CHAPTER VII

QUASI-JUDICIAL BODIES FOR THE PROTECTION OF ENVIRONMENT

In the V and VI of this report the discussion was related to the functioning of judicial institutions in our country with regard to the matter of protecting the environment and preventing the hazards of environmental pollution. Both the substantive as well as the procedural aspects were studied at length. What needs to be explored is whether our legal system end up with establishing the judicial institutions only and prescribing the rules of procedure for them to deal with the problem of environmental pollution or it moves forward to set up certain other agencies as well to strengthen the system of protecting the environment. As in several other countries in India also the legal system has devised the method of having an extensive system of protecting the environment. The legal system pursues the object of protecting the environment through various methods. Therefore there are administrative, and quasi-judicial institutions to exercise the rule making and the adjudicatory
The powers given to the authorities to remedy the wrong done by Environmental Pollution are based on the modern philosophy of speedy justice. Regulatory powers are exercised by the administrative and quasi-judicial institutions under the law by imposing civil liabilities; administrative sanctions, and adverse publicity etc. Such a system of administrative agencies is introduced to exercise judicial and quasi-judicial powers for the sake of securing quick disposal of the cases and for providing relief to the aggrieved persons at less expense and less expenditure.

Not only that the traditional agencies of administration have been empowered with the rule making and adjudicating powers but certain new agencies also have been introduced with the adequate powers to deal with the problems of environmental pollution.

This chapter has the object of discussing the remedial portion of justice with regard to matters of environment protection. While legal remedies are available before the judicial institutions, administrative and quasi-judicial remedies are available before the administrative or quasi-judicial institutions which are established under the Statute.

As a result of the special laws enacted by the appropriate legislatures certain new institutions like the Control Boards, etc have come into existence and certain new remedies exist also come up for dealing with the problem of environmental pollution. An important feature of the State Administration
today is that the formulation of any policy on State matters is the prerogative of the Executive Branch of Government; after the policy is formulated by the Executive it receives the approval of the legislature and then again it comes over to the Executive for its enforcement. At the stage of enforcement we find new agencies bearing the responsibility of enforcing the policy as embodied in the legislation. These new agencies perform the function of rule making, rule executing and rule interpreting, in other words they perform the quasi-legislative, quasi-executive and quasi-judicial powers. Their addition to the system of enforcing the laws is a unique feature of modern administration. Some of these agencies work under the control and supervision of the Central Government and some others work under the control and supervision of the State Government. The two-tier administration of environmental laws is a unique feature of the law governing the matters of environment protection and prevention of environmental pollution. The first thing that needs to be explained in this chapter is the process of policy formulation which in our system of government is a very important aspect.

1. Policy formulation and execution:

The Ministry of Environment and Forests is the nodal agency in the administrative structure of the Central Government for the planning, promotion, coordination and overseeing the implementation of the various environmental and forestry programmes. The Ministry has also been designated as the nodal agency in the country for the United Nation's

Conservation and survey of flora, fauna, forests and wildlife, prevention and control of pollution, afforestation and regeneration of degraded areas and protection of environment, are the mandates of the Ministry. These tasks are being fulfilled by the Ministry through environmental impact assessment, eco-regeneration, assistance to organizations, implementing environmental and forestry programmes. The Ministry also looks after the programmes concerning promotion of environmental and forestry research, extension, education and training to augment the requisite manpower, dissemination of environmental information, international cooperation and creation of environmental awareness among all sectors of the country's population.

These objectives are well supported by legislative and regulatory measures, which are aimed at the preservation and protection of environment. Some of them are the Air (Prevention and Control of Pollution), Act, 1974, the Environment Protection Act, 1986 the Public Liability Insurance Act, 1991, the National Environmental Tribunal Act, 1995 etc. There are three key policies relating to environmental protection in India. They are:

2. Policy Statement for Abatement of Pollution, 1992

After noting the system of policy formulation and its execution as initiated by the Government we may now refer to various aspects of the policies which have since been formulated and which are embodied in the legislations and the institutions which have been set up for executing those policies.

2. Procedure for the scrutiny of Development Projects:

An interesting aspect of Environmental Law is the controversies which arise when Government formulates its policies for the development of the country in various sectors of national life. Problems are raised by the vested interests before the law enforcement agencies including the courts of law.

The present day concept of the country's development therefore is fraught with problems arising from the organizations which are working in our country for the protection of Environment. In view of the problems which arise in relation to the development projects a certain procedure has been formulated under the relevant Acts for the scrutiny of development projects. This procedure is known as Environment Impact Assessment which has the meaning that the impact which is likely to be seen as a result of executing the policy must be assessed by the authorities:
3. Environmental Impact Assessment

The purpose of Environmental Impact Assessment (EIA) is to identify and evaluate the potential impacts (beneficial and adverse) of development projects on the environmental system. It is an useful aid for decision making based on understanding of the environmental implications including social, cultural and aesthetic concerns which could be integrated with the analysis of the project costs and benefits. This exercise is undertaken by the Central Government early enough at the planning stage of projects for selection of environmentally compatible sites, process of technologies and such other environmental safeguards.

While all industrial projects may have some environmental impacts all of them may not be significant enough to warrant elaborate assessment procedures. The need for such exercises is decided after initial evaluation of the possible implications of a particular project and its location. The projects which are considered for detailed Environmental Impact Assessment include:

i) Those which can significantly alter the landscape, land use pattern and lead to concentration of working and service population;

ii) Those which need upstream development activity like assured mineral and forest products supply or downstream industrial process development;
iii) Those involving manufacture, handling and use of hazardous materials;

iv) Those which are sited near ecologically sensitive areas, urban centres, hill resorts, places of scientific and religious importance;

v) Industrial estates with constituent units of various types which could cumulatively cause significant environmental damage.

(iv) Public Hearings for clearing the Development Projects:

Under the law, public hearings are required before a sanction is given by the Government in respect of any project which falls under the 29 categories of activities which require environmental clearance from the Ministry of Environment and Forests, Government of India, (MOEF).

Public Hearings are a mandatory requirement under the law, and provide an opportunity for the public to get to know about the coming up of any new project falling under the 29 categories of activities requiring environmental clearance of the MoEF and also an opportunity where the concerns, suggestions, views, comments and objections of the public are heard by the public hearing panel. The various stages involved in conducting a public hearing are the following:-
Stage – I. The State Pollution Control Board (SPCB) shall cause a notice of Environmental Public Hearing by publishing the same in at least two newspapers widely circulated in the region around the project, one of which shall be in the vernacular language or the locality concerned.

Stage – II. The State Pollution Control Board shall mention the date, time and the venue of the public hearing and also the name and address of the industry/unit proposed to come up for which a clearance is sought.

Stage – III. From the date of publication of the Notification, 30 days time is provided to the public inviting their suggestions, views, comments and objections to the said project.

Stage – IV. The public are provided access to the Executive Summary of the Environmental Impact Assessment project during this one month period at the following places:

1) District Collector’s office,
2) District Industry Centre;
3) Office of the Chief Executive officers of the Zilla Parishad or Commissioner of the Municipal Corporation/Local Body as the case may be.
4) Head office of concerned State Pollution Control Board and its concerned Regional Office;
5) Department of State Government dealing with the subject of Environment.

Stage - V. The actual public hearing is conducted as per the date, time and venue mentioned in the notification where the concerns of the public are heard by the Public Hearing Panel constituted for the purpose.

Though the provision mentioned under sub-paragraph (ii) of Paragraph 2 of Schedule 4 of the Environment Impact Assessment Notification says that all persons including bona fide residents, environmental groups and others located at the project site/sites of displacement/sites likely to be affected can participate in the public hearing, the explanation provided in the same paragraph explains the word “person” as:

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

(b) Any person who owns or has control over the project with respect to which an application has been submitted for environmental clearance;

(c) Any association of persons whether incorporated or not likely to be affected by the project and/or functioning in the field of environment;
(d) Any local authority within any part of whose local limits is within the
neighbourhood wherein the project is proposed to be located.

Therefore, because of the explanation, only those who fall within the
categories (a) to (d) can participate in a public hearing.

A - INSTITUTIONS EXERCISING THE QUASI-LEGISLATIVE AND QUASI-
EXECUTIVE FUNCTIONS:

1. The Central Government:

Under the law the Central Government is empowered to take measures
to protect and improve the environment. The relevant provision says, "Subject
to the provisions of this Act, the Central Government shall have the power to
take all such measures as it deems necessary or expedient for the purpose of
protecting and improving the quality of the environment. It further says, "In
particular, and without prejudice to the generality of the provisions of sub-
section 1 of section 3 of the Act such measures may include measures with
respect to all or any of the following matters, namely,

(i) Coordination of actions by the State Governments, officers and other
authorities;

(ii) Planning and execution of a nation-wide programme for the prevention,
control and abatement of environmental pollution;
(iii) Laying down standards for the quality of environment in its various aspects;

(iv) Laying down standards for emission or discharge of environmental pollutants from various sources whatsoever, Provided that different standards for emission or discharge may be laid down under this clause from different sources having regard to the quality or composition of the emission or discharge of environmental pollutants from such sources;

(v) 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;

(vi) Laying down procedures and safeguards for the prevention of accidents which may cause environmental pollution and remedial measures for such accidents;

(vii) Laying down procedures and safeguards for the handling of hazardous substances;

(viii) Examination of such manufacturing processes, materials and substances as are likely to cause environmental pollution;
(ix) Carrying out and sponsoring investigations and research relating to problems of environmental pollution;

(x) Inspection of any premises, plant, equipment, manufacturing or other processes, materials or substances and giving, by order, of such directions to such authorities, officers or persons as it may consider necessary to take steps for the prevention, control and abatement of environmental pollution;

(xi) Establishment or recognition of environmental laboratories and institutes to carry out the functions entrusted to such environmental laboratories and institutes under this Act;

(xii) Collection and dissemination of information in respect of matters relating to environmental pollution;

(xiii) Preparation of manuals, codes or guides relating to the prevention, control and abatement of environmental pollution;

(xiv) Such other matters as the Central Government deems necessary or expedient for the purpose of securing the effective implementation of the provisions of this Act." ¹

¹ Section 3 of the Environment Protection Act, 1986.
II. Constitution of Environmental Authority:

The Environment Protection Act empowers the Central Government to consider the constitution of an autonomous agency like the one which exists in United States of America, to be known as Environmental Authority. The Act dealing with this matter says,

"The Central Government may, if it considers it necessary or expedient so to do for the purposes of this Act, by order published in the Official Gazette, constitute an authority or authorities by such name or names as may be specified in the order for the purpose of exercising and performing such of the powers and functions (including the power to issue directions under Sec.5) of the Central Government under this Act and for taking measures with respect to such of the matters referred to in sub-section (2) as may be mentioned in the order and subject to the supervision and control of the Central Government and the provisions of such order, such authority or authorities may exercise the powers or perform the functions or take the measures so mentioned in the order as if such authority or authorities had been empowered by this Act to exercise those powers or perform those functions or take such measures." ²

² Sub-Section 3 of Section 3 of the Environment Protection Act, 1986.
III. Appointment of officers and their powers and functions:

The provision empowering the Central Government about appointment of officers and their functions says,

"1. Without prejudice to the provisions of sub-section (4) of Sec.3, the Central Government may appoint officers with such designations as it thinks fit for the purpose of this Act and may entrust to them such of the powers and functions under this Act as it may deem fit.

2. The officers appointed under sub-section (1) shall be subject to the general control and direction of the Central Government, or if so directed by that Government, also of the authority or authorities, if any, constituted under sub-section (3) of Sec.3 or of any other authority or officer."³

Further the Act says, Notwithstanding anything contained in any other law but subject to the provisions of this Act, the Central Government may, in the exercise of its prows and performance of its functions under this Act, issue directions in writing to any person, officer or any authority and such person, officer or authority shall be bound to comply with such directions.

Explanation: For the avoidance of doubts, it is hereby declared that the power to issue directions under this section includes the power to direct:

³ Section 4 of Environment Protection Act, 1986.
a) The closure, prohibition or regulation of any industry, operation or process;

b) Stoppage or regulation of the supply of electricity or water or any other service.\(^4\)

Further the Act empowers the Union Government to delegate its powers and functions to any officer, State Government or other authority.\(^5\)

(iv) Rule making power of the Government to regulate Environmental pollution:

The Environment Protection Act, 1986 confers Rule Making Power on the Central Government to regulate environmental pollution; It says,

"1. The Central Government may, by notification in the Official Gazette, make rules in respect of all or any of the matters referred to in Section 3;

2. In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely,

\(^4\) Section 5 of Environment Protection Act, 1986.
\(^5\) Section 23 of Environment Protection Act, 1986
a) The standards of quality of air, water for various areas and purposes;

b) The maximum allowable limits of concentration of various environmental pollutants (including noise) for different areas;

c) The procedures and safeguards for the handling of hazardous substances;

d) The prohibition and restrictions on the handling of hazardous substances in different areas;

e) The prohibition and restrictions on the location of industries and the carrying on of processes and operations in different areas;

f) The procedures and safeguards for the prevention of accidents which may cause environmental pollution and for providing for remedial measures for such accidents."  

(v) Pollution Control Boards

(a) Central Pollution Control Board constituted under the Air Act:

The Air Act of 1981 envisages the constitution of law enforcement agencies at the national and state levels. One such important agency is the

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Section 6 of Environment Protection Act, 1986.
Central Pollution Control Board. Section 16 of the Air Act dealing with the main function of the Central Pollution Control Board provides that the main functions of the Central Board under this Act shall be:

"To improve the quality of air and to prevent, control or abate air pollution in the country; and in particular, and without prejudice to the generality of the foregoing functions, the Central Board may,

(i) Advise the Central Government on any matter concerning the improvement of the quality of air and the prevention, control or abatement of air pollution;

(ii) Plan and cause to be executed a nation-wide programme for the prevention, control or abatement of air pollution;

(iii) Coordinate the activities of the State Boards and resolve disputes among them;

(iv) Provide technical assistance and guidance to the State Boards, carry out the sponsor investigations and research relating to problems of air pollution and prevention, control or abatement of air pollution;
(v) Plan and organize the training of persons engaged or to be engaged in programmes for the prevention, control or abatement of air pollution on such terms and conditions as the Central Board may specify;

(vi) Organize through mass media a comprehensive programme regarding the prevention, control or abatement of air pollution;

(vii) Collect, compile and publish technical and statistical data relating to air pollution and the measures devised for its effective prevention, control or abatement and prepare manuals, codes or guides relating to prevention, control or abatement of air pollution;

(viii) Laying down standards for the quality of air;

(ix) Collect and disseminate information in respect of matters relating to air pollution;

(x) Perform such other functions as may be prescribed under Rules or under an Order.⁷

In addition to the above functions, the Central Board may establish or recognize a laboratory or laboratories to enable the Central Board to perform its functions under this Section efficiently, and it may:

⁷ Section 16 of the Air (Prevention & Control of Pollution) Act, 1971.
(a) Delegate any of its functions under the Act generally or specially to any
of the Committees appointed by it; and

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

(b) State Pollution Control Board constituted Under the Air Act, 1971:

The Air Act also provides for the constitution of Pollution Control
Boards at the State level. Dealing with the functions of the State Boards the
Act says,

"The functions of the State Board shall be:

(a) To plan a comprehensive programme for the prevention, control or
abatement of air pollution and to secure the execution thereof;

(b) To advise the State Government on any matter concerning the
prevention, control or abatement of air pollution;

(c) To collect and disseminate information relating to air pollution;
(d) To collaborate with the Central Board in organizing the training of persons engaged or to be engaged in programmes relating to prevention, control or abatement of air pollution and to organize mass-education programmes relating thereto;

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

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

(g) To lay down, in consultation with the Central Board and having regard to the standards for the quality of air laid down by the Central Board, standards for emission of air pollutants into the atmosphere from industrial plants and automobiles or for the discharge of any air pollutant into the atmosphere from any other source whatsoever not being a ship or an aircraft;

Provided that different standards for emission may be laid down under this clause for different industrial plants having regard to the quantity
and composition of emission of air pollutants into the atmosphere from such industrial plants;

(h) To advise the State Government with respect to the suitability of any premises or location for carrying on any industry which is likely to cause air pollution;

(i) To perform such other functions as may be prescribed or as may, from to time, be entrusted to it by the Central Board or the State Government

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

In addition to the above functions the State Board may establish or recognize a laboratory or laboratories to enable the State Board to perform its above functions efficiently;" 

The primary responsibility of controlling air pollution is on the State Pollution Control Board. The very first measure to be adopted in this respect is the declaration of any area or areas within the State as air pollution control

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8 Section 17 of the Air (Prevention & Control of Pollution) Act, 1971.
area. The sub-section thus provides that the State Government may, after consultation with the State Board, by notification in the Official Gazette, declare in such manner as may be prescribed, any area or areas within the State as air pollution control area or areas for the purposes of the Act.

As regards power to give instructions for ensuring standards for emission from automobiles, Section 20 of the Act lays down that with a view to ensuring that the standards for emission of air pollutants from automobiles laid down by the State Board under clause (g) of sub-section 1 of Section 17 are complied with the State Government shall, in consultation with the State Board, give such instructions as may be deemed necessary to the concerned authority in charge of registration of motor vehicles under the Motor Vehicles Act, 1988, and such authority shall notwithstanding anything contained in that Act or the rules made thereunder be bound to comply with such instructions.

(c) Central Pollution Control Board constituted under the Water (Prevention and Control of Pollution) Act, 1974:

One of the objectives of the Water (Prevention and Control of Pollution) Act, 1974 is to provide for the prevention and control of water pollution and the maintenance of restoration of the 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.

The Water Act provides for the functions of the Central Board as follows:

1. "Subject to the provisions of this Act, the main function of the Central Board shall be to promote cleanliness of streams and wells in different areas of the states;

2. In particular and without prejudice to the generality of the foregoing function, the Central Board may perform all or any of the following functions, namely—

   a) Advise the Central Government on any matter concerning the prevention and control of water pollution;

   b) coordinate the activities of the State Boards and resolve disputes among them;

   c) provide technical assistance and guidance to the State Boards, carry out and sponsor investigations and research relating to problems of water pollution and prevention, control or abatement of water pollution;
d) Plan and organize the training of persons engaged or to be engaged in programmes for the prevention, control or abatement of water pollution on such terms and conditions as the Central Board may specify;

e) Organize through mass media a comprehensive programme regarding the prevention and control of water pollution

f) Collect, compile and publish technical and statistical data relating to water pollution and the measures devised for its effective prevention and control and prepare manuals, codes or guides relating to treatment and disposal of sewage and trade effluents and disseminate information connected therewith;

(g) Lay down, modify or annul, in consultation with the State Government concerned, the standards for a stream or well;

(Provided that different standards may be laid down for the same stream or well or for different streams or wells, having regard to the quality of water flow characteristics of the stream or well and the nature of the use of the water in such stream or well or stream or wells;

(h) Plan and cause to be executed a nation-wide programme for the prevention, control or abatement of water pollution;
(i) Perform such other functions as may be prescribed.

The Act further empowers the Board to establish or recognize a laboratory or laboratories to enable the Board to perform its functions under this section efficiently, including the analysis of samples of water from any stream or well or of samples of any sewage or trade effluents.  

(d) State Water Pollution Control Board constituted under the Water (Prevention and Control of Pollution) Act, 1974

Besides the constitution of Central Pollution Control Board there is provision for the constitution of State Pollution Control Board also. The functions of the State Board as provided in the Act are:

a) To plan a comprehensive programme for the prevention, control or abatement of pollution of streams and wells in the State and to secure the execution thereof;

b) To advise the State Government on any matter concerning the prevention, control or abatement of water pollution;

c) To collect and disseminate information relating to water pollution and the prevention, control or abatement thereof;

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Section 3 of the Air (Prevention & Control of Pollution) Act, 1971..
d) To encourage, conduct and participate in investigations and research relating to problems of water pollution and prevention, control or abatement of water pollution;

e) To collaborate with the Central Board in organizing the training of persons engaged or to be engaged in programmes relating to prevention, control or abatement of water pollution and to organize mass education programmes relating thereto;

f) To inspect sewage or trade effluents, works and plants for the treatment of sewage and trade effluents and to review plans, specifications or other data relating to plants set up for the treatment of water, works for the purification thereof and the system for the disposal of sewage or trade effluents or in connection with the grant of any consent as required by this Act'

g) To lay down, modify or annual effluent standards for the sewage and trade effluents and for the quality of receiving waters (not being water in an inter-State stream) resulting from the discharge of effluents and to classify waters of the State;

h) To evolve economical and reliable methods of treatment of sewage and trade effluents, having regard to the peculiar conditions of soils,
climate and water resources of different regions and more specially the prevailing flow characteristics of water in streams and wells which render it impossible to attain even the minimum degree of dilution;

i) To evolve methods of utilization of sewage and suitable trade effluents in agriculture; To evolve efficient methods of disposal of sewage and trade effluents on land, as are necessary on account of the predominant conditions of scant stream flows that do not provide for major part of the year the minimum degree of dilution;

j) To lay down standards of treatment of sewage and trade effluents to be discharged into any particular stream taking into account the minimum fair weather dilution available in that stream and the tolerance limits of pollution permissible in the water of the stream, after the discharge of such effluents;

k) To make, vary or revoke any order;

l) To lay down effluent standards to be complied with by persons while causing discharge of sewage or sullage or both and to lay down, modify or annul effluent standards for the sewage and trade effluents;

m) To advise the State Government with respect to the location of any industry the carrying on of which is likely to pollute a stream or well;
n) To perform such other functions as may be prescribed or as may, from time to time, be entrusted to it by the Central Board or the State Government.\(^{10}\)

Further, the Act provides that the State Pollution Control Board may establish or recognize a laboratory or laboratories to enable the Board to perform its functions under this Section efficiently, including the analysis of samples of water from any stream or well or of samples of any sewage or trade effluents.

IV. AUTHORITIES UNDER THE ANTI POLLUTION LAWS

Authorities have been constituted at the State level according to Rules made under the three major statutes on Environment. Reference is made herein to the Rules under which they have been constituted for the purpose of protecting the environment and preventing the pollution:

(a) Authorities constituted under the rules made under Environment Protection Act, 1986.

The Environment (Protection) Act, 1986 enables the Central Government to constitute an authority or authorities for the purpose of

\(^{10}\) Section 4 of the Air Act, 1971.
exercising and performing such of the powers and functions of the Central Government under that Act (including the power to give directions under Sc.5 of that Act) and for taking measures with respect to the matters referred to in section 3(2) and subject to the supervision and control of the Central Government. 11

Several rules have been framed under Sec.25 of the Environment (Protection) Act, 1986. These rules provide for ‘authorities’ who implement the rules and also provide for ‘appellate authorities’ who are all officers or departments of government. Various rules have been made under Sec.25. Some rules framed under the Act regarding appointment of ‘authorities’ do not prescribe appellate authorities.

In the Hazardous Wastes (Management and Handling) Rules, 1989 Rule 18 provides for an appeal against any order of grant or refusal of an authorization by the Member-Secretary, State Pollution Control Board (or any officer designated by the Board) — to the Secretary, Department of Environment of the State Government.

In the Rules of 1989 relating to Manufacture, Storage and Import of Hazardous chemicals, Rule 2(b) refer to the ‘authority’ mentioned in Col.2 of Schedule 5 as being the authority which will perform various functions under

11 Section 3, clause 2 of the Environment Protection Act, 1986
Rule 3. The said Schedule 5 designates various authorities or persons to exercise the functions, such as

1. **Ministry of Environment and Forests** under the Environment (Protection) Act, 1986;

2. **Chief Controller of Imports and Exports** under the Import and Export (Control) Act, 1947;

3. **The Central Pollution Control or the State Pollution Control Board or Committee** under the Environment (Protection) Act, 1986;

4. **Chief Inspectors of Factories** under the Factories Act, 1948;

5. **Chief Inspector of Dock Safety** appointed under the Dock Workers (Safety, Health and Welfare) Act, 1987;

6. **Chief Inspector of Mines** appointed under the Mines Act, 1952;

7. **Atomic Energy Regulatory Board** appointed under the Atomic Energy Act, 1972;

8. **Chief Controller of Explosives** appointed under the Explosives Act and rules; 1973.
No provision was made for an appeal in these Rules.

In the Municipal Solid Wastes (Management and Handling) Rules, 2000, various functions are to be performed by the Municipal Authority, State Governments, Union Territories, Central Pollution Control Board and State Pollution Control Board or Committee. No appeal provision is made.

In the Ozone Depleting Substances (Regulation & Control) Rules, 2000 various functions have to be performed by the authority specified in Schedule V thereof. Col.4 of the Schedule specifies the ‘authority’ and Col.6 specifies the ‘appellate authority’. The appellate authorities are Secretary, Ministry of Environment and Forests, or in certain cases, the Deputy Secretary in the same Ministry.

In the Noise Pollution (Regulation & Control) Rules, 2000, Rule 2 C defines ‘authority’ as an authority or officer authorized by the Central Government or the State Government, as the case may be, in accordance with the laws in force and includes a District Magistrate, Police Commissioner or any officer not below the rank of a Deputy Superintendent of Police. There is a definition of ‘Court’ in Rule 2 (d) but the Rules do not deal with the functions of the ‘Court’. No appellate authority is referred.

Bio-Medical Waste (Management & Handling) Rules, 1998 defines ‘Prescribed Authority’ under Rule 7 for enforcement of the Rules and
designates the authority as the State Pollution Control Board in States or such Committees in Union Territories. Rule 13 defines the appellate authority as the authority to be notified by the State Government or Union Territory.

Thus, in the various Rules made under Sec.3 of the Environment (Protection) Act, 1986, there are authorities (as in some cases) appellate authorities constituted but there is no appeal to a judicial body. Nor do the appellate authorities, wherever they are constituted, have any expert assistance. They are all bureaucrats.

(b) Authorities constituted under the rules of Water Act 1974.

The Water (Protection and Control of Pollution) Act, 1974 contains provisions for ‘appeals’ to an appellate authority to be constituted by the State Government to deal with appeals by persons aggrieved by orders of State Board and then a revision to the State Government.

The Union Territory of Chandigarh, on 11.4.1988 appointed three officers of Government as the appellate authority for purposes of Sec.28 of the Water (Prevention and Control of Pollution) Act, 1974. The Pondicherry Government, on 5.4.1988 appointed its Chief Secretary as the appellate authority. The Delhi Administration appointed a single person appellate authority on 18.2.1992 who is the Financial Commissioner.
Haryana (Prevention and Control of Water Pollution) Rules, 1978 (22.12.1978) state in Rule 23 that the appellate authority shall consist of two persons to be nominated by the Government and must have the following qualifications with qualification of graduate in Engineering and a third person who is a law graduate with 3 years experience as a lawyer.

Maharashtra Water (Prevention & Control of Pollution) Rules, 1983 prescribe an appeal to the ‘appellate authority’ to be designated by the State Government. Punjab Water (Prevention & Control of Pollution) Appeal Rules, 1978 provide for an appeal to the appellate authority. It is not clear who is designated under these Rules.

Uttar Pradesh Water (Consent for Discharge of Sewerage and Trade Effluents) Rules, 1981 provides for an appeal to an appellate authority specified by the Government.

Only in Andhra Pradesh, the appeal under Sec.28 of the Water Act, 1974 read with AP (Water Protection and Prevention of Pollution) Rules 1977 lies to a High Court Judge.

Thus, except in Andhra Pradesh, there is no appeal to a body which consists of a Judicial Member. There are also no Experts to assist the appellate authority.
(c) Authorities constituted under the Rules made under The Air (Protection and Prevention of Pollution) Act, 1981:


B - Institutions exercising Judicial and quasi judicial Powers and the methods for the disposal of complaints and Grievances:

The courts of ordinary jurisdiction in civil and criminal matters may deal with cases pertaining to Environmental issues. Of course, the procedure which they are to follow in dealing with environmental matters may in some respects differ from the ordinary procedure which is followed by the courts in respect of other civil or criminal cases. The disputes relating to civil liability
including the cases falling within the purview of the rule of strict liability, and which attract the Common Law principles may be dealt with by the courts of ordinary jurisdiction in the same manner as they are dealt with by the courts in regard to other civil disputes. Appeals against the decisions of the subordinate courts in such cases may be taken to the High Courts and the Supreme Court following the procedure established by law.

Further the High Courts in their extraordinary jurisdiction i.e., the Writ Jurisdiction, may deal with matters of environment protection and pollution where fundamental rights are involved and where legislative competence is questioned.

In addition to the above the Environmental Laws provide for the constitution of special courts and Tribunals which have certain peculiar features of their own. The following are the specialized institutions which may exercise their judicial or quasi-judicial powers as courts and tribunals to deal with the disputes relating to environmental problems.

1. **Green Benches:**

Green Benches are the Courts constituted by the Chief Justice of the respective High Courts either on their own or on directions from the Chief Justice of the Supreme Court to constitute exclusively a bench (quorum consisting of more than one Judge) to deal with matters relating to
environment and connected there with. The Green Bench in the respective 
High Courts deals with matters relating to Environment either on a particular 
day of the week exclusively or when and where the situation demands 
immediate action. West Bengal and Tamil Nadu are examples of some 
States which have constituted Green Benches.

2. National Environmental Tribunals:

In the year 1995 the Union Parliament enacted the National 
Environmental Tribunals Act to provide for 'strict liability' for damages arising 
out of any accident occurring while handling any hazardous substance and 
for the establishment of a National Environment Tribunal for effective and 
expeditious disposal of cases arising from such accidents, with a view to 
giving relief and compensation for damages to persons, property and the 
environment and for matters connected therewith or incidental thereto.

Liability under Sec.3 is to be on the basis of 'No fault' and under Sec.4 
compensation is payable. Under Sec.9(10 the Tribunal shall consist of a 
Chairperson and such members as Vice Chairpersons/Judicial Members and 
Technical members as the Central Government deems fit. It can fit in 
Benches but each Bench must consist of a Judicial and Technical member. 
Chairman shall be person who is or has been a Judge of the Supreme Court 
or High Court, or has at least been Vice Chairman for 2 years. A Vice 
Chairman should be a person:
a) who is or has been a Judge of a High Court or was a Secretary to Government of India for at least 2 years;

b) or has held any other post in Central or State Government carrying a scale of pay which is not less; or

c) held post of Additional Secretary in Government of India for five years and has acquired knowledge or experience in legal, administrative, scientific or technical aspects of the problems relating to environment, or has at least 3 years experience as a judicial member or a Technical member; A judicial member must be one who is or has been qualified to be a Judge of a High Court or has been a member of the Indian Legal Service and has held a post in grade I of that service for at least 3 years. A Technical Member is a person who has adequate knowledge of or experience in or capacity to deal with administrative, scientific or technical aspects of the problems relating to environment. No appointment of the Chairperson or Vice Chairperson can be made without consultation of the Chief Justice of India. No appointment of a Judicial or Technical Member can be made except on the recommendation of a Selection Committee appointed by the Central Government consisting of:

d) Chairperson of the Tribunal;
e) Secretary, Government of India, Ministry of Environment & Forests;

f) Secretary, Ministry of Law, Justice and Company Affairs;

g) Director-general, Council of Scientific & Industrial Research;

h) An Environmentalist to be nominated by the Central Government.

3. National Environmental Appellate Authority:

In the year 1997 the Union Parliament enacted the National Environmental Appellate Authority Act with the idea of providing for the establishment of a national Environmental 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 and for matters connected therewith or incidental thereto.

The uniqueness of the Environmental Appellate Authority is that according to Sec.12 of the Environmental Appellate Authority act, the Authority shall not be bound by the procedure laid down in the Code of Civil Procedure, 1908 but shall be guided by the principles of natural justice.
Subject to the other provisions of this Act, and of any rules made by central Government, the Authority shall have power to regulate its own procedure, including the fixing of places and times of its enquiry and deciding whether to sit in public or private. Also, with effect from the date of establishment of the Authority, no civil court or other authority shall have jurisdiction to entertain any appeal in respect of any matter with which the Authority is empowered by or under this Act.

Under Sec. 4 of the Act, the Appellate Authority is to consist of a Chairperson, a Vice Chairperson and such other Members not exceeding three, as the Central Government may deem fit. Under Sec. 5 the qualifications for appointment as Chairperson is that a person must have been (a) a Judge of the Supreme Court, or (b) the Chief Justice of a High Court. A person cannot be appointed as Vice Chairman unless he has (a) held for two years the post of a Secretary to Government of India or any other post under the Central/State Government carrying a scale of pay which is not less than that of a Secretary to government of India, and (b) had expertise or experience in administrative, legal, management or technical aspects of problems relating to environmental management, law or planning and development. The term of office of the above functionaries is three years.

The Appellate Tribunal did not have much work in view of the narrow scope of its jurisdiction as per the notification issued. It deal with very few
cases. After the term of the first Chairman was over, no appointment was made to the office of the Chairman, Appellate Tribunal.

4. Suggestion of the Law Commission of India to Establish Environment Courts:

In its 186th Report submitted to the Government of India in September, 2003 the Law Commission of India has suggested the constitution of Environment Courts. Among the reasons mentioned by the Law Commission in its Report one of the reasons is that several of the special Statutes, e.g., Environment (Protection) Act, 1986, Water (Protection & Control of Pollution) Act, 1974, Air (Protection and Control of Pollution Act delegate power to the State Governments/Union Government to designate appellate authorities. The appeals lie generally to various officers of government or departments of government. Except in one or two cases the appeals do not lie to a judicial body comprising judicial officer. In no case does the appellate authority have the assistance of experts in the field of environment. The Law Commission has been of the opinion that the present system is not satisfactory so far as disposal of appeals is concerned. The appeal is practically the first opportunity for a party or even third parties affected by pollution to seek relief. In the view of the Commission such appeals must lie to appellate Court having special jurisdiction and must comprise of persons who have or had judicial qualification or have considerable experience as lawyers. They must also be assisted by Experts in environmental science. The Law Commission has
recommended the constitution of Environment Courts manned by persons with judicial knowledge and experience assisted by experts in various aspects of environmental science.¹²

5. Proposal to establish Environmental Courts:

The two National Environmental Tribunals referred to above were unfortunately non-functional. One had only jurisdiction to award compensation and never actually came into existence. The other came into existence but after the term of the first Chairman ended, none had been appointed.

It was in the background of this experience with the laws made by Parliament with regard to Environmental Tribunals that the Law Commission proposed the constitution of Environmental Courts which can simultaneously exercise appellate powers as a Civil Court, and original jurisdiction as exercised by Civil Courts.

Emphasizing the need for such courts and explaining the legal position that there can be no difficulty in constituting such Courts, the Law Commission said,

"A. The fact that the National Environment Tribunal Act, 1995 and the National Environmental Appellate Authority act, 1997 were passed by

Parliament for the purpose of implementing the decisions at the Rio Conference of 1992 and Stockholm Conference of 1972 show that the proposed Environmental Courts Act can also be similarly passed by parliament. All these Acts are intended to provide speedy adjudicatory bodies in respect of disputes arising in environmental matters.

B. The Rio Declaration of 1992 expressly refers to 'remedies' to achieve the objects of the Declaration made at the Conference.. Principle 10 of the Rio Declaration on Environment and Development, 1992 refers to effective access to 'judicial and administrative proceedings including redress and remedy' and states that they shall be provided.

Principle 10 reads as follows: Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making process. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy shall be provided”

Principle 10 of the Rio Declaration clearly requires judicial remedies to be provided. There is, therefore no difficulty in Parliament invoking its special
powers to make a law on the subject of 'Environmental Courts' under Article 253 even if it be that there is encroachment into the entries in List II of Schedule VII relating to 'Water' which is a State subject.

In the judgment of the Supreme Court of India in A.P. Pollution Control Board v. M.V. Nayudu\textsuperscript{13} the Court had referred to the need for establishing Environmental Courts which would have the benefit of expert advice from environmental scientists/technically qualified persons, as part of the judicial process, after an elaborate discussion of the views of jurists in various countries.

In the subsequent follow-up judgment in A.P. Pollution Control Board v. M. V. Nayudu\textsuperscript{14} the Supreme Court referred to the serious differences in the constitution of appellate authorities under plenary as well as delegated legislation and pointed out that except in one State where the appellate authority was manned by a retired High Court, in other States they were manned only by bureaucrats. These appellate authorities were not having either judicial or environmental back-up on the Bench.

The Supreme Court opined that the Law Commission could therefore examine the disparities in the constitution of these quasi-judicial bodies and suggest a new scheme so that there could be uniformity in the structure of the quasi-judicial bodies which supervise the orders passed by administrative or public authorities including orders of the Government.

\textsuperscript{13} (1999) 2 SCC 718.
\textsuperscript{14} (2001) 2 SCC 62.
Environmental Courts were advocated in two earlier Judgments also. One was M.C.Mehta v. Union of India\textsuperscript{15} where the Supreme Court said that in as much as environment cases involve assessment of scientific data, it was desirable to set up environment courts on a regional basis with a professional Judge and two experts keeping in view the expertise required for such adjudication. There should be an appeal to the Supreme Court from the decisions of the environment court. The other judgment was Indian Council for Enviro-Legal Action v. Union of India\textsuperscript{16} in which the Supreme Court observed that Environmental Courts having civil and criminal jurisdiction must be established to deal with the environmental issues in a speedy manner.

The Law Commission also observed that the National Environmental Appellate Authority constituted under the National Environmental Appellate Authority act, 1997 for the limited purpose of providing a forum to review the administrative decisions on Environmental Impact Assessment had very little work. Since the year 2000 no Judicial Member had been appointed. So far as the National Environmental Tribunal Act, 19095 is concerned, the legislation has yet to be notified despite the expiry of eight years. Since it was enacted by parliament, the Tribunal under the Act is yet to be constituted. Thus, these two Tribunals are non-functional and remain only on paper.

In view of the observations of the Supreme Court in the above said judgments and having regard to the inadequacies of the existing appellate

\textsuperscript{15} (1986) 2 SCC 176
\textsuperscript{16} (1996) 3 SCC 212
authorities, the Law Commission proposed to review the position with a view to bring uniformity in the constitution of these bodies and the scope of their jurisdiction. These bodies, the Law Commission said, must be called 'Environmental Courts' and should consist of judicial members assisted by technical experts. According to the scheme proposed by the Law Commission, there should be an Environmental Court in each State (or in some cases for one or more States) which should be able to take on the burden of environmental case from the High Courts and at the same time decide these cases with the help of experts. An Environmental Court at the level of each State was proposed by the Law Commission so as to be accessible to the litigants in each State. The Law Commission stated the said Court must have appellate jurisdiction over the authorities under Water Act, 1974, Air Act, 1981 and the Environment Protection Act, 1986. It was proposed that the Environment Court should exercise original as well as appellate jurisdiction. It should be able to grant all orders which a Civil Court could grant including the grant of 'compensation' as visualized by the National Environmental Tribunal Act, 1995.

While proposing the constitution of Environment Courts, which was going to be of great importance for millions of people or our country, the Law Commission had to keep in mind several aspects such as the following:

(a) "The uncertainties of scientific conclusions and the need to provide, not only expert advice from the Bar but also a system of independent expert advice to the Bench itself;
(b) The present inadequacy of the knowledge of Judges on the scientific
and technical aspects of environmental issues, such as, whether the
levels of pollution in a local area are within permissible limits or
whether higher standards of permissible limits of pollution require to
be set up;

(c) The need to maintain a proper balance between sustainable
development and control/regulation of pollution by industries;

(d) The need to strike a balance between closure of polluting industries
and reducing or avoiding unemployment or loss of livelihood;

(e) The need to make a final appellate view at the level of each State on
decisions regarding environmental impact assessment.

(f) The need to develop a jurisprudence in this branch of law which is also
in accord with scientific, technological developments and
international treaties, conventions or decisions

(g) To achieve the objectives of Articles 21, 47, 48-A, 51-A (g) of the
Constitution of India by means of a fair, fast and satisfactory judicial
procedure."\(^{17}\)