CHAPTER – III
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1 INTRODUCTION

Having considered concept of environment at international level and having understood the implications of international treaties and the conventions in domestic sphere, it would be necessary now to delve in to the realities of the human lives within India. The 19th and 20th century rules governing human conduct were formulated. Rules governing human conduct were codified by legislations. They became law of the nation. Now question, which arises is what is law? Salmond, has defined law by raising the question:- what is law? The definition of law is necessary because it requires clarification regarding the concept of law. The first problem is to analyse the basic concept. Thus when jurisprudence is concerned with analysis of the legal concept, environmental jurisprudence would mean analysis of legal aspects of environmental policies. In-depth study of the legislations, which govern our environment, is a must to study the ramifications of the various legislations and their implementation.

Problem of environment has several facets. Initially, it seemed to be super-technical, but with the spreading of pollution, it became socio-technical and that the world community finds solace in law, it assumes socio-techno-legal character.

Having considered the impact of international covenants and declarations it would be important to delve into the environmental problems, which India started facing in the 19th and the 20th Century. Human nature compelled the
law making agency to legislate specific legislations so that Indians may be under compulsion to strive towards environmental safety.

2 ENVIRONMENTAL ETHICS IN ANCIENT INDIAN SOCIETY

This topic deals with the aspect of civilization of nation. It would be necessary to go back to the days of Harappan civilization. Reference to environment can be traced back in the Indian society even before the advent of Christ i.e. 'Kautilya's Arthashashtra'. The evolution of civilization took within its sphere, facets of earlier culture in which man sought to solve the problems of environment himself. It is rightly observed by a famous author:- Shri D.P.Singhal that.

"Indian civilization is distinctive for its antiquity and continuity. Apart from its own vitality, the continuity of Indian civilization is largely due to its ability to alien ideas, harmonize contradictions and mould new thoughts patterns. Her constant contact with the out side world also gave India the opportunity to contribute to other civilizations".

In ancient India, Dharmasashtras were the main source embedded in the governance. Dharma means what was propounded in Vedas, Purans, Smrities and other works. Dharma is a Sanskrit expression with the widest import. It would be futile to attempt to give any definition to Dharma.

The Harrapan civilization which flourished around 2500 B.C. goes to show that there was organized city Government, a settled society, the advanced civilization represented the adjustment of human life to specific environment
and legal system\textsuperscript{4}. The Harappan civilization even in those days cared for the welfare of its people. The Ancient Indian Environmental Ethics even during the Vedic periods depicts that teachers taught their pupils in secluded place and wrote their works, which are now known as Vedas, Upanishad, Smrities and Dharmas. The main motto of social life was to live in harmony with nature\textsuperscript{5}.

3 EVOLUTION OF ENVIRONMENTAL JURISPRUDENCE IN INDIA:

3(A) Brief Background: -

The environmental legislation in India has a long history. While analyzing the legal aspects of environmental laws, it is better to bifurcate them into five different periods enumerated as below in Box 3.1.

<table>
<thead>
<tr>
<th>Box 3.1</th>
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<tbody>
<tr>
<td>(a) Ancient times;</td>
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<tr>
<td>(b) British Regime or Pre-independence period i.e. prior to 1947;</td>
</tr>
<tr>
<td>(c) Post-independence but pre Stockholm period i.e. 1947 to 1972;</td>
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<tr>
<td>(d) Two decades from Stockholm i.e. from 1972 to 1992;</td>
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<tr>
<td>(e) Post Rio period till date i.e. from 1992 to 2004.</td>
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Environmental policies of ancient period can be said to have been embodied in the following:

Vedas, Upanishads, Smrities, Dharma, Rigveda, Manusmruti, Charusanhita, which give code of conduct for protecting environment. The Arthshashtra of
Kautilya, the Prime Minister of Chandragupta Maurya, can be said to be guiding text for framing comprehensive policy of environment during the ancient Indian period. However, no sophisticated legislation for environmental protection and conservation can be found before the advent of British in India.

This leads to the topic of the legislations, which were in vogue during the British regime. It considers the legislations in the post independence period but the pre-Stockholm declaration period. The constitutional provisions for safeguarding environment are considered. The Environment Protection Act is considered. Depletion of Ozone layer and other legislations are considered. The latest being the Bio-diversity Act, the amendment of Water Cess Act and Disaster Management Act can be said to be legislations touching environment in this Millennium.

The topic is differentiated into different eras so as to analyze the legislations and their implementation for halting degradation of environment.

3 (B) British Regime and the Laws:

The advent of the British regime brought with it certain legislations not meant directly for the betterment of the environment or for its protection but had certain incidental provisions dealing with the environment/betterment of living beings.

During the 19th century, there was a transformation in the society. The ancient Ethics were subjected to change and new behavioural attitude was developed in India. There was a large impact of the British Rule on the
Indian society. Industrialization and factories were coming up. The State of Bombay was the first to legislate to protect water in and around the city. In 1853, Shore Nuisance Act was legislated by the State of Bombay, which can be said to be one of early legislations on environment.

The British started fearsome onslaught on India’s forests, to meet military demands for constructing roads and railways and for exporting the goods, augmenting revenue from the people was their prime concern. The Forest policy was declared in 1884. On analysis of the policy its main objectives can be enumerated as follows:

**Box 3.2**

(a) Promoting general well being of the people in the country.
(b) Preserving climate and physical conditions in the country.
(c) Fulfilling the need of the people.

The Indian Forest Act was legislated in the year 1927. The Indian Forest Act 1927 was mainly based on acquisition of the forestland or village forest. The Forest Act is being implemented even today. However, there are several amendments made by the legislature to this Act.

The legislations appended at annexure III-A show that these enactments contained provisions so as to safeguard the environment. The legislations as their title indicate were meant for controlling natural resources and for prohibiting people from acting in a manner detrimental to environment. These legislations are invoked even today for curbing environmental degradation.
The roots of environmental law can be traced to common law. The definitions are given in present legislations shows that ‘nuisance’ was considered detrimental and thus, the three major acts are considered as they had provisions for betterment of environment. The three major acts i.e. Code of Criminal Procedure, Indian Penal Code and Code of Civil Procedure, 1908 have provisions for the safety of human health. The provisions in these legislations were for safeguarding people from the nuisance committed by others. A person could bring a suit for damages if he suffered from some special damage by reason of the nuisance committed by the other person. Special damages could/can be awarded to a person with other persons who were affected by nuisance reference can be made to the decisions in *Ardeshir vs. Aimai* (1929) 53 Bom. 187, and (12) *Manilal vs. Ishvarbhai* (1925) 27 Bom. I.R. 421. These are the two decisions of Hon’ble Bombay High Court, which have awarded damages. Remedies under criminal prosecution and under civil legislations or its provisions are concurrent and redressal under both the legislations can be simultaneously undertaken.

The illustrations given in *Code of Civil Procedure by Mulla 12th Edition* are worth noting so as to show their relevance even in present day scenario:-

"1. A keeps his horses and wagons standing for an unreasonable time in the highway.

(a) This is a public nuisance for which a criminal prosecution may be instituted against A."
(b) Further, a suit may be instituted against A under section 91 by the Advocate – General, or by two or more persons with the leave of the Court (In 1976 the section has been amended) though no special damage has been caused for an order requiring A to abate the nuisance, and for an injunction restraining him from continuing the nuisance. If the nuisance is repeated or continued, notwithstanding the injunction, he is liable for contempt where the decree granting the injunction is passed by a High Court, or he may be proceeded against under O. 21, R. 32, below, or he may be prosecuted and punished with imprisonment or fine or both under Section 291 of the Penal Code.

(c) If the horses and wagons are kept standing opposite a man’s house, so that the access of customers is obstructed, the house is darkened, and the people in it are annoyed by bad smells, a suit may be brought against A by the occupiers for damages, the damage so caused being sufficiently special to entitle them to maintain the action.

The High Court of Bombay has interpreted the provisions of Section 91 of the Code of Civil Procedure and has held that the said provision is meant for curbing public nuisance. It has held that injunctions can be granted for stopping of the said public nuisance.

Civil litigation is not very popular in India as opined by Michael R. Anderson in his article “Individual Right to Environmental Protection In India” published in the book Normally suits seeking injunction are not filed.
in India. The status of granting exemplary damages or punitive damages is not very clear. Armin Rosencranz in his book, Environment Law and Policy in India, 1991 has used the word "notoriously low" for the damages awarded in Trial Courts\(^5\). The public law remedy is of great help for assessing the environmental damages, either for granting injunctive relief or damages.

The Code of Criminal Procedure and the Indian Penal Code when read together provide for safeguarding the environment and curbing pollution.

**Indian Penal Code 1860 :-**

*The Indian Penal Code 1860* is a legislation having provisions, which prescribe punishment for nuisance. This legislation has its roots in the principles of law of torts. This legislation gives right to an individual to lodge complaint where nuisance is caused.

Chapter 14 of the Code relates to the offences affecting public health, safety, convenience, decency and morals. The chapter comprises of provisions enumerated in Sections 268 to 290. The drafting committee was alive to the problem of curbing nuisance. Curbing of nuisance that may spread infection and so sanctioning deterrent punishment for fouling of water of a public spring or reservoir was enacted. The important aspects are the Provisions embodied in Sections 268, 269 and 277. The Code prescribes punishment for a person being guilty of causing public nuisance. The person, who does any act or is guilty of any legal omission, which may cause common injury, danger or annoyance to the public who dwell or occupy property in his vicinity, is to be prosecuted. The act must necessarily cause (a) injury (b) obstruction (c) danger or (d) annoyance to the person who is entitled to
utilize any public right. The framers of the Code were alive to the aspect of causing convenience or advantage to a person.

The provisions of Section 425 and 426 of the Code can be resorted to for curbing menace of water pollution.

**Criminal Procedure Code 1898 now 1973:**

The Criminal Procedure Code (Old) now repealed had provisions to curb environmental hazards. It would be relevant to discuss the provisions of new Code.

Chapter 10 relates to maintenance of public order and tranquility. Provisions in Sections 133 to 148 are the relevant ones.

The law relating to public nuisance embodied in the Code of Criminal Procedure is more important and requires consideration. The powers are vested with the Executive Magistrate who has the power to interfere in removal of public nuisance which may be concerning environment. The provision in Section 133 specially empowers the Executive Magistrate on behalf of the State to pass conditional orders to remove such nuisance and if any objection is raised, the Executive Magistrate is given wide powers to pass orders. The order of the Executive Magistrate cannot be challenged in any Civil Court. The Magistrate is given two fold powers to initiate the proceedings namely (1) on report of a Police Officer or any other information, (2) he is empowered to take evidence. The courts have taken recourse to this provision for the purpose of protecting the environment. As early as 1931, Allahabad High Court applied the principle of public nuisance
in case of noise pollution. In its decision in the case of *Raghunandan vs. Emperors* reported in *AIR 1931 Allahabad 433*\(^{16}\) wherein the court held that the nuisance of a nature, which is injurious to the physical comforts can be redressed under this section. Person living in the neighbourhood can take recourse to Section 133 of the Code of Criminal Procedure.

The Supreme Court of India in *Govind Singh vs. Shanti Swaroop; AIR 1979 SC 143*\(^{17}\), “captured the potentiality of the law of nuisance in the Code of Criminal Procedure”\(^{18}\). It can be seen that the provisions of Section 133 demands a mandatory duty to be performed. This view was expressed by Hon’ble Supreme Court in *Municipal Council, Ratlam vs. Vardhichand; AIR 1980 SC 1622.*\(^{19}\)

The discussion of this legislation is important in this thesis because the 73rd and 74th amendments of the Constitution pertaining to environment have given powers to the local bodies to stop nuisance, and therefore, if there is perpetual negligence by the civic body, the Executive Magistrate can employ this Section as an antidote, besides, being a useful antidote to the crisis of sanitary environment management in the Indian scenario.\(^{20}\)

3 (C) **Post Independence Laws: - 1947 to 1972.**

The post-independence period before the advent of the Stockholm declaration shows that even the Constitutional framers did not envisage about environmental problems. The policies and attitudes of Government with respect to environmental protection were at low ebb.
The statutes tabulated in box 3.4 and annexed are important as they reveal that post independence legislations tried to curb pollution indirectly.

The post independence scenario as far as the State of Bombay was concerned, shows that several legislations touching environmental aspect were legislated. These legislations were more for the betterment of the labourers. It was because of the industrialization that these legislations were brought on the statute book. These Acts, while seen in the industrialization scenario, show that the legislations were meant for betterment of the people staying within the urban agglomeration. The Bombay Provincial Municipal Corporations Act, Bombay Municipalities Act and later on Gujarat Municipalities Act are examples. On formation of the State of Gujarat, Industrial Development Act was brought on the statute book in the year 1962 and in the year 1966 Beedi and Cigar Workers (Conditions of Employment) Act came up for consideration before Hon’ble High Court of Gujarat. Legislations show that the post independence legislations mainly concentrated on above aspects. State Water Disputes Act and the Ancient Monuments Act were legislations, which had direct nexus on the environment.

The State of Maharashtra in 1968 passed Maharashtra Water Pollution Prevention Act. As early as 1962 it was felt that there must be a comprehensive legislation for the entire country of India, which would deal with the problem of water pollution. A draft Act was sent to various State Governments. The Parliament was not competent to legislate on water, as the subject is enumerated under the State list in the Constitution of India. In the year 1969, bill for Prevention of Water Pollution was introduced as two or more States concurred to legislate.
Box 3.4 at appendix III A enumerates the legislations from 1948 to 1972: which had bearing on environmental issues:

On overall analysis of the post-independence era and pre-Stockholm era laws it appears that the Central Government and the State authorities were concerned more about industrialization. Environment was not on the main agenda of either of Governments. (Centre or State)

3(D) Two decades from Stockholm i.e. from 1972 to 1992

Environmental legislation was one of the main aspects, which had to be considered, so that the degradation of the environment could be halted.

In the year 1962, the international community permitted sovereignty over natural resources. The international hard laws and soft laws conventions gave impetus to the Indian thinking, which was already in motion since 1964, so as to legislate on the topic of Water. Till 1972, there were no laws enacted which had special reference to the protection from pollution or for the management of environment.

During 1950s to 1970s Supreme Court construed article 21 of the Constitution read with article 37 in a narrow compass. Since 1960s environmental protection by the legislations was on the agenda. However, up to 1972 its seriousness or the inadequacy of the prevailing legislations was not thought of. The two major Acts directly concerning the environment were (a) Water Prevention and Control of Pollution Act, 1974 and (b) Wild-
Life Protection Act, 1972. Both these Acts had the genesis in the Stockholm declaration.

The Planning Commission had in its recommendations considered the need for having legislations which would provide for environmental protection and conservation.

Indian Prime Minister had taken part at the Stockholm Conference in the year 1972. After her active participation, consensus was reached for framing of Acts which would safeguard the environment. The pollution control legislations during 1972 to 1992 and notifications pertaining to the same, governing India were legislated. Rules were framed. Notifications came to be issued.

To quote from Environmental Jurisprudence by Justice Ashok A. Desai where he has quoted from late Prime Minister Mrs. Indira Gandhi’s speech at Stockholm:-

"Mrs. Gandhi posed very penetrating and pertinent questions:

(1) Are not poverty and need the greatest polluters?
(2) How, can we ask for keeping environment clean, when our own lives are contaminated at the source?

The question focused the search-light on a situation, fundamental to pollution."

The legislations enacted between 1972 and 1992 are enumerated in Box 3.5 and appended as appendix III A.
The forests are only in 22% of land area in India. Industrialisation brought the degradation of forest land. Conservation of forests became very important. The Wildlife Protection Act had to be enacted. Conservation of wildlife was brought on the statute book in 1972, and thereafter, scheme of “Project Tiger” has been implemented. India has a national water policy, and a national forest policy. The Water Act, Air Act, Water Cess Act and Environment Protection Act were legislated. There were more than 200 pieces of legislations, which were concerned with protection of environment. The economic development had to be considered in all policies of the Government. In 1972, so as to integrate environmental concern, a high level committee was set up termed as National Committee on Environmental Planning and Co-ordination (NCEPC).

The post Stockholm period has given legislations, which were primarily meant for slowing down the degradation of environment. The Tiwari Committee while reviewing the environmental legislations noted the following major shortcomings.

(1) Many of these laws are outdated;
(2) They lack statements of explicit policy objectives;
(3) They are mutually inconsistent;
(4) They lack adequate provisions for helping the implementing machinery;
(5) There is no procedure for reviewing the efficacy of the laws.

The shortcomings, which Tiwari Committee has pointed out are such which are man made.
The Environment Protection Act and the decision of the Hon’ble High Court of Gujarat reported in 1995 (2) GLR 1210 go to show that whatever laws are enacted are flouted either with the connivance of the bureaucracies or because people under an obligation to follow the laws are flouting them.

The efforts were made by legislation and administration in India to adopt certain measures for environmental protection\(^{22}\). The approach was piecemeal and not comprehensive. This can be seen by the first legislative attempt to control water pollution and wildlife protection.

However, for a period of 14 years and only after India witnessed the worst of tragedy Bhopal Gas Leak, the country had comprehensive legislation with integrated approach, and enacted the Environmental Protection Act, 1986.

In *P.J. Patel vs. State of Gujarat; 1995 (2) GLR 1210*\(^ {23}\), the Environment protection Act was considered as umbrella legislation. This legislation was considered to be the legislation, which covered all aspects where the earlier legislations were not adopted by the State. This umbrella legislation was looked upon for guidance. The Hon’ble High Court issued directions with the help of this legislation.

The Environment Protection Act along with its rules, regulations has tried to allay environmental degradation. The judicial activism and the concern of the Highest Court, has salvaged the environmental degradation to some extent.
The trend emerged where the environmental impact assessment and public hearing became very necessary. The participation of people at large was becoming necessary and the emerging trends made the Central Government to issue two important notifications. The important notifications related to environmental impact assessment and public hearing. The Hon’ble High Court of Gujarat in the case of Gujarat Chamber of Commerce and Industry vs. P.J. Patel; 1997 (1) GLH 136\textsuperscript{24} framed the environmental audit scheme, which was made mandatory. The notification of 1994 issued by the Central Government was amended again in 1997 envisaging public hearing to the affected persons, which included even non-government organizations. The said notification was not implemented in letter and spirit in the State of Gujarat. In Centre for Social Justice vs. Union of India and others SCA 8529 of 1999; 2000 (3) GLR 1997\textsuperscript{25} the said notification regarding public hearing was sought to be implemented in letter and spirit by the Hon’ble High Court of Gujarat. The Hon’ble High Court of Gujarat issued various guidelines after relying on the notification and the Environment Protection Rules.

The National Environment Tribunal Act, 1995 and National Environment Appellate Authority Act 1997 were legislated. The latest legislation as far as Gujarat is concerned relates to Disaster Management. Specifying what is to be done if there is disaster. Gujarat faced one of the worst disasters of recent times when many people died in earthquake. The disasters occur because of natural calamity, but may originate from environmental hazards.

Municipal Solid Waste and their Bio-medical waste were not being treated properly. Thermal Power Plants were generating fly ash, which is harmful to
the environment. Emission from chimney, causes damage to human health. Use of recycled plastic had to be banned or restricted. To stop and regulate these several rules, notifications, orders had to be issued under the Umbrella Legislation i.e. Environment Protection Act, 1986.

Notifications, Rules and Legislation enacted between 1992 ti 2004 are enumerated in Box 3.6 & 3.7 and appended as appendix III A.

4. CONSTITUTIONAL PROVISIONS:

4 (A) Historical Background

The founding fathers of the Indian Constitution did not provide any provisions for dealing with environment protection. Shri M.C. Chagla during the emergency period in his extempore speech in\textsuperscript{26} \textit{Civil Liberties in India} conveyed that Civil Liberties mean those essential features of the society, which make it a free society. "Absence of Civil Liberties makes a society, a captive society, a society which is governed not by law but by men, and a society which can be trampled upon by the Government is not democratic in nature. Nani Palkhivala in \textit{Reshaping the Constitution published by Forum of Free Enterprise, 1976 at page 7}\textsuperscript{27} referred to the historic background of framing our constitution which according to him was very significant. The fighters for national freedom as architects of Constitution envisaged fundamental law, which would provide inalienable human rights. Fundamental Rights represented the solemn balance of rights. While framing the Constitution, fundamental rights were envisaged to be the core of the Constitution of India.
The major provisions, which indirectly touched the environmental aspects in the pre-Stockholm period or before the 42\textsuperscript{nd} amendment of the Constitution have been embodied in articles 14, 19, 21, 23 and more particularly article 32 and 226 of the Constitution of India. The directive principles enshrined in article 38 deals with duty of the States to secure social order for the promotion and welfare of the people. Article 42 and 43 made provisions, which directed the State to provide just and human conditions of work. It directed the States to fix living wage. Article 47 and 48 of the Constitution enjoins duties on the State to raise level of nutrition and standard of living and to improve public health. Organization of agriculture and animal husbandry was provided under Article 48. There were concerns about ancient monuments of national importance, and therefore, Article 49 was incorporated.

4 (B) 42\textsuperscript{nd} Amendment (1976) of the Constitution:

The Constitution (42\textsuperscript{nd} Amendment) Act of 1976 was passed during the dark ages (emergency period). The only good aspect about 42\textsuperscript{nd} amendment was concern for environment. The 42\textsuperscript{nd} amendment made two main changes, which enunciated the national commitment, which was made by Prime Minister Smt. Indira Gandhi at Stockholm in 1972. To fulfill her promises made at the Stockholm Conference, two articles relating to protection and improvement of environment were incorporated in the basic law of land i.e. Constitution of India. The two significant articles which were incorporated in the Constitution of India along with the changes in the 7\textsuperscript{th} Schedule provide as under:-
Article 48-A: “The State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country”.

Article 51-A(g): “It shall be duty of every citizen of India (g) to protect and improve the natural environment including forests, lakes, and wildlife and to have compassion for living creatures”.

Schedule Seventh: List III, Concurrent List

<table>
<thead>
<tr>
<th>Item No.</th>
<th>Description</th>
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<tbody>
<tr>
<td>17-A</td>
<td>Forests</td>
</tr>
<tr>
<td>17-B</td>
<td>Protection of wild animals and birds.</td>
</tr>
<tr>
<td>20-A</td>
<td>Population Control and Family Planning²⁸</td>
</tr>
</tbody>
</table>

On analysis of these articles and schedule it is seen that the concurrent list of Schedule – 7 enjoins power on the Indian Parliament to legislate on subjects, which are related to environment. Concurrent list consists of 47 items on which Parliament and the State Legislatures both can enact laws. If both the laws are inconsistent, the law passed by the Parliament will prevail²⁹.

The Executive, both the Union and the State, to fulfil their constitutional obligations, have made sufficient number of rules to effectively implement the laws made by the legislatures to protect and improve the natural environment and to safeguard forests and wildlife³⁰.

The Supreme Court in M.C.Mehta vs. Union of India³¹ held that “these directive principles (Articles 39 (b) 47 and 48 A) individually and collectively impose a duty on the State to create conditions to improve the general health level in the country”.

²⁸ Population Control and Family Planning
²⁹ If both the laws are inconsistent, the law passed by the Parliament will prevail
³⁰ The Executive, both the Union and the State, to fulfil their constitutional obligations, have made sufficient number of rules to effectively implement the laws made by the legislatures to protect and improve the natural environment and to safeguard forests and wildlife
³¹ M.C.Mehta vs. Union of India
The Fundamental Rights have inter-relationship between themselves. Earlier in *A.K. Gopalan vs. State of Madras; AIR 1950 SC 27* the Supreme Court declined to read requirement of reasonableness under Article 19 vis-à-vis Article 21. This kind of legal procedure neutral to the notions of reasonableness continued. However, Supreme Court later gradually rejected Gopalan's approach in various Judicial Pronouncements. The direct and inevitable consequence test, initiated in *Maneka Gandhi, vs. Union of India; A 1978 SC 597*; provided a judicial leeway for determining the validity of state action from the perspective of the relevant fundamental rights. The applications of Articles 14, 19 and 21 in a concerted manner compelled the procedure established by law to reflect justness and fairness, and reasonableness. The long averted due process law took a new turn to purge the procedure and render justice to the prisoners, under trials, death convicts, bonded labourers, drought-affected starving people and the homeless. In *Olga Tellis vs. Bombay Municipal Corporation; AIR 1986 SC 180*; and in *Bachan Singh vs. State of Punjab; AIR 1980 SC 898*; a new gloss was given to the *Maneka* approach, by introducing the pith and substance doctrine to determine the direct and inevitable consequence of the actions.

The inter-connection between right to life, right to equality and right to do business is visualized in the decision of Hon’ble High Court of Gujarat in *Abhilash Textiles vs. Rajkot Municipal Corporation reported in AIR 1988 Guj 57* wherein His Lordship Justice A.P. Ravani made it clear that the freedom of trade and commerce cannot be at the peril of causing public hazards. The petitioners challenged the action of the Municipal Corporation directing them not to discharge effluents causing health hazards. This
challenge was made before Hon’ble High Court. The petitioners were not granted with the relief under Article 226 of the Constitution. They wanted to reap profit at the cost of clean and healthy environment. In a recent decision rendered after 11 years of Abhilash Textile decision interrelationship between the Constitutional Mandates has been upheld in *D.S. Rana vs. Ahmedabad Municipal Corporation reported in AIR 2000 Guj 45*\(^38\) wherein the Hon’ble High Court held that reasonable restriction may amount to total prohibition if it is injurious to health of residents and causes nuisance to them and is violative of concept of life and liberty enshrined in the Constitution of India.

The Courts have given the fundamental right enshrined under Article 21. Article 21 is now invoked as inherent right for enforcement of the fundamental rights. Public Interest Litigations have been filed. In *Dr. Ashok, vs. Union of India; AIR 1997 SC 2298*\(^39\) a committee came to be constituted so as to examine ban on pesticides and chemicals which would cause health hazards. The expansion of Article 21 gave rise to litigations whereby the earlier non-justifiable directive principles and fundamental duties embodied in part IV and IVA have been enforced by the Supreme Court and the High Courts. In the cases of *Subhashkumar vs. State of Bihar; AIR 1991 SC 420*\(^40\) and *M/s. Shantistar Builders vs. Narayan Khimalal Totame; AIR 1990 SC 630*\(^41\) and also in the decision rendered in *Ramsharan Autyanuprasi vs. Union of India; AIR 1989 SC 549*\(^42\) the Supreme Court held that the right to food, clothing and decent environment are enforceable rights. The environmental rights and the fundamental duties are now made justiciable under Article 21 by invoking writ jurisdiction.
The Supreme Court in catena of decisions has held that under the Constitution, it cannot be now thought that a citizen has only rights to be protected. The Supreme Court has held that a citizen has corresponding duties. To have a welfare society and as early as 1970 in *Chandra Bhawan Boarding and Lodging, Bangalore, vs. State of Mysore; AIR 1970 SC 2042* the Supreme Court observed that mandate of the Constitution is to build a welfare society and that object may be achieved to the extent the directive principles are implemented by legislation. Thus it would be seen that fundamental rights, directive principles and fundamental duties are having interrelationship and are made justiciable under part III of the Constitution.

4(D) Law of Writs:

The Constitution of India has given Powers to the Hon’ble Supreme Court and the High Courts to issue writs. One of the fundamental rights of a citizen is right to constitutional remedy embodied under Article 32 of the Constitution of India. It is a mandate and fundamental right guaranteed under Article 32 of the Constitution, to approach the Hon’ble Supreme Court. It is part of basic feature of the Constitution that the actions of the state are justiciable under Article 32 and 226. The Supreme Court in the case of *Charan Lal Sahu vs. Union of India; AIR 1990 SC 1480* has invoked the doctrine of *parens patriae*. It is under Article 32 and 226 of the Constitution of India that the Supreme Court and High Courts have been empowered to entertain litigations pertaining to enforcement of basic rights. These litigations have played major role in framing and implementation of various legislations for environmental protection and pollution control. The reason for enactment of Article 32 in Part-III of Constitution guaranteed direct access, it self ensures that the less privileged individual or class might claim
interest through the courts\textsuperscript{46}. As early as 1976, Supreme Court liberalized the rule of \textit{Locus Standi}. (AIR 1976 SC 1455).

The High Courts have jurisdiction under Article 226 of the Constitution of India to entertain various kinds of litigation and issue prerogatives and issue writs / orders.

\textit{On analysis of Article 226 vis a vis Article 32 It can be said the article 226 has wider power than that under Article 32. This article empowers the High Courts of the States to issue such writ. The powers of the High Courts under this Article are wider than those of the Supreme Court under Article 32. The Article 32 can be invoked in case of violation of the fundamental right only. In contrast, the writ jurisdiction of the High Courts under Article 226 may be invoked not only for the enforcement of a fundamental right but for `any other purpose' as well. Ordinary legal rights may also be asserted through a writ petition in the High Courts. For an example, the freedom to trade and commerce in Article 301 is not fundamental right and hence cannot be enforced in petition under Article 32 but can be easily enforced in a High Court under Article 226.}

5. DEVELOPMENT OF PUBLIC INTEREST LITIGATION

5 (A) General Concept:

The Public Interest Litigation under environmental legislation requires to be considered under the Constitutional provisions related to environmental protection and environmental legislation, and the judiciary and how to strengthen the scope of public interest litigation in India. The right to life has
been considered to be a fundamental life and the State is under obligation to protect and preserve the ecology. The innovative approach of the Supreme Court shows that the Supreme Court and the High Courts entertained litigations for curbing environmental pollution. The Courts have taken action by appointing committees relying on reports have directed sighting and shifting of industries. The Supreme Court and High Courts have pursued the object of the directive contained in Article 48-A, the Supreme Court, in recent years, has entertained various petitions regarding control of environmental pollution and safeguarding of wildlife. The higher Courts have undertaken to evaluate legislative developments and have adopted techniques to protect the rights of people; public interest litigation is one of the innovative techniques adopted by the Supreme Court. The Supreme Court has held that utilities, serving public interest and human safety should be balanced. The Supreme Court in Fertilizers and Chemicals Travancore Ltd. Employees Association vs. Law Society of India reiterates this view.

The Supreme Court in Peoples Union for Democratic Rights vs. Union of India; AIR 1982 SC 1473 has termed it as the strategy arm of the legal movement, which aims at bringing justice within the reach of disabled and poor masses who constitute the low visibility area of the humanity. Public Interest Litigation (PIL) falls under the realm of writ jurisdiction of the Supreme Court and the High Courts. The emergence of PIL or Social Rights Litigation emerged under the realm of Human Rights Jurisprudence and went on to the Environmental Jurisprudence. The Judges of the High Courts and the Supreme Court widens the scope. The concept of Locus Standi is no longer the hindrance for entertaining the litigations, which are for the betterment of the community at large. As far as PIL for environment is
concerned, all those persons or groups or Non-Government Organizations who espouse the cause for betterment of environment will have an excess to Writ jurisdiction of the Supreme Court and the High Courts. Even if they espouse the cause of other people, without being affected, even formal format of Writ petitions is not required while entertaining such petitions. At times, the Supreme Court has laid down guidelines for Letters / petitions which are termed as Public Interest Litigation. The High Court of Gujarat has constituted several committees for studying the environmental concerns in PIL. The Supreme Court entertained petition by Dr. Kiran Bedi by way of Writ petition No. 26 of 1998 who petitioned the Supreme Court for protection of birth place of Father of the Nation at Village Porbandar.

The beginning of PIL can be said to have began in the case of Mumbai Kamgar Sabha, Bombay vs. M/s. Abdulbhai Faizullahbhai; AIR 1976 SC 1455. The Supreme Court under Article 32 of the Constitution has given directions to control pollution in Subhash Kumar vs. State of Bihar; AIR 1991 SC 420. During analysis and study, it is revealed that due to development of the social action, litigation, it has largely safeguarded environment of India. The Supreme Court under Article 32 has held that there is no theoretical limit to the relief, which can be granted under PIL. Even insurance of the workers in match factory were ordered to be taken in the directions given in the case of M.C. Mehta vs. State of Tamil Nadu; AIR 1991 SC 417. Article 32 can be said to be the basic feature of the Constitution which cannot be breached or taken away.

As early as 1979, the Hon’ble High Court of Gujarat treated a letter published in the newspaper regarding non-payment of Provident Fund dues to a widow as a petition in the case of P.K. Martiyani vs. Regional
Provident Fund Commissioner, SCA No. 2785 of 1979 reported in 1983(2) GLR 927 on 14/11/1979, Hon'ble High Court of Gujarat through His Lordship Justice M.P. Thakkar took suo motu action against Provident Fund Commissioner. His Lordship Justice B.J. Diwan invoked the jurisdiction of the Hon'ble High Court from a cutting from Times of India, Ahmedabad Edition and redressed the claim of the lady who had gone away to her native place after the death of her husband and was not paid dues of provident fund.

The Hon'ble High Court of Gujarat in Hamidbhai Usufbhai Patel vs. Director of Municipalities; 1989 (2) GLR 969 has held that writ jurisdiction has to be exercised to do real justice and merely because of technicalities a writ should not be issued if the exercise would be in futility. Analysis of the decision of the Court reveals that futile exercise should not be undertaken. The full bench of the Hon’ble High Court of Gujarat way back in the year 1976 has held in Dungarlal Harichand vs. State of Gujarat; 1976 GLR (FB) 1152 that individual interest should not be allowed to out-weigh wider interest. In a petition under Article 226 validity of legislative measure should not be gone into so as to find out if there is transgression of jurisdiction only to safeguard private interest. The decision has a very wide impact because it was given in the context of fundamental breaches causing lack of jurisdiction. Fundamental breaches resulting in lack of jurisdiction would make the action taken void ab initio.

The development of Environmental Jurisprudence in India could be said to be based on the principle of access to justice, so as to protect the fundamental rights. The concept of locus standi is being liberalized so that the law would not become a closed shop. The question of injury to public interest was the soul of development of Public Interest Litigation for
environmental concerns. A pro-bono-publico litigation is always welcomed by the High Courts and the Supreme Court but if it is found that it is busy body or inter-loper who wishes to gain personally for himself or for oblique motives, such persons cannot get benefit of Public Interest Litigation. Refer to Guruvayoor Devaswom Managing Committee vs. C.K. Rajan (2003) 7 SCC 546 : Air 2004 SC 561; Justice B.L. Hansaria’s Writ Jurisdiction, Revised by Vijay Hansaria, 3rd Edition, Universal Law Publishing Co. As early as 1996, His Lordship Justice A.M. Ahmadi in his speech has opined “The Supreme Court is left with little choice but to act in deference to its constitutionally prescribed obligation. This is the reason why the court has had to expand its jurisdiction by, at times, issuing novel directions to the Executive; something it would have never resorted to had the other two democratic institutions functioned in an effective manner”. In the article by Dr. Aruna B. Venkat in Nyaya Deep, Oct. 2004 issued, has opined that “In the context, it may be appreciated that the right to environment, which has been held to be a penumbral right of the right to life, has been used by Indian Supreme Court as an effective judicial tool, “To offer a shield against the ‘developmental terrorism’, which is treading to engulf human kind”.

The development of Public Interest Litigation in India, as far as environmental matters are concerned is due to the inabilities of the parties affected by pollution to approach to the court.

Public Interest Litigation is a narrower specie of public law litigation. The term public interest litigation was used in the United States. The public interest litigation in India substantially differs from that in the United States. Baxi pointed out that government and private foundations funded American public interest litigation and its focus was not so much on State
repression or government lawlessness as on public participation in governmental decision-making. He therefore insisted that the Indian phenomenon described as PIL should be described as social action litigation\textsuperscript{66} (SAL).

According to assessment and analysis of cases and the directions given by the Supreme Court and the High Court of Gujarat show that in the last two decades the courts have covered vast range of matters within the ambit of environmental PIL. Assessment of the PIL cases in Geetanjali Chandra, Public Interest Litigation and Environmental Protection, P-152 to 166 gives the tabulated number of PIL filed from 1986 till 2003 before the Supreme Court and the High Court.\textsuperscript{67}

\textbf{5 (B) Access to Justice}

The citizens invoke the jurisdiction of the superior courts to ascertain their fundamental rights under the Constitution of India. As early as 1985, the Supreme Court in\textsuperscript{68} \textit{Rural Litigation and Entitlement Kendra, Dehradun vs. State of Uttar Pradesh}, AIR 1985 SC 652 held that right to wholesome environment was a part of article 21 of the Constitution of India which enshrined right and liberty to the individual, so that he may live in a healthy environment.

The maxim \textit{Ubi-jus-ibi-remedium} is a golden maxim. It is true that where there is right there is remedy, but remedy is there but who will guide an illiterate or semi literate person what right he has, how he will be able to pursue that right when he is unaware of the place to vindicate the wrong done to him. Thus to see that a person can enjoy the rights enshrined in
socialistic society he must be made aware about his right. He has access to redress without fear and without having to sacrifice either his life savings or mortgage his only means to livelihood i.e. land or wives' ornaments.

For a person to be able to have access to law i.e. put law in action, new strategies need to be adopted. The tension between two people can only be solved if there is social justice and adoption of new strategies.

The golden key unlocks the doors of justice for downtrodden people. Particularly after 1987 when Legal Services Authority Act came to be enacted, the poor and downtrodden people with meager means have been benefited by this legislation. The constitutional rights have been made available to people in the right spirit by entertaining petitions filed by public spirited persons for downtrodden and giving directions for betterment of their living conditions.

At times it is found that persons with rich resources are able to approach the Courts. The so-called lilliputs whose lives are some times without any resources are unable to approach the courts. However, with the advent of humanist and socialist judges in the High Courts, postcards, letters and telegrams have been treated as writ petitions. This is an innovative strategy for access to justice by which the Supreme Court and the High Courts have tried to remove the possible hindrance, which obstructs the process of reaching justice to the poor masses. A citizen may be vigilant but he may be so poor and downtrodden that he cannot even afford to come to Court. By adopting novel procedure, access to justice has become easy. The weaker section in India constitutes, 2/3 populations. By a letter written to the Supreme Court bonded labourers were directed to be rehabilitated after they
were set free from the stone quarry by the order of the Supreme Court. The Supreme Court judgment in Mirza Chaudhary vs. State of Madhya Pradesh reported in 1984 (3) SCC 243 is of relevance.

Thus legal aid system would cover pending cases, post litigation and pre-litigation cases. Legal aid would become legal service in its real sense when it is accessible to all the downtrodden of this country and they may be provided with the service of "amicus curiae" so that they may not be refused justice.

India has legislated new law on Right to Information and has implemented the Aarhus Convention on access to information, UN/ECE Convention on Access to Information. Public Participation in Decision-making, and Access to Justice in Environmental Matters, Article 4 requires nations to provide a system to allow the public to request and receive environmental information from public authorities. Article 5 requires nations to provide a system under which public authorities collect environmental information and actively disseminate it to the public without request. Refer also-(Aarhus Convention – 1998; http://unfce.int/resource/guideconvkp-p.pdf)

The growth of environmental rights did not stop here. It has covered other correlative rights without which the enjoyment of the present right would not be complete. These included the right to know about the environment, environmental pollution and its consequences. This principle came to be elaborately discussed and propounded in LIC of India vs. Manubhai Shah; (1992) 3 SCC 637. This was done to expose the secrets of the mass disaster at Bhopal. Once the know-how is acquired the next step is education in the
subject. This will spread environmental awareness and build up a strong public opinion against the pollution of the environment.  

The 1998 Convention on Access to Information, Public Participation in decision making and Access to Justice in Environmental matters the ‘Aarhus Convention’ is undoubtedly the most important treaty instrument concerning the procedural environment right.

5 (C) Human Rights and Constitution:

The concept of Human Rights and its infringement has been discussed many times going back to the pre independence era by quoting reality of the misdemeanours of the Court. In the book "Famous Judges, Lawyers and Cases of Bombay", published by P.B. Vachha in the year 1962. The case law on page no. 228 under the head note of Magisterial Misdemeanours depicts that the Indians were so suppressed that even Magistrate would not hear the servants of European men and women.

This episode shows that the Indian labourers did not enjoy any human rights; rather they were deprived of justice. Now a days, activist Judges on the Supreme Court Bench and High Court Benches have honed for sense of Social, Economical and Political Justice, which includes good environment. Wherever there was violation of human rights, the Supreme Court has time and again punished the infringers of the human rights, especially of environment.

As far as India is concerned, human rights would have their base from international documents and from Constitution of India. Article 21 had lost
its significance during the 1975 emergency. The concept of personal liberty of an individual has to be protected if democracy has to survive. Violation of human rights and fundamental freedom are antithesis and can't thrive together in a socialist country.

The definition of human rights under Section 2 (D) of the Protection of Human Rights Acts, 1993 is relevant and is reproduced below.

"Human Rights" would mean the rights relating to (a) life, (b) liberty, (c) equality and (d) dignity of the individual guaranteed by (a) the Constitution of India or (b) embodied in the International Covenants which are enforceable by Courts in India.

Thus as seen in Chapter – II, it is the concept of human rights and the international covenants which have protected life, liberty and equality of the citizens of India through the directions given by High Courts and Supreme Court. Protection of Human Rights Act came to be amended in the year 2000, so as to uphold dignity of human beings.

The Public Interest Litigation in India can be said to have developed during the last three decades. Social activists such as M.C. Mehta or Common Cause have acquired good infrastructure for PIL. In developing Environmental Law, the Supreme Court as early as 1987 in M.C. Mehta vs. Union of India, AIR 1987 SC 965 accepted the need of scientific and technological expertise as an essential input to grant relief in environmental matters. It is now believed that fusion of diverse expertise in planning, science, technology, environment, law and public policy into a new
institution for environmental decision making is essential for integrating environmental values with developmental issues.

6. LEGISLATION AND JUDICIAL MANDATES FOR PROTECTING ANCIENT HERITAGE AND ARCHITECTURE

The role of culture and cultural heritage and their conservation is not a simple task. It has to be emphasized that conservation is a process to prolong the life of the monument. The Ancient Monuments and Archeological Sites Remains Act, 1958 has been interpreted for protecting the ancient heritages. As early as 1965, the Supreme Court has held that the idea behind the statute was to protect and conserve the monuments. Another case where preservation was pitted against the Article 19(1)(g), the right to carry on business is the case of Paramount Studio and others vs. Union of India and others. The Government issued a notification whereby photographers carrying on their free lance activities in the Taj Mahal and Fatehpur Sikri. In Surendra Kumar Singh and others vs. State of Bihar and others, the Supreme Court was hearing and appeal which had been directed against an order of the High Court directing the stone crushing activities need not be carried out within ½ a kilometer radius from the protected areas. In Rajeev Mankotia vs. Secretary to the President of India, the Supreme Court directed the Government to hand over the Vice regal lodge at Shimla which is a harbinger of colonial past, with architectural grandeur and beauty of Elizabethan era and stands a mute witness to the transition of independence to the people of India to the archeological department. In Harishankar and another vs. Union of India and others, the High Court held that as the area had been held to be of national importance under Section 3 of the Act, the combined effect makes the Jaisalmer Fort with its entire precincts is a
protected area being an archeological site and remains of national importance, and therefore, the Government had the right to remove the construction.

The cultural heritage of India and the cases, which have come up before the Supreme Court are Taj Mahal disfigurement, the birthplace of Father of Nation at Porbandar, which was in a dilapidated condition. Kiran Bedi, an upright Police Officer had preferred PIL before the Hon’ble Supreme Court. The Hon’ble Supreme Court had intervened in the matter to save rich cultural heritage. The Hon’ble Supreme Court after consideration of the submissions of the petitioner on 16.10.1998 directed the Central Pollution Control Board to submit a report about the conditions prevailing in and around the memorial built in memory of the Father of the Nation at Porbander. In its report, the Central Board was directed to furnish the report on the fish-drying activity carried on in the area surrounding the memorial, as also the overall sanitary conditions prevailing in the area. The roads leading to the memorial should also be cleaned. It was directed that the report should indicate the specific distance from the memorial to the land or plots on which fish drying activities were carried on. The hygienic conditions around the memorial and the landing sites for the fishing vessels including the distance of the landing sites from the memorial should be reported. The Central Board was directed to suggest, in consultation with the Gujarat Maritime Board whether the landing sites for the fishing vessels could be shifted to a distance of 3 kilometers at least from the memorial and also suggest proposals for shifting of fish drying activities.

A team from the Central Board after visiting Porbander city submitted its inspection report on the status of condition of sanitation in the city, fishing
activities and suggested short-term and long-term recommendations. The Hon’ble Supreme Court after examining the matter on 9.4.1999 directed that the area between Manik Chowk and Sardar Vallabhbhai Patel Road should be treated as “Walking Plaza”. It directed that no vehicular traffic should be allowed on that road subject to the special permission of the S.P. (Traffic) or the Collector of the District for urgent Government work. No hawkers should be allowed in the area. No fish drying activity could be carried out in and around an area of three kilometers from Kirti Mandir (the birthplace site). The State of Gujarat and Municipality of Porbander should submit the progress made concerning the sewerage system. The Hon’ble Supreme Court on 19.9.2000 observed that sufficient steps were taken to protect the birthplace of Mahatma Gandhi and fishing area had been shifted to a distance of 4 ½ kilometers. The appropriate authority had taken steps for having the sewerage system in the city in place. In view of that, no further orders were necessary. The Writ Petition was disposed off on 9.4.1999. This decision would show that the Supreme Court considered that buildings, which had heritage value, should be safeguarded. The petition was under Article 32 of the Constitution of India.

The international concern for such archaeological sites can be seen in the UNESCO Convention for the protection of world cultural heritage held in the year 1972. Article 49 of the Constitution of India enshrines a duty on the State Authority to protect such monuments. Chapter – 4 A enshrines the fundamental duty under Article 41 A on every citizen to protect and preserve rich heritage. These rich heritages are protected by legislative mandate as well as by judicial mandates given in Writ Petitions preferred before the Supreme Court and the Hon’ble High Courts. The Ancient Monuments and Archaeological Sites and Remains Act 1958, governs all the monuments,
buildings which have been declared to be buildings of National Importance. The 1904 Act was the Ancient Monuments Preservation Act, which was the first of its kind for safeguarding the ancient monuments. The statute enjoins duty on the Archaeological Survey of India so as to preserve, protect and restore the important sites, which are notified by the centre and even States. The Ancient Monuments Preservation Act was legislated so as to preserve and prevent unauthorised escalation of the sites, which were considered to be of historic interest. The definition clause defines the word "Ancient Monuments". The drawback of the legislation is that it takes within it sweep only those monuments which were expressly brought within its purview, though they may be declared to be protected monuments. Preservation was the main object of the legislation. The Act has 24 sections. The Gujarat Government has expressly legislated the Gujarat Act 25 of 1965, and therefore, Central Act does not apply to the State of Gujarat. The Gujarat Ancient Monuments and Archaeological Sites and Remains Act was legislated in the year 1965. It has 22 sections and was amended in the year 1978. The main object of the Gujarat Act was to make provision for preservation of such ancient and historic monuments in the State of Gujarat. The State of Gujarat faced the problem by way of SCA filed in the year 1980 by Sardar Vallabhbhai Patel Memorial Society challenging the resolution passed by the Government for Moti Sahibaug Palace which is a building of archaeological importance, constructed in the year 1622 A.D. The Hon'ble High Court of Gujarat had allowed SCA88. In M.C.Mehta vs. Union of India (1997) 2 SCC 353; concerning the Taj, the Supreme Court considered the international repute of the monument and sought opinion of the expert committees after obtaining the opinion of the expert committees constituted by it decided that Taj had to be saved as it was a industry by itself a part from being a cultural heritage of India. The Supreme Court directed that
pollution must be stopped while development of the industries had to be encouraged. The principle of polluter pays, precautionary Principle; and the concept of sustainable development was made applicable in the facts of the case. The Supreme Court is separately monitoring the Taj Case and in judgment reported in 1996 (4) SCALE (SP) 29 has shown their displeasure on the paper work not being completed despite continuous monitoring. The Supreme Court suggested to the planning Commission by order dated September 4, 1996 to consider sanctioning separate allocation for the city of Agra and the creation of separate cell under the control of Central Government to safeguard and preserve the Taj, the city of Agra and other national heritage monuments in the TT. Both legislation and the Supreme Court have protected the heritage concern of India by constituting various committees and by seeking opinion of experts. The Government of India even sought the advice of UNESCO in the Taj Case.

7. COMPARISON OF MAJOR POLLUTION CONTROL LAWS IN INDIA.

When environmental laws were first enacted in 1970s, there was little to distinguish the field of environmental law from the general body of law. After 1985 there was rapid change in the new legislations coming into being. The Hon’ble High Court of Gujarat in P.J. Patel’s case and Hon’ble Supreme Court in litigations instituted by M.C. Mehta have opined that, if only enactment of legislations would ensure clean pollution free environment, then India would be a country with least pollution but this is not so. The courts though well equipped to take on the help of legislations have not been able to do so at the trial Court level. The litigants have to fall back on constitutional mandates. Most of the case law has developed due to the
judicial intervention of the Supreme Court and the High Courts under their writ jurisdiction powers.

Water Act and Air Act have provisions for Constitution of the Pollution Control Boards. They have provisions prescribing standards of licensing for starting industry. Provisions for criminal sanctions embody both procedural and punitive aspects. The functions and powers of the Pollution Control Boards and establishment of laboratories by Government and the Boards are provided in these Acts. The Environment Protection Act, 1986 also has similar provisions. The board is granted powers to issue directions and of delegation of powers. The Central Government has to perform certain functions. The Environment Protection Act also lays stress on education of the public. Provisions for establishment of Government Environment Labs and Government Analysts are also made.

The enactment of the Acts was under different Articles of the Constitution. Water Act is legislated under Article 252 (a) of the Constitution, whereas Air Act and Environment Protection Act were legislated under Article 253 of the Constitution. The Water Act had to be adopted by the States and only those States, which have adopted it, are governed by it. The object and the reasons for enacting these laws can be seen in contrast with the Acts, which were governing these three topics before the enactment of specific legislations.

Table 3.1 shows important features of and differences between the three Acts. It is the Environment Protection Act, which has been relied upon while trying to solve environmental degradation though other legislations are enacted.
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<td>Article 252 (1) of the Constitution to enact a law on subject in the State list on resolution passed by two or more states.</td>
<td>Article 253 of the Constitution to implement the decision taken at the Stockholm Conference, 1972</td>
<td>Article 253 of the Constitution to implement the decision taken in the Stockholm Conference, 1972</td>
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<td>The existing provisions were found inadequate and unsatisfactory hence:</td>
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- Comprehensive legislation to establish unitary agencies in Centre and States, to provide for the prevention, abatement and control of pollution of rivers and streams, for maintaining or restoring wholesomeness of such water courses, for controlling the existing and new discharges of domestic and industrial wastes. |

- Preservation of quality of air and control of air pollution |

- co-ordinate activities of various regulatory agencies, |

- creation of an authority or authorities with adequate powers for environmental protection, |

- regulation of discharge of environmental pollutants and handling of hazardous substances, |

- speedy response in the event of accidents threatening environment. punishment to those who endanger human environment, safety and health. |
8. SIGNIFICANCE OF ENVIRONMENTAL PROTECTION LAWS

Legislations govern the humans in their behaviour with other systems. The Hindu culture goes to show that killing of animals or defiling of water was even subjected to punishment. Even in ancient Indian philosophy, trees could not be cut. Ancient India was wedded to the philosophy of environmental safety by stopping its subjects from doing acts detrimental to nature by framing rules of conduct. The code of conduct was even defined to inflict punishment. Ir. Ancient India even King was not above Dharma. In the Medieval period also there were rules and regulations made for the appointment of enforcing Officer to stop the defilement of the environment.

The legislations provided incentive to those industrial units who were applying proper compliance for safeguarding environment and were given incentive under the Income Tax Act also. Depreciation on pollution control equipments was permitted. The Air Act came to be amended in 1987 so as to make the legislation more effective and stringent. The High Court has stopped those industrial units, which were operating without requisite consent. The legislations showed workers participation and public participation.

9 ANALYSIS AND CONCLUSIONS.

On overall analysis of the legislations in the 5 regimes it can be concluded that: the hypothesis set in Chapter 1 is partly answered. The legislations have their weaknesses and at the same time they are important for the stoppage of environmental degradation. The three major legislations on environment have conferred powers on the Central as well as State Government to frame Rules. The major environmental legislations have given teeth to Ministry of Environment and Forest for framing various regulations, control mechanism and
for abatement of pollution. The legislations and judicial trend when employed in tandem and in the right perspective would show that without legislative measures and innovative judicial trends, the scenario on environmental front would be grim. Due to public out cry a serious concern about safety of workers was undertaken by the legislature, which was implemented by the Supreme Court.

Despite all the laws that have been legislated, the losses the entire country is bearing including Gujarat are of staggering dimension. The Supreme Court of India reflecting this concern aptly sums up this grim situation and also points out how despite all the legislation that has been passed; there is only marginal improvement in environmental concern.

[Even though laws have been passed for the protection of environment, the enforcement of the same has been tardy, to say the least.... The effort of this court while dealing with public interest litigation relating to environmental issues, is to see that executive authorities take steps for the implementation and enforcement of law]

The Supreme Court and the High Court of Gujarat by the judicial mandates and giving directions to the authorities to implement the laws stringently have salvaged Environmental Degradation.

A committee to review the existing environmental laws may be constituted so as to remove loopholes, and ensure that the violators of environment do not go unpunished. If the regulating authority implements legislations more stringently it will stop the degradation of environment.
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