic flora, crops, vegetables, trees, orchards;

k) Claims including cost of restoration on account of any harm or damage to environment including pollution of soil, air, water and ecosystem;

l) Loss and destruction of any property other than private property;

m) Loss of business of employment or both;

n) Any other claim arising out of, connected with, any activity of handling of hazardous substance.

4.10 THE NATIONAL ENVIRONMENT APPELLATE AUTHORITY ACT, 1997

This is a small piece of legislation consisting of twenty three section. It received the assent of the President of India on March 26, 1997 and became operative w.e.f. 30th day of January, 1997. The preamble of the Act provides that this is an Act to provide for the establishment of a National Environment Appellate Authority to hear appeals with respect to restriction of area in which any industries, operations or processes or class of industries, operations, or processes shall not be carried out or shall be carried out subject to certain safeguards under the Environment (Protection) Act, 1986 and for matters connected therewith or incidental thereto.
Under the Environment (Protection) Act, 1986, the Central Government is empowered to take measures for the protection and improvement of environment and for matters connected therewith. Section 3 to 6 enumerate general powers and sections 7 to 17 enumerate specified powers of the Central Government regarding prevention, control and abatement of Central Government regarding prevention, control and abatement of environmental pollution. Section 6 (2) in particular empowers the Central Government to make rules for all or any of the following matters, namely:

(a) the standards of quality of air, water or social for various area and purposes;
(b) the maximum allowable limits of concentration of various environmental pollutants including noise for different areas;
(c) the procedures and safeguards for the handling of hazardous substances;
(d) the prohibition and restrictions on the handling of hazardous substances in different areas;
(e) the prohibition and restrictions on the location of industries and the carrying on of processes and operations in different areas;
(f) the processes and safeguards for the prevention of accidents which may cause environmental pollution and for providing for remedial measures for such accidents.

The National Environment Appellate Authority Act is intended to deal with appeals with respect to restrictions of areas in which any industries, operations or processes or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards and matters connected therewith or incidental thereto regarding which the Central Government is empowered to make rules under Section 6(2) of the Environment (Protection) Act, 1986. Thus, the scope of the Authority constituted under the Act is very limited. It is however, important to keep in mind that this is not an
authority before which an appeal can be preferred against the orders or awards of
the National Environment Tribunal constituted under the National Environment
Tribunal Act, 1995. An appeal against the award or order of the Tribunal shall lie
to the Supreme Court on one or more of the grounds specified in section 100 of
the Code of Civil Procedure.\textsuperscript{198} The Appellate Authority Act of 1997, however,
contains no specific provision stating the authority before which an appeal can be
preferred against the order or award of the Appellate Authority. The present Act,
however, makes clear that the Appellate Authority:

(i) is not bound by the procedure laid down in the Code of Civil Procedure
(1908). shall be guided by the principles of natural justice;

(ii) shall have power to regulate its own procedure;

(iii) no civil Court or other authority shall have jurisdiction to entertain any
appeal in respect of which the Authority is empowered;

(iv) proceedings before it are judicial proceedings.

Thus, any person aggrieved by an order or award of the Appellate
Authority, may invoke the writ jurisdiction of the High Court and then by way of
appeal can approach the Supreme Court for remedy.

Establishment of Authority: The provisions relating to establishment of
Authority, i.e., the National Environment Appellate Authority are contained from
sections 3 to 10 of this Act. Once it is established as per provisions laid down in
this Act it shall be a statutory body and shall have jurisdictions and powers
assigned to it. Section 3(1) provides that the Authority shall be established by the
Central Government through a notification in the Official Gazette to be known as
the National Environment Appellate Authority This authority will exercise the

\begin{footnote}
\textsuperscript{198} The National Environment Tribunal Act, 1995, Sec. 24 (1).

“(1) Save as provided in sub-section (2) and notwithstanding anything contained in the Code
of Civil Procedure, 1908 (5 of 1908) or in any other law, an appeal shall lie against any award
or other order, not being an interlocutory order of the Tribunal to the Supreme Court on one
or more of the grounds specified in section 100 of that code”.
\end{footnote}
owners conferred upon it and perform the functions assigned to it under this Act. The head office of the Authority shall be at Delhi.

4.10.1 Jurisdiction and Powers of Authority:

Appeals to Authority: Who can prefer an appeal and on what grounds an appeal can be preferred is always a matter of debate. Under the present Act, as the preamble provides, appeal shall lie to the Appellate Authority with respect to:

"restriction of areas in which any industries, operations, or processes; or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards under the Environment (Protection) Act, 1986 and the matters connected therewith or incidental thereto."

Section 11(1) gives answer to the question as to who can prefer appeal. It provides that "any person" aggrieved by an order granting environmental clearance is entitled to prefer appeal before the Authority. Appeal is to be preferred before the Authority in Form A specified in the National Environment Appellate Authority (Appeal) Rules, 1997. Appeal shall be either in English or in Hindi and shall set forth concisely and under distinct heads, the grounds of appeal without any argument or narrative and such grounds shall be numbered consecutively.

Appeal is to be presented in person generally. But if there are more than one appellant, anyone of them may present the appeal. However, appeal may be sent by registered post also with acknowledgement due addressed to the Registrar of the Authority.

The expression "any person", however, has been given a very wide meaning. Section 11(2) explains "any person" means:

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

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199 The National Environment appellate Authority Act 1997, Sec. 11
201 Ibid., 5(2).
(b) any person who owns or has control over the project with respect to which an application has been submitted for environmental clearance;

(c) any association of persons (whether incorporated or not) likely to be affected by such order and functioning in the new environment;

(d) the Central Government, where the environmental clearance granted by the State Government and the State Government, where the environmental clearance is granted by the Gem Government; or

(e) any local authority, any part of whose local limits is within neighbourhood of the area wherein the project is proposed to located.

Thus, there are five categories of persons who are competent to prefer appeal.

**Limitation:** Section 11 prescribes two types of limitation: (i) for preferring appeal; and (ii) for disposal of appeal.

An appeal shall be preferred to the Appellate Authority within a period of thirty days from the date of the order granting environmental clearance. Where, however, appeal could not be preferred within the limitation period of thirty days, the Authority may entertain appeal after the said period of thirty days but not after ninety days from the date of beginning of the cause of action if the Authority is satisfied after going through evidences that the appellant was prevented by sufficient cause from filing the appeal in time. Limitation period for preferring appeal cannot be extended beyond ninety days from the date cause of action arose.\(^\text{202}\)

For the purposes of disposal of appeal a limitation of ninety days from the date of filing the appeal is prescribed. The Authority is required to dispose of the case within that period. This is a mandatory provision and the Authority is expected to honour the same.\(^\text{203}\) However, the Authority may for reasons to be recorded in writing dispose of the appeal within a further period of ninety days.

\(^{202}\) The National Environment appellate Authority Act 1997, Sec. 11(1).

\(^{203}\) Ibid., Sec 11(4).
An appeal under this Act has to be disposed of by the Authority within a period of ninety days from the date of presentation of the appeal but in exceptional circumstance within one hundred and eighty days.

4.10.2 Procedure and Powers of Authority:

On receipt of an appeal under sub-section (1) of Section 11, the Authority shall, after giving the appellant an opportunity of being heard, pass such orders as it thinks fit. But question arises that while doing so is the Authority bound to observe the principles relating to procedure laid down in the Code of Civil Procedure, 1908? The answer to this question is provided by section 12(1) of the Act. It provides that the Authority shall not be bound by the Procedure laid down in the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice and subject to other provisions of this Act and of any rules made by the Central Government, the Authority shall have power to regulate its own procedure including the fixing of places and times of its inquiry and deciding whether to sit in public or in private. Apart from observing the principles of natural justice, the Authority is free to observe procedure it may deem fit. The principles of natural justice are to be adhered to when there are no specific rules governing the hearing of the appeal.

Sub-section (2) of Section 12 further provides that the Authority shall have, for the purposes of discharging its functions, the same powers as are vested in Civil Court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely:-

(a) summoning and enforcing the attendance of any person and examining him on oath;
(b) requiring the discovery and production of documents;
(c) receiving evidence on affidavits;
(d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1972, requisitioning any public record or document or copy of such record or document from any office.

Note: Sections 123 and 124 of the Evidence Act, 1872 are as follows:

**Official Communications:** No public officer shall be compelled to disclose communications made to him in official confidence, when he considers that the public interest would suffer by the disclosure.

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

(f) reviewing its decisions;

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

(h) setting aside any order of dismissal of any representation for default or any order passed by it ex parte; and

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

Powers and procedures of the Appellate Authority are meticulously prescribed by the Act so that the Authority must be clear as to how it has to proceed and to enable it to pronounce its order within the limitation period mentioned in Section 11.

**Bar of Jurisdiction:** Section 15 of the Act provides that with effect from the date of establishment of the Authority, no Civil Court or other authority shall have jurisdiction to entertain any appeal in respect of any matter with which the Authority is so empowered by or under this Act. Thus the jurisdiction of Civil Court and other authority is barred since the establishment of this Authority.

**Proceedings before the Authority to be judicial proceedings:** Section 16 of the Act provides that all proceedings before the Authority shall be deemed to be judicial proceedings within the meaning of sections 193, 219 and 228 of the Indian Penal Code, 1860 (I.P.C.). The objective of declaring proceedings before the Authority to be judicial proceedings is to provide more armour in the armory
of the Authority so that it may punish any person who in its eye tried to cheat or play fraud upon the Authority.

Section 193, I.P.C: Punishment for False Evidence: Whoever intentionally gives false evidence in any stage of a judicial proceeding, or fabricates false evidence for the purpose of being used in any stage of a judicial proceeding, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine; and whoever, intentionally gives or fabricates false evidence in any other case, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Explanation 1: A trial before a Court Martial, is a judicial proceeding.

Explanation 2: An investigation directed by law preliminary to a proceeding before a Court of justice, is a stage of a Judicial proceeding though that investigation may not take place before a Court of Justice.

Section 219 I.P.C.: Public Servant in Judicial Proceeding Corruptly making Report, etc. Contrary to Law: Whoever, being a public servant, corruptly or maliciously makes or pronounces in any stage of a judicial proceeding, any report, order, verdict or decision which he knows to be contrary to law, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Section 228, I.P.C.: Intentional Insult or Interruption to Public Servant Sitting in Judicial Proceedings: Whoever intentionally offers any insult, or causes any interruption to any public servant while such public servant is sitting in any stage of a judicial proceeding, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Members and Staff of Authority to be Public Servants: Section 17 of the Act provides that the Chairperson, the Vice-Chairpersons, and the Members and the officers and other employees of the Authority shall be deemed to be public
servants within the meaning of section 21 of the Indian Penal Code, 1860. This provision tends to offer protection to the officers the Authority so that they may perform their duties without any fear and without being humiliated.

**Protection of Action taken in Good Faith:** Section 18 of the Act provides that no suit, prosecution or other legal proceeding shall be against the Central Government, or against the Chairperson, the Vice-chairperson or a Member of the Authority or any other person authorised by the Chairperson, the Vice-chairperson or a Member for anything which is in good faith done or intended to be done in pursuance of this Act or any rule or order made thereunder. Protection offered under this section is available only if the action is taken in good faith or intended to be taken in good faith only.

**Penalty for Failure to Comply with Orders of Authority:** Section 19 of the Act provides that whoever fails to comply with any order made by the Authority, he shall be punishable with imprisonment for a term which may extend to seven years, or with fine which may extend to one lakh rupees, or with both.

**Offences by Companies:** Section 20 provides that where any offence under this Act is committed by a company, every person, who at the time offence was committed, was directly incharge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly: But no such person shall be liable to any punishment if he proves that the offence was committed without his knowledge or that he has exercised all due diligence to prevent the commission of such offence [Sub-section (1)].

Sub-section (2) of section 20 provides that where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer of the company shall also be deemed
to be guilty of that offence and shall be liable to be proceeded against and punished accordingly. For the purposes of this provision, a “company” means any body corporate and includes a firm or other association of individuals and “director” in relation to a firm means a partner in the firm.

**Power to Remove Difficulties:** With regard to remove difficulty section 21 makes provision. Sub-section (1) provides that if any difficulty arises in giving effect to any provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act, as appear to it to be necessary or expedient for removing the difficulty. But no such order shall be made after the expiry of the period of three years from the date on which this Act receives the assent of the President.

Sub-section (2) provides that every order made under this section shall be laid, as soon as may be before each House of Parliament.

**Power to make rules:** Section 22(1) empowers the Central Government to make rules to carry out the provisions of this Act. Sub-section (2) provides that rules made by the Central Government may provide for all or any of the following matters, namely:

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

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

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

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

(e) the salaries, and allowances and conditions of service of the officers and other employees of the Authority;
(f) any other matter which is required to be or may be prescribed.

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