Chapter Six

Environmental Protection and Legislative Efforts
CHAPTER-VI

ENVIRONMENT PROTECTION AND LEGISLATIVE EFFORTS

Law is an instrument of social change and is used both ways first to punish the delinquent, and secondly to reward the good and ordained behavior. Law allows people to live and let others live with equal status and dignity, and for this it prescribes a normative behaviour. Law is basically the prescription of duties albeit, the recognition of rights. In all we can say that law regulate the behaviour of human beings. There cannot be a single topic which has no connection with law so is the environment. The term environment in most common explanation includes all that which surrounds us and takes into account all those variables which directly or indirectly infringe on it. Human beings constantly interact with the environment and each such interaction bring a change in environment, and the changed environment which is referred as human made environment is different to natural environment. The environment is given a meaning when it is viewed in relationship with human beings, who depend on it for survival, and if survival becomes difficult we say the environment is polluted.

The dependence of mankind on environment gives a power to transform it in count-less ways, from this follows the right to live in a healthy environment, which is one of the component of right to life as provided in Art 21 of the Constitution. Herefrom starts the domain of law, which checks and balances the human activities whether these are productive or detrimental to the environment. Human beings, development and environment are the factors, which are to be intwined by legal regulations. Law being the principal instrumentality of making, interpreting and enforcing the regulations, which is used to make the life of people more meaningful.
Development is the cherished goal of India. It is not a lofty idea, but a mission to lift the millions from massive poverty and to involve them in the process of development. State is obligated not only to protect the "right to life" but also to afford the poor to enjoy the "right to life". Every development programme proposed by policy planners, scientists, environmentalists and sociologists involve some kind of environmental change, and this change is to be censored by law and the state. Hence the state is bound to devise socially responsible legal regime, where development can take its "social root and mitigate the hardship". Polluted environment is the major hazard for the sustenance of human life. Therefore, it is the bounden duty of the state not only to protect the environment, but also to preserve it. The law making with reference to development and environment is highly specialized and technical, which must take account all the factor that deplete the environment and that affects the life adversely.

The state sponsored legal framework provides checks and balances in the establishments of detrimental industries. It also provides normative frameworks for the analysis of problems resulting from relationship among the natural environment, development policies and enforcement machinery. The law made by state legislature in the past century aimed to further debate on the nexus of environment and development issues at local, regional and national levels with reference to search for justice. In this chapter, the researcher aims at to focus the efforts of legislature to maintain a healthy environment. Here we intend to cover various aspects of environment susceptible to pollution due to the activities, industrial and otherwise. The legislative measures dealing with air, water land, forest and animals shall be dealt with in the chapter undertaken hereinafter.
LEGISLATIVE CONCERNS AND AIR POLLUTION:

The N.D. Tiwari Committee Report, 1980, found that there are over two hundred central and state legislative enactments and statutes that have some bearing on environmental protection. However, the provisions contained therein are only some piecemeal legislations which are directly concerned with environment. There is no single legislation taking into account the environmental problems in their entirety. In this chapter we intend to tined the legal mechanism, it’s effectiveness, it’s viability and shortcomings, whatsoever in combating with the problems arising out of environmental pollution.

The nineteenth century saw the germination of industrialization which took speedy and unprecedented pace in twentieth century. The irrational race of industrialization never took into account the inhuman aspects of this process which left detrimental and adverse effects on human and animal life. Later half of the twentieth century showed some concerns over environmental pollution. It was only after, when human society rose to inculcate a feeling and thinking over environmental abuse, exhaustion of natural resources and alteration of nature’s balance. The efforts were directed to evolve effective environmental protection laws. Legislative activities were intensified. Here we propose to survey legislative concerns regarding Air Pollution. The arrival of Britishers was to control market for their productions but ultimately they seized political sovereignty of the nation. Despite this fact, the British rule ushered in the law reform in the country to combat the dark side of the development, that is to say polluted environment. Whenever a slight pollution occurs, the first is the Air to be polluted. In 1857 a statute had been enacted to control air pollution in the form of The Oriental Gas Company Act, 1957. This Act was concerned with the air pollution in India. It contained provisions for the regulation of emissions of the Oriental Gas Company that may be discharged by the
establishment during the course of operation and may eventually result in pollution of the air. The main section was section 16 of this Act. It enumerates the provisions against environment pollution. It asserts that "Whenever any gas shall escape from any pipe laid down or set up or belonging to the said company they shall immediately after receiving the notice thereof in writing prevent such gas from escaping and in case the said company does not, within twenty four hours next after service of such notice, effectively prevent the gas escaping, and wholly remove the cause of complaint, they shall for every such offence forfeit the sum of fifty rupees of each day during which the gas shall be suffered to escape, after the expiration of twenty four hours from the service of such notice."

The Act, however did not play any significant role in preventing the environment pollution. It put the company under obligation to keep the gas pipes intact. The imposition of pecuniary penalty on the violation of the legal duties under the Act, made contribution in keeping the surrounding environment of a gas company free from pollution. The Act limited the application with regard to the escape of gas from the Company's gas pipes. It did not have application in regard to the air pollution from other sources.

It was the Indian Penal Code, 1860 which dealt with the state's regulation over the pollution problem. It was in this penal code that the causing of pollution was termed as a species of nuisance. The provisions of the code undoubtedly represent the board sweep with which the penal legislation has attempted to encompass wide area of common law of torts relating to acts of negligence and nuisance and render them criminal offences leaving, however, the common law remedies untouched.

Relevant provisions to combat the atmospheric pollution have enumerated under section 278 of the code. This section enlists the penal consequences for making atmosphere noxious to health. It enumerates that "whoever
voluntarily vitiates the atmosphere in any place so as to make it noxious to health of persons in general dwelling or carrying on business in the neighborhood or passing along a public highway shall be punished with fine which may extend to five hundred rupees". The law contained in this section is not comprehensive to deal with all aspects of air pollution. It only covers trade producing noxious and offensive smells in the proximity of a populated locality. Moreover this section proved deficient and ineffective in preventing pollution of atmosphere as it provides only the financial penalty which is far less to create any deterrent effect on polluters.

The second half of the nineteenth century witnessed several legislations to mitigate the effects of emissions accelerating atmospheric pollution. The Indian Explosive Act, 1884 is such a measure to prevent environment pollution. This Act regulates the manufacture, possession, use, sale, transport, export and import of explosive substances. The Act of 1884 saw the light of new and transformed age when it has been amended by an Amendment Act 32 of 1978. The Act prohibits manufacturing, possession, use and sale of explosive substance without having a licence issued by competent authority. Under section 5 of the Indian Explosives Act, 1884, Central Government is empowered to make rules in connection with manufacturing, etc. of explosive substances. In pursuance of powers conferred by the act, the Explosive Rules, 1941 were framed. Section 17 of the Act empowers Central Government to extend the definition of explosives "to cover other explosive substance" and declare any substance as explosive for the purposes of the Act which appears to it specifically dangerous to life and property by reasons of its explosive properties or any process in the manufacturing liable to explosion. The Act provides enforcement machinery as the government is empowered under rules to authorize any officer to exercise power relating to inspection, search, seizure, detention and removal of explosives from any place, aircraft,
carriage or vessel in which explosive is manufactured, possessed or used or sold or transported. Failure to comply with the provisions of the Act attracts punishment which may extend up to 3 years and a fine which may extend up to five thousand rupees or both. These penalties and punishments apply to companies also.

This Act of 1884 provides significant and effective provisions to prevent the use of explosives. The explosive substances are potential sources to make the atmosphere polluted. The provisions of the Act of 1884 have sharp teeth to deal with the demonic tendencies of the reckless persons who play havoc with the life and property of the people and vitiate the surroundings and dwelling localities. The imposition of heavy amount as fine and fear of imprisonment deterred the duty loving people from polluting the atmosphere.

The next legislative device to regulate and control the pollution of atmosphere is designed in the form of the Indian Boilers Act 1923. The leakage of heavy amount of steam or the burst of the boiler may damage the surrounding environment and can disturb prevailing ecological balance. Therefore the Act of 1923 was enacted which dealt with the matters connected with boiler regulations in India. It has indirect bearing on the environmental pollution. The Act incorporates the standards of construction, maximum pressure, registration and inspection of all boilers. The Central Boiler Board is the principal agency empowered to make regulations inter alia to ensure the safety of persons working inside a boiler. The Act also provides for the enforcement machinery. The inspectors from time to time examine the boilers to determine maximum pressure, steam emissions and offer advice to the owners as to the proper functioning and maintenance of boilers. The use of a boiler by the owner at a high pressure than allowed has been made punishable with fine which
may extend to five hundred rupees and with additional fine in cases of continuing offence.\textsuperscript{12}

The use, transportation and storage of petroleum need stringent provisions of law for proper handling of the petroleum which is though not an explosive but equally dangerous to the life, property and ecological balance. Special provisions are made in the Indian Petroleum Act, 1934 to regulate its dealings. Section 23 of the Act imposes penalties for the infringement of rules made by the Central Government. This contravention shall be punishable with simple imprisonment that may extend to one month or with fine which may extend to one thousand rupees or with both for subsequent offence. The punishment is simple imprisonment which may extend to three months or with fine which may extend to five thousand rupees or with both.

A major factor and cause of air pollution is vehicular emissions. The control of air pollution resulting from the vehicular emissions has been exerted by the Motor Vehicles Act. The Act of 1939 has taken care of the pollution created by motor vehicles. Section 70 of the Act empowered the state government to make rules, inter-alia, regarding the emission of smoke, visible vapour, sparks, ashes, grit or oil. The Act of 1939 has been repealed now, by the Motor Vehicle Act, 1988. Section 110 of the new Act empowers the Central Government to make rule regarding the following matters; emission of smoke, visible vapour, sparks, ashes, grit or oil, transportations of goods of dangerous or hazardous nature to human life, standards for emissions of air pollutants. The Act of 1939 attached a proviso to section 110 which directs that the rules relating to matters dealing with the protection of environment, so far as may be, shall be made after consultation with the ministry of environment of the Government of India. In 1989 new Rules have been prepared and enforced. The Central Motor Vehicles Rules, 1989 introduced nationwide emission levels for both
petrol and diesel engines. These Rule were amended in 1992. The amendments to Rules 115 and 116 lay down standards regarding emission levels of carbon monoxide, nitrogen oxides and unburnt hydrocarbons for petrol and diesel vehicles. Rule 115(1) requires that every vehicle be manufactured and maintained so that smoke, visible vapours, grit, sparks, ashes, etc; are not emitted when vehicle is driven. While Rule 115(2) lays down standards regarding emission limits of carbon monoxide for driven vehicles and smoke density levels for vehicles with diesel engines. Significantly the Rule makes no distinction between old and new vehicles. Further, vehicles manufactured after April 1, 1992 must meet the additional emission standards prescribed for petrol and diesel vehicles under Rules 115 (3) and 115(4) respectively. Rule 115(6) requires every manufacturer to certify that the new vehicle conforms to the prescribed standards and that the vehicles are designed and constructed to meet these emission limits. Emission standard similar to those prescribed under the Central Motor Vehicle Rules have also been issued under the Environment (Protection) Rules. These rules were again amended and the Motor Vehicles Rules, 1992 authorized the regional or state transport authorities to allow private agencies such as petrol stations to test the emission levels of vehicles and issue “pollution under control” certificates. Under Rule 116 the registration of a vehicle found to be exceeding the permissible emission levels can be suspended. As it was felt that by simply fining the driver and permitting him to continue to drive the vehicle defeated the purpose, apart from leading to frequent checking and harassment. The registration will remain suspended until a fresh “pollution under control” certificate is secured.

A breakthrough legislation dealing with the control of pollution has been enacted as the Factories Act, 1948. It provides for approval, licensing and registration of factories which involve dangerous dust and fumes;
artificial humidification, control of exposure and inflammable dusts, etc. Thus Act of 1948 contains provisions to control the air pollution, while dealing with health of the workers of the factories. The Act requires the occupier of a factory to make effective and suitable provisions for securing and maintaining in every workroom adequate ventilation by circulation of fresh air and such a temperature which is helpful in maintaining reasonable conditions or comfort and prevent injury to health. The Act of 1948 provides strong measure to control and prevent the air pollution. An occupier of a factory is directed to take effective measures to prevent the inhalation and accumulation of any dust, fumes or other impurities of such a nature and extent which is likely to be injurious or offensive to workers employed therein. If any exhaust appliance is necessary for this purpose, it shall be applied as near as possible to the point of origin of dust, fumes or other impurities and such point be enclosed as far as possible. The operation of stationary internal combustion engines is prohibited unless the exhaust is conducted into the open air or effective measures have been taken to prevent such accumulation of fumes therefrom as are likely to be injurious to workers employed in the room.

The Act, under section 15, empowers the state government to frame Rules in respect of all factories in which the humidity of air is artificially increased. The state shall make the rules: Prescribing standards of humidification; (b) regulating the methods used for artificially increasing the humidity of the air; (c) direct prescribed tests for determining the humidity of the air to be correctly carried out and recorded; (d) prescribing methods to be adopted for securing adequate ventilation and cooling of the air in the work rooms. Section 31 of the Factories Act, 1948 deals with effective measures to be taken to ensure safe working pressure of a plant or machinery. It requires that any plant or machinery in a plant should not operate at a pressure above the atmospheric pressure. Similarly, the Act
asked the factory owners to take practical measures to remove any gas, fume, vapours or dust etc. so as to bring its level within the permissible limits. The Act also lays down that a certificate in writing be given by a competent authority based on a test carried out by himself that the space is reasonably free from dangerous gas: fumes, etc. The Factories Act also deals with the control, mitigation and abatement of explosives or inflammable dust. Section 37 of the Act provides for taking all practical steps to prevent any explosion of dust, gas, fume or vapour which may be produced in any manufacturing process, and are of such character as is likely to expose an ignition by (a) effective closure of the machinery or plant, (b) removal or prevention of accumulation of such dust, gas, fumes or vapour and (c) exclusion or effective closure of all possible sources of ignition under section 37 (4) any welding, brazing, soldering or cutting operation which involves the application of heat off any plant, tank or vessel in factory which contains explosives or inflammable substance is restricted unless adequate measures have been taken to remove such substance and any funds arising therefrom to render such substance and fumes non-explosive or non-inflammable. The 1987 Amendment to the Factories Act provides special provisions on hazardous industrial activities in Chapter IV-A. This amendment empowers the states to appoint site appraisal committees. The amendment has also required compulsory disclosure of information by occupier, regarding dangers including health hazards and measures to overcome such hazards to Chief Inspector, the local authority and the general public living in the vicinity. Every occupier must draw up an emergency disaster control plan, which must be approved by the chief Inspector. The contravention of the provisions is liable to result in cancellation of license\textsuperscript{16}. The occupier is further required to maintain accurate and up-to-date health records and must employ operations and maintenance personnel who are experienced in handling hazardous
substance. The permissible limits of exposure to toxic substances are prescribed in the second schedule to the Act. Safety Committees consisting of workers and managers are required periodically to review the factory’s safety measures.

The occupier is held responsible for compliance with the provisions of the Act. Non-Compliance exposes him to stiff penalties. Section 92 of the said Act provides for an imprisonment for a term which may extend to two years or with fine which may extend to one lakh rupees or with both, for any contravention of the provisions of this Act or any rules made thereunder. If the contravention continues after conviction, a further fine which may extend to one thousand rupees for each day till the contravention continues, may be imposed. Section 96-A provides penalty for the contravention, of provisions dealing with hazardous processes which may extend to seven years imprisonment and with fine which may extend to two lakh rupees and if contravention continues with an additional fine which may extend to five thousand rupees for each day during which contravention continues. If contravention continues beyond a period of one year after the conviction, the offender shall be punished with imprisonment for a term which may extend to ten years.

When we look back at the legislative history of statutes relating to the sustained development and environment pollution, we find that some of them do not deal with environment pollution, yet their provisions relating to the issue of the license for the establishment of units and planning of future development on sound and balanced lines in such a way that the environment is adequately dealt with. The Industries (Development and Regulation) Act, 1951 is a such type of statute. This Act as such makes no direct or indirect reference to environment but provides that a licence is necessary for operating a new manufacturing establishment or significantly altering the operation of an existing plant. The Act confers on the Central
Government has the power to make rules for regulating the production and development of industries mentioned in the Schedule, in consultation with the central advisory council on these matters and licensing conditions. Provision has also been made in the Act regarding the establishment of development council with a view to secure proper development of the scheduled industries. The Central Government has power to revoke or amend conditions of licence. On the appraisal of the provisions of this Act, it is found that there is no mention of environment but if we read the policy statement between the lines it is that this Act gives implied authority to the government to append stipulations and conditions of taking care of the environment pollution at the time issuing or after the issue of the licence. The imposing of conditions for issue of licences can be stretched to serve the cause of environment.

Similarly the Inflammable Substance Act, 1952 does not contain the law dealing with environment, but its provisions declaring substances as inflammable covers the environment. This Act has been enacted to declare certain things such as acetone, wood neptha, ethyl alcohol and methyl alcohol, carbide of calcium, calcium phosphate and cinematographic films having nitro-cellulose base, etc. to be dangerously inflammable and to provide for regulation of their transportation. The regulatory norms of the above mentioned inflammable material are also directed towards the control and regulation of the pollution of environment created by the colorful handling of these substances.

The Mines and Minerals (Regulation and Development) Act, 1957 encompasses the protection against environmental degradation due to mining operations. As per section 4 of the Act no person can undertake any prospecting or mining operations in any area, except under and in accordance with the terms and conditions of a prospecting licence or a mining lease granted under the Act or the rules made thereunder. The
Central Government is empowered to make rules to regulate the disposal or discharge of tailings, slimes or other waste produced or arising from mining or metallurgical operations. Violation of the provision of section 4 entails penalty of imprisonment which may extend to one year and fine which may extend to five thousand rupees or with both\textsuperscript{21}.

There is the Atomic Energy Act, 1962 on the statute book which enacts the provisions relating to the protection and control of radioactive air pollution. The subsequent rules made there under as the Radiation Protection Rules, 1971 also deal with radioactive air pollution. Under the Act, the Central Government is required to prevent radiation hazards, guarantee public safety of workers, handling of radioactive substances and ensure the safe disposal radioactive wastes. It is apparent from the previous discussion that some of earlier Central enactments contain provisions having some concerns on the problem of air pollution and environment protection.

Some state legislations like the Bengal Smoke Nuisance Act, 1905, the Gujrat Smoke Nuisance Act, 1963, and the Bombay Smoke Nuisance Act, 1912 are important enactments which deal with abatement of nuisances arising from smoke of furnaces or fire places and provided for the machinery for the purpose of combating air pollution from these sources\textsuperscript{22}. Similarly Municipal statutes cover the area of pollution like Delhi Municipal Corporation Act, 1957. Section 481 of this Act deals with regulation of smoke in factories, workshops and trade premises. Section 206 of the Gujrat Municipal Act, 1963 empowers the municipalities to deal effectively with smoke nuisance which results in air pollution arising from any furnace employed in any work or building for the purpose of trade or manufacturing. The section 436 of the Calcutta Municipal Corporation Act, 1951 empowers the corporation to refuse the permission of establishment of a factory if the establishment of such factory would be objectionable by
reason of the density of the population in the neighborhood or would cause nuisance to the inhabitants. Section 437 (1)(b) prohibits the use of any premises for a purpose which in the opinion of the corporation is dangerous to life, health or property or likely to create a nuisance. These and some other state legislations and municipal statutes enshrine provisions in a slightly different form for prevention and suppression of nuisance at the local level. The matters of air pollution have been given only secondary importance. Only general rule making powers of government are used to prevent pollution under these legislations. Therefore, there arose a need to introduce a comprehensive legislation with the primary objective of dealing with air pollution. To meet this object the Parliament enacted the Air (Prevention and control of pollution) Act, 1981 and the Environment Protection Act, 1986.

The Air (Prevention and Control of Pollution) Act, 1981 popularly known as the Air Act 1981 which concerns about the detrimental effects of air pollution on the health of the people as also on animal life, vegetation and property. The Act deals exclusively with the preservation of air quality and the control of pollution. The Air Act defines Air pollution to mean the presence in the atmosphere of any air pollutant. The Air Act covers the emissions from the common and important sources of air pollution such as the industrial plants and automobiles.

The Air Act of 1981 provides for enforcement machinery in the form of Central Pollution Control Board and State Pollution Boards in their respective geographical jurisdiction. The main function of the Air Pollution Boards are inter alia to improve the quality of air and to prevent and control or abate air pollution in the country, advice respective governments on matters of air pollution; plan comprehensive programme for prevention and control of air pollution secure its execution. These boards are under obligation to organize mass education programmes pertaining to the cause
of air pollution. They are to lay down the standards for the quality of air, standards for emission of air pollutants into the atmosphere from industrial plants and automobiles or for discharge of any air, pollutants into the atmosphere from any other source. The state boards are also required to inspect any control equipment, industrial plant; or manufacturing process or in the control areas and can issue appropriate direction as to prevention, control or abate air pollution.

The Air Act of 1981 provides the scheme of prevention and control of air pollution. The Air Act after its amendment in 1987 gives wide powers to state governments and pollution boards. The state government after consultation with the state pollution board is empowered to designate particular areas as “air pollution control area.” The state government in such air pollution control areas can prohibit the use of any fuel or appliance other than the approved ones or the burning of any material (other than fuel) such as garbage and other waste products which may cause or likely to cause air pollution.

The Air Act of 1981 envisaged the scheme for the control of industrial pollution. The Act prohibits the operation or establishment of any industrial plant in an air pollution control area by any person without the previous consent of the state board. The state board may impose conditions including the installation and proper maintenance of such control equipment as may be specified by the state board erection or re-erection of specified chimney restriction an emission of air pollutants. If the establishment does not follow the instruction issued and conditions imposed by the state board; it can cancel the given consent after giving an opportunity of being heard. In case of actual or threatened violation of emission standards, the Board can seek an order from court for restraining such person from causing air pollution. Alternatively, the Board may issue directions as to the closure, prohibition of regulation of defaulting industry
or process or the stoppage or regulation of supply of electricity, water or any other service\textsuperscript{33}.

The enforcement and implement of the Air Act of 1981 depends upon the powers of the boards to take action against the violators of the Act and directions of the boards. To effectively implement the provisions of the Act the Boards are authorized to take remedial measures to mitigate the emissions of air pollutants in the event of their actual discharge or apprehension thereof\textsuperscript{34}, power of entry and inspection\textsuperscript{35}, power to obtain information about the nature and extent of emission control equipment of abatement of pollution\textsuperscript{36}. Failure to comply with the provisions of the Act or directions issued by the state board attach stringent penalties in which imprisonment, though varying, may extend from three months to seven years and a fine up to maximum of ten thousand rupees\textsuperscript{37}. The redeemable feature of the Act is that the State Board or individual have been conferred the right to lodge complaint in the court after giving proper notice of making complaint to violator. The cognizance by the Court of the offence shall be taken on a complaint made by board or by a person who has given notice of not less than sixty days of his intention to make a complaint, to the board. Hence, there is a provision of citizen's suit under the Act.

The Bhopal gas tragedy emotionally touched the hearts of all Indians. In the wake of this tragedy the parliament enacted a statute to prevent the recurrence of such type of tragic incidents. The Environment (Protection) Act, 1986 was passed by the Parliament. This Act relates to the protection and improvement of the human environment and the prevention of hazards to human beings, other living creatures, plants and property, etc. This statute constitutes an umbrella legislation designed to provide a framework to Central Government for coordination of the activities of various Central and State authorities established under the water Act and the Air Act. As regards the Control of air pollution, section
3(1) of the Act empowers the Central Government to take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of the environmental pollution, controlling and abating environmental pollution. The Central Government is authorized under the Act, to set new national standards for the quality of the environment as well as standards for controlling emission and effluent discharges, to regulate industrial locations, to prescribe procedure for managing hazardous substance, to establish safeguards for preventing accidents and to collect and disseminate information regarding environmental pollution. One of the most important provisions of the Act is enshrined in section 24 which provides that if any act or omission constitutes an offence punishable under the Act of 1986; as well as any other law, the offender shall be liable to be punished under the other law and not under the Act of 1986. This is a controversial provision of the Act of 1986. It is an irony that if the two Acts (including the Act of 1986) have prescribed punishment concurrently the Act of 1986 shall not have precedence while it is a legislation enacted later in point of time. In such type of situation, the severe penalties of the environment (Protection) Act shall become redundant and simply remain on paper. This is why the Act of 1986 has been described as a “Cobra that is seemingly fierce.. but ... has no venom in its fangs”30

LEGISLATIVE CONCERNS RELATING TO WATER POLLUTION

Water is an important component of the wholesome environment. It is an essential element of human life but, is useful only when it is unpolluted. The higher the standard of living, greater the danger of pollution. To make it fit for use, removal of pollutants is essential. Greater material wealth means an increase of substances in water which lead to pollution. The more we advance the more wastes we produce. Industrial wastes, inter alia; are the most important pollutants of the water39. Though
The water is an inexhaustible natural resource but for the purposes of consumption it is in short supply at many places. The water which is fit for consumption known as fresh water is only 3% to meet the requirement of entire world's population and it is because of this it is in short supply which going to be a rare commodity in future.

Polluted water means such water which contains foreign substances in it, that alters physical, chemical or biological Properties of water. When the water is polluted or contaminated it looses it's natural qualities and becomes unfit for use. Polluted or contaminated water has been found to be injurious to public health. It cannot be utilized for the domestic purpose, animals and aquatic life. Law has played a significant role in the prevention and control of water pollution. Here we intend to explore the extent and nature of the legislative law in prevention of water pollution. Statutory control of water pollution under the Indian legal system is to be probed in the study undertaken.

The oldest legislative safeguards against water pollution had been provided under the Shore Nuisance (Bombay and Colaba) Act, 1853. These safeguards are punitive in nature. The Act of 1853 contains provisions with regard to the control of pollution of fresh water and marine waters prescribing different penalties for the acts of pollution. The provisions are scanty and insipid. This Act is one of the earliest statute on this point in India. Section 1 of the Act gave wide powers to the collector of land revenue, Bombay, to issue notice to an offending party requiring of any nuisance anywhere below the "higher tide mark". It is that part of the sea-shore to which waters ordinarily reach when the tide is highest. The act empowered the collector to get the nuisance (done to water) removed or abated in case the warning given in the notice had been violated.

Another Statute enacted during the same time period is Oriental Gas Company Act, 1857. This legislation has comprehensively attempted to
control pollution of fresh water from industrial effluents of the Oriental Gas Company. This was a company incorporated in India for the purpose of manufacturing and supply of gas for lighting the town of Calcutta and its suburbs. Section 15 of the Act provided penal consequences if the company caused water to be polluted. This section held that "If the company shall at any time cause or suffer to be brought or to flow into any stream, reservoir, aqueduct, pond or place of water or into any drain communicating therewith, any washing or other substance produced in making or supplying gas, or shall willfully do any act connected with the making or supplying of gas, whereby the water in any such stream, reservoir, aqueduct, pond or place of water, shall be fouled, the said company shall forfeit for every such offence a sum not exceeding one thousand rupees and they shall forfeit an additional sum not exceeding five hundred rupees for each day during which such washing or other substances shall be brought or shall flow or the act by which such water shall be fouled shall continue after the expiration of twenty four hours from the time when notice of the offence shall have been served on the said company, by the person into whose water such washing or other substances shall be brought or shall flow or whose water shall be fouled, and such penalties shall be paid to such last mentioned person". Penalties have also been provided under section 17 of this Act. Provisions underlying this sections provided for penalties of two hundred rupees if the water be fouled by gas, to the person whose water was fouled, or a further sum not exceeding one hundred rupees, for each day during which the offence continue after the expiry of twenty four hours from the service of notice of such sum⁴⁸. In this series of general law dealing with water pollution is the Sarai Act of 1067. Section 7 of this Act enjoined upon keeper of a sarai or an inn to keep standard quality of water fit for consumption by persons and animals using it to the satisfaction of the District Magistrate or his
nominees. A penalty of rupees twenty was imposed for failure to maintain the standard of water\textsuperscript{44}.

It may be noted that in both the initial statutes of 1853 and 1857, no systematic efforts were made to define either nuisance or fouling of water\textsuperscript{45}. These legislations along with the statute of 1867 did not deal with the prevention of water pollution, they were meant to control the quality and standard of drinking water. They were consequently concerned with the control and prevention of water pollution. It was the Indian Penal Code of 1860 which systematically dealt with the control of water pollution. A chapter was inserted in the Code of 1860 with the name and style of Public Health and Safety. Sections 269 and 277 and 290 of the code are related with water pollution. These are concerned with fouling of water and prescribe the punishment for it. Section 269 reads”, whoever unlawfully or negligently does any act which is and which he knows or has reasons to believe to be, likely to spread the infection of any disease dangerous to life, shall be punishable with imprisonment of either description for a term which may extend to six months or with fine or with both”. Section 277 of the Code defines fouling of water and lays down the punishment for it. However this section in its scope covers voluntarily fouling of water and does not cover an act committed involuntarily what ever the consequences of such an act are there. This section has been narrowly interpreted to include only flowing water of rivers, canals and streams and wells\textsuperscript{47} in terms of ‘public spring or reservoir’. The words ‘corrupt and foul’ as used in the section simply take care of purity of water. The section also provides for a minimum punishment and fine for fouling of water keeping in view the seriousness of problem of water pollution the sanctions do not seem to have much force in recent times.

There is another section which covers pollution of water\textsuperscript{48} other than springs and reservoirs. It lays down that “whoever commits a public
nuisance in any case not otherwise punishable by the code, shall be
punishable with fine which may extend to two hundred rupees". It is clear
from plain reading of this section that, it does not mention the water
pollution as such but it covers all "public nuisance" not covered by this
penal code and thus include the fouling and making corrupt the water.
Furthermore it may be stretched from the language of section 425 of I.P.C.
that causing diminution of water supply may be treated as mischief and
possible direct cause which may also be pollution.

Many statutes had been enacted during nineteenth century which
are related to environment pollution indirectly. There are several statutes
dealing with river and canals providing legal devices with regard to water
pollution. The Northern India Canal and Drainage Act, 1873 lists certain
offences in section 78. It asserts 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. It
also provides that who ever corrupts or fouls the water of any canal so as
to render it less useful for the purposes for which it is ordinarily used would
be imposed a penalty of imprisonment not exceeding one month or a fine
not exceeding fifty rupees or both for the breach of the provision.

In 1881 a statute was enacted which took note of marine pollution.
The Obstruction in Fairways Act, 1881 was one of the earliest statutes
contains legal devices for the prevention of pollution of fairways leading to
port. Section 8 of the Act 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 arise to a bank or shoal or doing of any other
act which cause or likely to cause obstruction or danger to navigation.

The law that deals with water pollution since last quarter of the
nineteenth century is the Indian Easement Act, 1882. It is one of the earlier
statutes dealing with the rights of individuals inter se in regard to pollution
of waters. Section 7 of this Act contains several illustrations which clarify the application of legal provisions to concrete situations. One of illustration states that "the right of every owner of land, within his own limits, the water which naturally passes or percolates by, over or through his land shall not before so passing or percolating, be unreasonably polluted by other persons". The rule incorporated in this illustration is even wider in scope than common law doctrine of reparian owners' rights in that it extends not only to natural streams but also to percolating water and water flowing in undefined channel and stagnant water such as sea, ponds or lakes. The water pollution though, not specifically defined in the Act but must refer to any alteration of natural quality of water whereby it is rendered less fit for any purpose for which in its natural state it is capable of being used.

The Indian Easement Act has some black spots and bottlenecks in the form of prescriptive rights to pollute the water. Such prescriptive rights are binding where the right has been peacefully enjoyed without interruption for twenty years. Such prescriptive right cannot be acquired against the government which has sovereign rights in waters. The recognition of prescriptive right to pollute is one of the drawbacks of the Indian Easement Act. The Indian Fisheries Act, 1897 is also related to water pollution in order to save the fisheries from any foul play. This Act prohibits the poisoning of water and the consequent destruction of fish. Section 5 of the Act provided that if any person puts any poison, lime or noxious material into any water with intention thereby to catch or destroy any fish shall be punishable with imprisonment which may extend to two months or with fine which may extend to two hundred rupees.

The transportation of oil by ships or any other vehicles on the ports or in the sea may be a potential cause of water pollution. The water pollution by oil has been regulated by the Indian Ports Act, 1908. Section 6 of the Act empowered the government to make necessary rules for the
purpose of regulating the manner in which oil or water mixed with oil shall be discharged in any port and the disposal of the same. The Act also prohibits throwing of ballast or rubbish or any other thing likely to form a bank or shoal detrimental to navigation into either the port or upon any place likely to be washed into the port by tides, storms or land flood. Any violation of these provisions attracts a fine extending to rupees five hundred and reasonable expenses which may be incurred in removing the same. A maximum of two month’s imprisonment has also been provided in the event of receiving notice from the conservator of port to desist from casting or throwing of ballast, rubbish, oil or any other material and the person continues so to cast or throw or discharge the same.

The Damodar Valley Corporation Act, 1948 has asked the corporation to prevent water pollution. The Act authorizes the Corporation to frame regulations for prevention of water pollution with the previous sanction of the Central Government. In pursuance of the powers so conferred the corporation has framed the Damodar Valley Corporation (Prevention of pollution of Water) Regulations, 1957 for prevention of water pollution. The Regulations for the control of pollution of any water under the control of the corporation by persons, local authorities and vessels. The regulations provide for the imposition of a fine up to one thousand rupees and up to rupees one hundred per day for continuing offence, after conviction for the breach. The provision for punishment through regulation is subject to challenge on account of excessive delegation, because the provision of punishment has not found place in the Act itself.

For the better management of interstate rivers a Central legislation has been enacted in the form of the River Boards Act, 1956. The Act asked for creation of River Boards under section 13. The Board is empowered to lay down the framework for the regulation and development of interstate rivers and river valleys. One of the functions of the Board is to advise the
government concerned in regard to pollution of waters of interstate rivers. The statute is of very limited significance as the function of the Board on water pollution is simply advisory.

To increasing hazards of domestic and industrial units compelled various state governments to frame rules for the regulation, disposal and discharge of industrial wastes and effluents. Consequently certain states enacted legislations to protect their water resources. The Orissa River Pollution Prevention Act, 1953, covered the river pollution only. Maharashtra State in 1970 came out with much more comprehensive statute. The Maharashtra Prevention of Water Pollution Act, 1969 covers a wide area of water pollution encompassing rivers and water courses (flowing or for the time being dry), in land water (natural or artificial), subterranean streams or sea to such extent and tidal waters to point as stale government may specify in this behalf. The Act for the time defined pollution in elaborated terms. The water Board constituted under the Act was given power to control existing and new outlets and discharges. The Act provided separate treatment of different offences.

The prcusal of the above mentioned legislative measure makes it clear that all statutes had limited application and contained general provisions for the control and prevention of water pollution. These laws could not prove efficacious against the spread of Pollution that began to occur as a result of rapidly growingly population accompanied with increasing hazards of domestic and industrial needs. Therefore the feeling began to strengthen that water pollution has become a national problem which should be tackled at the national level. Keeping this in view some important statutes have been enacted, namely, the Water (Prevention and Control of Pollution) Act, 1974; the Water Cess (Prevention and Control of Pollution) Act, 1977 and the Environment (Protection) Act, 1986. The Act of 1974 undoubtedly represents one of India’s concerted efforts to deal with
the problem of water pollution comprehensively at national level. Some minor amendments were made in the Act of 1974 in 1978 and then it was revised in 1988 so as to bring it in conformity with the provisions of the Environment (Protection) Act, 1986. The Act empowers the water boards to take action against those who violate and breach the provisions of the Act. Significant achievement has been the incorporation of a provision for citizen’s suit in section 49 of the Act. The Act also provides for stringent penalties among others for failure to comply with a court order under section 33 or a direction from the board under section 33-A.

Instead of mechanism for prevention and control of water pollution, the economic incentives for controlling pollution and to augment the resources of the Central and State boards for effective management, have been provided under the water cess (Prevention and Control of Pollution) Act, 1977. By imposing a cess on water consumed the state government tries to raise funds for the effective functioning of water boards. The cess money is first to be credited to the consolidated fund of India and then be distributed and disbursed by the Central Government to the state boards.

The Umbrella legislation, that is to say, the Environment (Protection) Act, 1986, also makes room for the application of the water Act of 1974. This means that apart from the preventive or controlling measures under the water pollution law the residue protection of water would come within the environment (Protection) Act, 1986.

**LEGISLATIVE DEVICES AGAINST NOISE POLLUTION:**

From ancient time Noise had remained key factor of the pollution of wholesome environment. The religious rituals have been performed with much fanfare creating noise detrimental to the individual health. The high extent of religiosity in the life of Indians refrained the government to make any law regulation noise pollution. Noise in India is actionable under the
law of torts. As regards the statutory control of noise pollution, it is surprising, that there exists no law under Indian legal system exclusively dealing with the problem of noise or its control. Though there are many transnational statutes which have been specifically aimed at controlling the menace of noise. The concerns for noise pollution have found place in some stray provisions. These have been discussed hereunder.

The problem of noise pollution has been dealt with under criminal law. The noise is actionable under Indian Penal Code, 1860. The person who runs offensive trade and thereby corrupts the air or cause loud and continued noise and thereby cause injury or annoyance to those dwelling in the neighborhood in respect of the health or comfort and convenience or living is liable to prosecution for causing public nuisance. The noise nuisance can also be punishable under section 290 of the code of 1860. It may be emphasized that the question of nuisance by noise is one of the degree and depends on the circumstances of the concerned case. Neither the right to make noise can be acquired by prescription nor it can be accepted as defence to a charge of nuisance by noise. However it is safely said that in spite of the serious consequences of noise, it has not been accorded its proper place under Indian Penal Code, 1860. The provisions of the code, in view of the recent scientific and industrial development is inadequate to cope with increasing menace of noise pollution.

The Police Act, 1861 is another legislation which contains some stray provisions for the control of noise pollution. The Police Officers are empowered to regulate the extent of which music may be used in the streets on the occasion of festivals and ceremonies. A potent source of noise pollution at the vicinity and around the airport is the civil aviation. The impact of civil aviation on the environment is evident in the rising public concern regarding noise which is most irritating and the most responsible
element for the rising opposition to further growth of aviation. India is a member state of International Civil Aviation Organization and has accordingly accepted the noise specification laid down by it. There is Central legislation which is related with the noise of aircrafts. The Indian Aircraft Act, 1934 enshrined the rule that causing willful damage or injury is actionable. Though this Act does not directly deals with the noise pollution but the Rules made under this Act provide for the control of noise menace. This Act empowers the Central Government to make rules for the control of noise pollution. Noise restriction regulations and safety regulations have been incorporated in the Air Craft Rules.

At the time of its inception The Air (Prevention and control of Pollution) Act 1981 did not include the regulation of noise pollution. But after 1987 amendment noise has also been recognized as an air pollutant. Section 2 (9) defines air pollutants and includes "noise present in the atmosphere" in its lists of the air pollutants. Hence, the 1987 Amendment to the Air Act now specifically extends the provision of Air Act, including increased penalties, citizen’s suits and issuance of injunctions to control noise pollution. Moreover, the Central Pollution Control Board has been empowered to lay down noise standard meant for controlling the noise menace. On the perusal of the provisions relating to control the noise pollution as contained in the Air (Prevention and Control of Pollution) Act, 1981 one finds that this Act does not have proper teeth to deal with the noise pollution. It is an inadequate legislation to prevent and control the noise pollution. Even a cursory probe conducted to discover the devices for controlling noise pollution under the environment (Protection) Act, 1987 fails to grab any specific reference regarding noise pollution in it. This Act, too, is not a potential instrument for combating environment pollution through noise. However in exercise of the powers conferred by clause (ii) of sub-section (2) of Section 3, sub section (2) of section 6 and section 25
of EP Act 1986, the Central Government made the Noise Pollution (Regulation and Control) Rules 2000 to Control the increasing ambient noise in public places. The rules framed provide the ambient an quality standards in respect of noise for different areas/items. Rule 4 fixes the responsibility as to the enforcement of noise pollution control measures. According to rule 5 a loudspeaker or public address system shall not be used except after obtaining a written permission from authority and shall not be used at night between 10 p.m. to 6 a.m. The rules declare certain zones as silence zone/area, where playing of music and sound amplifies is prohibited and breach thereof is declared as an offence for which penal provisions are made. Despite the framing of these rules, the irony is that rules are seldom followed. People by and large are not aware of the rules and the mechanism provided in the rule for their enforcement is very weak.

**LEGISLATIVE MEASURES FOR PROTECTION OF FORESTS AND WILD LIFE**

**Protection of Forests:**

Forest and wild life are the important components of the ecosystem and form the basis of an effective bio-diversity. They play significant role in maintaining the relationship between organism and their environment and those between people and their environment, intact. Forests render the climate equable, add to the fertility of the soil, prevent soil erosion and promote perennial stream flow in the rain-fed rivers. They shelter wild animals, preserve gene pools and protect tribal people. Thus forests and wild-life help in maintaining the ecological balance. Moreover, India is a country of divines who dwell in forests away from material world. Indian ethos and culture have a significant connection between “spiritual heritage and sylvan milieu”. The Vedic literature reveals the response of Indian sensibility towards the benediction of nature and wild life as Yajur Veda evokes universal peace with special mention of the “peace of air, peace of
earth, peace of waters, peace of plants, peace of trees". The Vedic “Om Shanti Mantra” seeks peace in its entirety. The peace means calm and calm everywhere, no pollution of any sort. The men’s spiritual destiny lies in the deep peace of forest, because he is near to nature and lives naturally. Around him is the creation of Almighty. The wild life is also basic feature of the environment and ecology. Different kinds of animals play significant role in maintaining ecology. Different kinds of animals play significant role in maintaining ecological balance. The wild life has a vast number of potential uses for human beings. The uses range from aesthetic and moral values to economic values and ecological stability. The survival of mankind is inextricably linked to the over all health and stability of all species in the universe. The logical inference is that the individual is the member of a community of interdependent parts who avoid competition and seek cooperation and thus, enlarges the boundaries of community which includes soils, waters, plants and animals. It implies respect for biological diversity including wild life. Therefore we may say that the concern of forest and wild life is the concern for man himself. All forms of life he it human, animal and plant are so closely intermingled that disturbance in one gives rise to imbalance in others. If species of plants or animals become endangered they will accelerate the degradation in the environment which may threaten man’s own existence. Nature maintains the vast diversity of animals and plants in a complex organization in a well balanced process of life supporting system for their survival. This balance has been disturbed by the activities of mankind in the name of development. The intelligentsia and law makers came forward to prevent the ecological dis-balance and took care of the habitation and survival of endangered species of flora and fauna. The conflict between claims of development and adverse effects of the unplanned development has been tried to resolve by legislative efforts.
The law always carries with it the hopes and aspirations of the society. The British regime acted in the past on this principle and devised laws to protect forest and habitation of the animal and birds' life. The Supreme legislative council passed the first Indian Forest Act, in 1865. The law enshrined in this Act was related to the administration of forests. This Act was exploitative and served the interests of the feudal. The enactment as a whole is a derogatory step to both the forests and the forest dwellers. The general law relating to forests in British India was contained in the Forest Act, 1878. This Act embodies the colonial policies which served the interests of shipping manufacturers and traders. The Forest Act of 1927 consolidated the pre-existing laws. The territorial jurisdiction of the Act was also limited.

The Indian Forest Act, 1927 gives the states jurisdiction over the administration of forests and on the basis of the degree of control exercisable in them, classifies forest into reserved forests, village forests, protected forests and non-government (private) forests. Any unauthorized felling of trees, setting fire to a reserved forest, trespasses of pastures cattle, negligent damages to timber, quarrying clearing of land for cultivation, jaunting or poisoning of waters in the preserved forest is punishable with imprisonment for a term, which may extend to six months with fine which may extend to five hundred rupees or with both in addition to such compensation for damage done to the forest as the convicting court may direct to be paid.06

The changed conditions relating to socio-economic life, trade, industry and commerce gave birth to a debate over the balancing of various interests of Indian Society on forests and the concern over the rising rate of deforestation. There was felt a necessity of a central legislation for the conservation of forests. This necessity and demand for a legislation received impetus from Forty Second Amendment of the Indian
Constitution in 1976. The efforts have resulted in enacting of the Forest (Conservation) Act, 1980. The Forest (conservation), Act, 1980 imposes restriction on de-reservation of forest or on use of forest or forest land for non-forest purpose. The expression “non-forest purpose” means breaking up or clearing of any forest land of cultivation of tea, coffee, spices, rubber, palm, oil bearing plants, horticulture crops or medical plants. Breaking up or clearing of forestland for the purpose of re-forestation can allowed and is not considered as a non-forest purpose. No state government or other authority could, without prior approval of the Central Government, make any order to deserve forest use any forest land for non-forest purpose, lease out forest land to a private agency or cut naturally grown trees in forest land for the purpose of using it for reforestation. The Act also empowers the Central Government to appoint an advisory committee to advise on the grant of approval under the above mentioned provision and to make rules. Penalties have been prescribed by the Act for contravention or abetment of contravention of the provision of section. The liability extends to offences (subject to exceptions) committed by other authorities and government department. Though the Act of 1980 embodies the aspirations of Indians yet this law represents the extensions and continuation of colonial legacy of appropriation of common property resources in contravention of social forest policy. The forest (conservation) Act, 1980 has not done much for the protection and conservation of forests. The Act merely centralized the power concerning forest land use, shifting it from states to centre.

PROTECTION OF WILD LIFE:

Wild life is one of the important components of forest ecosystem playing a vital role in ecological balance. The protection of wildlife had been accorded recognition in the later half of the nineteenth century when birds attracted the attention of the Britishers in India. The wild life law is the
earliest legislation, which had a bearing on the environment wild life 
protection. thus received a statutory protection through state legislations. 
The first legislation in the regard is the Andhra Pradesh Wild Elephant 
Preservation Act, 1873. Another law on this subject is the Nilgiris Game 
and Fish Preservation Act, 1879. The twentieth Century saw an emergence 
of numerous statutes enacted for preserving the wild life as: the Wild Birds 
and Animals Protection (Central Provinces and Borer Amendment) Act, 
1935; the Bombay wild Animals and Birds Act, 1951; the Assam Rhino 
ceros preservation Act, 1954; the Assam Elephant preservation 
(Amendment) Act,1859; the West Bengal Wildlife Protection Act, 1959; The 
Gujrat wild Birds and Animals Act, 1963; the Madras Wild Elephant 
Act, 1998. These and some other enactments legislated on by different 
states provided protection to the wildlife but these are scattered and piece 
meal legislations devoid of comprehensive efforts. Apart from the state 
legislation we also find some old central legislations on statute books. The 
Elephant's Preservation Act, 1879 is one of the important Central 
Legislation enacted for the protection of wild elephants. Another legislation 
dealing with the protection of wild birds is named as: the Wild Bird's 
Protection Act, 1887. The purpose of this Act was to prohibit the 
possession or sale of certain kind of wild birds during the breeding season. 
This Act did not have the desired effects as killing of birds was not 
prohibited. These legislations did not produce any result and the killing of 
wild life went on free spree, which stirred the ingenuity of mankind to bring 
some effective measures to protect the wild life.

The remedial efforts were carried by the British government in form 
of the Wild Birds and Animals (Protection) Act, 1912. This enactment is a 
broader legislation which specified closed hunting seasons and regulated 
the hunting of designated species through licenses. This Act, through
section 3, empowered the provincial governments to declare the whole year or any part thereof as a closed season. It was made unlawful to capture or kill or sell or buy or possess any such bird or animal as specified. This was made effective by declaring the contravention of section 3 punishable under section 4. In 1935, the Act was amended by the Wild Birds and Animals (Protection), Act, 1935. Section 11 of this Act empowered the provincial governments to declare any area to be a sanctuary for birds or animals and their killing was made unlawful. Violation of this section was made punishable with fine. It is noteworthy that the concept of sanctuary was introduced in India for the first time however, the provisions of the Act also proved to be inadequate for protection of wildlife and birds.

The states and Central Statutes mentioned above are related primarily to the regulation of hunting and did not regulate trade in wildlife and wildlife products. The first comprehensive law for the protection of wild life and its habitat was perhaps the Hailey National Park Act, 1936 which established the Hailey National Park in the State of Uttar Pradesh popularly known as Corbett Park. After the enactment of the Act of 1936, nothing much was done to improve the situation. The Forests and lives therein were exploited with impunity. Thus, a need was felt to have a more adequate law. Concerned over the importance of wild life a perfect balance of ecosystem and altering depletion of wild life, the Central Government desired to enact a comprehensive legislation for the protection of wild life. With this commitment, the Parliament enacted the Wild Life (Protection) Act, 1972 in pursuance of regulations passed by the legislatures of 11 states.

The Forty second amendment of constitution in 1976 shifted the wildlife protection from state list to the concurrent list of the Indian Constitution empowering the Central Government to devise policies and
law of national importance in this sphere. The Central Government carved out the national wildlife policy in the form of National wildlife Action Plan 1982 for conservation of wildlife including flora of our country by way of providing for establishment of network of protected areas such as national parks, sanctuaries and biospheres.

Despite the important measures embodied in the Wild Life (Protection) Act, 1972, it proved to be inadequate. Hence, the Act of 1972 was amended in 1986 by Wild Life (Protection) Amendment Act, 1986. This too, did not succeed in preventing the illegal poaching of wild animals continued for the purpose of the trade and depleting the number of the animals in several areas. The Act failed to cater the requirements of constitutional mandate to deter the theft of wild animal’s and wild animal products. The constitution of India enshrined the principle that ‘A trade which is dangerous to ecology may be regulated or totally prohibited. Implementation of this constitutional principle was carried by doing an amendment through the Wild Life (Protection) Amendment Act, 1991. This was enacted to deter the poaching of wild animals and illegal trade of products derived there from. The penalties for various offences have been suitably enhanced to make them deterrent. At the outset, the legal provisions do not permit the collection of snake venom for producing life saving drugs from snakes like Cobra and Russell, Vipor. This has been causing hardship. The 1991 Amendment removes this bar and provided for extraction of and dealing in snake venom in a regulated manner.

The wild life forms part of our culture. Animals play a vital role in maintaining ecological balance. The purpose of the wild life legislation is to protect this balance through saving the endangered species extinction as also for arresting depletion in numbers caused by unbridled exploitation thereof.
The 2002 Amendment in the Principal Act of 1972 was aimed at to
attain the harmonious co-existence of man and animals to avoid
environmental disturbance. The 'project elephant' took into account this
animal and human conflict and sought the protection and safety of not only
elephants but also the people. The new 2002 amendment provides for
more involvement of people in wildlife preservation activities. This
amendment came into force in 2003. The regulation introduced by the
amendment extend to many things including selling or transferring wild
animals, dealing in wild animals, animal articles and trophies, hunting of
wild animals, keeping and breeding of wild animals in captivity against
rules. More public involvement and participation are envisaged and can be
done by way of NGO representation in the boards and the local community
and panchayat’s participation at the grass root levels of decision making
and management.

After Bhopal disaster Environment Impact Assessment, Oleum gas
leak largely. Indian think-tank had no answer so far as the fixing of
liabilities was concerned. The Environment (Protection) Act 1986 in section
3(3) simply empowered the central government to order the constitution of
an authority or authorities by such name as may be specified in such order
for the purpose of exercising and performing such powers and functions as
necessary to protect and improve environment. However this section falls
short of explaining the nature of liability of pollution or persons responsible
for such disasters. The environmental cases were taking long time for
disposal just like ordinary litigation. The urgency to compensate the victims
of such tragedies was before the law makers. Moreover the nation has an
obligation in the light of commitment to world community to enforce the
decisions of Rio Conference. The National Environmental Tribunal bill was
introduced in parliament in 1992 to provide the establishment of National
Environmental Tribunal for speedy and effective disposal of environmental
cases. Consequently, the parliament passed "The National Environment Tribunal Act 1995" (29 of 1995). The preamble of the Act provides for strict liability of damages arising out of any accident occurring while handling any hazardous substance. The Act also provides the establishment of a Tribunal for effective and expeditious disposal of cases arising from certain industrial accidents. Section 3 of the Act encompasses the liability of defaulter to pay compensation on the principle of "No fault liability". Section 7 of the Act prescribes the reduction of amount of relief if the victim or his representatives have received any relief under Public Liability Insurance Act or any other Act. Section 19 of the Act bars the jurisdiction of another former court, if the cognizance of the case has been undertaken under the provisions of the Act. Despite a noble effort in the shape of "NETA, 1995" the Act has not been given go ahead and so far it's enforcement has been delayed from 95 till date. The reasons are both known to the government. It is still unclear, why the government introduced this Act, when it could have expanded the scope of "Public Insurance Liability Act 1991", when had no intention.

The Public Liability Insurance Act, 1991 is a magnificent piece of legislation, which casts a legal duty upon the person or body of persons to subscribe to an insurance policy under the Act. The manufacturers, store house keepers public or private carriers, sellers (wholesaler or retailers) who deal in hazardous substances or chemical must subscribe to an insurance policy and some position of this subscription is to be deposited as Environment Relief fund to be operated by the District Collector in each district. Wherever an accident occurs, the moot question is how to provide immediate relief to victims and the idea of insurance that creeps in mind at once. This was the reason for the enactment of PLIA 1991 to provide public liability insurance cover to persons effected by accidents occurring while handling those hazardous substances. Whatever is paid under this
policy is an interim compensation based on the principle of no fault liability. The Act is comprehensive with respect to the liability of owner for injury caused due to handling of hazardous substances. The main drawback is that the Act has not been given any publicity and in most of the cases victims do not have recourse to it.

The National Environment Appellate Authority Act, 1997; is an Act to provide for the establishment of a National Appellate authority to hear appeals from orders of Environment Impact Assessment authority. Section 3 of the Act provides for the establishment of Authority, while Section 4 prescribes the composition of the authority. The authority shall consist of a chairperson and vice chairperson and such other members not exceeding three as the central government may deem fit. The chairperson to be a judge either of Supreme Court or Chief Justice of High Court. Vice Chairperson is to be appointed from amongst the administrators from civil services, the three members to be appointed as member must possess expertise or experience in the field of environmental matters. Section 11 of the Act deals with jurisdiction and powers of authority. An appeal u/s 11 of the Act shell lies, if any person is aggrieved by the order of Environmental Clearance authority within 30 days of such order. Section 12 exempts the authority from following the procedure laid down by C.P.C., but shall always be guided by the principle of natural justice. Section 15 bars the jurisdiction of courts to entertain appeals from the orders of clearance authority. Section 19 provides penalties in case the order of Authority are not complied with. The punishment may range with imprisonment for a term which may extend to seven years or with fine which may expend to one lakh rupees or with both. The criticism of the Act lies in the fact that by and large the Authority is non-technical, has no sufficient scientific knowledge or expertise. An element of bureaucracy has also been added.
in the form of Vice Chairman. Moreover it has only one seat in Delhi and this always preoccupied with the workload.

On the evaluation of the above narrated legislative sojourn we reach at the conclusion that the state as a representative of society did not remain aloof from the burgeoning problem of environment pollution. The continued process of law making through legislature shows that the enactment of numerous and various legislations mark the improvement in the dissipated situation of environment pollution, some of these legislations are impressive in their range covering many unregulated fields. These legislations incorporate new and challenging ideas in environment pollution law. The crux of the legislative devices to control and abate the pollution is the right to a healthy environment. The whole environmental jurisprudence is being built up on this principle. On the whole is self-evident that the growth of legislature law was slow but steady. However a criticism is also appended that even too many legislations are insufficient to control the pollution as desired for a dignified life. Moreover these legislations overlap each other and make the situation more confusing.

Foot Note Contd....
FOOT NOTES


2. Section 16 of the Oriental Gas Company Act, 1857.


5. Supra note 2, p.231.

6. Section 4, the Indian Explosive Act, 1884.

7. Section 6, of the Act of 1884.

8. Section 7; the Indian Explosive Act, 1884.


10. Section 9-C of the Act of 1884.

11. Section 2-B of the Indian Boiler’s Act, 1923.

12. Indian Boiler’s Act, 1923, Section 27-A.


18. Id. Section 5.
19. Id. Section 30.
20. Id. Section 6.
21. Id. Section 21.
23. Ibid.
24. Id. at 239.
25. The Air (Prevention and Control of Pollution Act, 1981 Section 2(a).
26. Id. Section 16(1).
27. Id. Section 16(2) (i) and Section ed.
28. Id. Section 16(2)(h) and Section 17(i)(f).
29. Id. Section 17(i)(e) and (f).
30. Id. Section 19(1) and (2).
31. Id. Section 19(3), (4) and (5).
32. Id. Section 22(5).
33. Section 33-A, Inserted by the Amendment of 1987 Into the Air (Prevention and Control of Pollution) Act, 1981.
34. The Air (Prevention and Control of Pollution) Act, 1981 Section 23(2).
35. Id. Section 24.
36. Id. Section 25.
37. Id. Sections 37, 38, 39, 40 and 41.


41. Section 1 of Store Nuisance (Bombay and Colaba) Act, 1953.

42. The Sarai Act, 1967, Section 7.

43. Supra Note 58, p.213.

44. See Emperor v. Nand Ram 1905,6 Bom L.R. 52.


46. The Indian Penal Code, 1880, Section 290.

47. The Northern India Canal and Drainage Act, 1873, Sub-section (3) of Section 78.

48. Id. Section 73(5).

49. The Indian Easement Act, 1882, Section 7, Illustration (f).

50. Id. Sections 15 and 28 (d).

51. Indian Fisheries Act, 1897, Section 5.

52. The Indian Ports Act, 1908, Section 6(e).

53. Id. Section 21.

54. Id. Section 6(2).
55. Id. Section 6 (3).

56. The Damodar Valley Corporation Act, 1948; Section 16.


58. Ibid.

59. Id., at 218.

60. Supra note 76 at p.248.


62. Indian Penal Code, 1860, Section 268.


64. The Indian Aircraft Act, 1934, Section 8(A).


66. The Indian Forest Act, 1972, Section 26.


68. Id. Section 3.