CHAPTER- 3
ENVIRONMENTAL PROTECTION IN INDIA: LAWS AND POLICIES

The emergence in recent years of global environmental issues like Ozone depletion, climatic change and the loss of biodiversity has brought environment considerable prominence on the international political agenda. The most important example of this new found status is the way in which the United Nations Conference on Environment and Development (UNCED) brought about the largest gathering of world leaders in history at Rio-de-Janeiro in 1992. Resolutions related to Global environmental issues require the cooperation of a large part of the international community; the unilateral efforts of a state or a small group of states, however powerful, are likely to prove inadequate.¹

Over the past several decades, growing public awareness regarding threats to the environment, informed by warnings of scientists, has led to the demand that law should protect the natural surroundings on which human well being depends. Under growing pressure issuing from national and international public opinion, governments began to demonstrate concern over the general state of the environment during the 1960s and introduced legislation to combat pollution of inland waters, Ocean and air, and to safeguard certain cities or areas. Simultaneously, they established special administrative organs, ministries or environmental agencies, to preserve the quality of life of their citizens more effectively. Today, national and international environmental law is complex and vast, comprising thousands of rules that aim to protect the earth’s living and non-living elements and its ecological processes.²

². Dinah Shelton and Alexandre Kiss, Judicial Handbook on Environmental Law, United Nations Environment Programme, United Kingdom, 2005, p.3.
There is no doubt that law can prove to be a vital tool for bringing about socio-economic changes. Wisely used and effectively employed, it can provide the most peaceful and smooth means of change. The horizon of Law is expanding to cover new areas and there is hardly any field inhuman activity which does not in one way or the other, come into contact with law. Law gives protection to life, liberty and property and provides the means for bringing to book those who are guilty of violation. Laws lay down norms for specific settlement of disputes and prescribe the procedure. Laws secure basic freedoms and prohibit their infringement. Environmental law is a complex and interlocking body of treaties, conventions, statutes, regulations, and common laws that operate to regulate the interaction of humanity and the natural environment, toward the purpose of reducing the impacts of human activity.

Environmental law is the law relating to environment. It deals with the protection of environment and seeks to control and prevent environmental pollution. For this purpose, it constitutes environmental authorities, provides powers and lays down their functions, duties and liabilities. Environmental law derives its relevance and strength from numerous other disciplines such as biology, biotechnology, ecology, economics, hydrology, medicine, political science, psychology and public administration. It is quite clear that environmental law cannot be separated from politics and its study also demands an understanding of ecology. Such inter-dependence of environmental law with other disciplines is a peculiar factor which makes it a distinct branch of law.

Environment planning and preservation is today the concern of all. With the introduction and propagation of the concept of Social Welfare State; now the state is not merely concerned with the maintenance of law

4. [http://www.iwawaterwiki.org/xwiki/bin/view/Articles/Waterenvironmen talregulation](http://www.iwawaterwiki.org/xwiki/bin/view/Articles/Waterenvironmen talregulation).
and order in the society but has also assumed all the duties which touch public life, public welfare and hence it becomes an essential duty of the state to provide every citizen a healthy environment to live in.\textsuperscript{6} However, different dimensions of the problem of environment protection and its management have taken a serious turn in the present era. If human beings are serious about the quality of life not only for the present generation but also for the future generation, then human beings have to maintain ecological balance, protect the environment from pollution and manage and improve it properly.\textsuperscript{7}

The World Community’s resolve to protect and enhance the environmental quality has found expression in the decisions taken at the United Nation’s Conference on Human Environment held in Stockholm in June 1972. The Government of India also participated in the conference and strongly voiced environmental concerns. While several measures have been taken for environmental protection, both before and after the conference, the need for general legislation to further implement the decisions of the conference has become increasingly evident. In India, although there were existing laws dealing directly or indirectly with several matters, there was an urgent need to provide for general legislation for environment protection.\textsuperscript{8}

Environmental regulation in India has a fairly long history. The religious scriptures and codes constituted the basis for the law and the state policy in the ancient past.\textsuperscript{9}

A small number of legislative and regulative measures were initiated during the British rule (pre-independence period) in India to prevent and


\textsuperscript{8} Ibid.

\textsuperscript{9} Rama Chandraguha, “Pre History of Indian Environmentalism,” Economic and Political Weekly, January 4-11, Calcutta, 1992, p.57.
control pollution of different segments of environment. These laws, however, had a narrow purpose and limited territorial approach. The Shore Nuisance (Bombay and Colaba) Act, 1853 was the earliest of the legislative enactments during the British Rule. The Act conferred wide powers to the collector of Land Revenue, Bombay to give notice to any offending party, requiring the removal of any nuisance any-where below high-water mark in the Bombay harbor.\textsuperscript{10}

Another one of the oldest pieces of legislation dealing with the control of water pollution and air pollution caused by industrial effluents of Oriental Gas Company was the Oriental Gas Company Act, 1857. This Act was a penal statute by nature as it provided for the punishment if the company caused water to be fouled or corrupted.\textsuperscript{11} The object behind its enactment was to satisfy those who were agitating against the establishment of this Gas Company, which might pollute pure and clean water.\textsuperscript{12}

The North Indian Canal and Drainage Act, 1873 provided that any interference with or alteration in the flow of water in any river or stream, so as to endanger, damage or render less useful any canal or drainage work would be an offence punishable with imprisonment not exceeding one month or a fine not exceeding Rs. 50/- or both. Certain offences have been listed under the Act contained in Section 70.

The Fairways Act, 1881 empowered the Central Government to make rules to regulate or prohibit the throwing of rubbish in any fairway leading to a port causing or likely to give rise to a bank or shoal.\textsuperscript{13}

Further, the Indian Penal Code, 1860 under its Section 277 lays down that, whoever, voluntarily corrupts or fouls the water of any public spring or reservoir, so as to render it less fit to the purpose for which it is

\textsuperscript{10} Section 1 of the Shore Nuisance (Bombay and Colaba) Act, 1853.
\textsuperscript{11} Section 15 and 17 of the Oriental Gas Company Act, 1857.
\textsuperscript{13} Section 8 of the Fairways Act, 1881.
ordinarily used, shall be punished with imprisonment for a term which may extend to three months, or with a fine which may extend to five hundred rupees or with both”. This provision was extremely limited in scope. It applied only to public springs or reservoirs.

The Indian Fisheries Act, 1897 contains seven sections. Section 5 of the Act prohibits destruction of fish by poisoning waters. Similarly Bengal Smoke Nuisance Act, 1905; Bombay Smoke Nuisance Act, 1912, and the Boilers Act of 1923 were the earlier laws, enacted during the British rule, aimed at controlling air pollution.\(^\text{14}\) Forest Act, 1927 was passed with a view to provide teeth to the Forest policy of 1894 providing for state monopoly over the forests. The Indian Fisheries Act, 1907; The Indian Ports Act, 1907; The Motor Vehicles Act, 1938 were some of the instances of the above type.\(^\text{15}\)

**Constitutional Provisions for Environmental Protection in India**

The constitutions of the nations become a source of environmental laws when they provide environmental right for the citizens. The constitutional right to healthy environment has been interpreted by the courts in many countries to provide and redress in case of environmental damage. The interpretations of such constitutional provisions provide more strength to environmental law and enhance access to justice by providing relief to the aggrieved persons.\(^\text{16}\)

India is one of the very few countries, which have enshrined a commitment to environmental protection and improvement in their Constitutions. Initially, the Indian Constitution did not make any direct

\(^\text{14}\) Kailash Thakur, *op. cit.*, p. 111.
reference to environmental protection as such.\textsuperscript{17} It placed the onus on the 
\textit{State}\textsuperscript{18} as well as Citizens\textsuperscript{19} to protect and improve the environment.  

\textbf{(a) Preamble:} The Preamble of the Indian Constitution provides that our 
country is based on a “Socialistic” pattern of society, where the state pays 
more attention to the social problems than any “individual” problems. The 
basic aim of socialism is to provide “decent standard of life to all”, which 
can be possible only through pollution free environment. Another objective 
of the preamble is to assure “dignity of the individual”. No person can live 
with full of dignity unless he has a pollution free environment to live in.\textsuperscript{20} 

\textbf{(b) Protection of Environment as a Fundamental Duty and Right:} The 
Constitution of India is the supreme law of the nation. Articles 38, 39, 46 
and 47 give some directions to be followed by the State. Though, initially 
there was no specific Constitutional provision to protect the environment 
in general but the new part IV-A of the Constitution containing the 
fundamental duties of the citizens of India, which has been incorporated 
by the Constitution (42\textsuperscript{nd} Amendment) Act, 1976. Article 51-A(g) provides 
that: 

“To protect and improve the natural environment including 
forests, lakes, rivers and wild life and to have compassion for 
living creatures”\textsuperscript{21} 

It is to be noted that these duties are the duties of the individual 
citizens.\textsuperscript{22} These fundamental duties are not enforceable by means of writ 
of mandamus.\textsuperscript{23} 

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\textsuperscript{17} Suresh Jain and Vimala Jain, et al. (eds.), \textit{Environmental Law in India}, The Lawyers 
\textsuperscript{18} House, Indore, 1984, p. 3. 
\textsuperscript{19} Article 48-A of the Constitution of India. 
\textsuperscript{20} Article 51-A (g) of the Constitution of India. 
\textsuperscript{21} Archana Mishra, \textit{Environmental Studies: Systems & Solutions}, Selective & Scientific 
\textsuperscript{23} Surya Narain vs Union of India, A.I.R. 1982 Raj. 1. 
\textsuperscript{24} Ibid. 
\end{center}
Article 19(1) (a) guarantees every citizen a fundamental freedom of speech and expression. It also includes freedom of press. In India public opinion and media have played a very important role in moulding the public perception about environmental issues. Various non-governmental organizations (NGO’s) have raised various important environmental issues by making use of their fundamental freedom under article 19(1)(a). In one such instance, the use of freedom of speech and expression by the Kerala Sastra Sahitya Parishad (KSSP), non-governmental organizations and environmentalists within and outside the government, and the intervention of media compelled the government to abandon, “the Silent Valley Project”. Again in Tehri Dam Project, the public opinion and media compelled the government to make proper environment impact assessment of the proposed dam.

Article 19(1)(g) of the Constitution states that, “All citizens shall have the right to practice any profession or carry on any occupation, trade or business”. On the other hand, environmental regulation has been growing more stringent and its enforcement has been becoming more challenging in the view of industrial development. In view of this it is provided that the Courts will, under judicial obligation, maintain balance between the environmental interest and the fundamental right to carry on any occupation, trade, or business as envisaged under this Article. However, this right is also not absolute. It can be subjected to reasonable restriction in the general interest of public under Article 19(6).

Article 21 guarantees the right to life and personal liberty. An extensive interpretation has been given by the judiciary, which include the fundamental right to a clean environment. The Supreme Court has repeatedly made it clear that right to life under Article 21 of the

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24. Archana Mishra, op. cit., p. 242. See also Article 19(1)(g) of the Constitution of India.
26. Article 19(6) of the Constitution of India. See also S.C. Tripathi, op. cit., p.223.
Constitution includes right to pollution free air and water. The Supreme Court has held that right to live is a fundamental right under Article 21 of the Constitution and it includes the right of enjoyment of pollution free water and air for full and complete enjoyment of life. Thus right to pollution free enjoyment is justifiable and enforceable.27

(c) Environment Protection and Directive Principles of State Policy:

Part IV of the Constitution lays down certain fundamental principles of state policy, which the future government of the country will have to take into account while framing the laws for the governance of the country. Though the directives, incorporated in Part IV of the Constitution are not enforceable in a court of law but the Indian Judiciary has made use of these directions in a number of cases.28 The Directive Principles of State Policy provide for certain directives to state regarding the protection and improvement of environment under Article 48(A) which states;

“The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country”.29

Article 47 of the Constitution provides that the state shall regard the raising of the level of nutrition and the improvement of public health as among its primary duties; and the standard of living of its people, and in particular, the state shall endeavour to bring about prohibition of the consumption except for medical purposes of intoxicating drinks and of drugs, which are injurious to health.30

Article 48 provides that the state shall endeavour to organize agriculture and animal husbandry on modern and scientific lines and shall in particular; take steps for preservation and improvement of breeds,

27. Ibid, pp.225-226. See also Article 21 of the Constitution of India.
28. Kailash Thakur op. cit., p. 201. See Also Part IV of the Constitution of India.
30. Article 47 of the Constitution of India.
and prohibition of the slaughter of cows and calves and other milk and draught cattle, which help in maintaining ecological balance.\textsuperscript{31} 

Article 49 of the Constitution of India provides that it shall be the obligation of the state to protect every place or object of artistic or historic interest declared by or under law made by Parliament to be of national importance from spoliation, disfigurement, destruction, removal, disposal or export, as the case may be.\textsuperscript{32}

Article 37 provides that the aforesaid provisions contained in part IV of the constitution shall not be enforceable by any court but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be duty of the state to apply these principles in making laws.\textsuperscript{33}

The Constitution thus, makes two-fold provisions. On the one hand, it gives directive to the state for the protection and improvement of environment and on the other side, it casts a duty on every citizen to help in the preservation of natural environment. These provisions are indicative of the policy makers’ awareness of contemporary problems and of the need for providing constitutional base for further action at the national, state and local level.

**(d) Article 32 and 226 of the Constitution:** One of the most innovative part of the Constitution is that right to enforce the fundamental rights by moving to the Supreme Court, is itself a fundamental right under article 32 of the Constitution. The importance of Article 32 was explained by the Supreme Court in Cheetriya Pardushan Mukti Sanghrash Samiti v. State of U.P,\textsuperscript{34} where the Court held that Article 32 is a great salutary safeguard for preservation of fundamental rights of the citizens. Every citizen has a fundamental right to have the enjoyment of life and living as contemplated by Article 21 of the Constitution. Writ jurisdiction is conferred on the

\textsuperscript{31}. Article 48 of the Constitution of India.
\textsuperscript{32}. Article 49 of the Constitution of India.
\textsuperscript{33}. Article 37 of the Constitution of India.
\textsuperscript{34}. A.I.R, 1990 Sc 2060
Supreme Court, under article 32 and on all the eighteen (now twenty four) high courts under article 226 of the Constitution. Under these provisions the Supreme Court and High Courts have the power to issue any direction or orders or writs, including writs in the nature of habeas corpus, mandam u’s, prohibition, quo-warranto and certiorari, whichever is appropriate.\textsuperscript{35}

In India, most of the environmental jurisprudence has been developed through writ jurisdiction. Judicial activism and the development of the concept of public interest litigation (PIL) or social action litigation under the writ jurisdiction of the Supreme Court and High Courts have brought a revolutionary change in the processual jurisdiction and it has played a pivotal role in developing and providing impetus to environmental jurisprudence with human rights approach.\textsuperscript{36} Thus Constitution of India provides the right to live in healthy environment as fundamental right of all human beings and also mentions that it has to be secured by the state.\textsuperscript{37}

\textbf{Environmental Legislative Powers}

The Constitution of India empowers the Parliament and State Legislatures for making laws. The Parliament can make law with respect to the matters contained in the Union List of the Seventh Schedule and State Legislatures can make laws on the subjects enumerated in the State List of the Seventh Schedule.\textsuperscript{38}

Article 246 makes arrangement for the Parliament to make laws on the subjects enlisted in the Concurrent List also.\textsuperscript{39} The residuary powers are vested in the Parliament.\textsuperscript{40} Article 252 enables the Parliament to make a law on any of the subjects falling under the State List with the consent

\textsuperscript{35}. Articles 21, 32 and 226 of The Constitution of India.
\textsuperscript{37}. \textit{Ibid}, p.77.
\textsuperscript{38}. Vikas Vashishth, \textit{op. cit.}, p.21.
\textsuperscript{39}. Article 246 of the Constitution of India.
\textsuperscript{40}. Article 248 of the Constitution of India.
of two or more states.\textsuperscript{41} The legislative power, under Article 253 is very extensive as it authorizes the Parliament to make law for implementing any international treaty, convention or agreement on any subject of State List.\textsuperscript{42}

It is important to point out here that the 42\textsuperscript{nd} Amendment inserted Entry 17-A also in List III of Seventh Schedule providing for forests. Originally, forests were a subject under the State List. As a result of this change, now the Parliament and the State Legislature both can pass legislation on this subject. Similarly, the subject of protection of wild animals and birds was also transferred from List-II to List-III, under entry 17B. Further, the above Constitution Amendment Act, for the first time, introduced a new entry viz. 20A in List III after entry 20. Entry 20A deals with population control by holding that the enormous increase in population was mainly responsible for the modern environmental problems. These amendments clearly show the concern of Indian Legislature to give priority to environment protection by bringing it on the national agenda.\textsuperscript{43}

There are various entries in the lists of Seventh Schedule of the Constitution relevant to environment as in:

List- I (Union List)\textsuperscript{44}: 6\textsuperscript{th}, 14, 24, 25, 29, 52, 53, 54, 56, 57.

\textsuperscript{41} Article 252 of the Constitution of India.
\textsuperscript{42} Article 253 of the Constitution of India.
\textsuperscript{43} S.L. Aggarwal, \textit{Legal Control of Environmental Pollution}, Indian Law Institute, New Delhi, 1980, p. 7. See Also Entries 17A, 17B and 20 of the 42\textsuperscript{nd} Amendment of the Constitution of India.
\textsuperscript{44} Union List, 7\textsuperscript{th} Schedule of the Constitution of India have various Entries about environment and its protection: Entry No. 6 is related to atomic energy and mineral resources and their production, Entry No. 14 is associated with treaties and agreement with foreign countries and implementing of treaties, agreements and conventions with foreign nations, Entry No. 24 is related to Shipping and navigation on inland waterways, Entry No. 25 is linked with maritime shipping and navigation, including shipping and navigation on tidal waters, Entry No. 29 is related to airways regulation and organization of air traffic and of aerodromes, Entry No. 52 is associated with Industries, the control of which is declared by the Parliament, by law to be expedient in the public interest, Entry No. 53 is linked with Regulation and development of oil fields and mineral oil resources, petroleum and petroleum products, liquids and substances declared by parliament by law, to be dangerously
List- II (State List)\textsuperscript{45}: 6\textsuperscript{th}, 14, 15, 16, 17, 18, 21, 23, 24, 25.

List- III (Concurrent List)\textsuperscript{46}: 17A, 17B, 20, 20A, 29, 36, 37, 40.

As conferred by Article 246(1), while the Union is supreme to make any law over the subjects enumerated in List-I, the states, under Article 246(3), enjoy competence to legislate on the entries contained in List-II, and both the Union and States under Article 246(2) have Concurrent jurisdiction on entries contained in List-III. In the event of a clash, the Union enjoys a primacy over States in that its legislation in the Union and the Concurrent List prevails over State legislations.\textsuperscript{47} Also the Parliament has residuary powers to legislate on any matter not covered in the three Lists.\textsuperscript{48}

The items specifically mentioned under the above three lists offer enormous scope for making laws for pollution prevention and environmental improvement in areas such as noise control, land improvement, irrigation, town planning, slum clearance, air and water

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\textsuperscript{45} State List, 7\textsuperscript{th} Schedule of the Constitution of India have various Entries about environment and its protection: Entry No. 6 is related to Public health and sanitation, Entry No. 14 is related to Agriculture, protection against pests and prevention of plant diseases, Entry No. 15 is related to Preservation and prevention of animal’s diseases, Entry No. 16 is related to Ponds and prevention of cattle trespass, Entry No. 17 is related to water, subject to provision of List-I, Entry No. 18 is related to Land, colonization, etc., Entry No. 21 is related to Fisheries, Entry No. 23 is related to Regulation of mines and mineral development subject to provision of List-I, Entry No. 24 is related to Industries, subject to provision of List-I and Entry No. 25 is related to gas work.

\textsuperscript{46} Concurrent List, 7\textsuperscript{th} Schedule of the Constitution of India have various Entries about environment and its protection: Entry No. 17A is related to Forests, Entry No. 17B is related to Protection of wild animals and birds, Entry No. 20 is related to Economic and social planning, Entry No. 20A is related to Population control and family planning, Entry No. 29 is related to Prevention of the extension from one state to another of infectious or contagious diseases or pests effecting man, animals or plants, Entry No. 36 is related to factories, Entry No. 37 is related to boilers and Entry No. 40 is related to Archeological sites and remains.

\textsuperscript{47} Article 246 of the Constitution of India.

\textsuperscript{48} Article 248 of the Constitution of India.
pollution, smoke and pest control, wildlife preservation, etc.\textsuperscript{49} So the Constitution of India has become the principal source of environmental laws which contains specific provisions for environmental protection.

Apart from this, the Five years plans introduced from time to time also incorporate provisions relating to protection of environment and forests. The Tenth Plan (2002-2007) contain the objective to increase the forest cover from 25% to 33% by 2012, to provide potable drinking water in all the villages and to clean all major polluted rivers by 2007 and other notified stretches by 2012. The Eleventh Five year plan contains the objective to increase the forest and tree cover by 5%, to attain WHO standards of air quality in all major cities by 2011-12 and to clean river waters.\textsuperscript{50}

Along with these legislative measures, a National Committee on Environmental Planning and Co-ordination (NCEPC) also known as Tiwari Committee, 1980 was established by the Central Government. It was established to consider environmental problems and make recommendations for their solutions. The NCEPC was an apex advisory body in all the matters relating to environmental protection and improvement. The Committee was assisted by the Department of Science and Technology and an office of Environmental Planning and Co-ordination (OPEC) was set up under the direction of the Chairman of the Committee.\textsuperscript{51}

\textbf{Ministry of Environment and Forests (MOEF)}

A full-fledged Ministry of Environment and Forests was set up in 1985. The Ministry of Environment & Forests (MOEF) is the nodal agency in the administrative structure of the Central Government for the

\textsuperscript{50} \url{http://www.en.wikipedia.org/wiki/five-yearplansofindia}.
planning, promotion, co-ordination and overseeing the implementation of India's environmental and forestry policies and programmes.

The Ministry also serves as the nodal agency in the country for the United Nations Environment Programme (UNEP), South Asia Co-operative Environment Programme (SACEP), and International Centre for Integrated Mountain Development (ICIMOD) and for the follow-up of the United Nations Conference on Environment and Development (UNCED). The Ministry is also entrusted with issues relating to multilateral bodies such as the Commission on Sustainable Development (CSD), Global Environment Facility (GEF) and of regional bodies like Economic and Social Council for Asia and Pacific (ESCAP) and South Asian Association for Regional Co-operation (SAARC) on matters pertaining to the environment.\(^{52}\)

Its objectives are well supported by a set of legislative and regulatory measures, aimed at the preservation, conservation and protection of the environment. Besides the legislative measures, the National Conservation Strategy and Policy Statement on Environment and Development, 1992; National Forest Policy, 1988; Policy Statement on Abatement of Pollution, 1992; and the National Environment Policy, 2006 also guide the work of MOEF.

Three different bodies are established under this ministry, namely, National Waste Land Development Board, Department of Environment, Forests and Wildlife, and the Directorate of Ganga Project. While the second agency looks after the broader aspects of environmental problems, the first and the last departments are expected to take care of specific problems of waste lands and cleaning up of the river Ganga. The Central office of the ministry of environment and forestry co-ordinates the

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\(^{52}\) [http://envfor.nic.in/modules/about-the-ministry/introduction.](http://envfor.nic.in/modules/about-the-ministry/introduction.)
activities of six regional offices established in southern, western, eastern,
northern, central and north-eastern regions.\textsuperscript{53}

**Environmental Impact Assessment (EIA)**

EIA is an important management tool for integrating environmental concerns in the development process and for improved decision making. MOEF in 1994 issued the first EIA notification prescribing mandatory environmental clearance for 32 categories of developmental activities. This process takes time, often causing long delays in commencement of projects. MOEF organized a re-engineering of the process and a fresh notification was issued in September, 2006.\textsuperscript{54} MOEF has used Environment Impact Assessment Notification, 2006 as a tool to regulate rapid industrial development of the country for minimizing the adverse impact on environment and reversing the trends which may lead to climate change in the long run. In the re-engineered notification of September 2006, projects are categorized into category ‘A’ and category ‘B’ depending on their threshold capacity and likely pollution potential and were appraised for prior environmental clearance at the Central and the State level respectively. Further the notification provides for screening, scoping, public consultation and appraisal. For appraisal of category ‘B’ projects and activities, State level Environment Impact Assessment Authorities (SEIAAs) and State Expert Appraisal Committees (SEACs) have been constituted.\textsuperscript{55} With a view to further simplify the procedure for obtaining environmental clearance without compromising or diluting the regulatory framework, the EIA notification was amended in December 2009.\textsuperscript{56}


\textsuperscript{56} V.S. Ganesamurthy, *op. cit.*, p. 29.
Legislation Concerning Environment

GENERAL LAWS

The General laws are in the nature of enactments, which incidentally afford scope for environmental protection even while serving some general purpose or objective. These laws, though not made with specific concern for environmental improvement, nevertheless impinge on it. The following general laws contain provisions meant to protect the environment and to punish its polluters.57

1. The Indian Penal Code
2. The Code of Criminal Procedure
3. The Code of Civil Procedure
4. The Specific Relief Act
5. The Factories Act, 1948
6. The Motor Vehicles Act

Most of these general laws are essentially punitive in nature and they do not have much to prevent the damage to the environment.58

SPECIAL LAWS

Various special laws also help in protecting the environment. After 1972, the Parliament has enacted a number of laws, directly relating to pollution control and environment protection.


The Wildlife (Protection) Act, 1972 was passed by Parliament under Article 252 (1) of the Constitution.59 This Act, enacted by the Parliament for the protection of Wildlife, animals and birds is applicable to almost all the States and Union Territories. The Government of India has framed a number of rules for concretizing, clarifying or elaborating the intent of the

act through issuance of the three different sets of rules. The Act provides for the Constitution of Wildlife Advisory Boards in every State to advise the State Government for the declaration and administration of sanctuaries, national parks, game reserves and closed areas; the formulation of the policy in granting licenses and permits under this Act; and for other matters connected with the protection of wild life.

Under the provision of the Act, hunting or capturing of wild animals, amphibians and reptiles and birds has been prohibited and hunting of other animals regulated. The act also provides for the punishment of persons contravening its provisions.

An amendment to the Act in 1982 introduced provisions permitting the capture and transportation of wild animals for the scientific management of animal populations. Comprehensive amendments to the present Act in 1998 resulted in the insertion of special chapters dealing with the protection of the specified plants and the regulations of Zoos. The new provisions also recognized the needs of tribal populations and forest dwellers and introduced changes to advance their welfare. This act has also been amended in the years 1986, 1991, 1993, 2002, 2004 and 2006.

2. The Water (Prevention and Control of Pollution) Act, 1974 (Act No. 6 of 1974)

The Water (Prevention and Control of Pollution) Act, 1974 is the first major and special enactment in the field of environment management and control. Before the enactment of the Act, there were few initiatives to legislate pollution control at the national level. This Act was enacted in pursuance of clause (1) of article 252 of the Constitution of India to provide for the prevention and control of water pollution and the

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62. Ibid.
maintenance or restoration of wholesomeness of water. The purpose of this act is to ensure that the rivers, streams and other sources of drinking water and water for support of fish life and for use in irrigation are not allowed to be polluted by the discharge of domestic and industrial effluents. The Act provides establishment of a Central Board and State Boards \(^{64}\) for the prevention and control of water pollution. \(^{65}\) The Water Act has defined water pollution \(^{66}\) and the authorities have been vested with a lot of functions. \(^{67}\) This Act was amended in 1988. \(^{68}\)

The Act lays down that, with certain exceptions, no person shall knowingly cause or permit any poisonous or polluting water to enter into any stream or well or impede its proper flow. The Board is also empowered to take certain emergency measures and issue certain orders in cases relating to pollution of streams or wells. The Board may approach the court for apprehending pollution of water in streams and wells. \(^{69}\)

\(^{64}\) Section 3, 4 and 5 of the Act, 1974, states: Both Central and State Boards are registered corporate bodies who have a legal character, can hold properties and can sue and be sued. The board members hold office for three years barring the member secretary. Board members can be re-nominated only for two extra terms. They are granting of license to new industries; reviewing pollution control situation in exiting industries; and finally prosecuting the offending industries.


\(^{66}\) Section 2(e) of the Act, 1974.

\(^{67}\) Section 16 and 17 of the Act, 1974, They are to advise, provide technical assistance and guidance, carry out and sponsor investigation and research, plan and organize the training of persons and to organize through mass media comprehensive programmes regarding the prevention and control of water pollution. They also go by standards for quality of water in streams or wells and to establish or recognize laboratories to perform functions including sample analysis.

\(^{68}\) The Water (Prevention and Control of Pollution) Act Amendment 1988, states ‘it was made compulsory on the part of any industry or unit to take prior permissions of the Board to start any unit that may discharge effluents, section 33-A of the Act empowers the State Board to stop supply of electricity or water or any other services, if the Board finds a particular unit is not following the standards and default, penalty may go up to the extent of six years imprisonment and also fine to the extent of Rupees 5,000 for every day, if the default continues.’

\(^{69}\) Section 32 and 33 of the Act, 1974.

The Water (Prevention and Control of Pollution) Cess Act, 1977 was enacted to provide for levy and collection of a cess on water consumed by persons running industries and by local authorities with a view to augmenting the resources of the Central Pollution Control Board and the State Pollution Control Boards for the prevention and control of water pollution.\(^{70}\)

The cess is calculated on the basis of the water consumed by such persons or local authority and assessed by State Boards.\(^{71}\) If such Person or local authority installs any plant for the treatment of sewage or effluents, it is entitled to a rebate of 70% of cess payable by it.\(^{72}\) The proceeds of cess are credited to the Consolidated Fund of India.\(^{73}\)

The Act was amended in 1992 with a view to augmenting the resources of Pollution Control Boards by removing the lacunae in the Act and to provide rebate to the industries for complying with the consumption and effluent quality standards. The Water (Prevention) Bill, 1991 has already been passed by both Houses of Parliament.\(^{74}\)


The Forest (Conservation) Act, 1980 has been passed with a view to check deforestation which had been taking place in the country on a large scale.\(^{75}\) This Act extends to the whole of India, except the state of Jammu and Kashmir.\(^{76}\)

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\(^{70}\) Surendra Kumar, *Environmental Policies in India*, Northern Book Centre, New Delhi, 2009, P-38.

\(^{71}\) Section 3 of the Act, 1977.

\(^{72}\) Section 7 of the Act, 1977.

\(^{73}\) Section 8 of the Act, 1977.

\(^{74}\) Surendra Kumar, *op. cit.*, p.38.

\(^{75}\) The Forest (Conservation) Act, 1980, states: it is necessary to obtain prior approval of the Central Government for de-reservation of reserve forests and for use of forest land for non-forest purposes. The Act also provided for the Constitution of an advisory committee to advise the Central Government with regard to grant of such approval.

Under Section 4 of this Act, the Central Government may, by notification in the official Gazette, make rules for carrying out the provisions of this Act.\textsuperscript{77} Every rule made under this Act should be laid, as soon as may be after it is made, before each House of Parliament.\textsuperscript{78} This Act has repealed the Forest (Conservation) Ordinance, 1980\textsuperscript{79} with the provisions that not-withstanding such repeal, anything done or any action taken under the provisions of the ordinance shall be deemed to have been done or taken under the corresponding provisions of the Act.\textsuperscript{80}

The Government of India, has made rules entitled “The Forest (Conservation) Rules, 1981”\textsuperscript{81} specifying the composition of the Advisory Committee, terms of appointment of non-official members, conduct of business of the committee and work procedures and certain other things. The Act was amended in 1988.\textsuperscript{82}


The first major global initiative for prevention of pollution was the United Nations Conference on Human Environment held at Stockholm in June, 1972. In order to implement the decisions taken at the Conference, all the participating countries, including India, decided to take appropriate steps for the conservation of natural resources including the preservation of the quality of air and control of air pollution. The Government

\textsuperscript{77} Section 4(1) of the Forest (Conservation) Act, 1980.
\textsuperscript{78} Section 4(2) of the Forest (Conservation) Act, 1980.
\textsuperscript{79} Section 5(1) of the Forest (Conservation) Act, 1980.
\textsuperscript{80} Section 5(2) of the Forest (Conservation) Act, 1980.
\textsuperscript{81} GSR 719, dated 20\textsuperscript{th} July, 1981, \textit{Published in the Gazette of India}, Extraordinary, Part II, Section 3(1), dated 1 August, 1981.
\textsuperscript{82} Amendment Act, 1988, deals with the prohibition of the forest department to assign any forest land by way of lease or otherwise to any private person or non-government body for reforestation. It also forbids clearance of any forest land of naturally grown trees for the purpose of reforestation. The amendment turns diversion of forest land for non-forest uses a cognizable offence and provides that any-one who contravenes this law is punishable with imprisonment for a period which may extend to fifteen days. “Non-forest uses” is defined to include “Cultivation of tea, coffee, spices, rubbers, horticulture crops” etc. This definition of “non-forest uses” it is said, goes against the rural poor, who use the forest land to grow fruits, fuel, etc. for their survival.
appointed an expert committee to assess whether the problem of air pollution can be tackled with modifications in the existing legislation.\textsuperscript{83}

The National Committee on air pollution appointed by the Central Government submitted its draft legislation. In pursuance of the above recommendations the Air (Prevention and Control of Pollution) Bill, 1978 was introduced in the Lok Sabha on April 17, 1978. On November 5, 1980, it was again introduced in the Lok Sabha as Bill No. 187 of 1980. The Bill No. 14 of 1981 received the assent of the President on March 30, 1981. According to the Central Government notification of May 15, 1981 the Act came into force from 16 May, 1981. It was passed under Article 253 of the Indian Constitution.\textsuperscript{84}

This Act aimed at preservation of the quality of air by prevention, control and abatement of air pollution through creation of registered corporate bodies viz., the Central and State Boards, similar to Water Boards.\textsuperscript{85} The Act lays down the functions of the Central and State Boards for the prevention, control or abatement of Air pollution.\textsuperscript{86} Section 4 of the Act entrusts the Boards with the various powers.\textsuperscript{87}


\textsuperscript{85} Section 2 of the Act, 1981, defines air pollution as “the presence of any solid liquid or gaseous substances present in the atmosphere in such concentration as may be or tend to be injurious to human beings or other living creatures or plants or property or environment.”

\textsuperscript{86} Section 16 and 17 of the Air (Prevention and Control of Pollution), Act 1981, It states, ‘Central and State Boards will be to advise, plan and cause to be executed a Nation-wide programs; provide technical assistance and guidance; coordinate the activities of the State and resolve disputes among them; carry out investigations and research relating to problems of air pollution; plan and organize the training of persons; collect, compile and publish statistical data; prepare manuals, codes or guides relating to prevention, control or abatement of air pollution; lay down standards for the quality of air; to establish or recognize laboratories for the above purposes; to collect and disseminate information relating to air pollution.’

\textsuperscript{87} Section 4 of the Air (Prevention and Control of Pollution) Act 1981, provides powers to the Boards to regulate or prohibit burning or use of any unapproved fuel of other material not being fuel and unapproved appliances in any pollution control area; to give instructions for ensuring standards for emission from automobiles to the concerned authority in charge of registration of Motor Vehicles under the Motor Vehicles Act, 1939; to entry and inspection of any place for purpose of examining
The Air Act 1981 was amended in 1988 to remove certain difficulties encountered during its implementation; to confer more power on implementing agencies; and to impose more stringent penalties for violation of its provisions.


The environment act was passed by the Parliament, under Article 253 of the Constitution in May, 1986 and came into force on 19 November, 1986. The purpose of the Act states that it was enacted to implement the decisions taken at the Stockholm Conference in 1972. However, it would obviously appear that the main impetus for its enactment was because the Government came under considerable pressure, following the gas leak accident at Bhopal in December 1984, to design comprehensive legislation for controlling toxic and hazardous substances.88

The Act was passed to protect and improve human environment and to prevent hazards to human beings, other living creatures, plants and property. This Act is said to be an “Umbrella” legislation passed to provide a framework for the Central Government towards co-ordination of activities of various Central and State agencies established under previous laws such as Water Act, Air Act, etc.89

A cursory analysis of its preamble makes it obvious that the objectives of the enactment are three fold, namely: (1) Protection of the environment, (2) Improvement of environment, and (3) Prevention of hazards to: (a) Human beings, (b) other living creatures, (c) Plants and (d) Property.90

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The Environment (Protection) Act, 1986 is a small piece of protective and progressive social legislation, consisting of 26 Sections, divided into four chapters, with the ability to assume immense importance and attention in all walks of life. First chapter is preliminary and contents have 2 sections only. Chapter two has 4 sections and deals with general powers of the Central Government, chapter three has 11 sections and deals with prevention, control and abatement of environmental pollution and finally chapter four has 9 sections and contains miscellaneous provisions and also rule making powers of the Central Government.\textsuperscript{91}

This Act was further amended in 1991. The Environment (Protection) Rules, 1986 came into being for the first time in 1986 followed by First Amendment Rules, Second Amendment Rules and Fourth Amendment Rules in 1998, 1999, 2001, 2002, 2003, 2004, and 2006. Whenever, the rules were amended it was not without a good reason, such as setting up standards for the industrial area or laying down standards for pulp and paper industries, issuing guidelines for disposal of solid wastes, drill cutting and drilling fluids for offshore and onshore drilling operations, setting up standards for boilers, using of agricultural waste as fuel and guidelines for the ginning mills etc. As the human activity increased in scientific and technological fields the need to amend the rules also increased.\textsuperscript{92}

For the first time, it was through this Act that an effort was made to turn environmental protection and preservation a programme of masses and not classes. It was attempted that each and every individual, group, association, village, city and state as a whole may and must take an active part and play an active role in this programme and that the people in general may be made aware of the benefit of environmental protection because until and unless there is a well-mobilized public support the objectives may not be met. This Act was enacted with a desire to influence

\textsuperscript{91} The Environment (Protection) Act, 1986.
\textsuperscript{92} http://works.bepress.com/krishnaareti/4.
the masses and motivate them to embrace the programme as an essential part of their existence. It was aimed to give rise to a realization that mass participation is essential for any programme of environmental protection to succeed and the common people cannot distance themselves from the responsibility of preserving and sustaining environment. In fact, they are obliged to make constructive interventions without considering environmental preservation to be an exclusive domain of the government. The Act is thus aimed at popularizing the highly crucial task of environmental protection and at generating awareness among the masses. It is true that until and unless the people are made aware of the benefit of a particular programme and also until and unless they are made to understand that it is their own programme they neither actively participate nor respond to it and legislation passed retains only ornamental value increasing the bulk of the statute.93

It can be argued that this Act is a very comprehensive document on environment protection in India. The other laws on environment also have interconnection with 1986 Act.


The Motor Vehicle Act came into force on 1st July, 1989. The provisions of the Act, besides others, include requirements to be observed in the matter of vehicles fitness. The important points of motor vehicle act are as follows:

(1.) All transport vehicles are required to obtain fitness certificate before registration, which is valid for two years and every year subsequently.

(2.) Transportation of goods of dangerous and hazardous nature to human life has been regulated under the Act. The vehicle carrying such goods should have prescribed labels indicating the nature of hazardous goods. The packages should also bear such

labels. The driver should know the fundamentals in case the vehicle is involved in accident. Driver should have minimum tenth standard of education.

(3.) Each vehicle must have all the components of the standards laid down by Bureau of Indian Standard (BIS)

(4.) Each vehicle should have registration certificate and insurance certificate and the driver should have valid driving license.

(5.) Rules -119 of 120 Motor Vehicle Act are aimed to reduce noise pollution. No vehicle shall be fitted with multi-toned horn, which gives harsh, loud or alarming noise (Rule 119). Rule 120 makes the fitting of silencer mandatory to reduce the noise.

(6.) No national permit shall be granted for a multi- axle goods carriage which is more than 15 years old at any point of time.

(7.) New items are included for offences and penalties in the Act. Amounts for different types of offences have been specified. To help the owners of cars and scooters maintain the prescribed level of exhaust emissions, the Directorate of Transport in Delhi has established Free Pollution Checking Centre’s at each of its offices in Delhi. Besides this, mobile teams are also covering different parts of the city. Delhi Administration has also been providing free facilities at different petrol stations, all over the city since November, 1987 for checking exhaust carbon monoxide levels from cars and scooters.94


This Act has been enacted to provide for public liability insurance for the purpose of providing immediate relief to the persons affected by accident occurring while handling any hazardous substance and for matters connected therewith or incidental thereto. Hazardous substances would mean any material or preparation, which is defined as hazardous

material under the environment (Protection) Act, 1986, and exceeding such quantity as may be specified, by notification, by the Central Government.95

Under this Act, every owner, before handling hazardous substance, shall take out one or more insurance policies, whereby he is insured against liability to give relief.96 Application for relief is to be made within five years of the occurrence of the accident.97 The claim for compensation is to be disposed off within three months of receipt of application.

In the background of the principle of the Oleum Gas Leak case,98 discussed earlier and The Bhopal litigation, the Act was passed to consolidate the law relating to product liability particularly in relation to hazardous activity. It seeks to provide relief to the members of the general public, who become the victims of industrial accidents. In effect, the Act is also an answer to reflections of the Supreme Court in Charan Lal Sahu’s case, where a call had been made to enact such legislation.99

One of the negative aspects of this Act is that it empowers the government to exempt Central or State government owned corporations or local authorities from a compulsory insurance required under the Act.100

The Public Liability Insurance (Amendment) Act, 1992 came in force on 31 January, 1992. Its major aim is stated in Section 7(A). 7A(1) provides that the Central Government may by notification establish a fund to be known as the Environment Relief Fund. The Central Government shall notify the authority with whom relief funds shall be placed and the manner they are administered.101

95. N.C. Gupta, op. cit., p. 42.
The Public Liability Insurance Rules 1991 are made in exercise of powers conferred by Section 23 of Public Insurance Act, 1991. It provides details on how to make application for compensation, directions to be given to owners, establishment and administration of fund for insurance, which may amount to five crore rupees or an amount equal to the paid up capital of the undertaking handling hazardous substances—Rule 16.102


The National Environmental Tribunal Act, 1995 is the latest of the environmental legislations enacted by the Government of India. The Act has been passed with a view to provide for liability for damages arising out of any accident occurring while handling any substance and for the establishment of a National Environment Tribunal for effective and expeditious disposal of cases arising from such accident, with a view to giving relief and compensation for damages to persons, property and the environment and for matters connected therewith. This law was inspired by the United Nations Conference on Environment and Development held at Rio-de-Janeiro in June, 1992 in which India also participated. The resolution of the Conference called upon the member states to develop national laws regarding liability and compensation for the victims of pollution and other environmental damages.103 This Act has many provisions about the compensation for the people, who suffer from the environmental pollution.104

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102 Ibid.
103 Mohammad Naseem, op. cit., pp. 223-224.
104 Section 3(1) and 3(2) of The National Environmental Tribunal Act, 1995 enunciates the principle of “no-fault” of the owner to pay compensation for death, injury or damage to human beings and environment. Further, the claimant shall not be required to plead and establish that the death, injury or damage was due to any wrongful act, neglect or default of any person. Section 5(3) of the Act, 1995 states, “The tribunal will hear the applicant and would be guided by the principles of natural justice and shall also have the power of the Civil Court as provided under the Civil Procedure Code of 1908, both the parties shall be heard before an injunctions issued by the Tribunal’. Section 25 of the Act, 1995 states, ‘Subject to some restrictions, the Tribunal has the power to regulate its own procedure, including the fixing of the place and time of its enquiry, persons who fail to comply

The National Environment Appellate Authority (NEAA) was set up by the Ministry of Environment and Forests to address cases in which environment clearances are required in certain restricted areas. It was established under the National Environment Appellate Authority Act, 1997 to hear appeals with respect to restriction of areas, in which any industries, operations or processes or class of industries, operations or processes cannot be carried out, subject to certain safeguards under the Environment (Protection) Act, 1986.\(^\text{105}\)


The Ministry of Environment and Forests has enacted the Biological Diversity Act, 2002 under the United Nations Convention on Biological Diversity signed at Rio de Janeiro on the 5\(^{\text{th}}\) day of June, 1992 of which India is also a party. This Act is to “provide for the conservation of biological diversity, sustainable use of its components, and fair and equitable sharing of the benefits arising out of the use of biological resources, knowledge and for matters connected therewith or incidental thereto”.\(^\text{106}\) The Act constituted different regulatory and quasi adjudicatory bodies for achieving the objective of the Act in the form of ‘National Biodiversity Authority’ and ‘State Biodiversity Board’. The Act also emphasizes upon the protection of biodiversity at the grass root level by constituting the ‘Bio-diversity Management Committee’ in local bodies. The ‘National Bio-diversity Authority’ is the regulatory body connected with the grant of permission for use of biological resources for transferring the knowledge, use of the resources for commercial purposes, and


applying for intellectual property.\textsuperscript{107} The state Bio-diversity Board also regulates the commercial exploitation of the biological resources.\textsuperscript{108} The Central Government has been given the power to develop national policies regarding the biodiversity of the country.\textsuperscript{109}


In the year 2003 the, Parliament passed the Cigarettes and Other Tobacco Products (Prohibition of Advertisements and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 with the object of imposing ban on smoking in ‘public places’. The Act was further intended to prohibit direct and indirect advertising of all tobacco products and their sale to minors.\textsuperscript{110}

In the year 2008, the Indian Government in pursuance of the powers conferred under the Act enacted the Prohibition of Smoking in Public Places Rules, 2008 as a major public health measure. The aim of the Act is to prohibit the smokers from smoking at hotels, banquet halls, pubs, discotheques, coffee houses, shopping malls, airports, restaurants and even reception at public places.\textsuperscript{111}


NGTA, 2010 was approved by the President on June 2, 2010. It provides for the establishment of National Green Tribunal (NGT)—a special fast-track court for speedy disposal of environment-related civil cases. NGT was envisaged to work for the effective and expeditious disposal of cases relating to environmental protection and conservation of forests and

\textsuperscript{107} Section 3, 4, and 6 of the Act, 2002.
\textsuperscript{108} Section 23 of the Act, 2002.
\textsuperscript{109} Section 36 of the Act, 2002.
\textsuperscript{111} The Tribune, June 2, 2008, p.1.
other natural resources including enforcement of any legal right relating to environment and giving relief and compensation for damages to persons and property and for matters connected therewith or incidental thereto.

NGTA was officially notified on October 19, 2010 with Justice Lokeshwar Singh Panta as chairman. The tribunal is exclusively dedicated to environmental issues. The tribunal also consists of other members, who are experts in the field of environmental and related sciences. It is empowered to issue directions for the compensation and restitution of damage caused from actions of environmental negligence.

There lie many reasons behind the setting up of this tribunal. After India’s move with Carbon credits, such tribunal may play a vital role in ensuring the control of emissions and maintaining the desired levels. This is the first body of its kind that is required by its parent statute to apply the “polluter pays” principle and the principle of sustainable development. NGT was conceived to follow various decisions of the Supreme Court in addition to the 186 Reports of the law Commission. The erstwhile National Environment Appellate Authority ceased to exist with the launch of the NGT. All the functions of the authority were transferred to the NGT.112

In the addition to these Acts, several Rules have also been incorporated under the Environment Protection Act, 1986. These Rules are important guidelines to sort out the environmental problems. Some of the major Rules notified are:-


(2) The Manufacture, Storage and Import of Hazardous Chemicals Rules, 1989. (Section 6, 8 and 25 of the Environment Protection Act, 1986)


(4) The Bio-Medical Waste (Management and Handling) Rules, 1998. (These rules were made by the Ministry of Environment and Forests and notified through a notification on July 20, 1998.)

(5) The Recycled Plastics Manufacture and Usage Rules, 1999. (These rules were framed by the Ministry of Environment and Forests notification on 2 September, 1999)


In addition to these, several State Governments have enacted special laws which can be invoked for protecting and improving environment. The Orissa River Pollution Act, 1953; the Prevention of Food Adulteration Act, 1954; the Punjab State Tube Wells Act, 1954; the West Bengal Notification No. 7; the Jammu & Kashmir State Canal and Drainage Act, 1963; the Gujarat Smoke Nuisance Act, 1963 and the Maharashtra Water Pollution Prevention Act, 1969; exemplify the concern for pollution exhibited at the State level.\(^{113}\)


Major Environmental Protection Laws Adopted by Government of Punjab

The Water (Prevention and Control of Pollution) Act, 1974; The Water (Prevention & Control of Pollution) Cess Act, 1977; The Air (Prevention and Control of Pollution) Act, 1981; The Environment (Protection) Act, 1986 have been utilized by the Government of Punjab to control environmental pollution within the territory of the State. It is the advent of the Water Act, 1974 that has led to the institutionalization the pollution control machinery by establishing the Central Pollution Control Board (CPCB) and State Pollution Control Boards (SPCBs). The responsibility to implement these laws has been assigned upon Central Pollution Control Board and State Boards. Punjab Pollution Control Board has been entrusted the task of implementation of environmental laws in the State of Punjab.¹¹⁵

In the State of Punjab the nodal agency for the protection and improvement of environment is the State Pollution Control Board with its head-office at Patiala. The State Government also has its separate Ministry of Environment and Forest but the major responsibility for the prevention and control of environmental pollution is upon the State Pollution Control Board. The Punjab Pollution Control Board was constituted in the year 1975 vide Punjab Government Notification No. 6186-BR II (4) 75/24146 dated 30.07.1975, after the enactment of Water (Prevention & Control of Pollution) Act, 1974 to preserve the wholesomeness of water. Subsequently, with the enactment of other environmental laws the responsibility to implement the provisions of such laws was also entrusted to the Punjab Pollution Control Board in the State of Punjab.¹¹⁶

The discussion on the laws and policies for environmental protection makes amply clear that India has a long and creditable history of public policy making for environmental protection and improvement. Legislation and policy framework for environmental preservation has been

¹¹⁵, Head Office, Punjab Pollution Control Board, Patiala.
¹¹⁶, Ibid.
a part of different political dispensations in the country. In formal terms, the process started during the colonial phase and has continued up till now. Environmental consciousness and concern as reflected in policy framework has had a different character at different times. In the colonial times it was co-terminus with the economic aspirations of the imperial rulers. However, on the other hand the ancient period was marked by a high sense of recognition of man’s dependence on nature and the consequent urge for respecting nature. During the ancient period environmental preservation was an integral to modes of living.

The environmental policy which existed until late eighties as was implicit in the International Declarations, official documents, policy formulations and legislations, was caught in the paradigm of protection mechanism relying principally on mandatory controls, standards, and legal enforcement. The policy enunciated a regulatory framework, which suffered from many drawbacks and therefore remained a subject of criticism all though. The policy suffered from the following drawbacks:

One of the weaknesses, common to most of the laws relating to environmental protection was that the authorities under the Acts were essentially government officials. There was no involvement of people or environmental groups or activists in any of the authorities constituted under the various laws. The scheme of the Acts revolved only around government agencies. The authorities under the various Acts were entrusted with numerous responsibilities but they were not entrusted with commensurate powers to carry out the same. Under the Water and Air Pollution Acts, the powers of the Pollution Control Boards were largely advisory in nature. The only measure of control they could exercise was in

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issuing consent certificates which were deemed to be given after expiry of four months in the Water Act and merely on application in the Air Act.\textsuperscript{119}

The Water act left many grey areas that were difficult to administer. The act does not cover ground water contamination. Municipalities which are primarily responsible for treating residential wastes remain free from direct liability. It allows the government agencies too much flexibility. For example the act states that the head of a polluting unit would not be punished, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent it. This act does not give the victim the right to go to the courts to punish the offending units and the charges can be brought to the courts only by the boards. The boards are expected to depend largely on government grants for their operations. As a result of all this the boards were overburdened and underfunded.\textsuperscript{120}

In addition to the above, there is a considerable overlap of powers of various authorities. In addition to the Pollution Control Boards created by the Water and Air Acts, there are local authorities like the Municipalities and Municipal Corporation which are empowered to issue industrial licenses. On account of this even if the Boards refuse consent certificates the same can be obtained from the Municipalities. In many States, Boards are yet to be set up as it is not made mandatory. Moreover these Boards lack adequate infrastructure and funds to ensure effective implementation of the laws.\textsuperscript{121}

The pollution control laws contain only punitive sanctions, which come into force only after the violations have occurred and environmental damage is done. Even the administrative sanctions at the disposal of enforcement authorities lack sufficient force remaining confined to asking for immediate installation of equipment, revoking the consent order or

\textsuperscript{119} Ibid, p.169.
\textsuperscript{120} N.C. Gupta, op. cit., p.36.
\textsuperscript{121} Ibid.
taking legal recourse. These measures are not innovative and process-oriented. Another drawback of the control approach under the earlier environmental policy has been the inadequacy of institutional framework for implementation of laws, poor monitoring machinery and lack of scientific and technical expertise to assess and prevent the possibility of adverse environmental effects. There are no adequate facilities for orientation and training of the staff engaged in environmental management, to undertake conscious pollution control measures.

The formulation of laws and standards is also over-ambitious. In such a scenario, the levels of compliance of the firms would be low. Incentives for adoption of better pollution abatement technologies are few. Absolute standards have to be adhered to. These standards are usually neither technology based nor performance based, nor are they related to the volume of pollution being generated. Thus even with strict enforcement, the environment quality may continue to deteriorate (Planning Commission, 2001-02).

Environmental Impact assessment has been the most controversial aspect of environment protection approach under the earlier policy. The administrative discretionary model of Environmental Impact Assessment (EIA) revealed “the hidden dangers of an environmental policy (that) did not strike at the source and prevent the evil but instead (made) an attempt to cushion the impact of environmental assault after the damage was already done”.

There is this further malaise of not having a “legislative mandatory model of an administrative decision-making process, right from the level of Ministry of Environment and Forest down to a State Pollution Control

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Board or a Local Panchayat Institution.” The administrative discretionary model of impact assessment through filling in questionnaires and checklists or an environmental management plan along with Environmental Impact Statement, as followed by the Ministry of Environment and Forests did not provide for publication of environmental information relating to the particular project under study, nor did it seek the assistance of the expertise of scientists and environmentalists outside the government much less the cooperation of the members of the general public, who were affected or benefited by the execution of the project.

India’s environmental power has to contend with the divided jurisdiction between the Union and State Governments. In the existing dispensation several ministries and departments claim to have necessary jurisdiction over certain aspects of environmental problems, and natural resources management. Given this constitutional situation, it is not surprising that policy and administration of natural resources and environmental quality have tended to be fragmented among the different levels, government, as well as among different ministries and departments of Central and State Governments, thereby creating their own problems.

The other major factor accounting for the poor implementation of pollution control programmes in developing countries is the limited availability of funds. Since investment in pollution control facilities does not visibly bring immediate profit, so this investment is considered idle or non-productive. At times the small and petty amounts allocated for pollution control and environmental improvement are diverted for to the purposes. Unlike most other government policies and programmes the

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126. Ibid.
environmental policy does not have a well-marked group of beneficiaries to constitute a pressure group to exert pressure on government.\textsuperscript{129}

An important recent development is the rise of judicial activism in the enforcement of environment legislation. This is reflected in the growth of environment-related Public Interests Legislations that have led the courts to take major steps such as ordering the shutdown of polluting industries. But these efforts of the judiciary are not enough for the pollution control.

Thus, it can be said that there is no dearth of legislations on environmental protection in India but their enforcement has been far from satisfactory. Environment consciousness at socio-political levels has been rising over the last few decades. There is increasing concern for environmental preservation and sustainable development at international level. This global concern has taken the form of laws and statutes. However a large number of laws and legal provisions, the problem of environmental pollution has continued to persist as successive governments have failed to implement these laws in an optimal and proper manner.

\textsuperscript{129} Sattu Raja Mohan, \textit{op. cit.}, p.42.