3.1 General

Human history has been one of progressive take-over on the flows of energy within natural systems, allowing ever-increasing human abundance and presence everywhere. The impacts on the natural systems have been immense. All human cultures are sustained through natural capital, including goods and services derived from living organisms (biotic sources) and abiotic (non-living) sources. India is a secular country in which people of various religions, caste, creed and culture live together. From ages, India is a land of devotees worshipping Air, Earth, Sun, Fire, Energy, Water and Nature which are all very essential for sustaining life. It is well said in the Sikh Scripture, Guru Granth Sahib that –

“Human beings are composed of five elements of nature, which teach lessons and inspire strength in the formulation of our character: earth teaches patience, love; air teaches mobility, liberty; fire teaches warmth, courage; sky teaches equality, broad mindedness; water teaches purity, cleanliness”.¹

¹ Gurdip Singh, Environment Law in India, p 8, 2005 (1st Edition).
Indian civilization has arisen from Indus Valley civilization in which people had high civic sense, proper drainage systems and proper attention to balance the nature and surrounding environment.

Hinduism’s teaching has had a significant influence on ecology and conservation. Non-human species and non-living objects are seen as manifestations of one’s own life and are thus to be protected and preserved. In Hindu dictum Manusmriti it has been cited that –

“The earth is our mother, and we are all her children…
Supreme Lord, let there be peace in the sky and in the atmosphere, peace in plant world and in the forests; let the cosmic powers be peaceful; let Brahma be peaceful, let there be undiluted and fulfilling peace everywhere.”

The Hindu perception of nature is best understood as prakriti, the matrix of the material creation. Prakriti is seen as the expression of the supreme intelligence and physical form of ‘Brahma’ which is often metaphorically referred to as a tree, with its roots ‘above’, in the spiritual dimension, and its branches ‘below’, in the physical world. The branches are conceived as five fundamental elements prakriti: sky, air, fire, water and earth. Hindus view nature as something internal rather than external, neither alien nor hostile, but inseparable from human identity and existence. As per Hindu concept of karma, every act willfully performed leaves a consequence in its wake because human life and actions are inseparable from their environment. It is broadly interpreted as the belief that every

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2 Ibid.
human action creates its own of reactions and events that will always be with that person and produce inescapable consequences. Attaining an ideal life depends on selecting right actions and living within a set of duties (dharma) that create good consequences (good karma), supported by a purity and balance of the five basic elements within and around a person. The aim is a life harmonious with nature by making an environment free of pollution, because polluted elements make the human body subject to disease and distortion.⁴

Similarly, Buddhism stresses a unity of self and environment. In the context of conservation, Buddhism does not emphasize that resources are limited, but that one should limit use of resources. Buddhism takes a high view of personal responsibility because it shares, with Hinduism, the doctrine of karma. Future happiness results from appropriate present conduct. Wrong actions of the past will produce bad effects in the present, so Buddhism encourages environmental education and appropriate behaviour, not only for present, but for future consequences also.⁵

Throughout history, humans have aspired to development and the definition of limits of development has been controversial and conflicting process. The concept of sustainable development and related environmental laws gained growth when India joined United Nations after Second World War. In these meetings, India has expressed its concern on depletion of environment and biodiversity. India has actively played its role in international seminars, conferences and other meetings relating to sustainable development and environmental laws. Also at the national level,

⁴ Ibid.
both state as well as central governments have taken responsibilities and framed rules and regulations from time to time. Various litigations by public at large have gained attention of our judicial system about environmental laws and various other related issues. Public Interest Litigations have played significant role in the judicial implementation of sustainable development which insists at the balanced synthesis of development and environmental imperatives.6

As contemplated by Article 21 of the Constitution, every citizen has a fundamental right to have the enjoyment of equality of life and living; anything which endangers or impairs conduct of anybody either in violence or derogation of laws, that quality of life or living by people is entitled to be taken recourse of Articles 47 and 48A of the Constitution.7

Simultaneously, the judiciary in India has played a pivotal role in interpreting the laws in such a manner which not only helped in protecting environment but also in promoting sustainable development. In fact, the judiciary in India has created a new “environmental jurisprudence”.8

Rapid development of science and technology and the ever increasing world population, has brought about tremendous changes in the earth’s environment. These changes upset the ecological laws and consequently, endangering the human race. It, therefore, became necessary to regulate human behaviour and social transaction with new laws, designed to suit the changing conditions and values. In order to manage and

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face the myriad challenges of the ever-changing environment, a new branch of law, known as environmental law emerged.\textsuperscript{9}

3.2 International Treaties Signed by India

In the recent past, there has been a plethora of international ethical statements and commitments in relation to the environment and sustainability. These documents can be considered as ‘paralegal rules’ in the form of values, principles and directives of policies, practices and outcomes. India has signed many treaties and agreed to carry out provisions of various treaties. India has been Contracting Party (C.P.) in some of these and a Signatory (S) in others:


\textsuperscript{9} P. Leela Krishnan, \textit{Environmental Law in India}, 1, 2005.


3.3 Emergence of Environmental Law in India

In India, sacred forests had been protected from hunting, logging and other forms of destructive use for over 2,000 years based on the Hindu
belief that each forest was the dwelling place of a diety. Such protection was effective also in spite of the fact that the forests were usually surrounded by dense human habitation. Hinduism has engaged itself forcefully and practically in the conservation of biodiversity. The most famous expression of such engagement was the chipko movement of northern India. The movement is dated from a protest near the town of Gopeshwar in the province of Uttar Pradesh (now Uttarakhand) in 1973. Villagers, protesting logging policies, went into the forests and physically embraced trees to be cut by loggers. Most of the protesters were initially women. The motivations behind this movement were not inspired exclusively by religious conviction but also by political issues of self governance and social justice and by concerns for local environmental quality. The chipko movement demonstrated how religious values affect social and political events that shape the outcomes of conservation.

The concern over Environmental Law was seen in India during British period. British colonization of Indian subcontinent in the 18th and 19th century brought with it very different rationales for and approaches to forest conservation. Government foresters in British-India followed the path of conservation through intensive, sustained yield management, converting thousands of acres of diverse, species-rich native Indian forests to single species plantation of economically desirable trees. This approach

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maximized timber production, but destroyed the resource base for local extractive economies. The benefits went primarily to industry and government, not to local persons. Unfortunately, forestry practices did not change for long even after independence from Britain. An environment scholar Ramachandra Guha noted that 22% of the nation`s land was still controlled by the Forest Department, but less than half of that land had any trees on it. This study remarked ruefully on the effects of scientific forestry on the actual conservation of native biodiversity and cultural practices.\textsuperscript{12}

Many rules and regulations were made by British Authorities in relation to environment. Many principles of common law were directly and indirectly related to preservation of environment. The Mayor Courts established at three Presidency towns were at Calcutta in 1661; Madras in 1687 and Bombay in 1718, gave judgments related to water pollution in India. But these courts in Letters Patents Act of 1861 were superseded by establishment of High Courts. The High Court at Calcutta, Bombay and Madras decided many cases under the head of Law of Torts. These cases were divided into two different groups:

(i) **Property rights over Water**: The common law has set a standard in respect of water pollution which may appear to be higher than Helsinki Rules.\textsuperscript{13}

(ii) **Careless use of polluting material**: The careless use of polluting material can be called as negligent act. It gives rise to an action under the law of negligence. Now, the question arises that, what is careless use of

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\textsuperscript{13} Article 9 of Helsinki Rule defines the term water pollution as referring to any detrimental change resulting from Human Conduct in the natural composition, quality of waters of an international area.
noxious or dangerous things and what is the test of liability for use of such things?

According to Prof. Asit Bose, “Probably it may be correct to say that anything used unnaturally is a dangerous manner. By applying this test a view may be held that pesticides that we used in our country are, dangerous and if an assessable injury can be proved as are suit of careless use of pesticide and action in negligence is very likely to tie.”\(^{14}\)

In the case of *Rylands v. Fletcher\(^{15}\)*, Justice Blackburn gave a well judgment, “We think that the true rule of law is that the person who for his own purposes beings on his lands and collects and keeps there anything likely to do mischief if it escapes, must keep it in at his peril and if he does not do so is *prima facie* answerable for all the damage which is the natural consequence of its escape. He can excuse himself by showing that the escape was owing to the plaintiffs default; or, perhaps, that the escape was the act of God; but as nothing of the sort exists here, it is unnecessary to inquire that excuse would be sufficient. The general rule, as above stated seems on principle just. The person whose grass or corn is eaten down by the escaping cattle of his neighbour or whose mine is flooded by the water from his neighbours reservoir, or whose cellar is invaded by the filth of his neighbours privy, or whose habitation is made unhealthy by the fumes and noise, is damnified without any fault of his own and it seems but reasonable and just that the neighbours, who has brought something on his own property which was not naturally there, harmless to others so long as it is

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\(^{14}\)Asit Kumar Bose, “Legal Control of Water Pollution in India”, *Legal Control of Environmental Pollution*, 121, 2001.

\(^{15}\)1868, L.R. 3 H.L. 330.
confined to his own property but which he knows to be mischievous if it gets on his neighbour’s should be obliged to make good the damage which ensures if he does not succeed in confining it to his own property. But for his act in bringing it there no mischief could have accrued, and it seems but just that he should at his peril keep it there so that no mischief may occur, or, answer for the natural and anticipated consequences. This we think is established to be the law whether the things so brought be beasts, or water, or filth”.  

This rule is known as Strict or Absolute liability in Law of Torts. According to this rule, if anyone brings a dangerous or noxious object on his land such as explosive chemicals and he allows it to escape, then he is liable for the consequences absolutely. This rule is prevalent even today after so many years. An Indian case, which is a leading case upon rule, is Bhopal Gas Tragedy Case (M.P. High Court, Civil Revision No. 26 of 1988) in India, which clearly shows the inadequacy of Indian statutory Law of Tort. Due to this, Indian Government passed Environment Protection Act in 1986. A great concern was shown on use of pesticides by farmers in this discussion done by Parliament of India but more could not be done in this direction.

### 3.4 Constitutional Provisions of Environmental Protection

In the Constitution of India there are many provisions in relation to protection of the environment and avoidance of pollution at various places.

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Also, due to these provisions Hon’ble Supreme Court has made many judicial pronouncements. There are many provisions for preservation of environment under Articles 48A, 52(A), 243 ZD(3), Article 21 Right to Life also includes the right to preserve environment. Article 253 empowers the Parliament to make laws to implement India’s International Treaty Obligations and to implement other International Laws.

**Fundamental Rights**

There are many fundamental rights relating to environmental preservation and man’s right to healthy environment. It is expanded to the boundaries of Fundamental Right to life and personal liberty guaranteed in Article 21 which reads -

“No person shall be deprived of his life or personal liberty except according to procedure established by law”.

In *Rural Litigation and Entitlement Kendra, Dehradun v. State of Uttar Pradesh*\(^{17}\) was the case based upon the above said statement. Article 32 was applied and court ordered the closure of some of quarries because in the viewpoint of Court these quarries were disturbing the ecological balance of their respective area. So, Court took the wide interpretation of Article 21 in which it was held that right to life includes right to live in pollution free environment. Then, it was also applied by the High Courts of Himachal Pradesh\(^{18}\), Rajasthan\(^{19}\) and Kerala\(^{20}\).

\(^{17}\) *AIR 1988 SC 1038.*


\(^{20}\) *Madhavi v. Tilakar, 1988 (2) Ker LT 730, 731.*
Government of India, in order to implement the principle of Stockholm United Nations Conference on Human Environment, 1972, enacted Air (Prevention and Control of Pollution) Act of 1980 and Environment (Protection) Act, 1986. Article 32 and 226 of Constitution also provide remedies to public at large. Many cases were sued under these heads relating to matters of environment pollution and other basic rights related to right to live a healthy life.

**Directive Principles of State Policy**

The Article 48A of Constitution of India was inserted by 42nd Amendment Act of 1976 in which direction is given to states to preserve their environmental conditions. This Article reads as under:

“The State shall endeavour to protect and improve the environment and to safeguard the forest and the wildlife of the country.”

In the case of *M.C. Mehta v. Union of India*\(^{21}\), great stress was laid upon protection of environment and avoidance of pollution as possible and prudent man can do.

The above said Directive Principle is a policy prescription to be followed by the Government. Although unenforceable by a court, the Directive Principles are increasingly being cited by Judges as complementary to the Fundamental Rights. There are many environmental cases where the Supreme Court had been guided by the language of Article 48A\(^{22}\). In another case of *Sachidanand Pandey v. State of West Bengal*\(^{23}\),

\(^{21}\) AIR 1988 SC 1037.
\(^{23}\) AIR 1987 SC 1109
Hon’ble Supreme Court held that “Whenever a problem of ecology is brought before the court, the court is bound to bear in mind Article 48A of the Constitution … and Article 54A (g)… when the court is called upon to give effect to the Directive Principle and the fundamental duty, the court is not to shrug its shoulders and say that priorities are a matter of policy and so it is a matter for the policy making authority. The best that the court may do is to examine whether appropriate considerations are borne in mind and irrelevances excluded”.

In several other cases\(^\text{24}\) it was held that even a court might not enforce Directive Principle but how much further will depend on the circumstances of the case. The court may always give necessary directions. However, the court will not attempt to nicely balance relevant consideration. In one case\(^\text{25}\) it was also held that “when the question involves the nice balancing of relevant considerations the court may be justified in resigning itself to acceptance of the decision of the concerned authority”.

**Fundamental Duties**

Fundamental duties of citizens of India was added by the Constitution (42\(^\text{nd}\) Amendment) Act, 1976. It is contained in Article 51A of Part IV – A of the Constitution of India. According to Article 51A (g):

“It shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wild-life and to


\(^{25}\) *M.C. Mehta v. Union of India, AIR 1987 SC 1109.*
have compassion for living creatures”. These duties have been added to implement the recommendations of the Swaran Singh Committee Report in 1976. The Swaran Singh Committee had suggested that Parliament should have power to pass laws under which penalties and punishment could be imposed for non-compliance with or refusal to observe the duties. But the suggestion was rejected at the later stage.

None of the Constitutions of the Western countries specifically provides the duties of the citizens. On the other hand, the Constitutions of socialist countries lay great emphasis on the duties. These duties are intended to create psychological consciousness among the citizens and are of merely educative value.

In the case of *M.C. Mehta v. Union of India* \(^{26}\), the petitioner by way of a “Public Interest Litigation”, filed a writ petition for the prevention of nuisance caused by the pollution of the river Ganga. Having regard to the grave consequence of the pollution of water and air and the need for protecting and improving the natural environment, the Supreme Court gave appropriate directions.

**Article 243 ZD (3):** The Constitution amended by 74\(^{th}\) Amendment Act, 1992, inserted Article 243 ZD. Its Clause 3 provides that every District Planning Committee shall, in preparing the draft development plan:

(i) have regard to -

(ii) matter of common interest between the Panchayat and the Municipalities including spatial planning, sharing of water and other

\(^{26}\) *AIR 1997 SC 734.*
physical and natural resources, the integrated development of infrastructure and environmental conservation;

The same provision was also inserted in Article 243 ZE (3) in cases of every Metropolitan Planning Committee.

3.5 Enactments Relating to Environment and Wildlife

When the law has to be implemented, it very much depends upon the procedural laws. So, discussion of various rules and regulations formed under substantive environmental legislations is necessary. In pursuance of various substantive environmental legislations, the Central and each State Government have formulated following procedural laws in our country.

(i) Wild Life (Protection) Act, 1972

In exercise of powers conferred by Clause (a) of sub-section (1) of Section 63 of the Wild Life (Protection) Act, 1972, the Central Government made the Wild Life (Stock Declaration) Central Rules, 1973\(^{27}\) in which stress laid down on increasing population of endangered wildlife flora and fauna species by increasing protected areas and sanctuaries.

In exercise of powers conferred by Clause (a) of sub-section (1) of Section 63 of the Wild Life (Protection) Act, 1972 (53 of 1972), the Central Government made the Wild Life (Stock Declaration) Rules, 1973\(^{28}\). The purpose behind its enactments is also an effort to increase the population of

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\(^{27}\)Notification No. CSR 41(E), dated 1.2.1973, Published in the Gazette of India, Extraordinary, No. 21, Part II, dated 01.02.1973.

\(^{28}\)Notified in the Gazette of India No. 184, Extraordinary, Part II, dated 1st August, 1973 for adoption the State of A.P.
endangered species and to penalize those who are indulged in illegal poaching.

In exercise of the powers conferred by Clause (b) of subsection (1) of Section 63 of the Wild Life (Protection) Act, 1972 (53 of 1972), the Central Government made the Wildlife (Transactions and Taxidermy) Rules, 1973. In these rules restrictions are made upon the trade or commerce in Trophies, Animal Articles etc., derived from certain animals.

(ii) Water (Prevention and Control of Pollution) Act, 1974

Under Section 4 (a) and (e) of Water (Prevention and Control of Pollution) Act, 1974, each State Government has framed State Rules. The Central Government after consultation with the Control Board made the Water (Prevention and Control of the Pollution) Rules, 1975. These Boards provide technical assistance and guidance to State Governments for doing investigations and research relating to problems, prevention and control of water pollution. These Boards can inspect sewage or trade effluents, works and plants for treatment of sewage and trade effluents. Boards can penalize these industries for not complying with the terms and conditions. State Boards can prohibit the use of stream or well for dispose or polluting matter.

(iii) The Water (Prevention and Control of Pollution) Cess Act, 1977

In exercise of the powers conferred by Section 17 of the Water (Prevention and Control of Pollution) Cess Act, 1977. The Government of India framed the Water (Prevention and Control of Pollution) Cess Rules, 1978 and The Central Government after Consultation with the Central Board made the Water Pollution (Procedure for Transaction of Business) Rules, 1975 in which Board is given authority to apply tax on those industries and other businesses by which water pollution is caused. They have to comply with the orders of Board otherwise it can lead to penalty. This Act is enacted with a purpose to reduce those industries which cause Water Pollution at a very large scale.

(iv) Air (Prevention and Control of Pollution) Act, 1981

In exercise of the powers conferred by Section 54 of the Air (Prevention and Control of Pollution) Act, 1981 every State Government framed their rules of the respective state. Thus, we get West Bengal Air (Prevention and Control of Pollution) Rules, 1953, substituted again in 1st February, 1984 and 16th August, 1985.

Under Section 53 of Air Act, 1981 the Central Government also framed the Air (Prevention and Control of Pollution) Rules, 1982. In this Act Central Government, in consultation with the Central Board, may make rules regarding prevention, control or abatement of Air Pollution. Central Board, under this Act, would have right to enter, at all reasonable times and

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inspect industrial plant, control equipment, record, register or document. These can be seized by Central Board Committees. If somebody denies to comply with these rules then he/she shall be punishable with imprisonment for a term which shall not be less than one year and six months which may extend to six years and with fine which may extend to five thousand rupees.

(v) Environment (Protection) Act, 1986

In exercise of the powers conferred by Sections 6 and 25 of the Environment Protection Act, 1986 (29 of 1986) the Government of India formulated the Environment (Protection) Rules, 1986 with effect from November 19, 1986. In this Act, Government would have the authority to make rules about matters relating to standard of quality of air, water or soil, maximum allowable limits of concentration of various environmental pollutants (including noise) in different areas.

In exercise of the powers conferred by Sections 6, 8 and 25 of the Environment (Protection) Act, 1986 (29 of 1986), the Central Government made the Hazardous Wastes (Management and Handling) Rules, 1989. In these sections, Government is authorized to make rules regarding the procedures and safeguards for the handling of hazardous substances.

In exercise of the powers conferred by Section 6, 8 and 25 of the Environment (Protection) Act, 1986 (29 of 1986), the Central Government made the Manufacture, Storage and Import of Hazardous Chemicals Rules,


\textbf{(vi) Public Liability Insurance Act, 1991}

In exercise of the powers conferred by Section 23 of the Public Liability Insurance Act, 1991, the Central Government made the Public Liability Insurance Rules, 1991\textsuperscript{38} in which for the first time, principle of no-fault liability was introduced. In this Act, it was made compulsory for the owner of premises before handling any hazardous substance, should make insurance of the employer and also to pay compensation if any mishappening take place.

\textbf{(vii) National Environment Appellate Authority Act, 1997}

In exercise of the powers conferred by Section 22 of the National Environment Appellate Authority Act, 1997 (22 of 1997), the Central Government made the National Environment Appellate Authority (Appeal) Rules, 1997.\textsuperscript{39} Under this Act, an Authority established by Central Government shall have power to entertain an appeal of an aggrieved person

\textsuperscript{35} Vide Notification S.O. No. 966(E), dt. 27.11.1989, published in the Gazette of India (ext.), Part -II, dated 27.11.1989.
\textsuperscript{36} Published in the Gazette of India (ext.), Part-II, Section 3(i), dated 02.08.1996.
\textsuperscript{37} Notification S.O. No. 630 (E), dated 20.07.1998, Published in the Gazette of India, (ext.), No. 460, Part-II, Sections, sub-section (ii), dated 27.07.1998.
\textsuperscript{38} Notification S.O. No. 330 (E), dt. 01.05.1991, Published in the Gazette of India (ext.), Part-II, dt. 01.05.1991.
\textsuperscript{39} Published in the Gazette of India, (ext.), Part-II, Section 3(11), dated 11.11.1997.
and to pass orders in regard thereof and penalize the party which fails to comply with the orders of Authority.

In exercise of the powers conferred by Section 22 read with section 13 of the National Environment Appellate Authority Act, 1997 (22 of 1997) the Central Government made the National Environment Appellate Authority (Financial and Administrative Powers) Rules, 1998, which would have the same powers as an Authority have in National Environment Appellate Authority Act, 1997.

Besides the aforesaid existing procedural rules framed under the Parent Acts, there are various quasi-laws or administrative regulations and guidelines for implementation of environmental laws, these are –

(i) Emission standard as per Section 17(1)(g) of the Air (Prevention and Control of Pollution), Act, 1981.

(ii) Emission Standards for Automobiles for Prevention and Control of Pollution.

(iii) Indian Standard Institute (ISI) specifications for Standard Tolerance Limits for Industrial and Sewage effluents followed by West Bengal Pollution Control Board.

(iv) Standard for Emission of Air Pollutants into the Atmosphere from Industrial Plants.

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41 West Bengal Pollution Control Board Publication Environmental Protection Laws, 226, 1987.
42 Ibid.
44 Ibid., 231.
(v) Guidelines for diversion of forest lands for non forest-purposes under the Forest (Conservation) Act, 1980.\textsuperscript{45}

(vi) Guidelines for Environmental Impact Assessment.\textsuperscript{46}

(vii) Guidelines for Environmental Appraisal of Industrial Projects.\textsuperscript{47}

(viii) Guidelines for Integrating Environmental Concerns with Exploitation of Mineral Resources.\textsuperscript{48}

(ix) Environmental Guidelines for Formulation of River Valley Projects.\textsuperscript{49}

(x) Environmental Guidelines for Development of Beaches.\textsuperscript{50}

(xi) Environmental Guidelines for Thermal Power Plants.\textsuperscript{51}

(xii) Guidelines for Environmental Impact Assessment of Shipping and Harbour Projects.\textsuperscript{52}

(xiii) Prevention of Hazards from Industrial Units: Government of India’s Instructions.\textsuperscript{53}

(xiv) Environmental Clearance of Industrial License Conditions of Letter of Intent/Industrial License.\textsuperscript{54}

(xv) Safety and Health Accident Reduction Action Plan (SAHARA).\textsuperscript{55}

(xvi) Guidelines for Dereservation of Reserved Forests or Diversion of Forest land to any Non-forest use.\textsuperscript{56}

\textsuperscript{45} Ibid., 300-311.
\textsuperscript{46} Ibid., 1-6.
\textsuperscript{47} Ibid., 7-18.
\textsuperscript{48} Ibid., 30-47.
\textsuperscript{49} Ibid., 48-54.
\textsuperscript{50} Ibid., 62-83.
\textsuperscript{51} Ibid., 55-61.
\textsuperscript{52} Ibid., 84-112.
\textsuperscript{54} Ibid., 116.
\textsuperscript{55} Ibid., 117-42.
(xvii) Guidelines for Massive Tree Plantation for Abatement of Air Pollution caused by industries.\(^{57}\)

(xviii) Decision of Cabinet on Amendment of the Rules of Business of affecting the Guidelines of the Department of Environment.\(^{58}\)

(xix) Incentives to Industries for Prevention and Control of Pollution and for Conservation of Resources.\(^{59}\)

(xx) Environmental Guidelines for Setting of Industry.\(^{60}\)

In pursuance of Constitutional 74\(^{th}\) Amendment Act, 1992 in Article 243 ZD (3) and Article 243 ZE (3),\(^{61}\) Urban Development in each states shall have to be made with refund to environmental conservation. With that end in view no specific uniform urban development planning of land has been developed in West Bengal as yet. However, the process of formal urban planning was initiated enacting Calcutta Improvement Act, 1911 but that was very restricted within few selected Scheme of Construction of Housing and Roads. After independence some legislation on this regard for urban development were passed by West Bengal Legislative Assembly, such as Durgapur. (Development and Control of Building Operation) Act, 1958 followed by the Calcutta Metropolitan Planning Area (Use and Development of Land Control) Act, 1965 and The Calcutta Metropolitan Development Authority Act, 1972. The last three Acts were later replaced in West Bengal to a comprehensive legislation the West Bengal Town and

\(^{56}\) Ibid., 143-46.
\(^{57}\) Ibid., 156-59.
\(^{58}\) Ibid., 160.
\(^{59}\) Id., 188-89, at 59.
\(^{60}\) Ibid., 147.
\(^{61}\) Constitution (Seventy-fourth Amendment) Act, 1992 published in Gazette of India, Part-II, Section I, 29\(^{th}\) April, 1993.
Country (Planning and Development) Act, 1979. Besides these for the Regulation of transfer of government Land and for certain incidental matter the West Bengal Government Land (Regulation of Transfer) Act, 1993 was passed by the West Bengal Legislature which was attested by the President of India in 1997.\textsuperscript{62}

There are some administrative regulatory orders issued by the West Bengal Pollution Control Board (WBPCB) as well as other Governmental Agencies to prevent environmental pollution, such as:

(i) Smoke emission test certificate to be taken by each owner of vehicle by properly maintaining the respective vehicles;\textsuperscript{63}

(ii) To control volume of microphone and other public functions within 65 decibels as a measure of sound pollution. To implement this regulatory order properly the Calcutta and West Bengal Policy authorities are to submit monthly report to the West Bengal Pollution Control Board;\textsuperscript{64} and

(iii) The green Bench of Calcutta High Court issued some directions on the application of WBPCB to maintain good environment as part of right to life. Thus, the High Court issued an order that during Madhyamik and Higher Secondary Examination no microphone can be used for any purpose.\textsuperscript{65}

The year 1972 marks a watershed in the history of environmental management in India. Prior to 1972, environmental concern such as sewage

\begin{footnotesize}
\textsuperscript{62} The Calcutta Gazette, March 4, 1997.
\textsuperscript{63} Source WBPCB (West Bengal Pollution Control Board).
\textsuperscript{64} Ibid.
\textsuperscript{65} Ibid.
\end{footnotesize}
disposal, sanitation and public health were dealt with by different central government ministries, and each pursued these objectives in the absence of a proper co-ordination system at the inter-government level (between centre and state governments). When the 24th UN General Assembly decided to convene a conference on the human environment at Stockholm in 1972, and requested a report from each member country on the state of environment, a committee on the Human Environment under the chairmanship of Pitambar Pant, member of the Planning Commission, was set up to prepare India’s Environmental Degradation and its Control in India’: Some Aspects of Problems of Human Settlement in India’ and ‘Some Aspects of Rational Management of Natural Resources.  

The Fifth Five Year Plan (1974-79) stressed that the NCEPC should be involved in all major decisions, so that environmental goals would be taken fully into account. The Plan also emphasized that the pursuit of development goals would not be less likely to cause a reduction in the quality of life if a link and balance between developmental planning and environmental management was maintaining. In this context, the Minimum Needs Programme concerning rural and elementary education, rural health and sanitation, nutrition, drinking water, provision of housing sites and slum improvements received a fairly high priority, and was expected to minimize environmental pollution and degradation in rural areas and reduce poverty levels.  

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3.6 Environmental Legislations

Due to urbanization, industrialization and population explosion, India has been suffering from growing environmental pollution. Air pollution and water pollution has assumed alarming proportions. Forests and the biodiversity have been degraded. Wild life is also in danger. Noise pollution has also increased. Unrestricted and unregulated development activities are resulting in grave environmental pollution. Right to live in healthy environment is being annulled.

Constitution of India directed to the States as well as Citizens of India with respect to protection and improvement as well as safeguarding the environment. There are various measures for protections and improvement of environment provided in Environment Law in India. Indian judiciary has demonstrated exemplary activism and treated right to healthy environment as a part of fundamental right. But there are other Acts also which were enacted from time to time for implementing preservation of environment. They can be divided into two categories:

(a) Pre- Independence Environmental Legislation, and
(b) Post- Independence Environmental Legislation

(a) Pre- Independence Environmental Legislations

So as to find out the legal provisions relating to water pollution in India various enactments are to be examined. Various Acts and provisions relating to environment pollution in chronological order are as under:
(i) **The Shore Nuisance (Bombay and Colaba) Act, 1853**

This was the first enactment passed by the legislature in the year of 1853 relating to control of water pollution. This Act empowered the collector of land Revenue, Bombay to give notice to an offending party for removal of any nuisance anywhere below the high-water in the Bombay harbour. It also provided to authorize the Collector of Land Revenue, Bombay to remove the nuisance if the party violates the provision of one month’s notice.

(ii) **The Orient Gas Company Act, 1857**

This was the second enactment passed in the year of 1857 related to the water pollution. Section 15 of the said Act relating to water pollutions provided: If the said company shall at any time cause or suffer to be brought, or to flow into any stream, reservoir, aquaduct, port 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; aquaduct, pond, or place for 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 substance shall be brought or shall flow, or the act by which such

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68 Act 11 of 1853.
69 Act 5 of 1857.
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.

Section 17 of the same Act provided that whenever any water shall be fouled by the gas of the said company, they shall forfeit to the person whose water shall be so fouled for every such offence a sum not exceeding two hundred rupees, and a further sum, not exceeding two hundred rupees, and a further sum, not exceeding one hundred rupees, for each day during which the offence shall continue, after the expiration of twenty-four hours from the service of notice of such sum.

Section 18 of the said Act authorized a person to dig up the grounds and examine pipes and conducts of the Gas Company for the purpose of ascertaining any leakage causing water pollution 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.

(iii) **Indian Penal Code, 1860**

Section 425 of Indian Penal Code, 1860 reads as under:

70 Act 45 of 1860.
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 demises its value or utility or affects injuriously, commits “mischief”.

*Explanation 1*: It is not essential to the offence of mischief that the offender intended to cause loss or damage to the owner of the property injured or destroyed. It is sufficient if he intends to cause, or knows that he is likely to cause, wrongful loss or damage to any person by injuring any property, whether it belongs to that person or not.

*Explanation 2*: Mischief may be committed by an act affecting property belonging to the person who commits the act, or to that person and others jointly causing diminution of water supply has been treated as mischief in section 430 of the code and the possible direct cause may also be pollution. Adulterating of food or drink so as to make it noxious has also been made punishable.71

(iv) **The Serias Act, 1867**

This Act imposed a duty upon a keeper of a serias or an inn to keep a certain quality of water fit for consumption by persons and animals using it to the satisfaction of the District Magistrate or his nominees and failure to observe is entailed a liability of rupees twenty only.

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72 Act 22 of 1867.
(v) The Northern India Canal and Drainage Act, 1873\textsuperscript{73}

The Act of 1873 in Section 70, sub-clause (3) and (5) provided that any interference with or alteration in the flow of water in any river or stream, so as to endanger, damage or render less useful for the purpose for which it is ordinarily used would be an offence. The prescribed punishment for this offence would be imprisonment not exceeding one month or a fine not exceeding fifty rupees or both.

(vi) The Obstruction in Fair Ways Act, 1881\textsuperscript{74}

Section 8 of this Act empowered the Central Government to make suitable rules for regulating or prohibiting the throwing of rubbish in any fairway leading to a port causing or likely to give rise to a bank. The punishment for violation of this provision was fine of not more than rupees five hundred or imprisonment of a maximum term of six months or with both.

(vii) The Indian Fisheries Act, 1897\textsuperscript{75}

The Fisheries Act provides in Section 5: If any person puts any poison, lime or noxious material into any water with intent thereby to catch or destroy any fish, he shall be punishable with imprisonment which may

\textsuperscript{73} Act 8 of 1873.  
\textsuperscript{74} Act 16 of 1881.  
\textsuperscript{75} Act 4 of 1897.
extend to two months, or with fine which may extend to two hundred rupees. The Act also prohibited destruction of fish by explosive in inland water or on coasts and use of dynamic in water.

(viii) **The Indian Ports Act, 1908**

By this Act water pollution by oil had been regulated. Section 6 of this 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 for the disposal of the same”. Section 21 of the said Act further prohibited throwing of rubbish ballast or oil or water mixed with oil or any other thing likely to form a bank or shoal detrimental to navigation. Punishment for violation of this provision was a fine which may extend to rupees five hundred and for continuation of this offence, the offender is liable to a maximum of two months imprisonment.

(ix) **The Inland Stream Vessels Act, 1917**

This Act provided a mandatory Rule of fresh water for the use of passengers.

(x) **The Indian Forest Act, 1927**

The Indian Forest Act provided control of water in the forest area. Whoever poisons water of a forest area shall be liable to be punished by the State Government.

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76 Act 15 of 1908.
77 Act 1 of 1917.
78 Act 16 of 1927.
(b) Post-Independence Environmental Legislation

(xi) The Factories Act, 1948

Section 11 of the Factories Act directs every factory to keep premises clean and free from effluvia arising from any drain privy or other nuisance.

Section 12 of the said Act prescribed Disposal of Wastes and Effluents: (1) Effective arrangements shall be made in every factory for the disposal of wastes and effluents due to the manufacturing process carried on therein. (2) The State Government may make rules prescribing the arrangement to be made under sub-section (1) or requiring that the arrangements made in accordance with sub-section (1) shall be approved by such authority as may be prescribed.

(xii) The Mines Act of 1952

Under Section 19 of the Mines Act for health and safety of the employees there is mandatory provisions for arrangement of quality of water described as cool and wholesome for drinking purposes.

(xiii) The Atomic Energy Act, 1962

The legal control of nuclear energy and eradication substances in India is governed by the Atomic Energy Act, 1962, and the Radiation

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79 Act 63 of 1948.
80 Act 35 of 1952.

(xiv) The Insecticides Act, 1968

The Act was designed to regulate the manufacture and distribution of insecticides through licensing. For violation of the provisions relating to registration and licensing all manufactures of insecticides shall liable to be prosecuted and punished. The Central and State Governments are vested with emergency powers to prohibit the sale, distribution and use of dangerous insecticides.

(xv) The Wild Life (Protection) Act, 1972

The Wild Life (Protection) Act of 1972 was passed by Parliament under Article 252(1) of the Constitution. The Act made provisions for control of wild life by formation of Wildlife Advisory Boards, regulations for hunting wild animals and birds, establishment of sanctuaries and national parks, trade in wild animals, animal products and trophies and provisions were made to impose penalties by court for violating the Act. An amendment to the Act in 1982, introduced provisions permitting the capture and transportation of wild animals for the scientific management of animal populations.

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81 Act 53 of 1972.
(xvi) The Water Prevention and Control of Pollution Act, 1974\(^{82}\)

In 1974, the Parliament came out for the first time with a comprehensive legislation for controlling water pollution by enacting the Water (Prevention and Control of Pollution) Act. The Act was passed with the asserted aim of prevention and control of water pollution and of restoring the wholesomeness of water quality. The Act provides for the constitution of a Central Board and a State Board for the prevention and control of water pollution. The Board’s function includes advisor to Central Government concerning the prevention and control of water pollution through co-ordination of efforts by State Boards, giving of technical assistance and guidance to State, sponsoring of research and training of persons engaged in the field of water pollution. The statute is aimed to promote cleanliness of streams and wells in different areas of the states.

(xvii) The Water (Prevention and Control of Pollution) Cess Act, 1977\(^{83}\)

The Water Cess Act of 1977 was enacted with the object to meet part of the expenses of the Central and State Pollution Control Boards by imposing cess (tax) for water consumption by local authorities and certain designated industries. The cess will be used to implement the Water Act. The Act allowed a polluter 70% rebate of the assessed cess upon installing

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\(^{82}\) Act 6 of 1974.  
\(^{83}\) Act 36 of 1977.
effluent treatment equipment as encouragement of capital investment in pollution control.

(xviii) The Forest (Conservation) Act, 1980

In view of rapid deforestation and the resulting environmental degradation, our Parliament enacted the Forest (Conservation) Act in 1980. As amended in 1988 the Act made it obligatory on the part of a State to take prior approval before it ‘dereserves’ a reserved forest, uses forest land for non-forest purposes, assigns forest land to a private person or corporation, or clears forest land for the purpose of reforestation. The Act also envisage an Advisory Committee to advise the Central Government.

(xix) Air (Prevention and Control of Pollution) Act, 1981

Unlike the Water Act, which was enacted by Parliament under Article 252(1) of the Constitution after securing enabling resolutions from 12 states, the Air (Prevention and Control of Pollution) Act of 1981 was enacted by invoking the Central Governments power under Article 253 to make laws implementing decisions taken at international conferences. The preamble of the Air Act says that the Act represents an implementation of the decisions made at the United Nations Conference on the Human Environment held at Stockholm in 1972.

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84 Act 69 of 1980.
85 Act 14 of 1981.
The Air Act of 1981 contains several interesting features. (a) The Act grants discretion to each State Government to designate particular area as “air pollution areas”. Polluters located outside each air pollution control area cannot be prosecuted by the State Board, but every industry operator within an air pollution control area must obtain a permit or consent order from the State Pollution Control Board. (b) The Act authorized a Magistrate to restrain an air polluter from discharging emissions, and empowers both the Central and State Boards to give directions to industries which, if not followed, can be enforced by the Board closing down the said industry or withdrawing its supply of power and water. (c) The penalties have been increased so that the polluters cost of non-compliance is substantial; and (d) citizens cannot sue to enforce the Act to gain compliance by the industries, but require the board to provide the emissions data needed to build a citizens suit.

(xx) **The Environment (Protection) Act, 1986**

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

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86 Act 29 of 1986.
Section 3 of the Act authorized the Central Government “to take all such measures as it deems necessary at expedient for the purpose of protecting and improving the quality of the environment and preventing, controlling and abating environmental pollution”. The Act envisaged that the Central Government would develop a national standard in all aspects for the quality of environment and will collect and disseminate information regarding environmental pollution.

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

The Act is a small piece of protective and progressive social legislation, consisting of only 26 Sections, divided into four Chapters, and is able to achieve greater importance and sensational attention in all walks of life, it has also put possible deterrent control over the polluters of environment by making them liable to penal action, and its scope has been widely extended by the courts, so as to make the polluters liable to pay not only the compensation to the victims of pollution but also costs to restore the disturbed ecology and environment.

For a proper understanding of its objectives and for an effective implementation of the various provisions thereof, the Act requires possession of and acquaintance with multifarious knowledge, such as the knowledge of assessment and forecasting of the pros and cons of the

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87 Somprakash Rekhi v. Union of India, AIR 1981 SC 212.
pollutants and the problem of pollution, socio-economic needs and the aspirations of the people, knowledge of exploitation of natural and other material sources of the earth and the consequences of exhausting the same in the coming years.

(xxi) **The Public Liability Act, 1991**

This Act was passed to provide for public liability insurance for the purpose of providing immediate relief to the persons affected by accident occurring while handling any hazardous substance and for matters connected therewith or incidental thereto.

This Act is to provide for Mandatory Public Liability Insurance for installations handling hazardous substances to provide minimum relief to the victims. Such insurance, apart from safeguarding the interests of the victims of accidents, would also provide over and enable the industry to discharge its liability to settle large claims arising out of major accident. If the objective of providing immediate relief is to be achieved, the mandatory public insurance should be on the principle of “no fault” liability as it is limited to only relief on a limited scale. However, availability of immediate relief would not prevent the victims to go to courts for claiming large compensation.

In the background of the principle of the *Oleum Gas Leak case,* and The Bhopal Litigation, the Act was passed to consolidate the law

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90 M.C. Mehta v. Union of India, AIR 1987 SC 982.
relating to product liability particularly in relation to hazardous activity. It seeks to provide relief to the members of the general public who become the victims of industrial accidents. In effect, the Act is also an answer to reflections of the Supreme Court in Charan Lal Sahu’s case, where a cell had been made to enact such a legislation.\(^{91}\)

Through the 1992 amendment, there is now in place a fund for the environment. The Act also provides an elaborate mechanism for disbursal of relief to affected persons.

(xxii) **The National Environment Tribunal Act, 1995\(^{92}\)**

Section 3 of this Act provides that owner shall be liable to pay compensation even if there is no fault of him. Under section 4 of this Act, an application can be submitted for claim of compensation by the injured person. Section 5 confers various powers like, summoning and examining the person, receiving evidence on affidavits, requiring discovery and production of documents, to make interim order and penalize if somebody fails to comply with order.

Cases seeking compensation for damages to human health, property and the environment, particularly contamination of sub-surface water, are increasing. It is deemed expedient to develop and codify the principle of strict civil liability in respect of all such cases where damage is caused while handling hazardous substances.

\(^{91}\) *Charan Lal Sahu v. Union of India, 1990, SCC 613.*  
\(^{92}\) *Act 27 of 1995.*
(xxiii) The National Environment Appellate Authority Act, 1997

This is an Act to provide for the establishment of a National Environment Appellate Authority to hear appeals with respect to restriction of areas in which any industries, operations or processes or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards under the Environment (Protection) Act, 1986 and for matter connected therewith or incidental thereto.

3.7 Amendments to the Wild Life (Protection) Act, 1972

The first amendment was done in 1982 when the amendment Act 23 of 1982 was introduced. Section 12 of the Act was amended and necessary provisions for capture and translocation of wild animals for scientific management were incorporated. Section 44 was also amended which relates to grant of licenses for carrying on business in trophy and animal articles.

The next amendment of 1986 (Act of 28) put a complete ban on trade in wild animals specified in Schedule I and Part II of Schedule II and also led to a total prohibition in dealing in Indian ivory. It further provided that in future no fresh licenses would be granted for internal trade of such wild animals or their products.

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A very short Amendment was introduced in 1993 (Amendment Act of 1993) wherein the period of recognition of zoos was extended by a further period of 6 months.

The last major Amendment Act (16 of 2003) resulted in fundamental alterations in the Wild Life Protection Act. The preamble of the Act was amended to highlight the significance of protecting wildlife in order to ensure the ecological balance and environmental security of the country.

3.7.1 Wild Life (Protection) Amended Act, 2002

The Wildlife (Protection) Act, 1972 was amended by the Parliament and received the assent of the President on the 17th January, 2003.94

Chapter I of the Act embodies various definitions and terms related to wildlife and wildlife products.

Chapter II deals with the appointment Director (Sec. 3), Chief Wildlife Warden and other officers (Sec. 4), their powers (Sec. 5), constitution of National (Sec. 5A) and State Boards (Sec. 6) of Wildlife and their functions, procedure to be followed by the Board (Sec.7) and duties of the Wildlife Advisory Board (Sec. 8).

Chapter III of the Act deals with provisions for hunting of wild animals. Section 9 of the Act holds that no person shall hunt any wild animal specified in Schedule I, II, III and IV except as

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provided in Sections 11 and 12. Chapter III A includes protection of specified plants. There are provisions for prohibition of picking, uprooting of specified plants (Sec. 17A); cultivation of such plants without license is also prohibited (Sec. 17C) but permission may be granted for special purpose as per Section 17B of the Act.

Chapter IV has provisions for notification of Protected Areas. As per Section 18, the State Government may declare any area other than area comprised with any reserve forest or territorial waters as a sanctuary if it considers that such area is of adequate ecological, faunal, floral, geomorphologic, natural or zoological significance, for the purpose of protecting, propagating or developing wildlife or its environment. Citing similar reasons, the State Government can declare an area as a National Park as per Section 35 of the Act. But according to Section 38 (Sub sec. 2), the Central Government, if it is satisfied that the conditions specified in Sec. 35 are fulfilled in relation to any area, whether or not such area has been declared, to be a sanctuary by the State Government, declare such area to be a National Park. There are provisions for the constitution of Central Zoo Authority, its functions (Chapter IV A). Details pertaining to Trade or Commerce in Wild Animals, Animal articles and Trophies are presented in Chapter V of the Act. According to Section 39, every wild animal which is hunted or kept or bred in captivity in contravention of any provisions of this Act or any rule or order made thereunder, or found dead or killed by mistake (Clause 1.a); likewise, every animal article, trophy or meat derived from any wild animal referred in Cl.(a) in respect of which any offence against this
act or any rule or order made there-under has been committed (Clause 1.b); every ivory imported in India and an article made from such ivory in respect of which any offence against this Act or any rule or order made there-under has been committed (C1.c); and every vehicle, vessel, weapon, trap or tool that has been used for committing an offence and has been seized under the provisions of this Act (C1.d) - shall be the property of the State Government or of the Central Government if such animal is hunted in a Sanctuary or National Park declared by the Central Govt. Under Section 40 (Sub section 1) a declaration within 30 days from the commencement of this Act is required by the persons, to the Chief Wildlife Warden or the authorized officer, who have in their possession any captive animal specified in Sch. I or Part II of Sch. II, or animal article or trophy derived from such animals or dried or salted skin of such animals or the musk of a deer or the horn of the rhinoceros.

After the commencement of the Wild Life (Protection) Amended Act, 2002, as per Sec. 40 (Sub section 2A), no person other than those having certificate of ownership (as per Sec. 42) shall acquire, receive or keep any captive animal article or trophy specified in Sch. 1 or Part II of Sch. II, except by way of inheritance. In the latter case, every person shall, within 90 days of such inheritance make a declaration to the Chief Wildlife Warden or the authorized officer (Sub sec.2B). However, some relaxation has been provided in the case of live elephant, recognized zoo subject or a public museum. Immunity in certain cases has been mentioned under Sec. 40A of the Act. Regulations for transfer of animals and their
products are dealt with in Section 43. Dealing in wildlife products without license is prohibited (Sec. 44). An appeal from an order refusing to grant or renew a license under Sec. 44 or an order suspending or cancelling a license under Sec. 45, may be made as prescribed in Sec. 46 of the Act.

Chapter VA of the Act contains various provisions for prohibition of trade or commerce in wildlife products derived from scheduled animals (Sch. I or Part II of Sch. II).

The rules with regard to prevention and detection of offences pertaining to wildlife are provided in Chapter VI of the Act. Section 50 deals with power of entry, search, arrest and detention. The punishment for violation of the rules under the Act, as per Sec. 51 include imprisonment for a term up to three years or fine which may extend to INR 25,000/- or both.

Chapter VIA comprises of various provisions regarding forfeiture of property derived from illegal hunting or trade related to wildlife.

Various miscellaneous provisions (Sec. 59-66) related to wildlife are provided in Chapter VII of the Act. These are pertaining to ‘officer to be public servants, protection of action taken in good faith, reward to a person, power to alter entries in schedules, power of Central and State Govt. to make rules, Protection of rights of Schedule Tribes etc.

Some of the major highlights of the Amended Act are as follows:
(1) Provision for the constitution of the National Board of Wild Life (NBWL) and conferring a statutory status to it.
(2) Restructuring of the State Wildlife Advisory Board and their renaming as the State Board of Wild Life.

(3) Rationalizing and expediting the process of final notification of Sanctuaries and National Parks and to safeguard the decline of biodiversity during the completion of this process.

(4) Provisions for changes in the boundaries of Sanctuaries and National parks only on the recommendations of NBWL.

(5) Empowering the officers to remove the encroachments from the Sanctuaries and National Parks.

(6) Prohibiting commercial sale of forest produce obtained from Sanctuaries and National parks for the better management of wildlife.

(7) Ban on construction of commercial tourist lodges, safari parks and hotels inside the Sanctuaries and National Parks except with the prior approval of NBWL.

(8) Provision for acquirement only by way of inheritance the captive animals and their derivatives included in Schedule I and Part II of Schedule II of the Act.

(9) Enhancement and rationalization of penalties/punishment in cases of offences pertaining to wildlife included in Schedule I and Part II of Schedule II of the Act.

(10) Provisions for compounded vehicles, weapons, tools etc. used in committing offences not to be returned to the offenders of the Act.
(11) Enhancing the amount of rewards payable to the persons providing assistance in detection of wildlife related offences and apprehension of offenders.

3.7.2 Cases related to Wild Life Protection Act (WLPA)

State of Bihar v. Murad Ali Khan\textsuperscript{95} : Section 9 of the WLPA prohibits hunting of wild animals specified in Schedule I, II, III and IV. Hunting not only covers capturing, killing, poisoning, snaring and trapping of wild animals but also includes driving away any wild animal for hunting. It was stated that injuring or destroying or taking any part of the body of any wild animal or damaging/disturbing the eggs and / or nests of wild bird or reptile would also amount to hunting as per Section 2 (16) of the Act. In Murad Ali case, the Supreme Court traced the policy as well as objective of the Wild Life Act in which it is noted that, “The policy and object of the wildlife laws have a long history and are the result of an increasing awareness of the compelling need to restore the serious ecological imbalance introduced by the depredations inflicted on nature by man.” The tragedy of the predicament of the civilized man is that, “Every source from which man has increased his power on earth has been used to diminish the prospects of his successors. All his progress is being made at the expense of damage to the environment which he cannot repair and cannot foresee.”

\textsuperscript{95} AIR 1989 SC 1
*I. R. Coelho v. State of Tamil Nadu*96: In this case the High Court of Madras noted that Section 9 (1) has laid down that no person shall hunt any wild animal specified in Schedule I, Section 11 has brought in special circumstances under which notwithstanding what has been expressed in Sec. 9 (1), a person is enabled to hunt a wild animal in Schedule I, Section 11 (1) (a), enables a person armed a permit issued therefore to hunt or cause to be hunted any wild animal specified in Schedule I, if it becomes dangerous to human life or is so disabled or diseased as to be beyond recovery under Section 11 (1) (b) a person having obtained a permit therefore would hunt any wild animal specified in Schedules I, II, III and IV, when it becomes dangerous not only to human life, but also to property including standing crops on any land or is so disabled or diseased as to be beyond recovery. The right to protect one’s property from any wild animal specified in Schedule I, need not necessarily be equated to a right to hunt that wild animal. The Act is intended only for the protection of wild animals. There need not to be a visualization of a presumption that an animal not found wild in nature according to the expertise made available to the Authority is likely to be included in the schedules. This comes within the rules that the possibility of misuse or abuse or travelling beyond the powers conferred is not a ground for frowning upon the very Act, itself as invalid. Specific complaints when contingencies arise can be tested. The Court has

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96 *1992 FLT 150 (Mad)*
touched the last two aspects of the arguments put forth by the counsel for the petitioners for the sake of completion, though the respondents have expressed their own reservation for these aspects being advanced at the stage of the hearing of the writ petitions, when they have no sufficient opportunity to disclose the requisite materials and make necessary submissions to counteract these views. The Court did not hear any independent attack on the Rules. Most likely by urging the points, which according to the counsel for the petitioners would prove to be infirmities, making the very provisions of the Act, as a whole invalid, they wanted this Court to strike down the Rules also.

*Consumer Education Research v. Union of India*: In this case the High Court of Gujarat has stated that the provisions of Sub section (3) of Section 26A were applicable to all the Sanctuaries declared under Section 18 and 26A or deemed Sanctuaries under Section 66 (3). The Wildlife (Protection) Act, 1972 contains various provisions applicable to sanctuaries. Section 29 deals with prohibition of destroying wildlife in the sanctuary and it cannot be said that because of the amendment to Section 2 (26), the restriction contained in the wildlife (Protection) Act, 1972 will apply to deemed sanctuaries under Section 66 (3), as well as sanctuaries declared as such under Section 26A or Section 30A, but will not apply to sanctuaries declared as such under this Act under amended Section

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97 AIR 1995 Guj 133 at 140
18. In 1993, when the impugned notification was issued, the pre-amended Section 18 was not in existence. Section 26A had been incorporated into the Act. The rule in this behalf, as observed in *Shamrao V. Parulekar v. District Magistrate, Thane* ⁹⁸, is as follows: “….that an unamended Act must be read as if the words of amendment had been written into the Act except where that would lead to an inconsistency…” These observations have been reaffirmed by the Supreme Court in *Yadlapati Venkateswarlu v. State of Andhra Pradesh* ⁹⁹.

Thus the provisions of Sub section (3) of Section 26A were applicable to all the sanctuaries, which had been declared as such under Section 18 or under Section 26A or were deemed sanctuaries as per Section 66 (3).

The High Court of Gujarat, in Consumer Education & Research Society case, has clarified that the Wildlife (Protection) Act, 1972 is a special Act and once the boundary of Sanctuary has been notified by the state government under this Act, only state legislature has the authority to alter the boundary. Thereafter, on 27-07-1995, the State Legislature passed resolution to reduce the sanctuary limit. This was done in exercising powers conferred by Section 26A (3) of the Act pursuant to that resolution the Government issued a notification to that effect. The petitioner again challenged those notifications by filing the writ petition. The Supreme Court held that, “The power to take decision for reduction

⁹⁸ 1957 Cr. L. J. 5, AIR 1952 SC 324 at 326
⁹⁹ AIR 1991 SC 704 at 709, 1990 Supp. (1) SCR 381
of the notified area is not given to the State Government but to the State Legislature. The State Legislature consists of representatives of the people and it can be presumed that those representatives know the local areas well and are also well aware of the requirements of the area. It will not be proper to question the decision of the State Legislature in a matter of this type unless there are substantial and compelling reasons to do so. Even when it is found by the Court that the decision was taken by the State legislature hastily and without considering all the relevant aspects it will not be prudent to invalidate its decision unless there is material to show that it will have irreversible adverse effect on the wildlife and the environment.”

_Nagarhole Budakattu Hakku Sthapana Samithi and Others v. State of Karnataka_ 100: The lease of forest land to a private company for the construction of a tourist resort was challenged by the petitioners. The land in question formed a part of the Nagarhole National Park. The Court quashed the lease on the ground that it was made in violation of Section 2 of the Forest (Conservation) Act, 1980 and the Wildlife (Protection) Act, 1972. According to the Court once the Government has declared its intentions to declare an area as National Park under Section 35 (1) of the WLPA, 1972, no person can acquire any right in or over the land comprised therein. The Court noted, “A conjoined reading of Section 20 and 35 (3) of the Wildlife

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100 AIR 1997 Kar 288
(Protection) Act, 1972 spells out a restriction on acquisition of any right in or over the land comprised within the limits of the area of a national park except by succession, testamentary or intestate. Therefore, it seems obvious that on and after the date of declaration by the State Government of its intention to declare an area as a national park under Section 35 (1) no one can acquire any right in or over the land comprised therein either by way of a transfer within the meaning of Transfer of Property Act, 1882 or by easement or licences as understood under the Easement Act, 1882. It cannot be seriously disputed that the State Government has assigned a portion of the forest land by way of lease or otherwise thereby creating a right in the properties in question, which forms a part of the national park- cum- reserve forest in favour of the respondent, which a private company, without seeking prior approval of the Central Government. There is an absolute prohibition on the grant of such rights under the Act. The Court ordered, “As such the grant of lease in question is void and cannot be acted upon by the respondent. Further the transaction is also hit by Section 2 of the Forest Conservation Act, for want of prior approval of the Central Government.”

*Pradeep Krishan v. Union of India*\(^{101}\) : In this case the Supreme Court discussed the duties of the Collector in WLPA, 1972 specifically with respect to the process of settlement of rights. The

\(^{101}\) *AIR 1996 SC 2040; (1996) 8 SCC 599*
Court observed, “Section 21 requires the Collector to publish the notification in the regional language in every town and village in or in the neighbourhood of the area comprised therein specifying the calling upon persons claiming any right to prefer the claim before the Collector specifying the nature and extent of such right and the amount and particulars of the compensation, if any, and the claim in respect thereof. The Collector is then expected to inquire into the claim preferred by any person and pass an order admitting or rejecting the same in whole or in part, the Collector may either exclude such land from the limits of the proposed Sanctuary or proceed to acquire such rights unless the right holder agrees to surrender his rights on payment of agreed compensation, worked out in accordance with the provisions of the Land Acquisition Act, 1894 or allow the continuance of any right of any person in or over and land within the limits of the Sanctuary. If he decides to proceed to acquire such land or right in or over such land, he shall proceed in accordance with the provisions of the Land Acquisition Act.”

In the instant case, the State Forest Department allowed commercial exploitation of the minor forest produce by the tribals in the National Park and Reserved Forest. This was allowed against the report in the newspaper about the shrinking forest cover in the State. The petitioner contended that removal of anything from the forest ecosystem creates imbalance which affects the whole evolutionary process. The Court in its order allowed the tribals to collect produce for commercial exploitation and directed forest department to take immediate steps to relocate or ensure alternatives before notifying
any areas as National Parks and Reserved Forest. The Court held, “Chapter IV, inter alia, deals with Sanctuaries and National Parks. Section 18 before its amendment by Act of 44 of 1991 provided that the State Government, may by notification, declare any area to be a sanctuary if it considers that such area is of adequate ecological, faunal, floral, geomorphological, natural or zoological significance for the purpose of protecting, propagating wildlife or its environment. After its amendment, it provides that the State Government may, by act as a sanctuary if it considers that such area………..environment.” In substance the thrust of the Section is the same except that earlier the State Government could straight way declare any area to be sanctuary by issuing a notification but under the amended Section it has to declare its intention to constitute any area other than an area comprised within any reserved forest or territorial waters as a sanctuary.

_Rajendr Kumar v. Union of India_ \(^{102}\): The Supreme Court while directing the closure of Kudremukh Iron Ore Ltd. has dealt at length with the background of Wild Life Act as well as the need for legislation for protection of wildlife and cautioned against every human victory over nature. The Court pointed out that the most important ecological and social problem is the widespread disappearance of certain species of plants and animals. According to the Court, “The rapid decline of India’s wild animals and birds, one

\(^{102}\) _AIR 1998 Raj 165_.

180
of the richest and most varied in the world, has been a cause of grave concern. Certain wild animals and birds have already become extinct in this country and others are in the danger of being so. Areas which were once teeming with wildlife have become devoid of it and even in sanctuaries and National Parks the protection afforded to wildlife needs to be improved.” Further, the relevance of laws in the present context was also questioned by the Court, particularly with respect to taxidermy and trade in wildlife and products.

The Court in *Sachidanand Pandey v. State of West Bengal and Others*[^103] ; in *Virender Gaur v. State of Haryana*[^104] and in *K. M. Chinnapa v. Union of India*[^105] has highlighted various aspects of wildlife protection. The Court emphasized that, “Various environmental questions have become urgent and they have to be properly understood and squarely met by man. Nature and history are two components of the environment in which we live, move and prove ourselves.” Ecologists forecast the extinction of animal and plant species on a scale that is incompatibly more than their extinction over the course of millions of years. According to an estimate, over half the species, which became extinct during the last 2000 years did so after 1990. On an average at present, one species or sub-species is lost every year as per the calculation of the International association for the Protection of Nature and Natural

[^103]: AIR 1987 SC 1109; 1987 (2) SCC 295; 1987 (2) SCR 223
[^104]: AIR 1995 SCW 306
[^105]: AIR 2003 SC 724; 2002 (10) SCC 606; 2003 (3) AIC 249
Resources. The destruction of multitude of animal and plant species for economic reasons and sometimes for no good reason at all are some of the factors which have contributed to environmental deterioration. To protect and improve the environment is a constitutional mandate. Every individual in the society has a duty to protect the nature.

*Rafique Ramjan Ali v. A. A. Jalgonkar* \(^{106}\) : In this case which concerns with the seizure of lizard and snake skins, it was specifically held that the word animal article is in reference to only those species of animals specified in the Schedules of the Act. The high Court noted that, “Where the certain articles of lizard and snake skin were seized from accused and accused was unable to produce documents required to be kept under the Act.” The prosecution did not state or prove that articles seized were of species of lizards or snakes mentioned in the Schedules I, II, III, IV and V or otherwise covered by the Act and hence the plea of guilty was irrelevant. Eventually, no offence was proved.

*Handicrafts Emporium and Others v. Union of India and Others* \(^{107}\) : In this case the Supreme Court held that, “A mere perusal of the definition of ‘animal article’ in Section 2 (2) of the Act would show that the imported ivory falls within it. In that view of the matter the question as to whether the African elephant is a scheduled animal or

\(^{106}\) 1984 *CRI. L. J.* 1460, (2)
\(^{107}\) *AIR* 2003 *SC* 3240
not is irrelevant. Dealing in trade in ivory is prohibited under Chapter VA. The Appellants being traders in ivory would come within the purview of the prohibitions contained therein. Therefore, they have to be dealt with accordingly.” A trader must have to make a declaration in terms of Sub section 49C of the Act Doctrine of ‘generalia specialibus non-derogant’ would be applied in this case.

Balram Kumawat v. Union of India108: In this case the Supreme Court considered the issue of ban on trade in elephant ivory and other kind of ivory. The point of dispute was whether the word ‘ivory’ in the Act was limited to elephant ivory or ivory of all types. The Court held that, “for the purpose of determination of the question, one needs to consider only the dictionary meaning of the term ivory.” The law clearly defines that no person shall trade in ivory. It does not say that what is prohibited is trade in elephant ivory or other types of ivory. The main purpose and aim of the Act is that nobody can pursue business in imported ivory so that trade in ivory procured by way of poaching of elephants may be curbed. The Parliament, therefore, advisedly used the word ‘ivory’ instead of elephant ivory. The intention of the Parliament is absolutely clear and unambiguous. The Court opined, “We cannot assume that the Parliament was not aware of existence of different types of ivory. If the intention of the Parliament was to confine the subject matter of ban under the Act of 44 of 1991 to elephant ivory, it would have said

108 AIR 2003 SC 3268, 2003 (7) SCC 628
so explicitly.” So the object of the Parliament by reason of the Amending Act was not only to ban trade in imported elephant ivory but ivory of every description so that illegal poaching of Indian elephants can be effectively curbed.

*Navin M. Raheja v. Union of India and Others*\(^{109}\) : This case highlights the grave condition of tigers and other animals kept in captivity. The threats faced by captive animals was dealt by the Supreme Court in this case which was related to the skinning of live tigress in Hyderabad Zoo as well as large number of deaths of white tigers in Bhubneshwar. The Court, in order dated 20-11-2000, emphasized that apart from taking steps to prevent killing and poaching of tigers it is also necessary to focus attention on the status of tigers and other animals in captivity particularly in zoos.

*Forest Friendly Campus Pvt. Ltd. v. State of Rajasthan*\(^{110}\) : in this case the Rajasthan High Court examined the powers of the Chief Wildlife Warden vis a vis the regulation of entry into a wildlife sanctuary. It was held that, “Right to entry in the sanctuary is not absolute. It has to be sanctioned by the Chief Wildlife Warden and on such terms and conditions and on payment of such fees as may be prescribed.” Regulating the entry of vehicles in the sanctuary for any of the purposes given in Section 28 (Sub section 2) within the phrase ‘permit to enter with conditions.’ Thus it cannot be said that the

\(^{109}\) WP (C) No. 47 of 1998

\(^{110}\) AIR 2002 Raj 214
conditions imposed by introducing the Roster System would be contrary to law. Undoubtedly, the authorities are well within their right to regulate the entry and impose the terms and conditions for entry in the sanctuary. Also, it would be just and fair enough to maintain a careful balance between the preservation of wildlife and sustainable development, in order to ensure the long term health of both the ecosystem and the tourism economy.

*Sheikh Tausif v. State of M. P.*\(^{111}\) : In this case the question was whether fish are forest produce or not. Under Section 2 of the Forest Act, the fish has not been included in the definition of ‘forest produce’ though wild animals have been so included. As per clauses 36 and 37 of the Wildlife (Protection) Act, the fish is not wild animal but wildlife. So it was decided that fish cannot be included in the forest produce in the Forest Act.

*Range officer, Kalkot Range, District Rajoury and Others v. Balkrishan*\(^{112}\) : Daruni tree is depicted in forest manual as tree not to be cut down. Then by referring to definition of forest produce it would become quite apparent that these trees and their leaves, flowers, fruits and all other parts would be forest produce. Thus in this case it was decided that ‘fruits obtained from daruni tree is forest produce.’

\(^{111}\) 2002 Cr, L. J., 1581
\(^{112}\) AIR 2002 J & K 42
Sanjay Lodha v. State of Jharkhand and Others\textsuperscript{113} : In the instant case there being nothing on the record to suggest that the ‘Chiraunji’ or ‘Gond’, in question, seized from the premises of petitioners were found in or brought from a forest, even as per clause (b) and (c) of Sub section 4 of Section 2 of the Indian Forest Act 1927, seized material cannot be held to be forest produce.

Essar Oil Ltd. v. H. U. Samiti\textsuperscript{114} : In this case the Supreme Court held that, “The habitat of the wild animals within the sanctuary may be destroyed or damaged and a wild animal can be deprived of its habitat within such sanctuary under and in accordance with a permit granted by the Chief Wildlife Warden. The State must, while directing the grant of a permit in any case, see that the habitat of the wildlife is at least sustained and that the damage to the habitat does not result in the destruction of the wildlife.”

The Supreme Court, in the instant case also considered the definition of ‘Sanctuary’ and held that, “That is the underlying assumption and is the implicit major premise which is contained in the definition of the word ‘sanctuary’ in Section 2 (26) and the declaration under Section 18 of the Act – that is an area which is of particular ecological, faunal, floral, geo-morphological, natural or zoological significance which is demarcated for protecting, propagating or developing wildlife.”

\textsuperscript{113} AIR 2003 Jharkhand 64
\textsuperscript{114} AIR 2004 SC 1834; 2004 (2) SCC 392
Chief Forest Conservator (Wildlife) v. Nisar Khan\textsuperscript{115} : In this case the Supreme Court held that, “When hunting of birds specified in Schedule IV is prohibited, there cannot be any doubt whatsoever that no person can be granted a license to deal in birds in captivity which are procured by hunting as indicated hereinafore, would also include trapping.” The Court further held, “Trapping of birds, which comes within the purview of the meaning of the term ‘hunting’, is prohibited in terms of Section 9 of the Act.”

Centre for Environment Law, WWF v. Union of India and Others\textsuperscript{116} : The Supreme Court in its order dated Oct. 9, 2003 raised concerns on the non-constitution of National Board of Wild Life by the Central Government within three months from the date of commencement of the Wildlife (Protection) Amended Act, 2002. The Court held, “Under Section 5-A of the Wildlife (Protection) Act, 1972, the Central Government was required to constitute National Board of Wild Life within three months from the date of commencement of the Wildlife (Protection) Amended Act, 2002.” The Prime Minister is the Chairperson of the NBWL and the minister in-charge of Forests and Wildlife is the Vice-Chairman as per section 5-A of the Act. The date of commencement of the Act is 1\textsuperscript{st} April, 2003. The Court observed, “It is unfortunate that for constitution of such a Board of which Prime Minister of the country is the Chairperson and where a statutory provision fixes a mandatory

\textsuperscript{115} AIR 2003 SC 1867; (2003) 4 SCC 595
\textsuperscript{116} WP (C) No. 337 of 1995 (SC Order dated 05-09-2003).
period.” The Court further noted, “Under Section 5B of the Act, the National Board of Wild Life is required to constitute a Standing Committee for the purpose of exercising such powers and perform such duties as may be delegated to the Committee by the National Board. Under Sub section (3) of Section 5B, the National Board is empowered to constitute committees, sub-committees or study groups, as may be necessary, from time to time in proper discharge of the functions assigned to it.”

Ashok Kumar v. State of Jammu and Kashmir\textsuperscript{117} : In this case, the Supreme Court by its order dated 22-11-2005 held, “In order to carry out his or her duties the Chief Wildlife Warden or the authorized officer is entitled to and has been empowered under Section 50 to enter, search, arrest and detain persons suspected to violation of the provisions of the Act. For this purpose they may also take the assistance of the police under Section 50A.”

Moti Lal v. Central Bureau of Investigation, New Delhi\textsuperscript{118} : In this case the Supreme Court justified that some powers of Assistant Director Wildlife or Wildlife Warden is alike a Court or Tribunal for the purpose of making investigation into any offence against any provision of the Act. The Court held, “Sub-section (8) of the Section 50 confers power on an Assistant Director of Wildlife Preservation or Wildlife Warden for purposes of making investigation into any


\textsuperscript{118} 2002 CRI. L. J., 2060 SC
offence against any provision of the Act, to (a) issue a search warrant, (b) enforce the attendance or witnesses, (c) compel the discovery and production of documents and material objects, and (d) receive and record evidence. The power to issue a search warrant under Clause (a) is similar to that conferred upon Magistrates of 1st Class and courts under Section 93 to 98 Cr. P. C. The Clause (c) appears to be somewhat like the powers of the court as contemplated by Order 11 of Cr. P. C. The power conferred by Clause (b) and (d) is generally conferred on the courts while trying regular cases or on tribunals holding quasi-judicial proceedings.” The Scheme of section 50 of the Wildlife Act is quite clear that Police Officer is also empowered to investigate the offences and search and seize the offending articles. For trial of offences, Code of Criminal Procedure is required to be followed and for that there is no other specific provision to the contrary.

Further, Sub-section (9) lays down that any evidence recorded under Clause (d) of Sub-section (8) shall be admissible in any subsequent trial before a Magistrate provided that it has been taken in the presence of accused person. A member of the police force or a member of Delhi Special Police Establishment (DSPE) has no power to record evidence or any statement made before it is admissible by virtue of Section 25 of the Evidence Act. Sub-section (9) of Wildlife Act, however, makes such evidence admissible. But this Sub-section cannot lead to an inference that any exclusive power of investigation has been conferred upon the officers or authorities under the Act.
In this case the orders regarding the powers of Forest Officer were defined. The Rajasthan High Court held that, “Authorized forest officers may give any captive animal or wild animal for custody on the execution of a bond for the production of such animal if or when so required. Thus, the forest officers under Sub-section (3A) of Section 50 have got powers to give on ‘superdari’ only captive animal or wild animal and not the vehicle.”

3.7.3 National Wildlife Action Plan (2002-2016)

It was introduced in response to the need for a change in priorities given the increased commercial use of natural resources, continued growth of human and livestock populations, and changes in the consumption patterns. It replaces the earlier plan adopted in 1983\textsuperscript{120}.

The Plan focuses on protection of wildlife through strengthening and increasing the protected area network; on the conservation of endangered wildlife and their habitats; on controlling trade in wildlife products; and on research, training and education.

The Plan endorses two new protected area categories: (a) Conservation Reserves- refer to corridors connecting protected areas, and (b) Community Reserves- which will allow larger participation of local communities in the management of protected area through traditional or

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\textsuperscript{119} 2003 CRI. L. J. 2954
\textsuperscript{120} Parveen Bhargav, ‘Legal framework for wildlife conservation in India’. Conservation India, April 15, 2011.
cultural conservation practices. These two new categories of protected areas supposed to bring in corridor areas under protection. The Plan contains various recommendations to address the needs of local communities living outside the protected areas. It also outlines the need for voluntary relocation and rehabilitation of villages within protected areas.

The Plan emphasizes the need to reduce human wildlife conflict and for the establishment of effective compensation mechanisms. It recognizes the restoration of degraded habitats outside protected areas as a key objective.

3.8 Biodiversity Act, 2002

Consequent upon the ratification of CBD by India on 18th February, 1994 the Govt. of India has taken steps to implement the CBD provisions by promulgating the Biological Diversity Act, 2002 in the Parliament of India121. Recognizing the urgent need to develop human resources, capabilities and public policy in order to play an active role in the new economy associated with the use of Biological Diversity and Biotechnology, seventeen biodiversity rich countries have formed a group known as Like Minded Mega-diverse Countries (LMMC). In a recent meeting in New Delhi in 2005, this group has adopted the New Delhi Ministerial Declaration of LMMC on Access and Benefit Sharing (Section 2) which is seen as a new beginning towards international

regime on biological access and benefit sharing as a legal binding instrument\textsuperscript{122}.

In accordance with the Section 8 of the Biodiversity Act 2002 (BD Act), a National Biodiversity Authority (NBA) was established in the year 2003 which is responsible for the implementation of the act. Other functions of NBA comprise of laying down the procedure and guidelines to govern the activities such as Access and Benefit Sharing (ABS) and Intellectual property Rights (IPRs) in accordance with the Article 8 (j) of the Convention on biological Diversity (CBD). The NBA also coordinates the activities of the State Biodiversity Boards (SBB) and Biodiversity Management Committees (BMCs). The NBA advises the government on issues relating to conservation of biodiversity, sustainable use of its components and equitable sharing of benefits arising out of biological resources; select and notify the areas of biodiversity significance as biodiversity heritage sites and perform other duties as may be essential as per provisions of the act. The documentation of People’s Biodiversity Registers (PBRs) by the BMCs includes information on bio-resources and associated knowledge obtained from local persons. This would further help in conserving and sustainably using the bio-cultural diversity for rewarding income generation\textsuperscript{123}.

Mechanism for access and benefit sharing: The Act governs access and benefit sharing (ABS) through a three tier system:

\textsuperscript{122} \url{www.lmmc.nic.in/prologueLmmc_new.php}
(i) NBA at the national level;
(ii) the State Biodiversity Board (SBB) and
(iii) Biodiversity Management Committees (BMCs) at local levels.

The NBA deals with all the requests pertaining to: access to bio-
resources and associated traditional knowledge by foreign nationals,
institutions or companies; all matters related to the transfer of research
findings to any foreign national; imposition of terms and conditions to
secure equitable sharing of benefits; establish sovereign rights over the
bio-resources of India and approval for seeking Intellectual Property
Rights in or outside India for an invention based on research or
information about a bio-resource and associated traditional knowledge
obtained from India. The SSBs deal with issues pertaining to access to
bio-resources by native Indians for commercial purposes and limit any
activity which violates the objectives of conservation, sustainable use
and equitable sharing of benefits. The mandate for BMCs is
conservation, sustainable use, documentation of biodiversity and
keeping a written account, in orderly manner, of knowledge relating to
biodiversity. The NBA and SBBs would consult BMCs on issues
pertaining to use of bio-resources and associated knowledge within their
jurisdiction.

The BD Act 2002 primarily addresses the issues concerning access
to genetic resources and associated knowledge by foreign nationals,
institutions or companies, and equitable sharing of benefits owing to
these resources by the country and its people. The Act stipulates norms
for access to biological resources and traditional knowledge in three
ways:
(a) Based on prior approval of NBA as per Section 3, 4, 6 and Rule 14-20 of the Act.

(b) On the basis of prior intimation to the SBB as per Section 7 of the Act.

(c) Exemption of prior approval or intimation for local people and communities, including producers and cultivators of biodiversity, and Vaids and Haqims, practicing indigenous medicines (Section 7 of the Act).

Applicants seeking access to biological resources and traditional knowledge will submit an application in Form 1 (available online at http://www.nbaindia.org) along with an application fee of INR 10,000. After relevant consultation mechanisms, NBA approves the applications and communicates its decision to grant access or otherwise to the applicant within a period of six months from the date of receipt of the applications. Then the agreement has to be signed by the applicant and an authorized official of NBA. The Rule 14 also stipulates the authority to provide reasons in writing in cases of rejection and provide reasonable opportunity to the applicant to appeal. Since inception, NBA has received over 300 applications for access and transfer of biological resources and patent. The access procedures are only regulatory in nature, not prohibitive in any manner to any applicant irrespective of nationality, origin and affiliations.

Revocation of access or approval: As per Rule 15 (Sub rules1 and 2) of the Act, revocation of access or approval granted to an applicant will be
done only on the basis of complaint or *suo moto*\textsuperscript{124} under the following conditions:

(i) violation of the provisions of the Act or conditions of agreement on which approval was granted;

(ii) failure to comply with any of the conditions of access granted; and

(iii) on account of overriding public interest or for protection of environment and conservation of biodiversity. The Authority is required to send an order of revocation to the concerned BMC and the SBB for prohibiting the access and to assess the damage, if any, caused and steps to recover the damages.

**Restriction for access to biological resources:** As per Rule 16 (Sub rule 1) of the Act, certain restrictions are imposed on request related to access to bio-resources and traditional knowledge if the request is for –

(i) endangered taxa\textsuperscript{125};

(ii) endemic and rare taxa;

(iii) likely adverse effects on the livelihood of the local people;

(iv) adverse and irrecoverable environmental impact;

(v) cause genetic erosion or affect ecosystem function; and

(vi) purpose contrary to national interests and other related international agreements to which India is party.

**Procedure for approval of transfer of research results:** Under Section 5 of the BD Act, proper guidelines have been prepared and notified for collaborative research projects involving exchange or transfer of bio-

\textsuperscript{124} *Suo Motto v. Valva Industries Association, AIR 2000 Guj 33.*

\textsuperscript{125} Taxon (plural Taxa) is any unit used in biological classification or taxonomy. Taxa are arranged in a hierarchy from Kingdom to sub species (*Encyclopaedia Britannica, Merriam-Webster, Inc. 2015*).
resources or information relating thereto between institutions including government sponsored institutions of India and of other countries.

As per Section 39 of the BD Act, the Designated National Repository (DNR) is an essential part of the infrastructure for biodiversity conservation. DNR consists of service providers and repositories of preserved specimen consisting of all fauna, herbarium (dried preserved plant parts), living cells, genomes of organisms, and information relating to heredity and functions of biological systems. DNR also contain collections of culturable organisms such as microorganisms, cells of plants, animals and humans; replicable parts of these such as genomes, viruses, plasmids, cDNAs; viable organisms which cannot be cultured; as well as data bases storing molecular, structural and physiological information relevant to these collections and related bioinformatics. The NBA has prepared guidelines on DNR. The Act, as per Section 4, does not permit any person to transfer the results of any research pertaining to bio-resources obtained from India for monetary consideration to foreign nationals, companies or NRIs without the prior approval of the authority. Approval for such transfer shall be made on the basis of an application to the authority in Form II along with an application fee of INR 5,000. A decision shall be taken by the authority within three months. The authority shall communicate the approval for transfer of research results to the applicant in the form of a written agreement duly signed by an authorized official and the applicant. In case the approval is not granted, the authority shall communicate the
reasons and give sufficient opportunity and time to the applicant for an appeal according to Rule 17 (Sub rules 1-6) of the Act\textsuperscript{126}.

Criteria for benefit sharing: According to Section 21 and Rule 20, the Act emphasizes upon appropriate benefit sharing provisions in the access agreement and mutually agreed terms related to transfer of biological resources or knowledge gathered from India for commercial use, bio-utilization, bio-survey or any other monetary purposes and to secure equitable sharing of benefits. These benefits, \textit{inter alia}, include the following:

(i) Grant of joint ownership of IPR to the NBA, or where benefit claimers are identified, to such benefit claimers.

(ii) Location of production, research and development units in such areas which will facilitate better living standards to the benefit claimers.

(iii) Association of Indian scientists, benefit claimers and the local people with research and development in biological resources, bio-utilization and bio-survey.

(iv) Setting up of venture capital fund for helping the cause of benefit claimers.

(v) Payment of monetary compensation and other benefits of non-monetary nature to the benefit claimers as the NBA may deem fit.

(vi) Technology transfer.

\textsuperscript{126} http://www.nbaindia.org/rules.htm
The ABS procedures stipulated under the BD Act are in accordance with the provisions of international laws and policies, particularly CBD. The whole process given in the Act can contribute substantially to facilitate an international regime of ABS on genetic resources and traditional knowledge.

3.9 National Environment Policy, 2006\textsuperscript{127}

The policy was approved by the Union Cabinet on 18\textsuperscript{th} May, 2006. This is built on the premises of existing policies which include National Forest Policy 1998; National Conservation Strategy and Policy Statement on Environment and Development 1992; Policy Statement on Abatement of Pollution 1992; National Agriculture Policy 2000; National Population Policy and National Water Policy 2002 among others. The National Environment Policy (NEP) seeks to extend the coverage and fill in the gaps that still exist, in the light of present knowledge and accumulated experience. It does not displace, but builds on earlier policies.

The policy focuses on ensuring that people who are dependent on natural resources for securing their livelihoods from the act of degradation should realize that a greater purpose will be served from the conservation of these resources. According to the NEP 2006 report, the proximate drivers of environmental degradation are population growth, inappropriate technology, consumption choice and poverty. The policy also seeks to stimulate partnerships of different stakeholders, inclusive

of public agencies, local communities, academic and scientific institutions, the investment communities and international development partners, in harnessing their respective resources and strengths for environmental management.

Major Objectives of NEP: (i) Conservation of critical environment resources;

(iii) Enhancement of resources for environmental conservation;

(iii) Livelihood security for the poor;

(iv) Integration of environmental concerns in economic and social development;

(v) Seeking good governance in management and use of environmental resources;

(vi) Intergenerational equity, and

(vii) Maintaining efficiency in environment resource use.

The NEP seeks the extension of the Protected Area Network. It also seeks to expand the control of wildlife conservators in other areas where endangered species inhabit. There are provisions for identification of emerging areas for new legislation in line with the NEP. The policy also intends to ensure accountability from the concerned government departments in undertaking necessary changes in a defined time frame. In order to make environment clearance process more effective, several steps have been contemplated for action:

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128 Protected Area Network consists of 54 national parks and 372 wildlife sanctuaries, covering 3.34 percent of the county’s geographical area.
(a) Encouraging regulatory agencies to institutionalize regional and cumulative environment impact assessment (EIA) to ensure environmental concerns are identified and addressed.

(b) Emphasis on post project monitoring and implementation of environmental management plans through participatory processes.

(c) Formulation and periodic updation of codes of good practices for environmental management.

The NEP 2006, designed by experts at the national level with cooperation from several non-governmental agencies, encompasses an integrated approach to reduce the impact of environmental degradation on human life by taking proactive measures at various fronts. However, there are some drawbacks of the policy:

(a) Makes full support to the damaging changes in EIA rules to ease the laws for big businesses.

(b) Weak in making a strong commitment towards EIA statements more open and public and subjecting it to evaluation and contestation by affected parties.

(c) Fails to integrate forest dependent communities and forests in terms of their livelihood needs.

(d) Ignores the issues of elimination of unsustainable practices of production and consumption of non-renewable resources by the corporate sector and affluent classes.

It seems that the NEP has made itself more useful to the industrial sector, attempting to protect the economy instead of environment. The unanswered and ignored issues in the policy call for immediate attention, as the risk of global warming
emerging from growing levels of industrialization and deforestation is increasing to sustain the excessively growing population. Thus there is dire need for bold initiatives from policy makers in India.\footnote{Suresh P. Singh 2009. “India 2006 National Environment Policy- not a paradigm shift”. Cuts Hanoi Resource Centre, Bani Park, Jaipur.}

According to the \textbf{Environment Performance Index}\footnote{Environmental Performance Index is a biennial index that tracks the environment of 149 countries based on the parameters of environmental health, water resources, biodiversity and habitat, production of natural resources and climate change.} Report 2008 published by Yale University\footnote{Angel Hsu 2014. Global metrics for the environment. Yale Centre for Environment Law and Policy. Available at http://epi.yale.edu (visited on 03-03-2015).} in the US, India ranks 120 among 149 nations with a paltry score of 60.3 on a scale of 100. The index rates the objective environment health of the country at 62.6 and ecosystem vitality at 58.0. Despite of a new environmental policy, India has performed poorly in comparison to other developing nations like Vietnam (rank: 76), Tunisia (rank: 60), Indonesia (rank: 102) and China (rank: 105). The NEP 2006 seems to have done little to the cause of environmental protection.

Sensing the gravity of the problem, Indian government approved at the beginning of 2009, a proposal for an Agreement between India and the UNEP. This will provide a framework for cooperation in capacity building, training and spreading awareness on environment protection and conservation. In fact, in December 2008 UNEP launched a major initiative to promote the ‘greening of the global economy’ through increased

\begin{footnotesize}
\footnote{Environmental Performance Index is a biennial index that tracks the environment of 149 countries based on the parameters of environmental health, water resources, biodiversity and habitat, production of natural resources and climate change.}
\footnote{Angel Hsu 2014. Global metrics for the environment. Yale Centre for Environment Law and Policy. Available at http://epi.yale.edu (visited on 03-03-2015).}
\end{footnotesize}
investments in areas such as clean sources, chemical waste management, biodiversity based products and environmental infrastructure.

Though the present environment policy was praised by many and is unique, there are some drawbacks which hinder the expected pace of improvement of environment. Its primary aim is to prevent the environmental degradation. However, it is not limited to air, water and soil pollution rather it encompasses all forms of pollution.

3.10 National Green Tribunal Act, 2010

This Act came into force on 18th October 2010 and is considered a critical step in capacity building because the Act strengthens the framework of Global Environmental Governance. The scope of the Act is broad and encourages institutional development for domestic environmental governance. The National Green Tribunal (NGT) Act was enacted to fill the gaps in existing adjudicatory framework.\textsuperscript{132}

The NGT Act outlines establishment of Tribunals in Chapter II. Sections 4 (1 & 2) states that a Tribunal shall have a full time Chairman and a minimum of 10 maximum of 40 full time Judicial and Expert Members. The Chairman can invite any skilled person to assist in tribunal proceedings. Complex temporal and spatial ecological dimensions arise in disputes related to environment. This requires expert and experienced

\textsuperscript{132} National Green Tribunal Act (19 of 2010), The Gazette of India, 2 June 2010, New Delhi.
handling in adjudication proceedings, so only a Supreme Court Judge is eligible for appointment to the Chairman`s position.

For direct violation of an environmental obligation, the NGT Act provides remedy at three levels: for violations that affect the community at large, for an incidence of substantial property / environmental damage or for public health damages. The Act also produces statues for environmental consequences that relate to specific activity or a point source of pollution. The Tribunal exercises appellate jurisdiction on all Schedule I enactments and under order or decision of State governments, Central and State Pollution Control Boards, National Biodiversity Authority and State Biodiversity Boards. It also exercises its jurisdiction over industrial environmental clearances, forests and other infrastructural developmental projects.

The National Green Tribunal is free to devise its own procedures since environmental issues and violations involve complex bio-chemical and ecological processes. The NGT Act integrated strict liability, precautionary and polluter pay as part of sustainable development management through *stare decisis*. Business and industry can approach the court about EIA that lack clearance. This novel approach seeks to expand the needed science in environmental adjudication.

### 3.11 Case Laws

The NGT has given its verdict on many cases since 2012 when it started functioning. The cases were mostly related to industrial and infrastructural development and their environmental impact assessment
(EIA). The NGT’s EIA notification dated 14 September 2006 clearly indicates that it is seriously concerned about proper EIA being done prior the implementation of projects. In many cases, the NGT took strong decisions setting aside the Environmental Clearance by various state environmental clearance bodies. On 23 May 2012, in one verdict[133], the NGT looked into multiple appeals against the construction of a coal-based thermal power plant at villages Baruva and Golagandi of Sompeta Mandal, Srikakulum district of Andhra Pradesh. The appeal raised the following issues:

(i) The project site was a wetland and would cause environmental hazards apart from ecological imbalance.

(ii) The Environment Assessment Committee (EAC) Report was incorrect, and was based on false data submitted by the project proponent.

(iii) The public hearing was not conducted properly.

The NGT observed that the EIA report had ignored ‘vital aspects’ which gave an impression that “the matter was dealt with a very casual manner without realizing its importance.” It strongly pointed out that “EIA report is the key on which the EIA process revolves, it is important that EIA report prepared should be scientific and trustworthy and without any mistakes or ambiguity.”

In another case, *Rohit Choudhury v. Union of India and Others*\(^{134}\) the NGT ordered the removal of 11 stone crushing units, 33 brick kilns and some other establishments functioning within the No Development Zone of the Kaziranga National Park. It also ordered 23 units working outside the zone to cease their operations. The NGT directed the Ministry of Environment and Forests (MoEF) and the Assam State Government to prepare a comprehensive action plan and monitoring mechanism for implementation of the conditions stipulated in the 1996 Notification creating the “No Development Zone.”

The case of *Prafulla Samantray v. Union of India and Others*\(^{135}\) (POSCO case) resulted in a major decision by the NGT. The appeal was against the Environmental Clearance and EIA for the steel cum captive power plant project and a captive minor port project of POSCO India. The NGT directed the MoEF to ‘make a fresh review of the project’ and suspended the Ministry’s final order on Environmental Clearance to the project. The NGT also suggested that it was “desirable that MoEF shall take a policy decision that in large projects like POSCO where MOUs are signed for large capacities and upscaling is to be done within a few years, the EIA right from the beginning, should be assessed for the full capacity and EC granted on this basis.”

Although the NGT has been delegated the duty to deal with the environmental cases, the Forest Bench of the Supreme Court, constituted in 2010, which handles the forest and mining-related cases, is still active.

\(^{134}\) Application No. 38/2011 (available at [http://www.Greentribunal.in](http://www.Greentribunal.in))

\(^{135}\) Application No. 8/2011 (available at [http://www.Greentribunal.in](http://www.Greentribunal.in))
On February 13, 2012, the Court decided in a case, *T. N. Godavarman Thirumulpad v. Union of India and Others*[^136] , involving the conservation of endangered Asiatic Wild Buffalo (*Bubalis bubalis*) in central India. The State of Chhatisgarh has declared the wild buffalo as its State Animal and hosts a critically important population of the animal, was heard in the case. The Apex Court ordered the State to give effect to centrally sponsored wildlife scheme- “the Integrated Development of Wildlife Habitats” to save the wild buffalo from extinction, and to take immediate steps to stop interbreeding of wild and domestic buffaloes in order to maintain the genetically pure lines of the animal.

In the case of *Bhopal Gas Peedit Mahila Udith Sangathan v. Union of India*[^137] , the Supreme Court opined, “We find it imperative to place on record a caution on consideration of the courts of competent jurisdiction that the cases filed and pending prior to coming into force of the NGT Act, involving questions of environmental laws and/or relating to any of the seven statues specified in Schedule I of the NGT Act, should also be dealt with by the specialized tribunal, that is the NGT, created under the provisions of the NGT Act. The Courts may be well advised to direct transfer of such cases to the NGT in its discretion, as it will be in the fitness of administration of justice.”

[^136]: I. A. Nos. 1433 & 1477 of 2005 in WP (C) No. 202 of 1995
[^137]: I. A. No. 6263 of 2011 in civil appeal No. 3187-3188 of 1988 I WP (C) No. 50 of 1998
In the case of *Subir Mario Chowfin v. Union of India and Others*\(^{138}\), the order of NGT dated 13\(^{th}\) March, 2014 stated that as per the earlier order of this Tribunal dated 06-02-2014, respondent number 2 (State Government) has filed minutes of meeting which appears to be an interim report. In the report, the Government of Uttarakhand has stated that it has not yet determined the standards for declaring the places as deemed forest and the steps are being taken in this regard. The Tribunal in this matter issued the following directions:

“The State of Uttarakhand shall complete the process of determining the standard/criteria for declaring deemed forest based on its experts reports expeditiously in any event within a period of six weeks from today, by making field verification through the duly constituted Committee which shall conduct survey in accordance with the directions of the Hon’ble Apex Court in the cases of *Lafarge Union Mining (P) Ltd. v. Union of India*\(^{139}\), *Noida Memorial Comlex near Okhla Bird Sanctuary, In T. N. Godavarman Thirumulpad v. Union of India and Others*\(^{140}\).” The interim orders passed by NGT were allowed to continue till the next hearing.

The State on next hearing submitted that another Committee was constitutes which observed that the area in question in villages, Manda Khal and Gadoli Khal, District Pauri, is not a forest area. On the other hand, MoEF, Government of India, after inspection of the area in question, submitted that it is a forest area. Despite the injunction orders of NGT, the non-forest activity was still going on in the forest area or a deemed forest

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\(^{138}\) *Forest Case Update Issue 83, March- May 2014 (available at www.forestcaseindia.org)*

\(^{139}\) *(2011) 7 SCC 338.*

\(^{140}\) I.A. No. 3698 & 3699/2013 in WP (C) No. 202 of 1995.
area. Therefore, the Tribunal, on 29th April 2014, passed the following directions:

(a) All the interim orders passed by the Tribunal earlier would continue to operate till specifically vacated.

(b) The Committee appointed by the order dated 28th April, 2014 shall submit its report to the Tribunal within three weeks from today.

(c) The hot-mix plant at village Manda Khal shall not operate henceforth in any manner whatsoever.

(d) No non-forest activity would be carried on in the forest / deemed forest area without specific orders of the Tribunal.

(e) The Committee appointed by the order dated 28th April, 2014 shall prepare the videography of the area in question, and they shall send due intimation of their visit to the sais area to the Regional Officer of MoEF whose senior most Officer shall participate in the inspection and record his findings. The Inspecting Team shall also record the density of the trees on sample basis at least.

After going through the Report and the documents, the Tribunal passed the following orders on 26th May, 2014:

1. The State of Uttarakhand shall issue a Notification within four weeks from today declaring the entire area in question as the Reserved Forest Area / Protected Forest and/or Private Forest as the case may be in terms of the Report submitted by the Committee.

2. No non-forest activity would be permitted by the State or any authority or body in the forest area.
3. The hot-mix plants and the stone crushers operating in this forest area shall be permanently closed. The Deputy Commissioner and the Superintendent of Police, District Pauri shall ensure that this plant does not operate in any form or manner whatsoever without specific orders of the National Green Tribunal. The State Government shall ensure that no municipal or other waste is dumped in this forest area.

4. We issue Notice to the Municipal Corporation, Pauri to show cause as to why they should not be directed to pay compensation for felling trees illegally in the forest area as well as compensatory forestation.

“In the mean while we also direct the State Government, the Municipality and all other public authority in District Pauri to remove all Debris, municipal Waste and Garbage etc. from the forest area and dealt with it in accordance with the rules.”

Some recent orders passed by NGT in Godavarman Case:

Orders dated 3rd March 2014:\footnote{141}{Ibid.} : “We have pursued the Report of the Central Empowered Committee on Prayer No. (ii) and we direct that the Government of Odisha will process and forward to the MoEF, Government of Odisha the compliance Report of the conditions stipulated in the in-principle approval granted in favour of the applicant within two months to enable the MoEF to consider and grant formal status to approval under Section 2 of the Forest (Conservation) Act, 1980.”
In his application a prayer has been made for grant of permission for diversion of 0.25 ha of forest land from Vikramshila Gangetic Dolphin Sanctuary for Bhagalpur Water Supply Project as the structure will be constructed within the Sanctuary. The learned Amicus Curiae submitted that, “….as the applicant is a government of Bihar Undertaking and the diversion is for water supply and the National Board for Wild Life has recommended in favour of the applicant, the application may be allowed.” The Tribunal ordered that, “We allow this application and direct that permission may be granted in accordance with the recommendations made by the Standing Committee of the national Board for Wild Life.”

Vikrant Kumar Tongad v. Delhi Tourism and Transport Corpn. Recently, on 12-02-2015, NGT has directed Delhi Tourism and Transportation Corporation (DTCC) to get an environmental clearance for the under construction ‘Signature Bridge’ over the Yamuna river at Wazirabad in Delhi. The bridge is under construction since 2008 across river Yamuna and is an eight-lane wide structure with a total area of 1,55,260 sq. mts. The order of NGT came upon an application filed by an environmentalist, who had alleged that construction of the said bridge started without obtaining prior Environmental Clearance from the Regulatory Authority in terms of the provisions of the Environment Clearance Regulations, 2006 and construction of bridge is likely to impact river Yamuna and its hydrology adversely. DTCC, in its defense, submitted that it had applied to the MoEF for seeking Environmental Clearance (EC) for execution of the project but

142 IA No. 3736 / 2014 in WP (C) No. 202 of 1995
143 2015 SCC OnLine NGT 3
it was informed by MoEF that ‘Bridges’ are not covered under the Regulations of 2006 and as such EC is not required. After perusal of the material on record, NGT directed Delhi Government to seek EC within three weeks and further noted, “As more than 80 per cent of the bridge has been completed……we do not direct demolition thereof in public interest. However, we direct SEIAA to put such terms and conditions as may be necessary to ensure that there are no adverse impacts on environment, ecology, biodiversity and environmental flow of river Yamuna and its floodplain.”

*Ramdas Janardan Koli v. Ministry of Environment and Forests*: NGT in one of its recent orders dated 27-02-2015 directed Jawaharlal Nehru Port Trust (JNPT), the City and Industrial Development Corporation (CIDCO) and the Oil and Natural Gas Corporation (ONGC) to pay compensation of Rs.95.19 crore to 1,630 fishermen families in Uran and Panvel talukas of Raigad district who were adversely affected by the project. The Court was hearing an application filed by fishermen of the affected area alleging that with the deepening of the sea for fourth additional birth at the port of JNPT, inter-tidal sea water exchanges and flow of sea water in Nhava creek will be substantially affected which will deprive them of daily earnings due to deprivation of their traditional rights. It was also alleged that the reclamation of land, removal of mangroves in the area also caused huge destruction of all surrounding mangroves. Consequently, breeding of the fishes is substantially reduced or obliterated and narrowed the navigational

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144 2015 SCC OnLine NGT 4
route of the traditional boats. The applicants sought rehabilitation of the affected families of fishermen. After perusing the material on record and hearing the parties, NGT held JNPT guilty of degrading environment to much extent by destruction of mangroves after and during commencement of the project. NGT also noted that ONGC did not remove outer cover of the pipeline in order to restore ecology and environment in the area which resulted in obstruction of tidal exchanges of sea water. While holding the three entities responsible for loss of mangroves, loss of spawning grounds, loss of livelihood etc., NGT directed them to pay compensation.

Recently the NGT has issued a series of orders to check the environmental degradation of the eco-sensitive regions. In its May 5, 2015 order, the NGT had placed a ban on non-CNG taxis from August 14. It also imposed a cess of Rs 2,500 on diesel taxis and Rs 1,000 on petrol taxis for each visit to Rohtang Pass (Himachal Pradesh). The NGT, on July 7, 2015, banned all commercial activities in Rohtang Pass and stopped horse-riding, snow-biking, paragliding, tyre-tube gaming and snow scooters. The NGT on August 25, 2015 extended till November 30, 2015 the dead line for phasing out petrol and diesel taxis plying between Manali and Rohtang Pass.\textsuperscript{145}

Very recently, on 28 August, 2015, the NGT directed the Assam government to not permit any construction whatsoever in and around the Kaziranga National Park. The Tribunal also ordered that the patta (land settlement document) holder couldn’t raise any construction in the eco-sensitive area or in the buffer zone as it gave a right in the land primarily

for agricultural purpose. “Notice should be issued to all offending parties. We direct that warrants issued against those who are represented through the counsel, will not be executed as they ensure the tribunal that they would be regularly appearing in the matter,” it said. It also asked the state to file a status report within two days and submit a comprehensive map of the Kaziranga National Park with offending structures existing within 5 km of its boundaries.\textsuperscript{146}

\section*{3.12 Conclusion}

India does not have lack of environmental policy but proper implementation is required. In the present scenario it becomes essential that the authorities should strive to achieve a society where ideals and reality, legislation and implementation correlate. In India, the challenges of environmental protection and conservation of biodiversity are intrinsically connected with the state of environmental resources such as land, water, air, flora and fauna and their judicious utilization. Many environment related factors are responsible for various ailments like poverty, diseases in India. The approach towards environmental issues needs to be more focused, integrated and inclusive. It must involve all stakeholders. The sustainable development and implementation of effective national policies and laws relating to environment and biodiversity protection will depend on decision makers having access to relevant information from various stakeholders. The strategic approach

should undertake and support timely participatory expertise, wisdom, data and indicators. There is an urgent need to prevent misappropriation of Indian traditional knowledge and conservation of bio-resources for the future generations. The Indian Constitution enables the Indian courts to play proactive role. India is a signatory to many multilateral environmental agreements and is committed to sustainable development, protection of environment and conservation of forests and the natural resources including biodiversity.