CHAPTER - 6

LEGISLATIVE MEASURES FOR CONTROLLING ENVIRONMENTAL POLLUTION IN INDIA AND ITS JUDICIAL PERCEPTION
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LEGISLATIVE MEASURES FOR CONTROLLING ENVIRONMENTAL POLLUTION IN INDIA AND ITS JUDICIAL PERCEPTION

The preceding chapter has demonstrated that how the religious and spiritual thoughts and beliefs and historical tradition of environment protection have became the inseparable parts of the Environmental Jurisprudence in India. It has also focussed on the constitutional mandates for environment protection as developed on the basis of such religious and spiritual thoughts and beliefs. Right from historical past, environmental issues have been drawing attention of different rulers, political thinkers, economists and intellectuals in India and they have shown their keen interest and desire through their various course of actions to protect environment and to preserve natural resources. Rulers had framed rules and regulations and political thinkers and intellectuals had prepared guidelines and standards for the protection of environment and maintaining ecological balance. But with the development of science and technology in modern era, specially from twentieth century onwards, environmental issues, specially pollution problems began to rise with its immense power in India. Urbanisation and industrial development had also caused overall degradation of the environment quality and as a result the human environment become vulnerable to ecological disaster. In this situation necessities of new effective legal strategies, including enactment of laws, for managing the environmental issues had been felt here. Therefore it is very much essential to discuss various legislative provisions, right from pre-independence to post-independence modern era along with its judicial perception and this chapter is contributed to that aspect.
6.1. Legislative Measures during Pre-Independence Period

6.1.1 General Overview

In view of consensus decisions of Stockholm-conference in 1972, wherein India was a participating country, the urgent necessities were felt for the environmental legislations to control pollution problems and to protect the human beings from, its hazardous effect. Ultimately, legislative activities have been intensified in India aiming to fulfil the commitments made by Indian Delegates at Stockholm conference, as Delegates of a participating country, immediately after the Stockholm Conference, 1972.

However, it does not mean that there had not been any legislation relating to environment protection during pre-Stockholm conference period in India. Actually there was no dearth of legislations before the pre-stockholm confernece period; even before the independence in India. During pre-independence period various legal sanctions had come into existence in India either in-the form of Legislations or by the way of common law principles, aiming at preservation and protection of environment and its natural resources.

6.1.2 Common Law : Law of Torts

Actions brought under the Law of Torts within the domain of common law principles are the oldest of legal remedies in British India, as introduced by the British Government, to abate pollution and to prevent degradation of quality of environment. Provisions of various legal sanctions under the Law of Torts, particularly with regard to public and
private Nuisence, Negligence, Strict and absolute liability are of immense importance even in the present Indian legal scenario for the protection of environment, as it appears from the foregoing discussion in this chapter.

In addition, during this pre-independence period, there had been numerous legislative sanctions, as made through various enactments, some of which are still prevailed, even in present age, to control and mitigate the pollution problems and to maintain ecological balances, as discussed below along with its judicial perception

6.1.3 General Legislations

*Indian Penal Code*

Indian penal code, 1860, is the earliest general Legislation of this country containing provisions relating to offence, affecting the public health, safety, convenience, decency and morals. Chapter 14 of the Indian Penal Code consisting of 26 Sectional Provisions (from Section 268 to Section 295) dealing with the matter relating to public nuisance which may amounting to environment pollution. These provisions have been introduced as a part of the Indian Penal Code safe guarding the public health and hygiene and to secure safety of human lives living in the society from the hazardous effects of nuisance acts. So, if it is considered from environmental perspective, all these provisions under the Indian Penal Code can be well invoked for the protection of human environment from the hazardous effect of pollution treating it as an actionable public nuisance.

Under section 268 of the Indian Penal Code, a person will be guilty
of public nuisance, when he does any act or he is guilty of an illegal omission which causes any common injury, danger or annoyance to the public or to the people in general who dwell or occupy property in the vicinity. Under Section 290 of this Indian Penal Code\(^1\), punishment for public nuisance has been provided. Section 291 of this code provides the punishment in case of continuation of such offence, instead of injunction. So if any act or omission of any person gives rise to environmental disorder and if it causes any common injury, danger or annoyance to the public living in the vicinity, provisions of the Section 268 read with the provisions of section 290 and 291 of the Indian Penal Code will be attracted considering such act as public nuisances.

In *K. Ramakrishnan and another vs. State of Kerala and Others*\(^2\), Kerala High Court has invoked the provision of Indian Penal Code regarding Public Nuisance for issuing direction against the Environmental Pollution arising out of Tobacco smoking in the public place. In this case\(^3\) in dealing with the issue of the effect of tobacco smoking in the public place and its probable consequence, Kerala High Court has considered that the tobacco smoking in the public place will cause public nuisance and it can be prohibited within the scope and ambit of the provision of section 133 of the code of criminal procedure and the provision of section 268 of the Indian Penal code, as it appears from the following observation — "public smoking of tobacco in any form whether in the form of cigerretes, cigars, beedies or otherwise is illegal,

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1. Section 290 of the Indian Penal Code says as follows: Whoever commits a public nuisance in any case not otherwise punishable by this Code, shall be punished with fine which may extend to two hundred rupees.
2. AIR 1999 Ker. 385.

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unconstitutional and violative of Article 21 of the constitution of India. We direct the District Collectors of all the Districts of the State of Kerala who are suo motu impleaded as Additional respondents 39 to 52 to promulgate an order under section 133(a) Cr. P.C. Prohibiting public smoking within one month from today and direct the 3rd respondent Director General of Police, Thiruvananthapuram, to issue instructions to his subordinates to take appropriate and immediate measures to prosecute all persons found smoking in public places treating the said act as satisfying the definition of 'public nuisance' as defined under section 268 IPC, in the manner indicated in this Judgement by filing a complaint before the competent Magistrate and direct all other respondents to take appropriate action by way of display of 'smoking prohibited' boards etc. in their respective offices or campus.4

In addition to nuisance, negligent act, as specified under the Indian Penal Code, may be also considered as another actionable responsible factor in causing pollution. Here Section 269 of the Indian Penal Code forbids any negligent acts what would result in spreading infection of any dangerous disease. Under Section 284 of the Indian Penal Code, certain safeguard has been also provided against pollutions arising out of negligent act while handling any poisonous substance. As per provision of Section 287 of the Indian Penal Code, who ever does any act so rashly or negligently with any machinery as to endanger human life or to be likely to cause hurt or injury to any other person, he shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand

rupees, or with both. So with the help of the provision of this section 287 of the Indian Penal code, noise pollution, taken place as a result of any rush and negligent act with any machiery, can be abated.

The Indian Penal code also provides possible safe guard against water pollution. As per provisions of section 277 of this code, whoever voluntarily corrupts or fouls the water of any public spring or reservoir, so as to render it less fit for the purpose for which it is ordinarily used, shall be punished with Imprisonment of either description for a term which may extend to three months or with fine which may extend to five hundred rupees or with both. So this provisions of Section 277 of this code can be considered as an effective steps to abate, water pollution, specially fouling of the water of public tanks and rivers under Indian Penal code. The person, responsible for causing water pollution, can also be punished under the provision of section 426 of Indian Penal Code considering his act of corrupting or fouling the water of public spring or reservoir as mischief within the meaning of section 426 of the Indian Penal Code. In addition to these, Indian Penal Code has also laid down the possible safe guard against atmospheric pollution under Section 278 of this code.

Another provision under Section 270 of the Indian Penal Code, which can be applied for the protection of human environment, may be stated here. According to the Section 270 of the Indian Penal Code whoever malignantly does any act, which is and which he knows or has reason to believe to be, likely to spread the infection of any disease

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5. Section 278 of the Indian Penal Code says as follows: Whoever voluntarily vitiates the atmosphere in any place so as to make it noxious to the health of persons in general dwelling or carrying on business in the neighbourhood or passing along a public way, shall be punished with fine which may extend to five hundred rupees.
dangerous to life, he shall be punished with imprisonment of either description for a term which may extend to two years, or with fine or with both. This provisions of Indian Penal Code can be well utilised to prevent pollution hazard arising out of clinical waste.

6.1.4 Specific Legislations

The Shore Nuisance (Bombay and Kolaba) Act, 1853

This Legislation may be considered as one of the earliest Legislation regarding water pollution though its application was restricted in a particular area. Under this Legislation, collector of Land Revenue in Bombay was authorised to give order of removal of any nuisance below the high water mark in Bombay harbour, by sending notice upon the offending party causing nuisance.

The Oriental Gas Company Act, 1857

This Legislation was the first attempt in India to keep the environment clean and healthy. It may be mentioned here that not only air, but this enactment also intended towards the protection of quality of water.

Section 15 the Oriental Gas Company Act, 1857, provides penal provision for causing the water corrupted by the company during supply of gas or its production and any kind of ancillary activity thereto. Section 16 of this Act provides penal provisions for corrupting the water during supply of gas by the company. Section 17 of this Act also imposes some penalty if water be fouled by gas during its supply by the company.

In addition to these, section 5 of this oriental Gas Company Act, 1857, has been also laid down aiming at preservation of clean
environment by providing the order of reinstating the broken or any broken sewer, any drain or tunnel which were broken and/or damaged for the purpose of gas supply and also to make good the road, pavement, drain, sewer, etc. and to carrying away the rubbish accumulated there. Here section 6 of this Act provides penalty in case of violation of such order.

*The Elephants' Preservation Act, 1879*

It was the first effort made by the central Government of the then British India for the protection and preservation of the wild lives. The Law introduced a general prohibition on the destruction of wild elephants and imposed a penalty on those who violated the embargo.

In a reported case, *Kuppathoda Madhavan Nair and Others vs. The State of Kerala*, Kerala High Court held that Section 3 of the Elephants' Preservation Act, 1879 prohibited the killing, injuring or capturing any wild elephant, except under the three circumstances as mentioned in the clauses (a) to (c) of the Section 3, of the *Elephants Preservation Act, 1879*.

But it may be mentioned here that before the enactment of the aforesaid legislation for elephant preservation, Madras enacted the first wild life statute for the protection of wild elephants in 1873, though that legislation was limited to specific areas and particular species.

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6. AIR 1964, Ker. 287.
7. Section 3 of the Elephants Preservation Act, 1879, Says as follows — "No person shall kill, injure or capture, or attempt to kill injure or capture, any wild elephant unless —
   a) in defence of himself or some other person;
   b) When such elephant is found injuring houses or cultivation or upon, or in the immediate vicinity of, any main public road or any railway or canal; or
   c) as permitted by a licence granted under this Act.
In 1887, another legislation for the protection of wild animals were enacted and that was the *Wild Birds Protection Act, 1887*. By this legislation, possession or sale of wild birds, recently killed or, taken, was prohibited during notified breeding seasons.

It may be mentioned here that in 1912, the Central Government enacted a broader *Wild Birds and Animal Protection Act, 1912*. Extending to most of British India, this law specified closed hunting seasons and regulated the hunting of designated species through licences.

_The Indian Fisheries Act, 1897_

This Legislation was made mainly for the preservation and protection of the aquatic life.

Under this Act, any person, who contaminates water with an intent thereby to catch or destroy any fish, shall be punished with imprisonment for two years or fine.

Under Section 4 of this, _Indian Fisharies Act, 1897_, destruction of fish by explosives is prohibited. Similarly under the provision of section 5 of this Act, destruction of fish by poisoning waters is also prohibited.

_The Indian Ports Act, 1908_

This Legislation has been made with an aim to protect the quality of water specially in sea coast and surrounding the port area. By this enactment measures have been taken to regulate and prevent the water pollution by oil mainly in coastal area.
Section 21 of this Act has laid down the prohibition order of throwing of ballest or rubbish or any other offensive articles into the sea coast causing degradation of the quality of water. This provision of section 21 of the Act is absolutely a preventive measure to control water pollution, mainly of coastal sea water.

The Bengal Public Parks Act, 1904

This legislation has been enacted for the protection of environment and ecology of public parks. This Act has laid down certain prohibitory clauses under Section 4 of this Act. It prohibits plucking or gathering anything growing in the parks breaking of trees, branches or plants. It also prohibits shooting, bird-nesting, etc. The Section 4 of the Bengal Public Parks Act, 1904, prohibit bathing or polluting the water body by any other means in the park. This provision is actually a save guard against the water pollution of the water bodies situated in the park.

In addition, to this Bengal Public Parks Act, 1904, various other environment related local Acts had been also enacted, such as Bengal Sanitary Drainage Act, 1895; The Bengal Drainage (Amendment) Act, 1902, which were repealed latter on. Though these legislations may not be considered as a straight forward environmental Legislations, but those were enacted to keep the atmosphere pollution free as far as possible and to maintain proper public hygiene within its limited capacity.

In this regard another Legislation, what was enacted to control pollution specially air pollution, may be mentioned here, and that was the Calcutta and Howrah smoke Nuisance Act, 1863, which was subsequently repealed by Bengal Act III of 1905.
The Bengal Smoke Nuisance Act, 1905

It was an attempt to combat air pollution mainly in undivided Bengal before Independence. Under this enactment, various measures had been taken to control the air pollution, mainly arising out of smoke. Section 6 of this Act empowered the State Government to prohibit the erection or use of Kilns or furnaces used for calcining or smelting of ores or minerals or for the casting, puddling or rolling of iron or other metals and for the manufacture of coke, in specified area. It also provides in this regard, that if any one violates the prohibitory order he shall be liable to be punished with fine. Section 7 of this Act also empowers the Magistrate to give order of demolition of Kilns or furnaces erected or used within prohibited area.

Here, constitution of a Commission for supervising and controlling the implementation of this enactment, was a remarkable event as taken place under this enactment.

Thereafter the Bengal Smoke Nuisance (Amendment) Act, 1916, was enacted. Under this Amendment Act, submission of Plan for constructing furnace or chimney became mandatory. Provisions of penalty in case of going beyond the direction, as given in the approved plans, has been also provided here.

The Bombay Smoke Nuisance Act, 1912.

It was the similar type of enactment, like Bengal Smoke Noisance Act, 1905. By this enactment measures had been taken to combat air pollution in Western India, mainly in Bombay, presentedly known as Mumbai.
The Poison Act, 1919

This legislation has been also enacted to protect and preserve the environment and its natural resources from the effect of any poisonous substance.

This particular statute provides certain regulatory measures to be invoked by the State Government in case of possession of such substance for sale and sale of any poison by any body and section 6 of this Act provides penal provision incase of violation of any regulatory provision as laid down under the provision of Section 2 of this poison Act, 1919.

In this regard in an old case, Hukum Chand vs. The State\textsuperscript{8}, it has been held by the Allahabad High Court that the accused could not be convicted merely for the possession of the poisonous substances, as specified in the schedule in the statute.

The Indian Boilers Act, 1923

Though this legislation has not been enacted to control the air pollution directly, but indirectly with the help of this enactment air pollution problem may be countered. In this regard provision of Section 7 may be mentioned.

Section 6 of the Indian Boilers Act, 1923, has provided the prohibition of use of unregistered or uncertificated boiler by the owner. This section is actually a preventive measure to minimise the risk of any accident or any unwanted incidents within the Industrial unit due to use of any boiler which is not certified as competent for use. Section 23 of this Act

\textsuperscript{8} AIR 1957 All. 705
provides some penal provision for illegal use of boiler. It prescribes fine as punishment in case of violation of restriction as laid down under this Act. In *B.N. Mehrotra and Others vs. The State*, it has been held by the Calcutta High Court that as Section 23 prescribes only fine as punishment that can be inflicted for contravention of Section 6 of the Indian Boilers Act, 1923 and there can be no difficulty whatever in prosecuting the company for the offence.

Under the provision of Section 7 of this Act, Chief Inspector, being appointed by the Government, can enforce restriction regarding use of oil, asphalt or bitumen, used as a heating medium for the operation of boilers and as a result, risk of pollution may be checked.

*The Indian Forest Act, 1927*

The Indian Forest Act, 1927, has been enacted for the conservation of the Natural resources of plant species, as well as to protect the ecological balance and also to combat the environmental problem arising out of deforestation, as highlighted below.

As per provision of Section 3 of this Act, Government may reserve any forest wholly or any part of it with an aim to protect the forest. In a reported case, Union of India, representing the *Union Territory of Tripura vs. Abdul Jalil and others*, in dealing with the dispute whether the areas where the offences are said to have been committed, were within "reserved forests" within the meaning of the Indian Forest Act, 1927, the Supreme Court held that on the terminology employed by the Indian Forest Act, "reserved forests" were those areas of forest land

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9. AIR 1956 Cal. 137.
10. AIR 1965 S.C. 147.
which are constituted as 'reserved forests' under Chapter-II of the Act.
It has been further held by the Supreme Court that section 3 of the
Indian Forest Act, 1927, empowers the State Government to constitute
any forest land or waste land, which is the property of Government or
over which the Government has proprietary rights or to the whole or in
part of the forest produce to which the Government is entitled, a reserved
forest. Supreme Court has also held that Section 4 of this Indian Forest
act, 1927, requires that when the State Government has decided to
constitute the land as a "reserved forest", it should notify by the issue
of a notification in the official Gezette specifying the situation, limits, etc.
of that land and declare its decision to contribute the land as a "reserved
forest".

As per provision of Section 24 of this Act, there is also a restriction
to alienate any part of forest land without the sanction of Government.
It also provides restriction for the selling and bartering the timber.
Section 26 of the Indian Forest Act, 1927, also provides some prohibitory
Acts, such as setting fire to a reserved forest; trespassing or pasturing
cattle; causing any damage by negligence in felling any tree or cutting
or dragging any timber clearing or breaking up land for cultivation or any
other purpose in contravention of any rules, made in this behalf by the
State Government ; hunting and shooting or poisoning the water, etc.
under this Act, commissions of all these prohibitory acts are subject to
punishment with imprisonment for a terms which may extend to six
months or with fine which may extend upto five hundred rupees.

In State of U.P. Vs. District Judge, Bijnar and others\textsuperscript{11}, the Allahabad
High Court held that in view of the provision of Section 26 of the Forest Act, 1927, no person could carry on fishing within the reserved forests without the permission of the Forest settlement officer or State Government and as such, the fish, which is found in a cannel or pond in reserved forest is forest produce.

So from the aforesaid provisions of the Indian Forest Act, 1927, it is clear that this enactment has been made aiming at protection and preservation of the forest environment and its natural resources from destruction.

*The Bengal Municipal Act, 1932*

It was a regional legislation, enacted during pre-independence period in India and was applicable only in undivided Bengal till independence and after independence extends to the whole of West Bengal except Calcutta as defined under clause 11 of Section 3 of the Calcutta Municipal Act, 1923, as repealed by the provision under clause 9 of Sec. 2 of Calcutta Municipal Corporation Act, 1980.12

But it may be mentioned here that Howrah Municipal Area was not covered under this Act, since Calcutta Municipal Act, 1923 had been extended to that area.

Though this legislation is not environmental legislation in true sense, but some of its provisions are indirectly related with the pollution control process.

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12. Section 3(11) of the Calcutta Municipal Act, 1923, says as follows — "Calcutta" includes the area added to Calcutta and means the area described in Schedule I and any other area which the local Government may include in that Schedule on the issue of a notification in the Calcutta Gazette under Section 543. Section 2(9) of the Calcutta Municipal Corporation Act, 1980, says as follows — "Calcutta" means the area described in Schedule-I.
Section 254 of this Bengal Municipal Act, 1932, Prohibits allowing of sewage or offensive matter or rubbish to be thrown or run into street or drain thereof.

As per provision of section 255 of this Act disposal of dead bodies of animals is absolutely restricted. So these are the restrictions regarding disposal of animal dead body. It may be mentioned here that the commissioners may charge fees, as may be determined at a meeting under the provision of section 255 (2) of this Act for the purpose of disposal of carcass in terms of the provision of the section 255 (1) (b) of this Bengal Municipal Act, 1932.

In addition to these provisions there are also certain other provisions as laid down under this local Act, Bengal Municipal Act, 1932, such as Section 261. As per provision of Section 261 of this Act, without the written permission of the commissioners, no persons shall be allowed to construct or to keep any house drain, service-privy, urinal or cess pool within fifty feet of any tank, well, or water course or any reservoir for the storage of water or to construct any privy with a door or trap-door opening into any road or drain.

It may be mentioned here that in case of violation of these provisions, as laid down under the Bengal Municipal Act, 1932, by any body, then he shall be punished under the provision of Section 500 (1) of this Bengal Municipal Act 1932 and in case of continuation of such offence after first conviction, there is a penal provision as laid down under the provision of Section 500 (2) of this Act providing the punishment of fine for each day during the period of continuation of such offence.
In this regard, in a reported case, *Oriental Enterprise vs. Corporation*\(^1\) it has been held by the Calcutta High Court that for continuing to commit an offence, which has already ended in conviction, one cannot be said to be committing a continuing offence.

So all these provisions, of the Bengal Municipal Act, 1932, have been meant for the protection and preservation of human environment.

**[The Indian] Aircraft Act 1934**

There is certain provision to check pollution indirectly under this Act. Under the provision of Section 8A of the Aircraft Act, 1934, Central Government can make rules for the protection of public health against the prevention of danger arising to public health by the introduction or spread of any infections or contagious diseases from aircraft arising at or being at any aerodrome and for the prevention of the conveyance of infection or contagion by means of any aircraft leaving an aerodrome.

**The Motor Vehicles Act, 1939**

It is a central legislation under which the states may make rules to regulate various matter regarding the operation and maintenance of motor vehicles. As per provision of section 70 of this 1939 Act, State Government can regulate the matter regarding reduction of noise emitted or caused by vehicles. It has also empowered the State Government to make rules regarding prohibition of the carrying of appliances or materials which may likely to cause annoyance or danger to the people and to regulate the levels of exhaust emissions.

Later on this *Motor Vehicles Act 1939* has been amended and *The*

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13. 88 CWN 1037.
Motor Vehicles Act 1988 has come into force. Under the provision of section 110 of this 1988 Act, the Central Government has been empowered to frame rules regarding the matter in connection with the reduction of noise emitted by or caused by the vehicles. In addition Government can also make rules under this Section 110 of this Act regarding the matter in connection with the emission of smoke and standards for emission of Air pollutants. Ultimately in excercising the powers conferred by Section 110 of the Motor Vehicles act, 1988, Central Government has framed the Central Motor Vehicle Rules, 1989.

In a reported case, Murali Purushothaman vs. Union of India¹⁴, in dealing with the issue regarding air pollution arising out of gasious pollutants emitted from the Vehicles plying through streets of Kerala, Kerala High Court has adjudicated the case and given certain direction in the light of the rules under the Central Motor Vehicles Rules, 1989, in the following manner that Director General of Police, Kerala, shall issue necessary instructions to their subordinate officers (falling with the purview of rule 116(1) of the Central Motor Vehicles Rules) within three months from today to effectively carry out their functions envisaged in rule 116 of the Central Motor Vehicles Rules, 1989, interalia.

In dealing with the air pollution problem in Delhi due to automobile emission, Supreme Court has adjudicated the case¹⁵ in the light of the such spirit which is behind the Framing of Central Motor Vehicles Rules, 1989, providing rules for restriction of emission of smoke and other Air Pollutants from the motor vehicles.

¹⁴. AIR 1993 Ker. 297.
6.1.5 Procedural Laws

In addition to these aforesaid substantive laws, there are also two procedural law, enacted during pre-independence period in India, such as Code of Criminal Procedure (Cr.P.C) and Code of Civil Procedure (C.P.C), in which certain provisions of procedure are mentioned to combat pollution problems in India.

**Code of Criminal Procedure, 1973**

This code of Criminal Procedure was enacted first time in India in 1898 during British regime and later it was amended to consolidate the laws, relating to criminal procedure in 1973 and it came into force on the 1st day of April, 1974. Provision under the Code of Criminal Procedure may also be utilized to abate the pollution problems in India. Provision of section 133 of the Code of Criminal Procedure can be invoked to abate the environmental pollution, caused due to act of public nuisance, by the way of Magistrat enquiry to the incident and taking cognizance of it.

*Ratlam Municipal Council Case* has played a significant role in environment protection by invoking the Jurisdiction of criminal court going beyond the traditional mode of justice delivery system. The decision of the Supreme Court, as given in Rathlam Municipal Council case, has clearly established the fact that a citizen can always avail the scope of section 133 of the code of criminal procedure for the removal of pollution considering it as a public nuisance, as it appears from the following observation of the Supreme Court —

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17. Ibid.
"Section 133, Cr. P.C. is categoric, although read discretionary. Judicial discretion, when facts for its exercise are present, has a mandatory import. Therefore, when the sub-divisional Magistrate Rathlam, has before him, information and evidence, which disclose the existence of a public nuisance and on the materials placed, he considers that such unlawful obstruction or nuisance should be removed from any public place which may be lawfully used by the public, he shall act. Thus; his judicial power shall passing through the procedural barrel, fire upon the obstruction or nuisance triggered by the jurisdictional facts. The Magistrate's responsibility - under S. 133 Cr. P.C. is to order removal of such nuisance within a time to be fixed in the order. This is a public duty implicit in the public power to be exercised on behalf of the public and pursuant to a public proceeding.18

The Code of Civil Procedure 1908

The Code of Civil Procedure, 1908, also provides some precautionary measures to combat public nuisance, which may cause environmental pollution. According to section 91(1) of the Code of Civil Procedure, in case of a public nuisance or other wrongful act affecting or likely to affect, the public, a suit for a declaration and injunction or for such other relief as may be appropriate in the circumstances of the case, may be instituted-

(a) by the Advocate General, (b) with the leave of the Court, by two or more persons, even though no special damage has been caused to such persons by reason of such public nuisance or other wrongful act.

This section deals with the procedure in connection with the civil

suit to get remedy and relief against the public nuisance or other wrongful acts which affect a considerable number of people. This provision of the code of Civil procedure may be invoked in getting relief in case of damage caused by the pollution arising out of certain acts of nuisance like 'opening a burial ground and burning place near residential houses'\(^{19}\); 'slaughtering cattle in public street'\(^{20}\); etc. what may affect a considerable number of people and their health and hygiene. It may be mentioned here that to combat the act of public nuisance amounting to environmental pollution, when a suit for declaration and injunction is filed, an immediate and temporary relief in the form of injunction against the nuisance act may be prayed for under the provision of Order 39, rule 1 and 2 read with section 151 of the code of Civil Procedure (C.P.C.).\(^{21}\)

6.2 Legislative Measures during Post-Independence period

Before commencement of the Indian Constitution and specially before the independence various Legislations had been made for the protection of environment and for better sanitation and public hygiene, as it has been observed in the foregoing discussion under this chapter. The observations on those early Legislations reveal that such legislations had been enacted for its limited application and most of them had their limited territorial reach. These legislations had not been made to deal

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20. Shahbaz vs. Umra, ILR 30 All 181.
21. Order 39, Rule 1 of the C.P.C. says as follows :- "Where in any suit it is proved by affidavit or otherwise —
   a) that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree, or (b) that the defendant threatens, or intends, to remove or dispose of his property with a view to [defrauding] his creditors, (c) that the defendant threatens to dispossess, the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit, the Court may be order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property or dispossess of the plaintiff, or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit as the Court thinks fit, until the disposal of the suit or until further orders.

Order 39, Rule 2 of the C.P.C. Says as follows : — "(1) In any Suit for restraining the defendant from committing a breach of contract or other injury of any kind, whether compensation is claimed in the suit or no, the plaintiff may, at any time after the commencement of the suit, and either before or after judgement, apply to the court for a temporary injunction to restrain the defendant from committing the breach of contract or injury complained of, or any breach of contract or injury of a like kind arising out of the same contract or relating to the same property or right. (2) The Court may by order grant such injunction on such terms as to the duration of the injunction, keeping an account, giving security, or otherwise, as the Court thinks fit."

Section 151 of the C.P.C. Says as follows : "Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court".
with environmental pollution problems directly and exhaustively. Actually those were to deal with very limited and restricted environmental issues. At the early stages of history of environmental legislation in India, specially during pre-constitutional era, not a single comprehensive and total environmental legislation has been made to control and to prevent the pollution problems. Lack of awareness regarding magnitude and gravity of environmental pollution problems might be one of the reasons behind it.

Since the middle of the last century, people had been facing more and more complex pollution problems with higher intensity and naturally they began to realise the necessities of comprehensive and general environmental legislation in all over the world, so that environmental pollution may be controlled in proper way. In this regard, Indian scenario was not exceptional one. Though the concerted legislative activities for environment protection have been started in India during 1970s, specially after Stockholm Conference, 1972, where India along with other participating countries had unanimously agreed on the point of necessities of the enactment of Legislation for the protection of environment and prevention of environmental pollutions and to keep the human environment pollution free, but India had initiated its efforts to combat environmental pollution problems through various legislative sanctions including its judicial perception, much before Stockholm Conference.

6.2.1 Pre-Stockholm Conference Period

In this regard name of certain legislations are being mentioned here, such as the Factories Act, 1948; The Industries (Development and Regulation) Act, 1951; River Boards Act, 1956; The Merchant
Shipping Act, 1958; The Merchant Shipping (Amendment) Act, 1970; The prevention of Food Adulteration Act, 1954. The mines and Minerals (Regulation and Development) Act, 1957; The Insecticides Act, 1968; The Atomic Energy Act, 1962; The Ancient Monuments and Archaeological Sites and Remains Act, 1958. In addition to these Central legislations, few state legislations had been also enacted, such as the Orissa River Pollution Prevention Act, 1953, The Maharashtra Prevention of Water pollution Act, 1969, mainly enacted for the prevention of Water pollution and The Gujrat Smoke Nuisance Act, 1969, enacted for the prevention of Air pollution. All these legislations have been enacted during the post independence period but certainly before the Stockholm Conference, as held in June, 1972. It may be mentioned here that like all the pre independent legislations, as discussed above in this chapter, these legislations also can not be considered as environmental legislations in its true sence. At best, those legislations can be treated as environment related legislations.

Certain salient features of those legislations along with its judicial perception are being stated below under the heading of the respective enactments :-

*The Factories Act, 1948*

Immediately after the independence, but before the commencement of the constitution, few environment related legislation had been enacted and the Factories Act, 1948 is one of them.

According to the Section 12 of the Factories Act, 1948, effective arrangements shall be made in every factory for the disposal of wastes and effluents, generated due to industrial operation and manufacturing
process. It is an environment friendly provision for the prevention of pollution arising out of industrial Wastes.

Section 14 of the Factories Act, 1948, has also laid down certain provision as an preventive measures against environmental pollution caused due to dust and fumes, as, generated within the factory. In a reported case, *the public prosecutor vs. Veerabhadrapa Lakshminarayana Setty*\(^{22}\) in dealing with the dispute regarding failure to construct dust proof husk chamber, it has been held by the Madras High Court that failure to construct a dust proof husk chamber is a continuing offence so that prosecution launched within three months of a second visit by the Inspector in respect of such a failure is not barred by reason of the fact that such a failure was noticed by him for the first time during his earlier visit itself.

Section 36 of this Act has also laid down certain provision for taking effective steps against dangerous fume, generated within the factories to avoid harmful effect upon the people, being present in the factory premises. This provision is mainly for the protection of human environment within the factory premises.

Subsection(4) of the Section 36 of the Factories act, 1948, provides that suitable breathing apparatus, reviving apparatus and belts and ropes shall in every factory be kept ready for instant use beside any such confined space which any person has entered and all such apparatus shall be periodically examined and certified by a competent person to be fit for use. In *Chinubhi Haridas vs. State of Bombay*\(^{23}\), it has been held by the Supreme Court that it is duty of occupier to see that

\(^{22}\) AIR 1953 Mad. 204.
\(^{23}\) AIR 1960 S.C. 37.
apparatus is always available in factory, but section 36(4) of the Factories Act, 1948, does not contemplate that apparatus, etc., shall always be kept ready near confined space whether there is an occasion for any person to enter it or not. It has been also held that the duty of keeping the apparatus ready for instant use near the confined space arises as soon as a person is about to enter it, obviously with permission of occupier.

Here section 37 of this Act also provides similar protection. In addition, section 87 of the Factories Act 1948, has laid down certain restriction regarding volume of noise at the time of exposure within the factory premises to check the possible noise pollution.

The Factories Act, 1948 has been amended in 1987 and this Amendment has introduced certain provision regarding hazardous industrial activities. This Amendment has empowered the state to appoint site appraisal committees to advise on the initial location of factories using hazardous process.

So the factories Act, 1948, also provides certain provision of protection of human environment. Though this enactment is not directly an environmental legislation but indirectly its various above mentioned provisions may be invoked for the purpose of environment protection.

*The Industries (Development and Regulation) Act, 1951*

Though under this legislation, there is no such provision which is directly related with environmental issue, but indirectly the provision of section 5(2) (b) of this Act, can be applied for the protection of human environment within industrial undertakings.
According to the section 5(2b) of this Industries (Development and Regulation) Act, 1951, the members of the Advisory Council, as constituted under the provision of this section 5(1) of this Act for the purpose of advising it on matters concerning the development and regulation of scheduled industries, shall be appointed by the Central Government from among persons who are in its opinion capable of representing the interest of persons employed in industrial undertakings in schedule industries. So with the help of this provision under the Industries (Development and Regulation) Act, 1951, interest of the working people within the working environment may be protected by the effective intervention of the members of the advisory council within the ambit of their function as specified by this statute.

The Prevention of Food Adulteration Act, 1954

This Act has been enacted by the Parliament for the prevention of adulteration of food.

As per the provision of this enactment, no person shall himself or by any other person on his behalf manufacture for sale or stores, sells or distributes any adulterated or misbranded food and if he does not abide by the restriction, as laid down under this Legislation he would face the penal consequences, as laid down under section 16 of this Act.

In Buddha Pitai vs. Sub-Divisional Officer Malihabad, Lucknow and Others24, it has been held by the Allahabad High Court that sale of food stuff mixed with prohibited colour dye is an offence under the

24. AIR 1965 All 382.
provision of Section 16(1)(a)\textsuperscript{25} of the prevention of Food Adulteration Act, 1954.

So with the help of this preventive clause of this Act, adulteration of food, a kind of pollution what may be considered pollution of food, may be abated.

It may be mentioned here that this \textit{prevention of Food Adulteration Act, 1954} has been amended by the \textit{Prevention of Food Adulteration (Amendment) Act, 1971} to strengthen the existing legislation in this regard.

The Acquisition of Land for Flood Control and Prevention of Erosion Act, 1955:

This legislation has been enacted mainly for the prevention and control of soil erosion which is a kind of Land pollution.

\textit{The River Boards Act, 1956}

During the post-independence, as well as post Constitution period, the River Boards Act, 1956, is the first environment related Legislation which lays down some provisions for the conservation of water as natural resources and the protection of quality of water in the various water courses, specially in river.

\textsuperscript{25} Section 16(1) of the Prevention of Food Adulteration Act, 1954, sayd as follows — "If any person — (a) whether by himself or by any other person on his behalf imports into India or manufactures for sale or stores, sells or distributes any article of food — (i) which is adulterated or misbranded or the sale of which is prohibited by the Food (Health) authority in the interest of public health; (ii) other than an article of food referred to in sub-clause (i), in contravention of any of the provisions of this Act or of any rule made there under, he shall, in addition to the penalty to which he may be liable under the provisions of Section 6, be punishable with imprisonment for a term which shall not be less than six months but which may extend to six years, and with fine which shall not be less than one thousand rupees ."
Under the provision Section 4 of this Act, Central Government may, on a request received in this behalf from a State Government or otherwise, by notification in the official Gazette establish a River Board for advising the Governments interested in relation to such matters concerning the regulation or development of an inter-State river or river valley or any specified part thereof and for performing such other functions, as may be specified in the notification.

As per provision of Section 13 of the River Boards Act, 1956, A Board, River Boards, being empowered by the Central Government, may advise the Governments, interested on any matter concerning the regulation or development of any specified inter-State river or river valley within its area of operation for the purpose of conservation, control and optimum utilisation of water resources of the inter-State river; promotion and operation of schemes for irrigation, water supply or drainage; promotion and operation of schemes for the development of hydroelectric power; promotion and operation of schemes for flood control; promotion and control of navigation; promotion of afforestation and control of soil erosion; prevention of pollution of the waters of the inter-state river.

Subsequently Central Government, being empowered by this River Boards Act, 1956, has made the River Board Rules, 1958, to formulate certain rules regarding preservation and protection of water resources in various water bodies, specially in river.

The Mines and Minerals (Regulation and Development) Act, 1957

This legislation has been enacted for the restriction of the mining activity and excavation works of miners. By this enactment, air pollution,
as well as Land pollution, may be controlled by the implementation of the regulatory provisions of this Act, specially in granting of prospective licences and mining leases. This enactment may be also considered as an effective legislation for the preservation of natural resources.

As per provisions of Section 18 of this Act, It shall be the duty of the Central Government to take all such steps as may be necessary for the conservation and development of minerals in India and for that purpose the Central Government may make such rules by official Gazette Notification. As per provision of this Section, such rules may provide for the matters like opening of new mines and the regulation of mining operations in any area; the regulation of the excavation or collection of mining from any mine; the development of mineral resources in any area.

In a very recent case, M.C. Mehta vs. Union of India and Others,26 Supreme Court has held in the light of the Provision of Section 18 of the Mines and Minerals (Regulations and Development) Act, 1957 and the Rule 31-41 of the Mineral Conservation and Development Rules 1988, that the mining operations shall be carried out in such a manner so as to cause least damage to the flora of the area and nearby areas. It has been also held that every holder of mining lease shall take immediate measures for planting in the same area or any other area as selected by the authorised officer and not less than twice the number of trees destroyed by reason of any mining operation and look after them during the subsistence of the licence / lease and restore, to the extent possible, other flora destroyed by mining operations. Actually

26. AIR 2004 SC. 4016
this decision is nothing but a judicial effort for protection of environment and Control of pollution, taken place, as a result and consequence of mining operation.

So in this way mining operation can be kept under control and as such chance of pollution and loss of natural resources due to mining activity can also be controlled under this Act.

*The Merchant Shipping Act, 1958*

This enactment is another post constitutional legislation relating to water pollution, specially of coastal marine water. This enactment has laid down certain preventive measures against the pollution of sea and coastal region by oil. This enactment has also laid down restriction on movement and operation of ships operated by nuclear power to avoid the chance of radioactive pollution in the sea water and coastal region of this country. It also lays down restriction on carriage of dangerous goods.

Latter on to give adequacy to the above mentioned *Merchant Shipping Act, 1958*, such legislation has been amended by the *Merchant Shipping (Amendment) Act, 1970*.

In addition to these legislation few State legislations have been also enacted for the prevention of water pollution much before Stockholm Conference such as the *Orissa River Pollution Prevention Act, 1953*; *The Maharestra Prevention of Water Pollution Act, 1969*.

*The Ancient Monuments and Archaeological Sites and Remains Act, 1958:*

By enacting this legislation Central Government had tried to preserve
and protect the ancient and historical monuments and archaeological sites and remains of national importance from the degradation. In a reported case, *B.P. Sharma vs. Union of India and Others*\textsuperscript{27}, it has been held that the Ancient Monuments and Archaeological sites and Remains Act, 1958 was enacted to provide for preservation of ancient and historical monuments and archaeological sites and remains of national importance, for the regulation of archaeological excavations and for the protection of sculptures, carvings and other objects of the kind.

Under the provision of Section 3 of this Act, all the ancient and historical monuments and all archaeological sites and remains had been declared to be of national importance. As per provision of Section 5 of this Act, Director General of Archaeology, being authorised by the Central Government, may acquire the right in a protected monument for the purpose of its protection and preservation. In addition to this provision of acquisition, under the provision of section 13 of this Act, if the Central Government apprehends that a protected monument is in danger of being destroyed, injured, misused or allowed to fall into decay, it may acquire the protected monument under the provision of the Land Acquisition Act, 1894, as if the maintenance of the protected monument were a public purpose within the meaning of that Act.

So in this way, some short of restrictions have been imposed by this enactment, so that ancient monuments, archaeological sites and remains may be protected from the hazardous effect of pollution. It may be mentioned here that spirit of this legislation has been well reflected from the judgement as delivered in *Taj Trapezium Case*\textsuperscript{28} for the

\textsuperscript{27} (2003) 7 S.C.C. 309
\textsuperscript{28} M.C. Mehta vs. Union of India & Others, AIR 1997, S.C. 734.
protection and preservation of the wonder of Moghal Art and Sculpture, Taj Mahal, situated at Agra.

*The Prevention of Cruelty to Animals Act, 1960*

This Act has been enacted to prevent the infliction of unnecessary Pain or suffering on animals. By the introduction of this Act, the earlier legislation, *the Prevention of Cruelty to Animals Act, 1890*, relating to the matter contain therein, i.e. prevention of cruelty to animal, had been repealed.

As per the provision of Section 3 of this Prevention of Cruelty to Animals Act, 1960, it shall be the duty of every person having the care or charge of any animal to take all reasonable measures to ensure the well-being of such animal and to prevent the infliction upon such animal of unnecessary pain or suffering.

Under the provision of Section 4 of this Act, Animal Welfare Board shall be established for the promotion of general animal welfare and for the purpose of protecting animals from being subjected to unnecessary pain and suffering and such Board shall perform its function, as laid down under the provision of section 9 of this Act, to keep the law in force in India for the prevention of cruelty to animals and to advise the Government on any matter connected with animal welfare or the prevention of infliction of unnecessary pain or suffering on animals, including on various other matters relating to prevention of cruelty to Animals.

This Act also provides certain penal provision in case of cruelty to Animals. As per the provision of section 11 of this Act, if any person
is found treating animals cruelly, he shall be punishable, in the case of first offence, with fine which may extend to fifty rupees, and, in the case of second or subsequent offence committed within three years of the previous offence, with fine which may extend to one hundred rupees, or with imprisonment for a term which may extend to three months, or with both.

It has been held in a reported case\textsuperscript{29} that beating animal as such is not offence, but it must be shown that beating was such as to subject animal to unnecessary pain or suffering. In this case\textsuperscript{30}, it has been further held that whether beating has caused unnecessary pain or suffering is matter of inference depending on proved facts of case and court can itself drawn such inference from facts and circumstances proved. It has been also held that conviction cannot be set aside merely on ground that Magistrate has not expressly stated that beating caused animal unnecessary pain or suffering.

\textit{The Atomic Energy Act, 1962}:

Development in the field of nuclear Science in India increase the scope of utilization of nuclear energy and as a result a chance of radio-active pollution, has been also intensified. Ultimately to control over the development of atomic energy and matters connected therewith including the matter of radio-active pollution and to fill up the Short commings in \textit{The Atomic Energy Act, 1948}, new Legislation, \textit{the Atomic Energy Act, 1962} has been enacted and as such old Act become repealed. This new Enactment had been made, for the purpose of development, control and use of atomic energy for the welfare of the

\textsuperscript{29} (1969) 35 Cut. LT 1244.
\textsuperscript{30} Ibid.
people of India and for other peaceful purpose and for matters connected therewith.

With the help of the provision of Section 5 of this Act, Central Government has tried to impose certain control over mining of any substance from which, in the opinion of the Central Government, Uranium can be or may reasonable be expected to be isolated or extracted.

In addition to this provision, there is also another prohibitory clause as laid down under Section 16 of the Atomic Energy Act, 1962. As per provision of Section 16 of the Atomic Energy Act, 1962, the Central Government may prohibit the manufacture, possession, use, transfer by sale or otherwise, export and import and in an emergency, transport and disposal, or any radioactive substance without its written consent.

In addition to these, under section 17 of this Act, Central Government may impose certain other preventive measures to prevent injury being caused to the health of persons employed at such premises or places or other persons either by radiations or by the ingestion of any radioactive substance and also to secure safe disposal of the radioactive waste products resulting from manufacture, production, mining, treatment, storage or use of radioactive elements. In M. K. Sharma vs. Bharat Electronics Ltd.\(^\text{31}\), Supreme Court has confirmed the rights of the worker to get protection from the exposure to radiation.

It may be mentioned here that Central Government has been empowered by this enactment to make rules for the protection of human environment and securing safety for the human life from the effect of the radioactive element. The Radioactive Protection Rules, 1971, is

\(^{31}\) (1987) 3 SCC 231.
one of such rules as framed by the Central Government.

6.2.2 Post Stockholm Conference period

After the Stockholm conference lot of initiatives were taken in India with a view to meet the growing challenges of environmental pollution problems and also to keep the commitment as a participating country in that conference for the protection and preservation of human environment. As a part of such efforts, a high level National Committee on Environmental planning and co-ordination (NCEPC) was set up in India in 1972. It had given recommendations regarding environmental appraisal of development projects, planning of human settlements, formulation of environmental guidelines and the creation of environmental awareness. Ultimately different environmental Legislations have been enacted in India during this post Stockholm conference period. In 1972, Indian Parliament had enacted the Wild Life Protection Act, 1972, the first comprehensive national law relating to ecology during post Stockholm period in India but this legislation can not be considered as environment legislation in true sense, since definition of environmental pollution has not been given in this legislation. Immediately thereafter, the Water (Prevention and Control of Pollution) Act, 1974, had been enacted. After the enactment of this Water Act, 1974, various other environmental legislations have been also enacted in subsequent time, such as Air (Prevention and Control of Pollution) Act, 1981, Environment (Protection) Act, 1986, etc. In addition various other legislations have been also enacted. All these legislations have been enacted for the protection of environment and prevention and Control of Pollution and for the maintaining ecological balance in the environment. Salient features of
these legislations along with its Judicial perception are being discussed below.

The Wild Life (Protection) Act, 1972

It is an eco-friendly legislation enacted for the protection and preservation of wild lives. It may be mentioned here that though the enactment process of this legislation had been initiated during pre-Stockholm Conference period, but it came into force on 9th September, 1972 immediately after the Stockholm Conference, held in Stockholm on and from 5th to 16th June, 1972, and such legislation received the assent of the President on the 9th September, 1972.

With the commencement of this Act, every other Act, which is relating to any matter contained in this act and in force in a State to the extent to which that Act or any provision contained therein corresponds or is repugnant to this Act or any provision contained therein, became repealed without effecting the previous operation of the act, so repealed and also without affecting any right, privilege, obligation or liability acquired, accrued or incurred under the Act, so repealed and legal proceedings or remedy in respect of such right, privilege, obligation and liability under that Act.

Under this enactment, some strict measures have been taken to maintain ecological balance by imposing restriction on hunting of wild animal and by, declaring some area as 'sanctuary'\textsuperscript{32}, 'National Park'\textsuperscript{33},

\textsuperscript{32} Section 2 (26) of the Wild Life (Protection) Act, 1972, says as follows:—
"sanctuary" means an area declared, whether under Sec. 26-A or Sec. 37, or deemed, under sub-section 3 of Sec. 66, to be declared, as wild life sanctuary".

\textsuperscript{33} Section 2 (21) of the Wild Life (Protection) Act, 1972, says as follows:—
"National Park" means an area declared, whether under Sec. 35 or Sec. 38, or deemed, under sub-section (3) of Sec. 66, to be declared, as a National Park".
'Game reserves' and 'closed areas' and by imposing ban on use of injurious substances within the reserved area, etc.

As per the provision of Section 9 of this Act, no person shall hunt any wild animal as specified in schedule I, II, III and IV of this Act with certain exception, as laid down under Section 11 and 12 of this Wild Life (Protection) Act, 1972. As per provision of Section 11(1)(a) of this Wild life (Protection) Act, 1972, the Chief Wild Life Warden may permit any person to hunt such animal or cause such animal to be hunted if he is satisfied that such wild animal, as specified in Schedule-I of this Act, has become dangerous to human life or is so disabled or diseased as to be beyond recovery; and also under Section 11(i)(b) of this Act, if the Chief Wild Life Warden or any authorised Officer is satisfied that any animal, as specified in Schedule II, Schedule III, or Schedule IV of this Act, has become dangerous to human life or to property (including standing crops on any land) or is so disabled or diseased as to be beyond recovery, he may by written order permit any person to hunt such animal or cause such animal to be hunted. It has been also laid down under Section 11(2) of this wild life (Protection) Act, 1972, that killing or wounding in good faith of any wild animal in defence of oneself or of any other person shall not be an offence.

In a reported case, namely Chief Forest conservation (wild life) and others vs. Nisar Khan, Supreme Court has interpreted the meaning of hunting within the purview of Section 9, 11 and 12 of the WildLife

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34. The word "game reserves" omitted by Sec. 8, Act 44 of 1991 (w.e.f. 2nd October, 1991) from the Wild Life (Protection) Act, 1972
35. Section 2 (8) of the Wild Life (Protection) Act, 1972, says as follows:—
   "Closed area" means the area which is declared under sub-section (1) of Sec. 37 to be closed to hunting.
36. Wild Life (Protection) Act, 1972
37. AIR 2003 SC, 1867.
(Protection) Act, 1972, and has considered the 'trapping' of birds as hunting within the meaning of Section 9 of this Act. Along with this, Supreme Court has also dealt with the role of Licensing Authority in terms of the provisions of this Act, and the Rules framed thereunder. In this case\textsuperscript{38}, Supreme Court observed that as the licensing authority in terms of the provisions of the Act and the Rules framed thereunder is required to consider the application filed by an Applicant and satisfy himself that in the event any licence is granted in favour of the Applicant, he is capable of strictly complying with the provisions of the Act, the Rules as also the terms and conditions of the licence laid down therefore. It has been further held by the Supreme Court that only in the event of his being satisfied upon considering the objective criteria laid down in the satellite, he may issue a licence and as such it was not within the domain of the High Court to issue the impugned direction.

Under this observations, ultimately it has been directed by the Supreme Court that in the event, the Respondent therein files an Application for grant of Licence for dealing in captive birds, the same shall be considered by the Licensing Authority upon satisfying himself about the capability of the Respondent as regards strict complaicne of the Act, the Rules and/or the relevant terms and conditions of the licence as also the fact as to whether by reason of such grant any provision of the said Act without violated or not.

As per the provision of Section 12 of this Act, a person can be entitled to hunt wild animal for the purpose of education, scientific research, scientific management, collection of specimens for the

\textsuperscript{38} Chief Forest Conservator (Wild Life) and Others vs. Nisar Khan, AIR 2003 SC. 1867.
recognised zoos or for museums and similar institution and for derivation collection or preparation of snake-venom for the manufacture of lifesaving drugs, after getting permit from the Chief wild life warden on payment of prescribed fees, but such permit to hunt is subject to certain condition which may be specified by the Chief Wild Life Warden at the time of granting such permit. So these are all exceptional circumstances where killing and wounding of any wild animal shall not be considered as offence and will be exempted from being penalised.

Previously there was a provision under Section 6 of this Wild Life (Protection) Act, 1972, to constitute an Administrative Authority, namely 'Wild Life Advisory Board'\footnote{Omitted by the Wild Life (Protection) Amendment Act, 2002 (Act. No. 16 of 2003).} for the protection and preservation of both flora and fauna in all the restricted areas and subsequently such provision has been repealed.

By the enactment of the Wild Life (Protection) Amendment Act, 2002 (Act. no. 16 of 2003), Constitution of the 'National Board for Wild Life under the Provision of Section 5A has came into effect. In addition, under the provision of Section 6 of the Wildlife (Protection Act, 1972, State Government shall constitute a State Board for Wildlife within a period of six months from the date of commencement of the Wildlife (Protection) Amendment Act, 2002.

In addition, another administrative authority has been constituted, such as Central Zoo Authority, as constituted under Section 38-A of the Wild life (Protection) Act, 1972. This authority has been constituted mainly to lookafter the functioning of various zoos in this country and for various other purposes relating to that zoos, as laid down under the
provision of Section 38-C of this Act.

So in this way initiative had been taken by the Central Government by enacting the wild life (Protection) Act, 1972, to protect and preserve the wild lives including both flora and fauna.

It may be mentioned here that in exercise of powar, conferred by the wild life (Protection) Act, 1972, the Central Government framed The Wild life (Protection) Rules, 1995; The wild life (Transactions and Taxidermy) Rules, 1973, Wild Life (Stock Declaration) Central Rules, 1973; Recognition of Zoo Rules, 1992, to provide more protective measure for the protection and preservation of the wild lives.

The Water (prevention and control of Pollution) Act, 1974

While considering the importance and urgency in preventing problem of pollution of rivers and streams and preservation of water and having considered the relevant local provisions existing in the country and recommendation of committee, as set up in 1962 to draw a draft enactment for the pervention of water pollution, the Government had realised the urgent need for introducing a comprehensive legislation which would establish unitary agencies in the Centre and State to provide for the prevention, abatement and control of pollution of rivers and streams for maintaining or restoring wholesomeness of such water courses an for controlling the existing and new discharges of domestic and industrial wastes. Ultimately water (Prevention and control of pollution), Act, 1974, has been enacted.

In M.C. Mehta vs. Union of India and Others40, popularly known as

Ganga Pollution (Kanpur Tanneries) Case, Supreme Court has observed the necessities and importance of enactment of the Water Act, 1974, in the light of following observation - 'Realing the importance of the Prevention and control of pollution of water for human existence Parliament has passed the water (Prevention and Control of Pollution) Act, 1974 (Act 6 of 1974) (hereinafter referred to as 'the Act') to provide for the prevention and control of water pollution and the maintaining or restoring of wholesomeness of water, for the establishment, with a view to carrying out the purposes aforesaid, of Boards for the prevention and control of water pollution, for conferring on and assigning to such Boards powers and functions relating thereto and for matters connected therewith.'

Main achievement of this legislation is the formation of two Boards, namely Central Pollution Control Board and State Pollution Control Board, as constituted under Section 3 and Section 4 of the Water (Prevention and Control of Pollution) Act, 1974, respectively. These Boards have been conferred the power to deal with the problems of water pollution in India effectively.

Under this Water Act, various preventive measures have been also provided for the prevention and control of water pollution. One of such provisions has been laid down under Section 24 of this Act. This Section 24 of this Act has prohibited the disposal of any poisonous, noxious or polluting matter, determined in accordance with such standards, as may be laid down by the State pollution control Board, into any streams or well or sewer or on Land. To abate the violation of this order, a penal provision has been also laid down under Section 43 of this Act.
which has laid down the punishment of imprisonment for a term not less than one year and six months which may extend up to six years and with fine. As per the provision of section 45 of this Act, if any person, who has been convicted of an offence under section 24 of this Act, is again found guilty of an offence involving a contravention of the same provision, on the Second and on every subsequent conviction, he shall be punishable with imprisonment for a term which shall not be less than two years which may extend to seven years and with fine.

In *M.C. Mehta vs. Kamal Nath and Others*\(^\text{43}\) in dealing with the water pollution problem of the river Beas due to construction of a Motel on that river and river bank, Supreme Court has given direction to the respondent authorities, in the light of the provision of Section 24 of the Water (Prevention and Control of Pollution) Act, 1974. Supreme Court has directed that the Himachal Pradesh Pollution Control Board shall not permit the discharge of untreated effluent into River Beas in terms of Section 24 of the Water Act, 1974 and the board shall inspect all the hotels / institutions / factories in Kulu-Manali area and in case any of them are discharging untreated effluent into River, the board shall take action in accordance with law.

Section 25 of this Act has also laid down certain restriction on establishing any new industry or any treatment and disposal system. According to the provision of Section 25 (1) of this Water (Prevention and Control of Pollution) Act 1974, without the previous consent of the State Board, no person shall establish or take any steps to establish any industry operation or process, or any treatment and disposal system

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\(^{43}\) (2000) 6 SCC 213; See also M.C. Mehta vs. Kamal Nath (1997) 1 SCC 388.
or any extension or addition thereto, which is likely to discharge sewage or trade effluent into a stream or well or sewer or on land or shall bring into use any new or altered outlet for the discharge of sewage. In this regard, Section 44 of this Water Act has laid down certain penal provision providing that whoever contravenes the aforesaid restriction, as made under section 25 of this Act, he shall be punished with imprisonment for a term which shall not be less then one year and six months which may extend upto six years with fine. It may be mentioned here that under the provision of Section 45 of this water Act, 1974 if any person, who has been convicted of an offence under Section 25 of this Act, is again found guilty of an offence involving a contravention of the same provision, he shall be punishable with imprisonment for a term which shall not be less than two years but which may extend to seven years and with fine on the Second and on every subsequent conviction, provided that for the purpose of this section, no cognizance shall be taken of any conviction made more than two years before the commission of the offence which is being punished.

In dealing with the dispute regarding prevention of irreversible pollution to the drinking water reservoirs of Osman Sagar and Himayat Sagar catering the needs of over 50 lakhs people in Hyderabad and Secunderabad, in A.P. Pollution Control Board-II vs. Prof. M.V. Nayudu (Retd.) and others44, Supreme Court has invoked the provision of Section 25 of the Water (Prevention and Control of Pollution) Act, 1974. In the light of the provision of Section 25 of the Water Act, 1974, Supreme Court has held in this case that since prohibition extends even to establishment of the industry or taking of steps for that process and

44. (2001) 2 SCC 62; See also A.P. Pollution Control Board (1) vs. Prof. M.V. Nayudu (1999) 2 SCC 718.
therefore before consent of the pollution Board is obtained, neither can the Industry be established nor can any steps be taken to establish it.

Under this Enactment, different laboratories have been also established or recognised for the purpose of testing and analysis of the samples of water or of sewage or trade effluents, collected for the analysis. Under Section 16 and 17 of this water prevention (prevention and control of pollution) Act, 1974, two types of laboratory have been established or recognised by the Central pollution Control Board and State Pollution Control Baord, respectively for the purpose of analysis of samples of water collected from any stream or well or of samples of any sewage or trade effluent. In addition under the provisions Section 51 and 52 of the said Act, Central Water Laboratory and State Water Laboratory have been also established respectively to assess the extend of pollution in the samples of water or of sewage or trade effluents by its analysts.

*Latter Water (Prevention and Control of Pollution) Amendment Act, 1978* and *Water (Prevention and Control of Pollution) Amendment Act, 1988*, have been enacted to give adequacy to this Water Pollution Act, 1974.

It may be mentioned here that Central Government has framed *Water (Prevention and Control of Pollution) Rules, 1975*, in exercising its Rule making powers conferred by the said Water (Prevention and Control of Pollution) Act, 1974, after consultation with the Central Board for the prevention and control of water pollution. In addition to this, another rules has been also framed by the Central Government in similar way and such rule is named as *Water Pollution (Procedure for*
The Water (Prevention and Control of Pollution) Cess Act, 1977, has been enacted to provide for the levy and collection of a cess on water consumed by persons carrying on certain industries and by local authorities, with a view to augment the resources of the Central Board and the State Boards for the prevention and control of Water Pollution, constituted under the Water (Prevention and Control of Pollution) Act, 1974.

Under the provisions of the Water (Prevention and Control of Pollution) Act, 1974, the Central Government and the State Governments have to provide funds to the Central Board and the State Boards for the purpose of prevention and Control of Water Pollution respectively and for implementing the provisions of the said Act\textsuperscript{45}. Since the State Governments were not in a position to provide adequate funds to the State Boards for their effective functioning, it was proposed to levy cess on the local authority and on certain specified industries, as specified in the Schedule-I of the Act\textsuperscript{46} like ferrous and non-ferrous metallurgical industry, mining industry, petroleum industry, coal (including coke) industry, power (thermal and diesel) generating industry, etc.

In a reported case, the Member - Secretary, Andhra Pradesh, State Board for Prevention and Control of Water Pollution vs. Andhra Rayons Ltd. and others\textsuperscript{47} it has been held by the Supreme Court that any particular industry, which is not an industry as covered in the Schedule-

\textsuperscript{45} The Water (Prevention and Control of Pollution) Act, 1974.
\textsuperscript{46} The Water (Prevention and Control of Pollution) Cess Act, 1977.
\textsuperscript{47} AIR 1989 SC 611.
I of the water (prevention and Control of pollution) Cess Act, 1977, would not fall within the realm of taxation and as such, that particular industry need not to give cess to the State Government concerned. It has been further observed that whether a particular industry falls within the realms of taxation, must be judged by the predominant purpose and process and not by any ancillary or incidental process carried on by a particular industry in running its business.

Under the provision of section 3 of the Water (Prevention and Control of Pollution) Cess Act 1977\(^{48}\), the cess shall be levied on the basis of water consumed by such local authorities and industries. As per provision of section 6, this Act, the cess will be collected by the State Government concerned through such of its officers or authorities as may be specified by it in this behalf by notification in the Official Gazette from the person or local authority liable to pay the same and it will be paid to the Central Government and as per the provision of section 8 of this act, the Central Government after due appropriation, made by law in this behalf, if Parliament so provides, may pay the amount out of such proceeds of the cess, levied, to the Central Board and every State Board after deducting the expenses on collection.

In exercise of the powers conferred by the Section 17 of the water (Prevention and Control of Pollution) Cess Act, 1977, the Central

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48. Section 3 of the (Prevention and Control of Pollution) Cess Act, 1977, says as follows —"(1) There shall be levied and collected a cess for the purpose of the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974), and utilization thereunder.

(2) The Cess under Sub-section (1) shall be payable by (a) every person carrying on any specified industry; and (b) every local authority, and shall be calculated on the basis of water consumed by such person or local authority, as the case may be, for any of the purposes specified in column (1) of schedule-II, at such rate, not exceeding the rate specified in the corresponding entry in column (2) thereof, as the Central Government may, by notification in the Official Gazette, from time to time, specify.

(3) Where any local authority supplies water to any person carrying on any specified industry or to any other local authority and such person or other local authority is liable to pay cess under sub-section (2) in respect of the water so supplied, then, notwithstanding anything contained in that sub-section, the local authority first mentioned shall not be liable to pay such cess in respect of such water".
Government has also framed *Water (prevention and Control of Pollution) Cess Rules, 1978.*

_The Forest (Conservation) Act, 1980._

It has been for quiet sometime felt the need of a legislation to protect the vast forest resources in India, as rapid commercialization and urbanisation has caused excessive deforestation which ultimately results in ecological imbalance in the region and it leads to environmental deterioration and ultimately it has caused widespread concern and Government of India has enacted the necessary legislation, _The Forest (Conservation) Act, 1980_, for the Conservation of forests and for the matters connected therewith or ancillary or incidental thereto.

Under this Act, certain restriction has been imposed on use of forest Land for non-forest purpose, as laid down under Section 2 of this Act.

As laid down under this Act for the purposes of this section, "non-forest purpose" means "the breaking up or clearing of any forest land or portion thereof for -

(a) The cultivation of tea, coffee, spices, rubber, palms, oil-bearing Plants, horticulture crops or medical plants;

(b) any purpose other than reafforestation, but does not include any work relating or ancillary to conservation, development and management of forests and wild-life, namely, the establishment of check posts, fire lines, wireless communications and construction of fencing, bridges and culverts, dams, waterholes, trench marks, boundary marks, pipelines or other like purpose."^{49}

^{49}. Explanation to Section 2 of the Forest (Conservation) Act, 1980.
In a reported case, T.N. Godavarman Thirumulkpad vs. Union of India and Others\(^50\), Supreme Court has dealt with the dispute, arising out of continuing illegal mining activity inspite of the courts order in Doon Valley causing highly detrimental effect to the forest ecology in the said region under the realm of the provision of the Section 2 of the Forest Conservation Act, 1980.

The Orissa High Court in a report case, \textit{Bhagawan Bhoi vs. State of Orissa and Others}\(^51\), had justified the Steps as taken by the Divisional Forest Officer, Kalahandi Division, Orissa invoking the provision of Section 2 of the Forest Conservation Act, 1980, in calling upon the petition to stop felling of any tree on the property which is private in nature until further orders. Actually in this case\(^52\), Orissa High Court has justified the application of the Section 2 of the Forest (Conservation) Act, 1980, even in case of private forest property.

In addition to this legislation, Central Government, in exercise of the powers conferred by Section 4 of this Act, has framed the Forest (Conservation) Rules, 1981, mainly for the preparing guidelines regarding composition of the committee, as constituted under Section 3 of the Forest (Conservation) Act, 1980, and its conduct of business in connection with conservation of forest.

\textit{The Air (Prevention and Control of Pollution) Act, 1981}

With the increasing industrialisation and the tendency of the majority of industries to congregate in areas which are already heavily industrialised,

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\(^{50}\) AIR 1999 SC. 97.

\(^{51}\) AIR 2000 Ori. 201.

\(^{52}\) Bhagawan Bhoi vs. State of Orissa & Others, AIR 2000, Ori. 201.
the problem of air pollution has begun to be felt in this country. The problem is more acute in those heavily industrialised areas which are also densely populated. The presence in air, beyond certain limits, of various pollutants discharged through industrial emission and from certain human activities connected with traffic, heating, use of domestic fuel, refuse incineration, etc., has a detrimental effect on the health of the people as also on animal life, vegetation and property. Under these circumstances, it had been felt that there should be an integrated approach for tackling the environmental problems relating to air pollution. Ultimately, Air (Prevention and Control of Pollution) Act, 1981, was enacted to implement the decisions taken at the "United Nations Conference on Human Environment" held at Stockholm in June, 1972, where India had participated and it was decided to take appropriate steps for the preservation of the natural resources of the earth including the preservation of the quality of air and control and abatement of air pollution.

At the time of enactment of this legislation, it was proposed that Central Board for the prevention and control of Water pollution, constituted under the Water (prevention and Control of pollution) Act, 1974, would also perform the functions of the Central Board for the prevention and control of Air Pollution. It was also proposed that the State Boards constituted under the said Act would also perform the functions of State Boards in respect of prevention, control and abatement of air pollution. Under the provision of Section 3 of the Air (Prevention and Control of Pollution) Act, 1981, Central Pollution control Board, as constituted under water (Prevention and Control of Pollution) Act, 1974, has been empowered to perform its functions of the Central Pollution
Control Board for the prevention and control of air pollution under this Air Act. Similarly State Pollution Control Boards constituted under Section 4 of Water (Prevention and Control of Pollution) Act, 1974, shall exercise the powers and perform the function of the State Pollution Control Board for the prevention and Control of Air Pollution, under Section 4 of the Air (Prevention and Control of Pollution) Act, 1981 and both of these Boards will act as an implementing Authority under this Air Act, without prejudice to the exercise and performance of its powers and functions under Water (Prevention and Control of Pollution) Act, 1974.

As a preventive measures under this Air Act53, Section 19 has empowered the State Government, in such a manner as may be prescribed, to declare any area or areas within such state, as Air Pollution Control area or areas after constltation with the State Boards. Section 20 of this Act empowers the State Governments to give instruction as may be deemed necessary to the concerned Authority in change of registration of motor vehicles under the Motor Vehicle Act (4 of 1939), for ensuring standards for emission from automobiles.

In order to Control Air Pollution arising out of Motor vehicle, Kerala High Court has successfully invoked the provision of Section 20 of the Air (Prevention and Control of Pollution) Act, 1981 in a reported case, Muralia Purushottaman vs. Union of India and Others54 In this case it has been observed by the Kerala High Court that under Section 20 of the Air (Prevention and Control of Pollution) Act, 1981, State Government is under an obligation to give such instructions to the authorities in charge of registration of motor vehicles as are necessary to ensure

54. AIR 1993 Ker. 297.
compliance with the standards fixed by the State Pollution Control Board regarding emission of air pollution from automobiles. In the light of the aforesaid observation, Kerala High Court has issued directions upon the State Authorities. In this regard, State Government of Kerala has been directed to provide, at least one smoke meter and gas analyser or any other approved instrument to measure carbon monoxide and other pollutants emitted by the automobiles each at all the major District Centres within a stipulated period, interalia.

In connection to the 'air pollution control area', another restriction has been imposed under Section 21 of the Air (Prevention and Control of Pollution) Act, 1981. As per provision of Section 21 of this Act, no person shall-establish or operate any industrial plant in an air pollution control area without previous consent of the State Board.

In Chaitanya Pulverising Industry vs. State Pollution Control Board, Karnataka High Court has held that if Consent has been granted by the Board with Specific Conditions and if they are not abide by, the consent can be taken back by the Board. It has been further held that once a consent is given, the Board can issue orders, directions, etc., which are to be complied with by the Industry and for this reason, the Industry, which has been given consent, is required to comply with certain conditions as enumerated in sub-section (5) of Section 21 of this Air (Prevention and Control of Pollution) Act, 1981. Otherwise non-compliance of these conditions is made punishable under Section 37 of this Air Act, 1981, as it has been held in this case.

It may be mentioned here that under Section 22 of this Air Act, no...
person, operating any industrial plant in any air pollution control area shall discharge or cause or permit to be discharged the emission of any air pollutant in excess of the standards, as laid down by the State Boards. In *M.C. Mehta vs Union of India*\textsuperscript{57}, the Supreme Court held that since Chlorine Gas is dangerous to the life and health of the general public after any leakage from a storage tank, cylinder or any other point during its production, the health and welfare of the workers and public at large living in surrounding areas may be put to risk and accordingly the Foods and Fertilizer Industries were imposed stringent conditions to carry on such production so that such an eventuality may be prevented.

Under this Air (Prevention and Control of Pollution) Act, 1981, certain penal provisions have been also laid down and these provisions are to be applied in case of disobeying all those restrictions as imposed under this Act. Section 37 of this Air (Prevention and Control of Pollution) Act, lays down that failure to comply with the provision of Section 21 or section 22 of this Act, as mentioned in the foregoing paragraph, is subject to punishment with the imprisonment for a term which shall not be less than one year and six months which may extend upto six years with fine and in case of such failure continues, additional fine will be imposed which may extend upto five thousand rupees for every day during such continuation of such failure.

Immediately after the enactment of Air (Prevention and Control of Pollution) Act, 1981, *Air (Prevention and Control of Pollution) Rules, 1982*, has been framed by the Central Government by invoking its rule making power as provided under Air (Prevention and Control of Pollution) Act, 1981.

\textsuperscript{57} AIR 1987 S.C. 965.
The Environment (Protection) Act, 1986

Existing environmental Laws, dealing directly or indirectly several environmental matters, usually focus on specific types of pollution or on specific categorizes of hazardous substances, but some major areas of environmental hazards had been laying vacant. Certain uncovered gaps had been existing in the areas of major environmental hazards. There were also inadequate linkages in handling matters of industrial and environmental safety. All these things have been exposed mainly after Bhopal Gas Disaster when thousands and thousands people became the victims of inadequate safety measures in the industrial operations where certain hazardous substances had been used for which no such rules and regulation were available under the domain of existing environmental Laws.

So under these facts and circumstances, there was an urgent need for enactment of a general environmental legislation to fill up the gaps between handling of hazardous substance during industrial operation and environmental safety and to co-ordinate the activities of various regulatory agencies engaged in dealing with environmental matters. Ultimately to meet the necessities of creation of an authority with adequate powers for environmental protection, regulation of discharge of environmental pollutants and handling of hazardous substances including speedy response in the event of accidents, the environment (Protection) Act, 1986 has been enacted.

This enactment has empowered the Central Government to take measures as it deems necessary or expedient for the purpose of protecting and improving the quality of the environment and for the purpose of preventing, controlling and abating environmental pollution,
as laid down under Section 3 of this Environment (Protection) Act, 1986. Under the provision of Section 3 of this Act, Central Government may also impose restriction on inudstrial process and its operation.

In *Indian Council for Enviro-Legal Action etc. Vs. Union of India and Others*\(^58\), in dealing with the issue, regarding environmental damage due to discharge of highly toxic effluents from industrial units situated at Bichhri village in Udaipur district of Rajasthan, Supreme Court had justified the scope of section 3 of the Environment (Protection) Act, 1986, in giving direction by the Central Government under the industrial units engaged in manufacturing hazardous or inherently dangerous substances, for the environment protection, either in the form of carrying out remedial measures or in any other form of prevention of pollution, as it appears from the following observation of the Supreme Court — "Section 3 and 4 of Environment (Protection) Act confers upon the Central Government the power to give directions of the above nature and to the above effect. Levy of costs required for carrying out remedial measures is implicit in Section 3 and4 which are cauched in very wide and expensive language. Appropriate directions can be given by this court to the Central Government to invoke and exercise those powers with such modulations as are called for in the facts and circumstances of the case".\(^59\)

Various preventive measures have been also provided under this legislation. Section 7 of this Act provides that no person carrying on any industry, operation or process shall discharge or omit or permit to be discharged or emitted any environmental pollutants in excess of such

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59. Indian Council for Enviro-Legal Action, etc. vs. Union of India and Others, AIR 1996 S.C. 1446 (1466)
standards, as may be prescribed. Section 8 of this Act provides that no person shall handle or cause to be handled any hazardous substances except in accordance with such procedure and after complying with such safeguards as may be prescribed. The preventive measures as laid down under the provision of Section 8 of the Environment Protection Act, 1986, is nothing but a mandatory requirement to avoid the risk of environmental hazard in dealing with the hazardous substances during industrial activities.

In *M.C. Mehta vs. Union of India and Others*\(^{60}\) it has been held by the Supreme Court that Tanneries at Jajmou, Kanpur, cannot be permitted to continue to carry on the industrial activity unless they take steps to establish primary treatment plants. Ultimately Supreme Court has directed certain number of Tanneries functioning at Jajmou, Kanpur, to stop the running of their tanneries and also not to let out trade effluents from their tanneries either directly or indirectly into the river Ganga without subjecting the Trade effluents to a pretreatment process by setting up primary treatment plants as approved by the State Board. Actually this decision of the Supreme Court is an effort of Judiciary to prevent the adverse effect of the functioning of the Industrial Units upon the public at large within the purview of Environment Protection Act, 1986.

This enactment also provides certain penal provision to control or abate environmental pollution. As per provisions of Section 15 of this Environment (Protection) Act, 1986, whoever fails to comply with or contravenes any of the provisions of this Act, or rules or orders or

\(^{60}\) AIR 1988 S.C. 1037.
directions issued there under, in respect of each failure or contravention, he shall be punished with imprisonment for a term which may extend to five years or with fine which may extend to one lakh rupees or with both. In case continuation of such failure or contravention, additional fine, which may extend up to five thousand rupees for every day during such continuation of offence after the conviction for first such failure or contravention, shall also be added. This Section 15 of this Act, also provides that if such failure or contravention continues beyond the period of one year after the date of conviction, offender shall be punished with imprisonment for a term which may extend up to seven years. The legal significance of this penal provision has been well considered by the Supreme Court in a reported case, *M.C. Mehta vs. Kamal Nath and Others*.61

It may be mentioned here that under the purview of this Legislation, even the Government department is not beyond the scope of punishment, if it commits any offence under this Act as provided under Section 17 of the Environment (Protection) Act, 1986.

In exercise of the powers conferred by Section 6 and 25 of this Environment (Protection) Act, 1986, where under the Central Government may make rules by official Gazette notification for carrying out the purposes of the environment (Protection) Act, 1986 the Central Government has framed the *Environment (Protection) Rules, 1986*. Under this Environment (Protection) Rules, 1986, standards for emission or discharge of environmental pollutants have been specified. In addition to it, under the Rules 1986 certain prohibitory orders and restrictions have been framed regarding handling of hazardous substances in different

In addition, certain other rules have been also framed by the central Government in exercising its rule making power conferred by the Environment (Protection) Act, 1986, to meet the necessities and to fill up some lacuna in the existing environmental legislation and to combat certain pollution crisis for which no specific legal sanction has yet been provided, as mentioned below.

**Hazardous Waste (Management and Handling) Rules 1989**

This rule has been framed regarding handling of certain specified hazardous wastes including the matters related to packaging, labelling and transporting of such hazardous waste.

**Manufacture, storage and import of hazardous chemicals Rule, 1989**

This rule deals with the precautionary measures in view of possible chance of accidents during industrial activity with hazardous chemicals.

**The Chemical Accident (Emergency Planning, Preparedness and Response) Rules, 1996.**

This rule has been framed by the Central Government for the purpose of making emergency planning, preparedness and response in case of chemical accident which involves a fortuitous or sudden or unintended occurrence while handling any hazardous chemical resulting in continuous intermittent or repeated exposure to death, or injury to, any person or damage to any property but does not include an accident by reason only of war or radioactivity.

**The Bio-Medical Waste (Management and Handling) Rules, 1998**
This Rule has been framed by the Central Government in exercise of the powers conferred by the Environment (protection) Act, 1986. This rule has been framed for the purpose of treatment and safe disposal of Bio-medical Waste which is generated during the diagnosis, treatment or immunisation of human beings and animals or in research activities pertaining thereto.

The Recycled Plastics Manufacture and Usage Rules, 1999

Central Government being empowered by the environment (Protection) Act, 1986 framed the Rules for the manufacture and use of recycled plastics carry bags and containers. Use of carry bags or containers made of recycled plastics for storing, carrying, dispensing or packaging of food stuffs is prohibited under this Rule.

Being empowered by the environment (Protection) Act, 1986, Central Government has also framed another rule, The Ozone Depleting Substances (Regulation and Control) Rules, 2000. Under this Rule, production and consumption of ozone depleting substances are to be regulated. Under this Rule, regulation shall be also imposed upon purchase and use of ozone depleting substances, including upon the import, export and sale of products made with or containing ozone depleting substances.

The Municipal Solid Wastes (Management and Handling) Rules, 2000

This rule has been framed by the Central Government by invoking rule making power, as conferred by the Environment (Protection) Act, 1986, to regulate the management and handling of the Municipal Solid Wastes which includes commercial and residential wastes generated in
a Municipal notified areas in either solid or semi-solid form excluding industrial hazardous wastes, but including treated bio-medical wastes.

*The Noise pollution (Regulation and Control) Rules, 2000*

In exercise of the power conferred by environment (Protection) Act, 1986 and environment (Protection) Rules, 1980, Central Government has made Rules for the regulation and control of noise producing and generating sources aiming at prevention and control and abatement of noise pollution.

By framing of this Noise Pollution (Regulation and Control) Rules, 2000, initiatives have been taken by the Central Government to Control and initate the noise pollution problem in India.

*The Public Liability Insurance Act, 1991*

This legislation has been enacted for providing immediate relief to the persons affected by the accident occurred at the time of handling of any hazardous substance and for the matters connected therewith or incidental thereto, since under the Environment (Protection) Act, 1986 and any Rules made thereunder no legal sanction had been provided for immediate relief including financial assistance to the victims of industrial accident occurred arising out of hazardous substance, though certain safety measures had been laid down under the said Environment (Protection) Act, 1986 and rules made there under.

As per provision of Section 4 of this public liability Insurance Act, 1991, before starting handling any hazardous substances, every owner shall take out one or more insurance policies providing for contracts of insurance whereby he is insured against liability to give relief to any
person (other than a workman) who sustained injury arising out of any accident due to hazardous substance. Any damage to any Property due to such accident will also be covered under the aforesaid insurance policy as mentioned under section 4 this Act.

As per provision of Section 6 of this Act, an application for claim for relief may be made by the Person who has sustained injury or by the owner of the property to which the damage has been caused. Such application can also be made by all or by any of the legal representatives of the deceased, where death has resulted from the accident or by any agent duly authorised by such person or owner of such property or all or any of the legal representatives of the deceased and such application shall be made to the collector and shall be in such form, contain such particulars and shall be accompanied by such documents as may be prescribed. But no application for relief shall be entertained, unless it is made within five years of the occurrence of the accident.

On the basis of the aforesaid Application, collector having jurisdiction over the area in which the accident occurs, after giving notice of the application to the owner and after giving Opportunity of hearing to all the parties i.e the claimants or the person from whom relief will be realised, may make an award determining the amount of relief which appears to him to be just and also specify the person or persons to whom such amount of relief shall be paid as laid down under the provision of Section 7 of this Public Liability Insurance Act, 1991. It has been also provided under this Section that when an award is made, the insurer, who is required to pay any amount in term of such award, shall deposite that amount within thirty days of the date of announcement of the award in such manner, as the collector may direct.
So with the introduction of this legislation, the Public Liability Insurance Act, 1991, victims of environmental accident arising out of hazardous substance are now under financial protection, as guaranteed by this Act, 1991, by providing relief through insurance coverage.

In *U.P. State Electricity Board and another vs. District Magistrate Dehradun and Others*,#n62# Significance of the enactment of the public liability Insurance Act, 1991, has been elaborately dealt with. It has been held by the Allahabad High Court that the Public Insurance Act, 1991 is the most important legislation on the subject of claims for accidents due to hazardous substance and is likely to be of great significance for business and industry in the years to come. It has been also held by the High Court that since the growth of hazardous industries process 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 and very often, the majority of the people affected due to accident, are from the economically weaker sections and suffer great hardships because of delayed relief and compensation, it is felt essential to provide for Mandatory Public Liability Insurance for handling hazardous substances to provide minimum relief to the victims.

Finally in justifying the necessities of the enactment of the Public liability Insurance Act, 1991, under Indian perspective, it has been observed by High Court that in India, while rapid industrialisation is absolutely essential for modernization of the country, judiciary must try to avoid the evils caused by unplanned industrialisation, e.g. air and

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#n62# AIR 1998 All. 1.
water pollution, discharge of harmful chemicals, explosions, etc. and where industrial accidents occur, prompt compensation must be paid to the victims and the public liability insurance act, 1991, is a great step forward taken by the parliament towards securing social justice to such victims.

In exercise of the powers conferred by the public liability Insurance Act, 1991, the Central Government has framed *The Public Liability Insurance Rules, 1991*, whereunder the procedure of awarding relief has been laid down.

*The National Environment Tribunal Act, 1995*

For the establishment of 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 damages to human health, property and the environment and to invoke the principle of strict liability for damages arising out of any accident occurring while handling any hazardous substances and to implement the decision of the United Nations conference on Environment and Development held at Rio de Janeiro in June, 1992, where India was participating nation alongwith other countries, to develop National Laws regarding liability and compensation for the victims of pollution and other environmental damage, this National Environment Tribunal Act, 1995 has been enacted.

Under the provision of Section 8 of the National Environment Tribunal Act, 1995, 'National Environment Tribunal' shall be established by the Central Government by a notification to exercise the jurisdiction, powers and authority conferred on it by or under this Act. Such Tribunal shall
consist of a chairperson and such number of Vice-Chairpersons, Judicial members and Technical Members and the Central Government may deem fit and subject to the other provisions of this Act, the Jurisdiction, Powers and authority of the Tribunal may be exercised by Benches thereof and a Bench shall consists of the judicial Member and one Technical Member, as laid down under section 9 of this National Environment Tribunal Act, 1925.

As per provision of Section 23 of this National Environment Tribunal Act, 1995, an award made by the Tribunal under this Act shall be executable by the Tribunal as a decree of Civil Court and for this purpose, the Tribunal shall have all the powers of a Civil Court. It has been also provided under Section 25 of this Act, whoever fails to comply with any order made by this Tribunal, he shall be punishable with imprisonment for a term which may extend to three years or with fine which may extend to ten lakh rupees, or with both.

As it has been decided in *L. Chandra Kumar's Case* an Award under this National Environment Tribunal Act, 1995, may be challenged before the Supreme Court or impugned in a Petition to the High Court under Article 226 and 227 of the Constitution of India.

It may be mentioned here that as per the provision of Section 27 of this Act, all proceedings before the Tribunal shall be deemed to be judicial proceedings within the meaning of section 193, 219 and 228 of

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63. *L. Chandrakumar vs. Union of India, AIR 1997 SC. 1125.*
the Indian Penal Code (IPC).\textsuperscript{64}

The National Environment Appellate Authority Act, 1997

This legislation has been enacted to provide for establishment of a National Environment Appellate Authority to hear appeals with respect to restriction of areas in which any industries, operations or processes or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards under the Environment (Protection) Act, 1986, end for matters connected therewith or incidental thereto.

As per provision of section 3 of this National Environment Appellate Authority Act, 1997, the Central Government by notification in the official Gazette, shall establish a body, to be known as the National Environment Appellate Authority, to exercise the power conferred upon it under this Act and such Authority shall consist of a chairperson, a vice-Chairperson and such other members not exceeding three, as the Central Government may deem fit, as laid down under the Section 4 of this Act.

According to the provision of Section 11 of the National Environment Appellate Authority Act, 1997, any person aggrieved by an Order granting

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\item Section 193 of the Indian Penal Code says as follows — 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.
\item Section 219 of the Indian Penal Code says as follows — 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.
\item Section 228 of the Indian Penal Code says as follows — Whoever intentionally offers any insult, or causes any interruption to any public servant, while such public servant is sitting in a 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.
\end{itemize}
environmental clearance in the areas, in which any industries, operations or processes or class of industries, operations and processes shall not be carried out or shall be carried out subject to certain safeguards, may prefer an Appeal to the Authority in such form as may be prescribed within thirty days from the date of such order, but that Authority may entertain any appeal after expiry of the said period of thirty days but not after ninety days from the date aforesaid if it is satisfied that the Appellant was prevented by sufficient cause from filing the appeal in time.

In a reported case, *Manoj Kumar Ray vs. Appellate Authority*\(^\text{65}\), Calcutta High Court has categorically made it clear that the National Appellate Authority cannot confer itself with a power to review against any order of a Judicial Body when statute has not conferred any power of review on the National Appellate Authority. In this regard, it has been also observed that the 'practice direction' can not be treated to override a judicial body unless and until it is provided in the statue.

After this enactment in exercise of the power conferred by Section 22 of the National Environment Appellate Authority Act, 1997, Central Government has also framed Rules, the National Environment Appellate Authority (Appeal), Rules, 1997, regarding various procedure of function of the said Appeal Authority.

There after another rules has been framed by the Central Government. It is the *National Environment Appellate Authority (Financial and Administrative Powers) Rules, 1998*, under which various Administrative powers of the National Environment Appellate Authority have been specified. In addition to it, another rules, The National

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\(^{65}\) AIR 2002 Cal. 216.
Environment Appellate Authority (Salary, Allowances and conditions of Services of Members) Rules 1998, has been framed in connection with the subject matter regarding tenure of service, pay, allowances and other conditions of service of members of the said Appellate Authority, as constituted under the National Environment Appellante Authority Act, 1997.

So these are certain important environmental legislations and rules made thereunder of the post Stockholm conference period. All these legislations have been enacted with the main objectives to prevent, control and to abate the environmental pollution and to protect our human health and environment in our country. But one thing must be stated here that main inspiration behind the enactment of these legislation has been derived from the Stockholm conference held at Stockhold in 1972, where it has been unanimously decided to develope Municipal Law in the respective countries for the protection of human environment and to prevent, Control and abate the environmental pollution therein. Ultimately with these objectives, all the environmental legislations and the rules made thereunder as stated above have been enacted after Stockholm declaration and become the part and parcel of the environmental Jurisprudence in India.

It emerges from the foregoing discussion that right from pre-independence period till the recent times various legal sanctions in the form of legislations have come into existence in India for the preservation and protection of environment and natural resources and such legislative activities have intensified during post-stockholm conference period to fulfil the commitments, as made by the India being a participating nation.
in the said Stockholm Conference to take appropriate steps for the protection and improvement of human environment and for the preservation of the natural resources of the earth. Ultimately various legislative provisions regarding environment protection have been developed and become an inseparable part of the environmental jurisprudence in India with the help of its judicial perception. As a result, environment protection movement in India has achieved a great vigour and strength from legal point of view.