CHAPTER 5

ENVIRONMENTAL LEGISLATIONS DURING BRITISH PERIOD

5.1 INTRODUCTION

A survey of early legislations indicate the nature and levels of governmental awareness towards environmental issues. Though there was no 'the environmental law' environmental laws were there, otherwise various Acts enacted during British period clearly indicate that environmental concern was very much there eventhough they had a narrow purpose and limited territorial reach.

The municipal and public health Acts on the pattern of Local Authorities Act of United Kingdom conferred powers on the local bodies for controlling water pollution caused by industrial effluents and for necessary action against the erring industries. These acts prohibit the discharge of sewage or industrial effluents from factories into municipal drains or into water course until it had been treated so as not to contaminate the water.

5.2 OVERALL OBSERVATION OF THE BRITISH INDIAN LAWS

Every British Indian Law and practice had an element that viewed every resource as a commodity that deserved to be exploited, contrary to the ancient Indian practice of protecting, using and managing the natural resources by the communities facilitated by State. A study of the Acts enacted during colonial rule illustrate the following.
The policy making, planning as to natural resources was completely under the control of State and the exercise and execution also by the State through its administrative set up.

The Indian traditional practice of access, use and management of natural resources was not given due credit, importance and place in the legal jurisprudence.

Stopping the patronage and legal protection to the communities who had the tradition of access and use of natural resources created a social impact like discontinuance of these tradition and plight of rural common property resources.

There was heavy convergent of power and centralization of authority. The local and provincial administration had no saying in the policy making and were carrying out the functions as per the directions given by the central authority.

The British models of management and practice was more a State controlled one and 'eminent domain' concept of Anglo Saxon jurisprudence was applied. Good amount of shift from the community based Resource Management to State controlled Resource Management. The State was considered as the protector and conservator of resources and the laws enacted in such a way to guard the concept.

The colonial administration has vested with lot of discretionary power especially in determining the 'public purpose'.

Consultation of Project Affected Personals and obtaining their views and consent, otherwise Social Impact Assessment was never a part of the legal jurisprudence.
Access to information and Right to Information either to individual or community was not available.

Centralization of power and more discretionary power lead the administration to take decision on the kind of information to be given and manner by which to be made available.

The whole process from law making, law execution and law interpretation was top down and not bottom up and people's participation was given least importance.

Equitable sharing of natural resources was very little. Indigenous and customary law was not given due status.

In spite of several drawbacks, pollution control in the form of public health and hygiene was given due credit in the legislations. The approach of British on public safety, community hygiene was something that deserves a lot of appreciation.

Though British did not enact any single specific legislation for preventing and controlling of air or water pollution, the different legislations enacted by them contain several pieces of legislations for the safety and hygiene of the individual and community and even industrial hygiene and safety. Adequate penal clauses were available to punish the offenders.

Command and control was the predominant strategy than economic or incentive mode.

The emission standards, design standards for hygiene and public health were available but economic incentives were not available.
Since no specific statutory legislations were available for pollution control and the same was available in piecemeal form in different enactments, more often Common law was used as a remedial measure for pollution control.

The role of Non Governmental Organizations and community in the process of development and enforcement of pollution control regulation was nil. Except few authorities, overall, no specific authorities or institutions were vested with the power to control pollution.

The laws were more punitive than preventive.

There was no separate environmental policy.

On the whole the laws showed more concern towards human health and very little towards eco-health.

5.3 LEGISLATIONS SHOWING CONCERN FOR ENVIRONMENT

5.3.1 Shore Nuisance (Bombay and Colaba) Act, 1853

One of the earliest Act concern for the water pollution and coastal area land pollution.

Section 1 of the Act gives power to the Collector of the Land Revenue, Bombay to issue notice to an offending party requiring the removal of any nuisance anywhere below the high tide mark.

Section 5 empowered the Collector to get the nuisance removed or abated if it was not removed or abated within one month of the issuance of notice.
5.3.2 The Oriental Gas Companies Act, 1857

This Act was enacted to prevent and reduce the atmospheric pollution by the Oriental Gas Company.

Section 15-17 of the Act imposes fines on the company and giving a right of compensation to anyone whose water was fouled by the company's discharges.

Section 15 prescribes the penal consequences if the company corrupts or pollutes the water.

Section 16 provides for the regulation of emissions of the Oriental Gas Company.

Section 17 provided a penalty of two hundred rupees if the water be fouled by gas, to the person whose water was so fouled on a further sum of not exceeding one hundred rupees, for each day during which the offence continue after the expiry of the twenty four hours from the service of notice of such sum.

5.3.3 Indian Easements Act, 1882

This is one of the earliest Act that protected the riparian owners against 'unreasonable' pollution by upstream owners. The Act has codified the common law doctrine of riparian rights to unpolluted waters.

In the Section 7 (f) and (h) of the Act, eventhough the word 'pollution' is not specifically defined, but referred to any alterations 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 Act is more wider in scope than the common law doctrine of riparian owners' rights. The Act
extends its scope to cover and control the pollution of not only natural stream but also percolating water and water flowing in undefined channel and stagnant water such as ponds and lakes.

The Act recognizes the prescriptive right to pollute water where the right has been peacefully enjoyed without interruption for twenty years. The prescriptive right to pollute water (whether natural, artificial, sea or under ground), however, cannot be acquired against the government which has sovereign rights in waters (Section 15 and 26 of the Act).

5.3.4 The Sarais Act, 1867

This is another general law dealing with water pollution.

Section 7 of the Act enjoined upon a keeper of a sarai or an inn to keep certain 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.

5.3.5 Fisheries Act, 1870

This Act prohibited 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 any noxious material into any water with an 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.
5.3.6 Northern India Canal and Drainage Act, 1873

Section 5 of the Act provides for punishment whoever corrupts or fouls the water of any canal so as to render it less fit for which it is ordinarily used, would be imposed a penalty of imprisonment not exceeding one month or a fine not exceeding Rupees fifty or both for the breach of the provision.

5.3.7 Obstruction in Fairways Act, 1881

This is one of the very early statute that deals with 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 rise to a bank or doing of any other act which will cause or be likely to cause obstruction or danger to navigation.

5.3.8 Indian Ports Act, 1908

This Act regulates the water pollution by oil in the ports.

Section 6 empowers 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 disposed of the same.

Section 21 of the Act prohibits throwing of ballast or rubbish or any other thing likely to form a bank or shall detrimental to navigation into either the port or upon any place likely to be washed by the tides, storm or land flood.
5.3.9 Motor Vehicles Act, 1939

The control of air pollution resulting from vehicular emission is taken care by the Motor Vehicles Act, 1939.

Section 70 of the Act empowers the State government to make rules inter alia regarding emission of smoke, visible vapor, sparks, ashes, grit or oil. The Act was replaced by Motor Vehicles Act, 1988.

5.3.10 Hailey National Park Act, 1936

This is the first comprehensive law for the protection of wild life and its habitat in the Hailey National Park now Corbett National Park in the state of Uttar Pradesh.

5.3.11 Factories Act, 1948

Section 12 (1) lays down that effective arrangements shall be made in every factory for the treatment of wastes and effluents due to the manufacturing process carried on therein, so as to render them innocuous and for their disposal.

Section 12 (2) provides that the State government may make rules prescribing the arrangements to be made under Sub Section (1).

Section 13 of the Chapter III requires the occupier of the factory to take effective and suitable provisions for adequate ventilation and circulation of fresh air and maintaining such a temperature as will secure to workers therein reasonable condition of comfort and prevent any injury to health.
Section 14 requires the occupier to take effective measures to prevent the inhalation and accumulation of any dust or fumes to such level so as to not be injurious to workmen.

Section 36 provides for taking effective measures to ensure safety from gas, fume, vapor etc., in any chamber, tank, pit, pipe or any other confined space in any factory.

Section 92 provides for general penalty for non observance and non compliance with the requirement of Section 12 of the Act and other rules made under the Act.

5.3.12 Indian Explosives Act, 1884

Section 4 of the Act regulates the manufacture, possession, use, sale, transport, import and export of explosive substances.

Section 5 prohibits manufacturing, possession, use, sale, transportation etc. of explosive substances except as under rules as to licensing, sale, transportation import and export etc. The prohibition may either be absolute or subject to certain conditions. The Central government may absolutely ban the use or manufacturing etc., of any explosive which is dangerous in its opinion for public safety by issuing a notification to this effect. The Act empowers Central government to extend the definition of explosives to cover other explosive substances and declare any substance or explosive for the purpose of the Act. Failure to comply with the provisions of the Act entails penal consequences against individuals and companies.
5.3.13 Indian Boilers Act, 1923

This Act deals with boiler regulations in India. The Act ensures proper maintenance and safe working of boilers. It incorporates the standards of construction, maximum pressure, registration, and inspection of all 'boilers.' The Act provides for the certified boiler attendants and Central Boiler Board. The Board is the principle agency empowered to make regulations and standard conditions with respect to material design and construction.

5.3.14 Indian Petroleum Act, 1934

This Act provides for the transport and storage of petroleum. The Central government is authorized to make rules with respect to regulations of import, transportation and storage of petroleum and conditions for the requirement of license etc. A person is authorized to import, transport or store any petroleum products only in accordance with the provisions of the Act or any rules made therein under.

Section 23 imposes penalties for the contravention of rules made under Section 4 and 5.

5.3.15 Police Act, 1861

It deals with noise pollution and punishment thereby. The District Superintendent of Police or Assistant District Superintendent of Police is authorized to direct the conduct of all assemblies and processions in public roads or in the public streets or thoroughfares. The police officers are empowered to regulate the extent to which music may be used in the streets on the occasion of festivals and ceremonies. The Act prevents and controls the slaughtering of animals, clearing of carcasses, cruelty to animals and throwing dirt into the streets.
5.3.16  Cattle Trespass Act, 1871

For the preservation and protection of forests Cattle Trespass Act was enacted in the year 1871.

5.3.17  Other Acts

The Wild Birds and Animals Protection Act, 1912 specifies closed hunting seasons and regulated hunting of designated species through licenses.

In the year 1873 Madras Presidency enacted first Wild life statute for the protection of wild elephants.

In the year 1879 for the first time Central government enacted a broader Elephants Preservation Act.

Bengal Smoke Nuisance Act, 1905

and

Bombay Smoke Nuisance Act, 1912 were some of the early statutes with respect to air pollution control

5.3.18  Indian Penal Code, 1860

A very systematic approach to control of water pollution in India started with the enactment of Indian Penal Code, 1860.

Section 268 states "A person is guilty of a public nuisance, who does any act, or is guilty of an illegal omission, which causes any common injury, danger, or annoyance to the public or to the people in general who dwell or occupy property in the vicinity or which must necessarily cause injury, obstruction, danger or annoyance to persons who may have occasion to use any public right. A common nuisance is not excused on the ground that is causes some convenience or advantage". 
Section 277, 278, 290 of the Indian Penal Code refer to pollution of water and air.

Section 277 states "Whoever voluntarily corrupts or fouls the water of any public spring or reservoir, so as to render it less fit for the purpose for which it is ordinarily used, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both".

Section 278 entails penal consequences for making atmosphere noxious to health. It reads, "Whoever voluntarily vitiates the atmosphere in any place so as to make it noxious to the health of persons in general dwelling or carrying on business in the neighborhood or passing along a public way, shall be punished with fine which may extend to five hundred rupees".

Section 284 is drafted in such wide terms as to include any handling of poisonous substance as to endanger human life or likely to cause hurt or injury to any person by poisoning well and rivers as well.

The Section states "Whoever does, with any poisonous substance, any act in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any person, or knowingly or negligently omits to take such order with any poisonous substance in his possession as is sufficient to guard against any probable danger to human life from such poisonous substance, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both".

Section 290 states, "Whoever commits a public nuisance in any case not otherwise punishable by this Code, shall be punished with fine which may extend to two hundred rupees".
A water polluter may also be prosecuted and punished under **Section 425** for mischief if his act causes wrongful loss or damage to public or to any person or if his act causes destruction of any property or diminishes its value or utility. Hence causing diminution of water supply may be treated as mischief and the possible direct cause may also be pollution.

The Section states "Whoever, with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public or to any person, causes the destruction of any property, or any such change in any property or in the situation thereof as destroys or diminishes its value or utility, or affects it injuriously, commits "mischief".

In addition to the above sections, the following Sections namely 269, 270, 271, 272, 286, 287, 288, 289 can also be used for prosecuting and punishing persons who indulge in the act of pollution.

### 5.3.19 Provisions under Criminal Procedure Code

The Criminal Procedure Code, contains provisions to tackle the problem of public nuisance. The **Section 133** of the Code of Criminal Procedure an executive magistrate can interfere and remove public nuisance of an environmental nature. **Section 133** of Cr.P.C. states, "Whenever a District Magistrate or a Sub-divisional Magistrate or any other Executive Magistrate specially empowered in this behalf by the State Government, on receiving the report of a police officer or other information and on taking such evidence (if any) as he thinks fit". He can adopt immediate measures to prevent danger or injury of a serious kind to the public vide **Section 142** of the Cr.P.C.
For the prevention of danger to human life, health or safety, the magistrate can direct a person to abstain from acts vide Section 144 of Cr.P.C.

5.3.20 Provisions under Civil Procedure Code, 1908

Section 7(b) to (f) and (h) of the Indian Easements Act, 1882, guarantees beneficial enjoyment to the owner of a land free from air, water or noise pollution without disturbing natural environment. This law enables an aggrieved person to challenge any act of pollution by moving a Court under the Code of Civil Procedure.

The Section 9 of the C.P.C. empower the Court to try suits of civil nature. The Section reads "The Court shall ... have jurisdiction to try all suits of a civil nature excepting suits of which their cognisance is either expressly or impliedly barred".

In all cases where environmental assaults amount to private nuisance this provision can be invoked. The Court can give different kinds of remedies namely damages, injunction, interim orders, declaration and decree. Only when the harm is of such a nature affecting large number of people, it attain the character of public nuisance. The difficulty is the extent of harm may not be ascertainable. Another difficulty is standing. To overcome this, under Section 91 of the Civil Procedure Code an Advocate General or with the leave of the Court, two or more persons, can institute a suit, whether or not special damage is caused to such persons. A civil suit may be filed in case of a public nuisance or other wrongful acts affecting or likely to affect the people. The remedy may be either a declaration or injunction or any other relief as may be appropriate in the circumstance of the case. This provision has a reservoir for class action against environmental violations.
The Order 1, rule 8 in an amplification of the concept of class action with the permission of the Court. When a representative suit is filed, notice by personal service or by advertisement is to be given. The Court has discretion to allow impleading a party. The decree will be binding to all parties on whose behalf or for whose benefit the suit is instituted. It is enough that the persons who sue need have the same interest in the suit. It is not necessary to establish that such persons have the same cause of action as the persons on whose behalf or for whose benefit they sue.