The legal and constitutional framework of protection to Environment in India is ascertainable from the provisions of law as found in various sources. As in other Common Law countries in India also matters relating to protection of environment earlier were covered by the Common Law principles which usually provided the remedy of Damages, Injunction and other kinds of traditional remedies. Certain Statutes enacted by the Central Legislature legislature during the period of British regime supplemented the system of remedies. For example, the erstwhile Code of Criminal Procedure enacted during the period of Britishers provided the remedy of injunction in certain situations. After Independence, India adopted a Constitution which contains the fundamental principles on various matters of governance including the matters relating to environment. In the post-Constitution period a few more Statutes have been enacted by the National Legislature, such as, the Water Act (Prevention & Control of Pollution) Act, 1974 the Air (Prevention & Control of Pollution) Act, 1981 the Environment Protection of Act, 1986. These Statutes are the special laws and in most of the cases they have been
enacted under the inspiration of international legislation. Apart from all these the Courts have through their decisions added to the body of the law on environment by way of principles applicable in the matter of awarding the remedies as also in respect of procedural matters.

This chapter has the object of discussing the development of law on the subject of protection to environment. The methodology followed has been to discuss in Section A of this chapter the principles of Common Law which were the first source of law. The type of wrong dealt with by this particular branch of law and the type of remedies that were provided by the rules of Common Law have been covered. Then Section B is devoted to a discussion of the Constitutional provisions which contain the law on the rights of the individuals and the powers of the State authorities in relation to environmental matters; and then there is in Section C of this chapter a discussion on the nature and scope of the principles embodied in the special laws. Thus the whole spectrum of the legal framework at the national level is sought to covered in this chapter.

SECTION 'A' - PRINCIPLES OF COMMON LAW

Common Law principles were the first in Indian law to address themselves to the problems of individual rights. They operated in the form of Law of Torts, addressing the problems arising from various kinds of wrongs and provided various kinds of remedies. This particular branch of law did not
directly deal with environmental problems as such at that time but the environmental problems in their nascent form were effectively dealt with by the Law of Torts. The basic features of Law of Torts may be described in the words of Winfield and Jolowicz thus,

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"The chief source of our Law of Torts is the Common Law as opposed to the Statute Law. This, of course, signifies that it is for the most part based on decided cases and owes its development to the activity of the Judges more than to the activity of Parliament. It also means that the Law of Torts has grown up like other branches of our law behind the screen of legal procedures."¹

Under the rules of Common Law a legal action with regard to any matter affecting the rights and interests of persons could be brought in a court of law through a Form of Action admissible under the rules of Common Law. Under the early rules of Common Law, a rule of action was procedural in nature but later on it contributed to the development of the substantive law as well.²

1. The Action of Trespass

The Writ of Trespass was the first kind of form of action in the 13th century. The Judges of the Common Law courts employed this writ in the

beginning of judicial process in the realm of remedial justice. This form of action had a combined procedure of civil and criminal nature. It operated not only to give the plaintiff damages but also to punish the defendant by a fine payable to the Crown. As these two aspects later became separated the particular branch of law concerned with the evolution of the law on Pollution at this stage was the civil one only. According to the mature theory of law Trespass was the appropriate remedy for any act causing direct and forcible injury, in other words for any direct invasion of a right by some physical interference. This meant not only Trespass to Land but also Trespass to goods and Trespass to person. Trespass was actionable without proof of actual damage.3.

In course of time the Writ of Trespass became a vehicle for protecting the constitutional liberties of the subjects. For example, in the year 1703 a person was able to vindicate his right to vote by an Action of Trespass if his right was improperly rejected by a corporate public official.4

2. The Writ of Trespass Upon the Case

The Common Law from the beginning was not a static body of rules but was capable of altering itself to meet the needs of a changing society. In the first instance, the law made a beginning with the form of action called the Writ of Trespass, but afterwards it underwent a change introducing a new Writ

4 Ashby v. White, 1688 HL.
called the Writ of Trespass upon the Case. Where therefore there was a direct injury caused to a person it was the Writ of Trespass whether the harm was caused to a person, to land or to property. But when in such of the cases where the injury was not direct but indirect, the wrong was remedied by a writ called the Writ of Trespass Upon the Case. It was this kind of a changing trend of the remedial part of the law which was quick in responding to the changes occurring in society.\(^5\)

The introduction of a new Writ in this manner resulted in the extension of the principle of liability. This happened not only in the case of harm to person or to land by way of Nuisance but it happened in the case of Negligence also. The rules of liability developed by the Courts of Common Law both in regard to Nuisance and Negligence are relevant to the present day cases of Environmental Pollution.

3. The Tort of Nuisance

Nuisance is defined as anything injurious or obnoxious to the community or a member of it and for which a legal remedy exists.\(^6\) It is also defined as anything done to the hereditaments of another.\(^7\) As a tort nuisance means an unlawful interference with a person's use or enjoyment of land or some right over or in connection with it. Acts interfering with the comfort,

\(^5\) Clerk & Landsell on Law of Torts.
\(^6\) Concise Oxford Dictionary.
health or safety are examples of it. Interference may be in different ways, for example, Noise, Vibration, Heat, Smoke, Smell, Furnes, Water, Gas, Electricity, diseases producing germs etc.

There is some difference between Nuisance and Trespass which is also a wrong against the possession of property. If interference is direct the wrong is trespass but if it is consequential it amounts to nuisance. If a person plants a tree on another's land it is trespass. But when a person plants a tree over his own land, but the roots or branches project into or over the land of another person, which is a Nuisance.

Nuisance is of two kinds: Public or Common Nuisance and Private Nuisance.

Nuisance is one of the civil remedies available under the Law of Torts. There are two types of nuisances, one is Public Nuisance and other is Private Nuisance. Private Nuisance is essentially confined to invasion of the interests in the use and enjoyment of land, although occasionally an occupier may recover for incidental injury sustained by him in the exercise of an interest in land.

The second type of nuisance is public nuisance. This consists of interference with public or common right which confers a cause of action for
damage on any one sustaining personal injury or other loss although no rights or privileges in land have been invaded at all.

(a) Private Nuisance The distinguishing characteristic of private nuisance is the imposition of liability as a result of an act or omission whereby a person is annoyed or disturbed in the enjoyment of land. The disturbance may take the form of physical damage to the land or the imposition of discomfort upon the occupier. The typical situations which may give rise to liability involve incursion by water, smoke, smell, fumes, gas heat, vibration, electricity, animals and vegetation. Wrongful interference with the exercise of an easement comes within the rubric of private nuisance. Nuisance is thereby really a field of tortuous liability rather than a single type of tortuous conduct.8

In the older cases it was sometimes said that the basis of the law of nuisance is the maxim: Sic Utore Tuo Ut Alianum Non Laedas which had the meaning that a man must not make such use of his property as unreasonably and unnecessarily causes inconvenience to his neighbour. The concept of Private Nuisance is somewhat ambiguous. Sometimes it refers to the conduct of the defendant, sometimes to the result of that conduct and sometimes to such results of that conduct as are actionable.

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(b) Public Nuisance This is essentially criminal, but civil in certain instances. It means that a nuisance which affects convenience of the life of a class of citizens who come into as far as the neighbourhood of its operations may be actionable. In English Common Law a Public Nuisance has been defined as an act not warranted by act or an omission to discharge a legal duty, which act or omission obstructs or causes damage or inconvenience to the public in the exercise of rights common to all of Her Majesty's subjects. This definition suggests that Public Nuisance is concerned with the infringement of public rights. Whether a sufficient number of people have been affected by a nuisance to constitute a class of Her Majesty's subjects is also a question of fact but it is not necessary that all members of the class should be affected. It will be sufficient if a representative of a cross-sections of the class have been inconvenienced. Historically, the crime of public nuisance covered four broad categories, that is public decency, public health, public convenience and public safety. Crimes such as keeping a disorderly house, displaying one's naked body to a crowd are now regulated by Statutes and were never significant in the Law of Tort.  

In determining the standard of liability in nuisance the plaintiff has available remedies which require a different consideration. The purpose of the remedy is to protect the plaintiff from further damage.

(c) Legal Remedy for Nuisance

There are three possible remedies available under the rules of Common Law to a victim of nuisance. These are:

(1) Action for damages;

(2) Injunction, and

(3) A form of self-help known as Abatement.

4. The Tort of Negligence:

The most important tort which aims to compensate for harm is the Action for Negligence, where we can find instances of liability for negligence.

Negligence became the modern Tort Action par excellence in England after the celebrated action in Donogue v. Stevenson.\(^{10}\) Before that there were many rules limiting the type of relationship that could give rise to a duty of care, the kind of person who could claim benefit of the duty and the kind of damage for which he could recover. The courts followed the precedent occasionally extending the remedy slightly too expressing apprehension lest they be too venturesome. Donogue v. Stevenson marked a turning point more significantly perhaps in retrospect than it seemed at the time. All that it actually decided was that the purchaser of a bottle of ginger beer who was (it was assumed) injured by drinking the contents which had been fouled by a snail in the bottle could recover damages for negligence from the manufacturer who had bottled the drink. The decision in itself went one step

\(^{10}\) (1931-1932) Appeal Cases, 562.
further than the previous authority. The magnitude of the decision was its insistence upon the expansible nature of the action of negligence. Lord Macmillan said, “The categories of negligence are never closed” and Lord Atkin stated the famous “Neighbour principle” that a duty of care is owed to all persons who are so closely and directly affected by my acts that I ought reasonably to have them in contemplation as being so affected.” This has wrought a change of attitude.

Among the rules which arose through the Forms of Action the rule of Strict Liability is the most relevant to the concept of Remedies in Torts whether the action is for damages to person, property or reputation, and even today in the field of liability for Environmental pollution the rules of Strict Liability hold the ground.

5. The Rule of Absolute Liability

The Law of Torts developed the rule of absolute liability. Way Back in 1868, the House of Lords formulated the rule of absolute liability in the famous case of Rylands v. Fletcher\(^\text{11}\) but afterwards some exceptions were recognized to this rule on account of which the rule became a rule of strict liability from the rigorous rule of absolute liability. The basis of the law in this case was the following rule propounded by Blackburn J.

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\(^{11}\) 1868 LR 3, HL, 330.
"We think the true rule of law is that the person who for his own purpose brings on his land and keeps there anything likely to do mischief if it escape must keep it in at his peril and if he does not do so is prima facie answerable for all the damage which is the natural consequence of its escape."

6. The significance of the rule of absolute liability in Environmental Pollution Cases With the enactment of various Statutes on various kinds of trespasses, nuisance, and negligent conduct the Common Law has been reduced to a secondary position. But the principles of Common Law have still their significance in view of the fact that they furnish the fundamental ingredients of the wrongs coming under the head of environmental torts or environmental offences. The protection and preservation of environment is now perceived as being of crucial importance to the future of mankind, and public bodies both national and international are taking significant steps towards the establishment of legislation which will promote the protection of environment and make the polluter pay for damage to the environment for which he is responsible. But it does not follow from these developments that the common law principles which had their origin in Trespass, Nuisance and Negligence and which assumed the form of the rule of Strict Liability have since become irrelevant. That is not the case, there is still the relevance of the old rules of liability; what the new jurisprudence of torts has done is it has moulded the relief to suit the new conditions of society. The one particular rule of Common Law which is by far the most important in the realm of liability for
torts, particularly the torts affecting environment even today is the rule of strict liability.

SECTION ‘B’ - PRINCIPLES OF CONSTITUTIONAL LAW

(I) Preamble of the Constitution: The preamble embodies the philosophy and the ideal underlying the Constitution, which begins with the words:

"We, the people of India, having solemnly resolved to constitute India into a sovereign, socialist, secular, democratic republic and to secure to all its citizens:

Justice, social, economic and political;
Liberty of thought, expression, belief, faith and worship;
Equality of status and of opportunity; and to promote among them all fraternity assuring the dignity of the individual and the unity and integrity of the nation..."

The preamble provides that our country is based on socialistic pattern of society where the State pays more attention to the social problems and not to individual problems alone. The basic aim of socialism as adopted in our country is to provide ‘decent standard of life to all’, which can be possible only in a pollution free environment. Pollution is one of the social problems and the
State is required under the Supreme Law to pay more attention to this social problem and march towards the affirmed aim of just social order\textsuperscript{12}.

(ii) Fundamental Rights: Part III of the Constitution contains the fundamental rights which are the magna carta of India. Fundamental rights are sprung out of doctrine of natural right. Fundamental rights are essential for protection of rights and liberties of the people against the arbitrary actions by the governments or any such agency. In the words of J.Bhagwati,

"These fundamental rights represent the basic values cherished by the people of this country since the Vedic times and they are calculated to protect the dignity of the individual and create conditions in which every human being can develop his personality to the fullest extent. They weave a 'pattern of guarantee' on the basic structure of human rights, and impose negative obligations on the State not to encroach on individual liberty"\textsuperscript{13}.

Article 19 of the Constitution grants fundamental right in relation to protection of certain freedoms, such as, the freedom of speech, freedom of assembly, freedom of movement, freedom of residence, freedom of trade etc.

Article 21 of the Constitution provides protection to life and personal liberty; it says, 'No person shall be deprived of his life or personal liberty

\textsuperscript{12}\textsuperscript{12}Environmental Law- Dr. Parmjit S. Jaswal, Dr. Nisha Jaswal, 2\textsuperscript{nd} edition, Pioneer Pub. 2007, P. 37.
\textsuperscript{13}\textsuperscript{13}Maneka Gandhi v. Union of India, AIR 1978 SC 597.
except according to procedure established by law. The first case in which right
to live in healthy environment was regarded by the court as a part of Art. 21
was the Rural Litigation Entitlement Kendra v. State of U.P.\textsuperscript{14} in which a letter
written to the Supreme Court was treated as writ petition. In this case the
court observed that disturbance of ecology and pollution of water, air and
environment by reason of quarrying operation definitely affects the life of the
person and thus involves the violation of right of life and liberty under Art. 21
of the Constitution.

In M.C. Mehta v. Union of India\textsuperscript{15}; known as oleum gas leakage case,
the Supreme Court treated the right to live in a pollution free environment as a
part of fundamental right to life under Art.21, and that private corporation are
subjected to the Art.21 of the Constitution.

(iii) Directive Principles of State Policy

Part IV of the Constitution deals with the directive principles of State
policy. These directive principles represent the socio economic goals which
the nation is expected to achieve. These Directive Principles though
embodied in part IV of the Constitution is at any rate most of them are as
important as the right of individuals\textsuperscript{16}.

\textsuperscript{14} AIR 1985 SC 652 and 1985(2) SCC 431.
\textsuperscript{15} AIR 1987SC 1086 and 1985(1) SCC 395.
The Directive Principles are fundamental in governance of the country and cannot be isolated from the fundamental rights\textsuperscript{17}. But these Directive Principles are not enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws\textsuperscript{18}.

The Directive Principles serve the courts as a code of interpretation. Fundamental rights should be interpreted in the light of the directive principles. The directive principles now stand elevated to inalienable fundamental human right.

Article 47 of the Directive Principles imposes a duty on the State to raise the level of nutrition and the standard of living and to improve public health-

Article 48A was added in the Constitution by 42\textsuperscript{nd} Amendment Act, 1976. It provides for protection and improvement of environment and safeguarding of forest and wild life. It says, ‘The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country’.

Article 48-A of the Constitution casts a responsibility upon the Government to endeavour to protect and improve the environment and to

\textsuperscript{17} Mohini Jain v. State of Karnataka, 1992 (3) SCC 666, AIR 1992 SC 1858.
\textsuperscript{18} Article 37 of the Constitution.
safeguard the forest and wildlife of the country. It is fundamental in the governance of the country and it is the duty of the Government to apply this principle in making laws\textsuperscript{19}. Article 48A along with Article 51A(g) casts a duty on the State to secure the health of the people, improve public health and protect and improve the environment\textsuperscript{20}.

(v) Fundamental Duties:

The Constitution (Forty second) Amendment Act, 1976 has added a new Article, i.e., Article 51A under a new Part IV-A. Under this Article certain fundamental duties are imposed on every citizen of India. Though the Article does not impose specifically a duty on the State, as State is all the citizens placed together and hence, though the article does not expressly cast any fundamental duty on the State, the fact remains that the duty of every citizen of India is the collective duty of the State\textsuperscript{21}. Article states that.

"It shall be the duty of every citizen of India-
(a)...
(g) To protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures;

\textsuperscript{19} Intellectuals Forum v. State of A. P., 2006 (3) SCC 549.
\textsuperscript{20} Shri Sachidanand Pandey v. State of West Bengal, AIR 1987 SC 1109, 1987 (2) SCC 295.
\textsuperscript{21} AIIMS Student’s Union v. AIIMS, 2002(1) SCC 428
Though these fundamental duties are not enforceable by a writ of the court, it provides a valuable guide and aid to interpretation of Constitutional and legal issues.22

(vi) Constitutional Remedies: A right without a remedy does not have much substance. The Fundamental Rights guaranteed by the Constitution would not have been worth nothing had the Constitution not provided an effective mechanism for their enforcement. This remedy is available under Article 32 and 226 of the Constitution.

Article 32 provides remedy for enforcement of fundamental rights. The article state that.

1. The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this part is guaranteed.

2. The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this part. ...”

22 Supra 21.
Under Article 226 of the Constitution, every High Court has power to issue certain writs. The High Courts under this article can exercise their jurisdiction to issue 'directions, orders or writs' so as to enable the High Courts to reach injustice wherever it is found and to mould the reliefs to meet the peculiar and complicated requirement of this country. The Supreme Court has held that the power of the High Courts under Article 226 of the Constitution is basic feature of the Constitution and therefore it cannot be ousted or excluded\textsuperscript{23}.

The Constitution of India, 1950 has many provisions dealing with the policy of the State and the duties and responsibilities of the individuals and the authorities of the State in regard to the protection of environment and prevention of pollution. The State’s Responsibility with regard to environmental protection has been laid down in the Chapter of Directive Principles of State Policy, thus:

"The State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the community." \textsuperscript{24}

\textsuperscript{23} L. Chandra Kumar v. Union of India, AIR 1997 SC 1125.
\textsuperscript{24} Article 48-A of the Constitution.
As far as the authorities of the Union and the State to legislate on matters of environment is concerned the scheme adopted by the Constitution may be noted from the distribution of legislative powers as laid down in the Entries of the three Schedules of the Constitution.

(vii) Distribution of Legislative Power between the Union And the State Legislatures under the Constitution:

The distribution of legislative power between the Union Legislature and the State Legislatures in regard to various subjects is laid down in the form of Entries in the three lists of the Seventh Schedule of the Constitution, which is as follows:

Entries of the Union List:

1. Industries;
2. Regulation and development of oil fields and mineral oil resources;
3. Regulation of mines and mineral development;
4. Regulation and development of inter-State rivers and river valleys;
5. Fishing and fisheries beyond territorial waters.
Entries of the State List:

1. Public Health and sanitation;
2. Agriculture, Protection against pest and prevention of plant diseases;
3. Land, colonization etc.
4. fisheries;
5. Regulation of mines and mineral development
6. Industries subject to the provisions of List I.

Entries of the Common or Concurrent List:

1. Forests;
2. Protection of wild animals and birds;
3. Economic and social planning;
4. Population control and family planning.

According to the provisions of Article 246 (a) of the Constitution, the Union Parliament is supreme to make any law over the subjects mentioned in Union List, and under Article 246 (3) the State Legislatures enjoy competence to legislate on the entries contained in List II, and both the Union and the States under Article 246 (2) have concurrent jurisdiction on entries contained in List III. In the event of a clash, the Union Parliament enjoys primacy over State Legislatures in that its legislation in the Union and the Concurrent List
prevails over State legislations. Also the Union Parliament has residuary powers to legislate on any matter not covered in the three lists.25

SECTION 'C' - PRINCIPLES EMBODIED IN THE SPECIAL LAWS

1. The Air (Prevention and Control of Pollution) Act, 1981.

The underlying idea of this statute was to implement the decisions that had been taken at the United Nations Conference on Human Environment held in Stockholm in June, 1972, in which India had participated. These decisions included the duty of taking for the preservation of the natural resources of the Earth which, including the preservation of the quality of air and control of air pollution. It was considered necessary to implement the decisions stated above in so far as they related to the preservation of the quality of air and control of air pollution. The Water (Prevention and Control of Pollution) Act, 1972 was enacted by the Union Parliament for this purpose.

The objective of this Act is to provide for the prevention, control and abatement of air pollution, for the establishment of Pollution Control Boards with a view to carrying out the aforesaid purposes, for conferring on and assigning to such Boards powers and functions relating thereto and for matters connected therewith.

25 Article 248 of the Constitution.
The primary responsibility of controlling air pollution is on the 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 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 Sec.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 hereunder be bound to comply with such instructions.

The remedial part of the law in case of violation of the Water (Prevention and Control of Pollution) Act 1972, providing for penalties and the sanction of compensation is as follows:-
2. The Water (Prevention & Control of Pollution) Act, 1974:

The object of the Water (Prevention and Control of Pollution) Act, 1974 is to provide for the prevention and control of water pollution and maintaining or restoring of the wholesomeness of water, and for the establishment of Boards to carry out these purposes. Chapter I of the Act defines various terms which are used in the Act. Chapter II provides for constitution of Central Board, State Board and Joint Boards.

The objectives of this Act are to provide for the prevention and control of water pollution and the maintenance or restoration of the wholesomeness of water and for the establishment 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.

According to the provisions of this Act, ‘Pollution’ means:

Contamination of water;

Alteration of the physical, chemical or biological properties of water;

Discharge of any sewage or trade effluent or any other liquid, gaseous or solid substance into water (whether directly or indirectly) Which may, or is likely to, create a nuisance or render such water harmful or injurious to public

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26 Preamble of the Water Act.
health or safety, or to domestic, commercial, industrial, agricultural or other legitimate uses, or to the life and health of animals or plants or of aquatic organisms.

Apart from this Act there are several other Acts also enacted by the appropriate legislatures for controlling/preventing water pollution, for example;

The Shore Nuisance (Bombay and Kolaba) Act, 1853, the Orient Gas Company Act, 1857; the Indian Penal Code, 1860, the Serais Act, 1867; the North India Canal and Drainage Act, 1873; the Obstruction in Fairways Act, 1881; the Indian Easement Act, 1882, the Indian Fisheries Act, 1897, the Indian Ports Act, 1908, the Indian Steam Vessels Act, 1917 the Poison Act, 1919, the Indian Forests Act, 1927 etc.

3. The Environment Protection Act, 1986:

This is the third important legislation on environmental matters. The nature and scope of this legislation can be understood if a reference is made to the Statement of Objects and Reasons of the Environment Protection Act, which inter alia stated as under:

"The decline in environmental quality has been evidenced by increasing pollution, loss of vegetal cover and biological diversity and excessive concentration of harmful chemicals in the ambient
atmosphere and in food chains creating risk of environmental accidents and threats to life support systems. The world community's resolve to protect and enhance the environmental quality found expression in the decision taken at the United Nations Conference on Human Environment held in Stockholm in June, 1972. The Government of India participated in the Conference and strongly voiced the environmental concerns. While several measures have been taken for environmental protection both before and after the Conference the need for a general legislation further to implement the decisions of the Conference has become increasingly evident. ...

Existing laws generally focus on specific types of pollution or on specific categories of hazardous substances. Some major areas of environmental hazards are not covered. There also exist uncovered gaps in the major areas of environmental hazards. There are inadequate linkages in handling matters of industrial and environmental safety. Control mechanisms to guard against slow, insidious build-up of hazardous substances, especially new chemicals in the environment are weak. Because of multiplicity of regulatory agencies there is need for authority which can assume the lead ole for studying, planning and implementing long term requirements of environmental safety and to give direction to and carrying a system of safety and adequate response to emergency situation threatening the environment....
In view of what has been stated above there is an urgent need for the enactment of a general legislation on environmental protection which inter alia should enable coordination of activities of the various regulatory agencies; creation of an authority or authorities with adequate powers for environment protection, regulation of discharge of environmental pollutants and handling of hazardous substances, speedy response in the event of accidents threatening environment and deterrent punishment to those who endanger human environment; safety and health...."

According to Section 2 of Environment Protection Act "environment" includes water, air and land and the inter-relationship which exists among and between water, air and land, and human beings, other living creatures, plants, micro-organism and property. Environmental pollutant means any solid, liquid or gaseous substance present in such concentration as may be, or tend to be injurious to environment. Environmental pollution means the presence in the environment of any environmental pollutant.

Section 3 of the Environment Protection empowers the Central Government to take measures to protect and improve the environment. It 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 environmental pollution. Sub-Section 3 of Section 3 provides that 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 as may be mentioned in the order.

Section 4 of the Act empowers the Central Government to 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 the Act as it may deem fit.

Section 5 of the Act gives directions to any person, officer or any authority and such person, officer or authority shall be bound to comply with such directions.

4. THE FOREST ACT 1927

This statute is yet one more step in the matter of protecting the environment and preventing the pollution when it occurs in the protected areas of the Forests. Under Sec.29 of this Act the State Government may declare the provisions of this Act to be applicable to any forest-land or waste-land which is not included in a reserved forest, but which is the property of the Government or over which the Government has proprietary rights, or to the whole of any part of the forest produce of which the Government is entitled.
The forest land and waste land comprised in any such notification is called a 'protected forest'.

However, there is a limitation on the power of the Government to declare a certain area by its Notification as a 'protected forest land', because Sub-section 3 of Sec.29 says,

"No such notification shall be made unless the nature and extent of the rights of Government and of private persons in or over the forest land or waste land comprised therein have been inquired into and recorded at a survey or settlement, or in such other manner as the State Government thinks sufficient. Every such record shall be presumed to be correct until the contrary is proved,

Provided that if, in the case of any forest-land or waste-land, the State Government thinks that such enquiry and record are necessary but that they will occupy such length of time as in the meantime to endanger the rights of Government, the State Government may, pending such inquiry and record, declare such land to be a protected forest, but so as not to abridge or affect rights of individuals or communities."
Protection of Forests for special purposes:

Section 35 of the Indian Forest Act provides that “the State Government may, by notification in the official Gazette, regulate or prohibit in any forest or waste land:

a) The breaking up or clearing of land for cultivation;
b) The pasturing of cattle;
c) The firing or clearing of the vegetation.

5. THE FOREST CONSERVATION ACT 1980

An important change occurred in the Environmental Laws of our country when the Forest Conservation Act was passed in 1980 which may be explained thus:

Breaking up of the soil or the clearing of the forest land seriously affects re-afforestation or regeneration of forest. Therefore, such breaking up of the soil can only be permitted after taking into consideration all aspects of the question, such as the overall advantages and disadvantages to the economy of the country, environmental conditions, the ecological imbalances, that are likely to occur, the effects on the flora and the fauna in the area etc.
It was, therefore, thought that the entire control of forest areas should vest in the Central Government. With that end in view, Sec.2 provided that the entire control of forest areas should vest in the Central Government. With that end in view, Sec.2 provided that prior approval of the Central Government should be obtained before permitting the use of the forest land for non-forest purposes. "Non-forest purpose" under the Forest Conservation Act, 1980 means the breaking up or clearing of any forest land or portion thereof for the cultivation of tea, coffee, spices, rubber, palms, oil-bearing plants or medicinal plants, and any purpose other than re-afforestation, but does not include any work relating or ancillary to conservation, development and management of forest and wild life.

6. THE WILD LIFE PROTECTION ACT, 1972

The Wild Life Protection Act enacted by the Union Parliament in the year 1972 is yet another important legislation in the system of Environmental Laws of our country. According to this Act, "wildlife" includes any animal, bees, butterflies, crustacean, fish and moths; and aquatic or land vegetation which forms part of any habitat.

While the above Statutes are examples of the statutes enacted by the Central Legislature on Environmental matters, there are also a good number of Statutes enacted by the State Legislatures in the exercise of their legislative powers under the Constitution.
7. PRINCIPLES OF LIABILITY EMBODIED IN THE STATUTE LAW

The provisions of the Water (Prevention and Control of Pollution) Act lay down the penalties for the contravention of the Act as follows:

According to Section 24 of the Water Act, 1974:

a. No person should knowingly cause or permit any poisonous, noxious or pollution matter determined in accordance with such standards as may be laid down by the State Board to enter (whether directly or indirectly) into any stream or well or sewer or on land, or

b. No person shall knowingly cause or permit to enter into any stream any other matter which may tend, either directly or in combination with similar matters, to impede the proper flow of the water of the stream in a manner, leading or likely to lead to a substantial aggravation of pollution due to other causes or of its consequences.

Sec.37: Failure to comply with the provisions of Section 21 or Section 22 or with the directions issued under Section 31-A:

1. Whoever fails to comply with the provisions of Section 21 or Section 22 or directions issued under Section 31-A shall, in respect of each such
failure, be punishable with imprisonment for a term which shall not be less than one year and six months but which may extend to six years and with fine, and in case the failure continues, with an additional fine which may extend to five thousand rupees for every day during which such failure continues after the conviction for the first such failure.

2. If the failure referred to in sub-section (1) continues beyond a period of one year after the date of conviction, the offender shall be punishable with imprisonment with a term which shall not be less than two years but which may extend to seven years and with fine.

Section 38: Penalties for certain acts:

Whoever, pulls down, removes, injures or defaces any pillar, post or stake fixed in the ground or any notice or other matter put up, inscribed or placed, by or under the authority of the Board, or

Obstructs any person acting under the orders or directions of the Board from exercising his powers and performing his functions under this Act, or

Damages any works or property belonging to the Board, or
Fails to furnish to the Board or any officer or other employee of the Board any information required by the Board or such officer or other employee for the purpose of this Act, or

Fails to intimate the occurrence of the emission of air pollutants into the atmosphere in excess of the standards laid down by the State Board or the apprehension of such occurrence, to the State Board and other prescribed authorities or agencies as required under sub-Section (1) of Sec.23, or

In giving any information which he is required to give under this Act, makes a statement which is false in any material particular, or

For the purpose of obtaining any consent under Section 21, any person who makes a statement which is false in any material particular shall be punishable with imprisonment for a term which may extend to three months or with fine which may extend to ten thousand rupees or with both.

Section 39: Penalty for contravention of certain provisions of the Act:

Whoever contravenes any of the provisions of this Act or any order or direction issued hereunder, for which no penalty has been elsewhere provided in this Act, shall be punishable with imprisonment for a term which may extend to three months or with fine which may extend to ten thousand rupees or with both, and in the case of continuing contravention, with an additional
fine which may extend to five thousand rupees for every day during which such contravention continues after conviction for the first such contravention.

**Penalty for contravention of provisions of Section 24 of the Air Act:**

Whoever contravenes the provisions of Section 24 shall be punishable with imprisonment for a term which shall not be less than one year and six months but which may extend to six years and with fine.

**Liability of Companies under the Environment Laws:**

The three important legislations discussed above contain provisions in identical terms about the liability of companies for the contravention of any of the provisions of the Act or the rules made under the Act. In all the three Acts, i.e., the Air Act, the Water Act and the Environment Act the provision of law about penal liability of companies runs as follows:

"Where any offence under this Act has been committed by a company every person who at the time the offence was committed was in charge of and was responsible to the company for the conduct of the business of the company as well as the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act if he proves that the
offence was committed without his knowledge or that he exercised all due
diligence to prevent the commission of such offence.

Notwithstanding anything contained in sub-section (1) where an
offence under this Act has been committed by a company and it is proved that
the offence has been committed with the consent or connivance of, or is
attributable to any neglect on the part of, any director, manager, secretary or
other officer shall also be deemed to be guilty of that offence and shall be
liable to be proceeded against and punished accordingly."

**Liability of Government Departments:**

Like the provisions on penal liability of companies there are provisions
in the I Laws about the penal liability of Government Departments in all the
three Statutes in identical terms. The provisions read as follows:

"Where an offence under this Act has been committed by any
Department of Government, the head of the Department shall be
deemed to be guilty of the offence and shall be liable to be proceeded
against and punished accordingly."

**Penal Liability for violation of the Environment Protection Act:**

The Environment Protection Act provides for penalties if there is
violation of any of the provisions of the Act or the rules made under the Act:
“Whoever fails to comply with or contravenes any of the provisions of this Act, or the rules made or orders or directions issued there under, shall in respect of each such failure or contravention, be punishable with imprisonment for a term which may extend to five years or with fine which may extend to one lakh rupees, or with both, and in case the failure or contravention continues, with additional fine which may extend to five thousand rupees for every day during which such failure or contravention continues after the conviction for the first such failure or contravention.

If the failure or contravention referred to in sub-section (1) continues beyond a period of one year after the date of conviction, the offender shall be punishable with imprisonment for a term which may extend to seven years.”

According to Section 24 of the Act, “where any act or omission constitutes an offence punishable under this Act and also under any other Act then the offender found guilty of such offence shall be liable to be punished under the other Act and not under this Act.”

Even the companies are liable under the Act as in the case of contravention of the provisions of the other two Acts, i.e., the Air Act and the Water Act.