CHAPTER-IV

WATER POLLUTION CONTROL AND GENERAL LEGISLATIONS

The degradation of ecological quality can be witnessed by loss of vegetal cover, extravagant concentrations of injurious chemicals in the ambient atmosphere, in food chains, biological diversity etc. All the nations resolved to preserve and control ecological pollution at the United Nations Conference on the Human Environment held in Stockholm in June 1972. India also participated in the Conference with full enthusiasm and showed great interest in the environmental protection.¹

Accordingly, after the Stockholm Conference, several laws were passed, which were directly or indirectly dealing with several environmental matters, e.g., Water (Prevention and Control of Pollution) Act, 1974, Air (Prevention and Control of Pollution) Act, 1981 etc. these were specific legislations for the control of water and air pollution respectively. But till, 1986 there was no general legislation for the protection of the environment. The specific legislations generally focused on specific type of pollution but the major environmental hazards were not covered under these Acts, therefore, there was urgent need for the enactment of a general legislation for the protection of fragile nature from further degradation. At last in the year 1986, the Environment

¹. Under articles 253 of the Constitution of India, the Parliament has power to make law for the whole part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international Conference.
A. **The Environment (Protection) Act, 1986**

In the wake of Bhopal tragedy, the Government of India enacted, the Environment (Protection) Act of 1986 under article 253 of the Constitution.\(^2\) The main object behind the enactment of this law is following:-

i. The main purpose of the Act is to implement the decisions of the United Nations Conference on the Human Environment of 1972, in so far as they relate to the protection and improvement of the human environment and the prevention of hazards to human beings, other living creatures, plants and property.

ii. This Act, is an umbrella legislation designed to provide a frame work, to coordinate the activities of various Central

\(^2\) Supra note 1.
and State authorities established under the Water and the Air Act.

iii. The Act, provides for deterrent punishment to those, who are responsible for the degradation of ecology.

iv. It covers uncovered gaps in the areas of major environmental hazards as the existing laws generally focused on specific types of pollution or on specific categories of hazardous substances and some major areas of environmental areas were not covered under these specific laws.

This Act, is divided into IV chapters containing 26 sections. The potential scope of the Act is broad. Section 2 of the Act deals with definitions which are very important in understanding the further provisions of the Act. The expression “Environment” is defined broadly under the Act, as under:

Environment includes water, air, land and besides this, it also emphasise on the relationship amongst water, air, land and human beings and other lively creatures, which includes plants, property and micro-organisms.3

The above definition is inclusive one, it does not exhaust the entire universe of what is covered by the word “environment”. It is exhaustive definition in an evolving field like environmental control, are likely to lead to recourse to judicial interpretation of highly complex, scientific and technological matters, whose complexion is ever changing as knowledge accumulates dynamically.4 Section 2 (b) of the Act defines, “Environmental

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3 Section 2 (a), The Environment (Protection) Act, 1986.
Pollutant”. It can be in any form i.e solid, liquid or gaseous, which is present in such concentration in nature as harmful to the entire organisms. Environment is polluted, when the atmosphere is in the trap of various environmental pollutants, which may be in the form of solid, liquid or gas. Hence, from this definition of environmental pollution, it is clear that it also includes water pollution, because when the environmental pollutants will be in liquid form, it will ultimately mixes up with various water resources and ultimately degrade quality of water.

“Handling” is defined in relation to any substance, means the manufacturing, processing, treatment, packaging, storage, transportation, use for collection, destruction, conversion, offering for sale, transfer or the like of such substance. Hence, any industry which discharges environmental pollutants without treatment, effects the quality of water resources. Similarly when pesticides are used in agriculture to improve the quality and quantity of crops, if it is used non-judiciously, then excessive pesticides which are not absorbed by the crops, run away in water resources or seep into ground and pollute the water. Besides, this if municipality does not dispose off municipal garbage properly then it also causes threat to water resources.

According to section 2 (e) of the Act, hazardous substance, includes any preparation which may cause harm to human beings, micro-organisms, property or the nature due to its chemicals or physico-chemical properties. Occupier in relation to any factory or premises means a person who has control over the affairs of the factory or any other premises. Besides this, if a

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5 Section 2 (c).
6 Section 2 (d).
person is in possession of any substance that will also be covered under the definition of occupier under the Act. From all the above definitions, it is clear that the Environment (Protection) Act, 1986 intends to cover a very wide range of subject matters relating to environment protection which also includes water pollution.

Chapter II of the Act, deals with the general powers of the Central Government. The Central Government is empowered to take all such measures as it deems necessary or expedient for the purpose of protecting, preventing, controlling and abating environmental pollution. It is authorized to set new national standards for controlling emissions and discharge of effluents plan and execute nation wide programmes for the prevention of ecological degradation, put restrictions on areas in which any industry, operation or process can not be carried out. It also lays down procedures and safeguards for the handling of hazardous substances and carrying out and sponsor investigations and research related problems of environmental pollution, besides this, it can run environmental awareness programmes with the assistance of state Government. The Central Government can publish in the official gazette the constitution of an authority, who is authorized to take steps for the protection of ecology. Hence, under this Act, the Central Government has power to take such measures, which helps in protecting and maintaining the quality of our natural resources, which also covers water.

The Supreme Court delivered its first judgement under section 3 (1) and (2) of the Environment (Protection) Act, 1986 in

7. Section 2 (f).
8. Section 3.
Indian Council For Enviro-Legal Action v. Union of India. This case is popularly known as “CRZ Notification Case”. In this case the petitioners were three environment protection groups, challenged the amendment made by the Government in Coastal Regulations, 1991. The amendment was challenged on the ground, that it would lead to ecological degradation.

By the Coastal Regulation Zone, Notification 1991, the Government directed all the State Governments and Union Territories to declare approved Coastal Zone Management Plans (CZMP) for their respective areas. The Notification declared that the development along rivers, creeks and back waters shall not take place less than 100 meters of river etc. This condition was imposed to protect the water resources form such construction. But in 1994 the Government reduced distance for 100 metres to 50 meters, which was challenged on the ground that it would harm ecology.

The Court held that the principal notification of 1991 was passed by the Central Government while exercising its powers under section 3 (1) and 3 (2) (v) of the Environment (Protection) Act, 1986. It was further observed by the Court, that the said notification was passed after studying all the relevant aspects, which also include environment, therefore, the said amendment of 1994 is illegal.

The Court observed:

Enactment of a law, but tolerating its infringement is worse than not enacting law at all. The continued infringement of law, over a period of time, is made possible by adoption of
such means which are best known to the violators of law. Continued tolerance of such violations of law not only renders legal provisions nugatory but such tolerance by the enforcement authorities encourages lawlessness and adoption of means which cannot, or ought not to be tolerated by any civilized society. Violation of anti-pollution laws not only adversely affects the existing quality of life but the non enforcement of the legal provisions often results in ecological imbalance and degradation of environment, the adverse effect of which will have to be borne by future generations.  

The Central Government has also power to constitute an authority or authorities, which will exercise such powers and functions which are mentioned under section 3 (2) of the Act. The Central Government can also appoint officers for performing functions under this Act. It is submitted that under section 3 (3) of the Environment (Protection) Act, 1986 very wide powers are conferred on the Central Government to constitute any authority, which can perform such functions under the Act, which helps in protecting the environment. Under this section the Central Government has also power to implement the suggestions given by the Supreme Court in any matter relating to environment for the protection of environment from degradation.  

The Apex Court in various cases has directed the Central Government to constitute Authority under section 3 (3) of the Environment (Protection) Act, 1986. For example: The Court held that it is high time that the Central Government realizes its

10. Ibid.
11. Section 3 (3).
responsibility and statutory duty to protect the degrading environment in the country. If the conditions of the districts of Tamil Nadu, where tanneries are operating, are permitted to continue then in the near future all rivers/canals shall be polluted, underground waters contaminated, agricultural lands tuned barren and the residents of the area exposed to serious diseases. It is therefore, necessary for Supreme Court to direct the Central Government to take immediate action under the provisions of the Central Government to protect the degrading environment in the country.

Thus, the Court directed the Central Government to constitute an authority and confer on this authority all the powers necessary to deal with the situation created by tanneries and other polluting industries in the State of Tamil Nadu. The Court further directed that the authority so constituted shall implement the "precautionary principle and the polluter pays principle." Hence, the Central Government accordingly constituted the "Loss of Ecology" (Prevention and Payment of Compensation) Authority for the State of Tamil Nadu.

The Apex Court has not always taken upon itself the responsibility of shifting/relocating the industries from the populated areas. But sometimes it direct government to decide whether to shift industries from the populated area or residential colonies should be shifted which are in the vicinity of industrial area. For example in *F.B. Taroporawala v. Bayer India Ltd.*, the question before the Supreme Court was regarding the relocation

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12. *Id.* at 667-668.
of chemical industries/factories located in the populated area of Thane. The lives of inhabitants living around the factories were in jeopardy in view of probable accident in the factories. In industries, therefore, were given the option either to obtain ownership of the area or shift their factories to such places where residential area could be kept wide apart from the factory premises. Both the options were not acceptable to the owners logistically, financially or otherwise.

The Supreme Court held that it is neither having expertise nor being in possession of various requisite information to decide the question of relation or shifting of these factories. Therefore, the Court directed the Central Government to constitute an authority under section 3 (3) of the Environment (Protection) Act, 1986 within one month.

If the Government fails to constitute Authority under Environment (Protection) Act, the Apex Court can itself discharge responsibility of Government and direct it to set up such Authority under section 3 (3) of the Act. For example in Vellore Citizens Welfare Forum v. Union of India15 the court held, it is pity that till date no authority has been constituted by the central Government. The main purpose of the Environment (Protection) Act, is to create an authority under section 3 (3) of the Act with adequate power to control pollution and protect environment. The work which is required to be done by an authority in terms of section 3 (3) read with other provisions of the Act is being done by this court. It is high time that the Central Government realize its responsibility and statutory duty to protect the degrading environment in the country.

In India, courts not only scold the appropriate authority, if it fails to take appropriate steps for the preservation of environment, but also appreciate the concerned authority, if it has taken some positive steps for the preservation of environment, so that in future also the concerned authorities perform their duties perfectly. The Supreme Court has shown the same attitude in *M.C. Mehta v. Union of India*. In this case, when the court came to know about the constitution the Environment Pollution Prevention and Control, authority for the National Capital Region by Government of India under section 3 (3) of the Environment Protection Act, 1986, the court observed, that the step taken by the Government is appropriate and timely and the said authority will deal with entire matter relating to environmental pollution in the National Capital Territory Region.

We can not achieve anything by merely constituting some authority for the protection of our fragile environment, it is necessary that such authority should have some powers. So that it can take appropriate steps in the preservation of our environment, this view was expressed by the Supreme Court, in *Bittu Sehgal v. Union of India*, the Apex Court held, that the Central Government is bound to constitute an authority under section 3 (3) of the Environment (Protection) Act 1986 and it should confer to it all the powers necessary to protect the ecologically fragile Dahanu Taluka and to control pollution in the said area. The Court observed that Under Section 3 (3) of the Act, the Central Government is conferred with the power to Constitute Authority, which may implement the provisions of Environment

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(Protection) Act, 1986, Section 5 of the Act, empowers the Central Government to issue directions to any person, authority etc. who is responsible for the degradation of quality of ecology.

Section 5 of the Act, provides that if some authority or any other person is not performing their duties according to the provisions of this Act, then the Central Government can issue directions to him, which include even order to close down, or suspend the work of the offender industry. It can also stop supply of electricity or water to such industry.

Under Section 5 of the Act, the power to issue directions to the industries which pollutes environment are conferred on the Government, but if the Government fails to carry out its duties, then the Court can take the initiative to issue direction of closure etc to the defaulting industry. The Gujarat High Court expressed the similar view in Pravinbhai J. Patel v. State of Gujarat.\textsuperscript{18} The brief facts of this case were that industries at Naroda, Vavta and Odhav in Ahmedabad were discharging their polluted, effluents into Kharicut canal, which leads to Khari river. The people of Keda district villages were getting water for the purpose of irrigation from Khari river. Due to pollution caused by industries, the water of river was not suitable for agriculture. Due to irrigation by polluted water the land of the said villages lost fertility and the colour of wells turned red, which was not suitable for drinking. Due to the consumption of polluted water, it affected not only agriculture, but also animals. Therefore, petition was filed by two agriculturist, which court considered as public interest litigation.

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\textsuperscript{18} (1995) 2 Guj L.R. 1210.
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The Court observed that normally it was for the State Government of Gujarat (as power delegated to it by the Centre Government to issue appropriate closure directions under section 5 of the Act, as it is not duty of the court. The Court further observed:

"Where, however, there is a complete abdication of authority by the government and the Court comes to the conclusion, like in the present case, that the government has failed to discharge its statutory duty, and which failure has resulted in the violation of the fundamental rights of the petitioners and lacs of other people guaranteed under article 21 of the Constitution, then the Court is left with no option but to issue appropriate direction to the government to pass the necessary orders under section 5 of the Environment Act." 19

The Court further observed that under the Environment (Protection) Act, 1986 the government was the custodian of a clean environment and that its power under section 5 was coupled with a duty to exercise the power whenever the need arose. 20 When the State Government failed to perform it’s duty, therefore, the Court issued directions to the polluting industries to shut down their units and were also directed to pay compensation to the villagers, who suffered due to water pollution caused by them.

The Central Government, can lay down rules, for the regulation of environmental pollution. It may prescribe standards for the quality of air, water, soil and maximum allowable limits of concentration of various environmental pollutants for different

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19. Id. at 253.
20. Id. at 1235.
areas, it also lays down procedures and safeguards for the handling of hazardous substances and prevention of accidents which may cause environmental pollution and describes remedial measures for such accident.

For the maintenance and the preservation of our water resources, the concerned authority can also dispensed with the opportunity of personal hearing to a person, who is degrading our water resources. The similar view was expressed by the Court in *Narula Dyeing and Printing Works v. Union of India.* The brief facts of this case were that the petitioners were discharging their untreated trade pollutants into an irrigation canal. The Central Government delegated its powers to issue directions to the erring industries under section 5 to the Environment (Protection) Act 1986 to the State Government and the State Board. These authorities while exercising their power under section 5 of the Act, ordered for the closure of the industry. The petitioners challenged the authority of the Government, by alleging that no personal hearing was given to them. The Court rejected this objection and held, that in case of grave injury to the environment the Government has power to dispensed with the opportunity of personal hearing to the defaulter.

The Court held that the requirement of giving opportunity to file objections against the proposed directions which can be issued under section 5 of the Act, can be dispensed with only when the Central Government is of opinion that in view of the likelihood of a grave injury to the environment, it is not expedient to provide such opportunity.

The Court further held that the State Government in its deliberation took into account the gravity of the situation and it was decided to issue directions for the closure of polluting units. It was decided to take action without giving any show cause notice under Rule 4 (5) of the Environment (Protection) Rules, 1986, in view of the grave and serious pollution caused to the irrigation canal because of discharge of effluent by thirteen industries which had caused severe damage to the crops and fertile land and environment at large. The release of such trade effluents in canal, which was meant for irrigation of lands obviously would result in damage to the crop and the fields to which the polluted water was being carried several complaints were lodged before the Hon’ble Chief Minister regarding the pollution caused due to release of untreated effluents in river. This naturally called for immediate action. Therefore, if the government took immediate action against the polluting industries to prevent further damage to the crops and the agricultural lands.\(^{22}\)

In *Mahabir Soap and Guakhu Factory v. Union of India*,\(^{23}\) the brief facts of the case were that the appellant industry was situated in a thickly populated area and was discharging untreated effluents resulting in pollution of water reservoir. The Central Government while exercising powers under section 5 of the Environment (Protection) Act, 1986 to close down the factory. Further directions were issued to discontinue water and electricity supply to the factory. These directions of the government was challenged before the Court on the ground that the directions

\(^{22}\) Ibid.

\(^{23}\) AIR 1995 Ori. 218.
were issued without giving opportunity of personal hearing to the factory.

The Court held, that Rule 4 (5) of Environment (Protection) Rules, 1986 does not require any personal hearing to the defaulting industry, if it is proved that the effluents of the industry are damaging ecology. Therefore, there was no violation of any law and government rightly gave directions under section 5 of the Environment (Protection) Act, 1986 to close down the factory.

Rule 30 of the Environment (Protection) Rules, 1986 (hereinafter Rule 1986) provides that the standards for emission or discharge of environmental pollutants from industries, operations or process shall be specified in schedules I to IV of the Rules, 1986 to protect and improve the environment, which deal with different aspects of environmental pollutants for the purpose of present study only schedule I and IV are relevant which are given as under:

Schedule I: It has enlisted 89 industries and the parameter and standards of emission/discharge.

Schedule II: General Standard for discharge of Environment Pollutants.

The Central and the State Boards are empowered to specify more stringent standards against those who transgress provisions of the legislations, than prescribed in the schedules. Chapter III of the Act lays down procedure regarding prevention, control and abatement of environmental pollution. Section 7 of the Act, specifically provides that any person who is carrying on any industry, operation or process will have to bind himself with the
standards laid down in this Act, for the discharge of the environmental pollutants. In other words this section permits discharge of some industrial effluents to some extent. Because it is not possible that a industry would not discharge any pollutants, but certain standards to be maintained that those pollutants are not allowed to be discharged into water resources which deplete quality of water resources. The similar opinion was expressed by the Court in *Samatha v. State of Andhra Pradesh*. In this case the Court held that the legislature should prescribe definite rules to find out whether any industry has been discharging emission of the environmental pollutant in excess of the standard fixed under the Rules, 1986 or not. If the discharge of effluent is found excess from the prescribed limits, it is only then the question of complaining before a court and taking cognizance of the same would arise, otherwise Court will not entertain any complaint.

Section 8 emphasizes, that people should comply with the procedures prescribed and the safeguards laid down under Rules in the handling of hazardous contents. Hence, no doubt under article 19 (1) (g) of the Constitution, people have right to carry any profession, trade etc., but if such business causes water pollution, than it is duty of the occupier of the business to install water treatment plant, so that water resources can be protected from degradation.

In *Rural Litigation and Entitlement Kendra v. State of U.P.*, the brief facts of the case were that there was haphazard and dangerous lime stone quarrying practice in Mussoorie Hill Range

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24. AIR 1997 SC 3383.
of the Himalayas. Miners blasted out the hills with dynamite, extracting lime stone from thousands of acres, they also dig up into the hillsides, which resulted in cave-ins and slumping. Illegal mining Operations upset the hydrological system of the Dehradun Valley, springs dried up and severe water shortage occurred in the Valley. The Mining debris also clogged river channels and during monsoon season severe flooding occurred. The mining was leased out for 20 years. However, in 1982 the State Government refused to renew the lease due to ecological devastation in Valley. Against the rejection order of renewal of lease, the miners approached the Allahabad High Court, the Court issued injunction and allowed to continue the mining. Then, the petitioner moved to Supreme Court against the environmental degradation due to illegal mining in the Valley.

The Supreme Court held that the mountain range has been responsible to regulate the monsoons and consequently the rainfall in the Indo-Ganetic belt. The Himalayas are the source for perennial rivers and the Ganges, Yamuna and the Brahmaputra as also several other tributaries which have joined these main rivers. The Court further held at present the valley is in danger because of erratic, irrational and uncontrolled quarrying of lime stone.

The limestone belt has acted as the aquifer to hold and release water perennially. Rackless mining, careless disposal of mine debris and random blasting operations have disturbed the natural water system and the supply of water both for drinking and irrigation has substantially gone down. There is growing apprehension that if mining is carried on in this process a stage...
will come when there would be a dearth of water in the entire belt.

The Court observed that:

“We do not obligivous to the fact that natural resources have got to be tapped for the purpose of social development but one can not forget at the same time that tapping of the resources have to be done with requisite attention and care so that ecology and environment may not be affected in any serious way. There may not be any depletion of water resources. It has always to be remembered that these are permanent assets of mankind and are not intended to be exhausted in one generation”. 26

When the environmental pollutants are discharged in excess from the prescribed limit, whether it may be knowingly or accidental, then the person responsible for such discharge or if not responsible personally, but occupying that premises would be bound to prevent or mitigate the environmental pollution, which is caused due to discharge of pollutants. The offender is also bound to inform the authorities regarding such discharge of effluents. If after getting information about these effluents the authorities get cleared such pollution, then whatever expenses they incur on such clearance, that would be paid back by the defaulters to the concerned authority.

Section 10 of the Act provides that the Central Government can empower any person to enter any premises at appropriate time for the following purposes:-

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26. Ibid.
a) To perform functions, which are entrusted to it by the Central Government.

b) To check whether the provision of this Act, or if any notice is served by any authority etc complied with or not.

c) To examine and testing any equipment, industrial plant, record etc. or conducting search of any premises where he believes that an offence under this Act or Rule made there under has been committed. He can seize the above mentioned equipments, if it is necessary to prevent the pollution.

Every person carrying on any industry, operation, process or handling any hazardous substance shall be bound to render all assistance to the person empowered by the Central Government under sub-section (1) for carrying out the functions under that sub-section, however, if the occupier of any factory fails to provide such assistance, then he would be guilty of an offence under this Act. The Central Government has power to take sample for the purpose of analysis of water, air, soil etc of any factory premises. This sample can be taken only after serving notice of that affect to the occupier and will be collected in the presence of the occupier. The sample would be placed in a container and a seal would be put on that and send to the laboratory. If the occupier, willingly neglect the collector, then authorized person can take the sample of his own and will send it to the laboratory and will inform the government analyst about the willful neglect of the occupier.

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27. Section 10 (2).
28. Section 11.
Delhi Bottling Company Pvt. Ltd. New Delhi v. Central Board for the Prevention and Control of Water Pollution, New Delhi,\(^{29}\) the brief facts of this case were that the Board took a sample of trade effluents from the appellants company which it was discharging in a stream. The Board did not divide sample into two parts as required by the Water Act, 1974. The Board got injunction from Court under section 33 of the Act. The appellant Challenged it in the High Court, the Court held that the division of sample into two parts can not be denied on wrong facts, that company never requested for the same. Though company did not requested itself, but that fact was raised by the company in it's pleadings which can not be denied, this demand was also made verbally to the officials of the Board. Therefore, the Board was bound to get the sample tested from the laboratory of Delhi Administration, but the Board got the same tested from some other laboratory approved by the Board. The Court quashed the order of lower Court.

Though, in this case the Court did not directly invoke section 11 of the Environment (Protection) Act, 1986, since section 21 of the Water Pollution Act, 1974 relates to the power of taking samples and procedure to be followed therewith. Similar provisions are given under section 11 of the Environment (Protection) Act, 1986. Therefore, if there was violation of provision of Water Act, regarding taking of a samples, that would also be violation under section 11 of the Environment (Protection) Act, 1986.

According to section 12 of the Act, the Central Government is empowered to establish environmental laboratories or recognize any laboratory as an environmental laboratory. It is the Central

\(^{29}\) AIR 1986 Delhi 154.
Government which prescribes functions and procedure for the submission of samples of water, soil, air etc. for analysis. The Central Government appoints qualified persons as Government Analysts for the purpose of analysis of samples of water, soil, air and other substances sent for the analysis to the environment laboratories. Any document purporting to be a report which is signed by the Government Analyst may be used as evidence of the facts stated therein in any proceeding under the legislation.

The Act imposes punitive penalty on persons, who transgress the provisions of the Act. Section 15 of the Act provides, that any person who does not comply with the provisions of the Act, would be punished with imprisonment for a term of five years or fine up to rupees one lakh or both. If the violation continues beyond one year, then punishment may increase upto 7 years.

In A.S. Sulochana v. C. Dharamligam, the Court observed that the law seeks to punish only those who are guilty and commit sin, and not to an innocent. It being a penal provision, because it visits the violater with punishment, therefore, it must be strictly construed. From this decision of the Court it is clear that the judiciary does not want to take lenient view against those who harms our environment, because it realizes the importance of pollution free environment, moreover if our environment is not free from contamination then luxurious life is also of no use.

Section 16 of the Act, deals with offences committed by companies. It incorporates principle of vicarious liability against

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30. Section 13.
31. Section 14.
the person incharge, Director, Manager, Secretary and other officer, for the offence committed by the company. However, there is exception to this rule, if the person incharge proves that offence was committed without his knowledge or he tried his best to prevent it, then he would be discharged from his liability.

In India Courts have started a crusade against the environmental pollution. For the preservation of our fragile environment, Courts do not mind if the concerned authority without the interference of Courts takes action against the person who degrades our environment. In *Suo Moto v. Vatva Industries Asson.*, the Assistant Environment Engineer of the Gujarat Pollution Control Board observed huge quantity of hazardous wastes dumped near a village. He sought directions from the High Court against erring industries for abatement of such activities.

The Gujrat High Court held that if any person violates any provision of the Environmental legislations, then the Pollution Control Board and its officers are free and competent to take action against him. They need not to wait for the order of the court to bring action against the violator.

In *U.P. Pollution Control Board v. Mohan Meakins Ltd.*, the Apex Court made it clear that Director/Managers who were responsible for causing the pollution would be liable under section 16 of the Environment (Protection) Act, 1986. They cannot be absolved on the basis that the complaint was filed long ago and there was inordinate delay in taking up the case. The Court further observed that it cannot afford to deal lightly with cases involving pollution of water.

33. AIR 2000 Guj 33.
34. (2000) 3 SCC 745.
Section 17 of the Act, fixes criminal liability also on the Heads of the Department of Government. When offence is committed by the concerned Department and the Head of the Department is not able to prove that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

The Court can take action against the transgressors of provisions of the environmental legislations, if the complaint is either filed by the Central Government itself or on its behalf. Before filing complaint it is mandatory on the complainant to serve with a notice to the offender of sixty days.\textsuperscript{35}

The Act, provides that Civil Courts can not entertain any proceeding in respect of any action taken, or order or directions issued by the Central Government or by any other authority on its behalf under this Act.\textsuperscript{36} However, it may be pertinent to mention here that in India most of the cases concerning environment have come before the Courts in public interest litigation under the writ jurisdiction of the High Courts and Supreme Court.

Section 24 of the Act provides over riding effect of other laws on this Act, e.g. where any act or omission is offence under this Act, and same is also offence under some other law, then guilty would be punished under other law and not under this Act. The Central Government is empowered to make rules for carrying out the object of this Act.\textsuperscript{37} These rules making power of the Central Government is same as we already discussed under section 63 of the Water Act, 1974.\textsuperscript{38} From this discussion it is evident that

\begin{footnotesize}
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35 & Section 19. \\
36 & Section 22. \\
37 & Section 25. \\
38 & See Chapter V. \\
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Environment (Protection) Act is a very important piece of legislation. This being general legislation, therefore, covers all kinds of pollution e.g. water, air and noise pollution.

However, there are certain lacunas in this Act, therefore, there is a scope for making improvement, in this Act as well. For example, the Act prescribes the maximum sentence but no minimum sentence has been prescribed. It may happen that offender may get only a minimum punishment and not the maximum, the result of this will be that deterrent effect of the legislation goes away. The emphasis in the Act is also put on criminal liability rather than on the civil liability. Further the Act, does not provide any incentive to the public for taking steps to bring the culprit to book. The requirement of sixty days notice seems to be unnecessary for filing a complaint by a private party. In spite of all this, it is a positive piece of legislation.

Today industry is growing at large scale. It has made our life comfortable and has positive effect on our lives, but along with it, industry has also negative impact on our life, it effects our natural resources e.g. water, land, air etc. It is due to exploration and extraction of products by consumers. The generation of waste leads to the degradation of natural resources.

The incidence of major accidents involving toxic chemicals have grown. Discoveries of hazardous wastes disposal sites have drawn attention to other serious problems. Industrialized countries generate about 90 percent of the world’s hazardous wastes. The waste management in developing countries suffer from a variety of problems. With little or no pretreatment of wastes, this could contaminate water supplies or cause local people to be directly exposed to the waste. A land filling generally
occurs closed to industrial states that are surrounded by poor neighbourhood or shanty towns.\textsuperscript{39}

Hazardous substances include flammables, explosives; heavy metals such as lead, arsenic, and mercury, nuclear and petroleum fuel by products, dangerous micro-organisms, and scores of synthetic chemical compounds like DDT and dioxins. Exposure to toxic substances may cause acute or chronic health effects. Acute effects occur soon after a high level exposure and range in severity from temporary rashes to death. Chronic effects frequently result from long term, low level exposure and include cancers, birth defects, miscarriages and damage to the lungs, liver, kidneys and nervous system.\textsuperscript{40}

In \textit{M.C. Mehta v. Union of India}\textsuperscript{41}, the Supreme Court held that chemical and other hazardous industries have become a pressing problem in the modern industrial society. It is also necessary to point out that here when science and technology are increasingly employed in producing goods and services calculated to improve the quality of life, there is a certain element of hazard or risk inherent in the very use of science and technology and it is not possible to totally eliminate such hazards or risks altogether.

The Court observed, that we can possibly adopt a policy of not having any chemical or other hazardous industries merely because they pose hazards or risks to the community. If such a policy were adopted, it would mean the end of all progress and development. Such industries, even if hazardous have to be set up since they are essential for the economic development,

\textsuperscript{40} Shyam Divan and Armin Rosen Cranz, \textit{Environment Law and policy in India}, 514 (2001).
\textsuperscript{41} AIR 1987 SC 965.
advancement and well being of the people. We can only hope to reduce the element of hazards or risks to the community by taking all necessary steps for locating such industries in a manner, which would pose least risks or danger to the community and maximizing safety requirements in such industries. In India to control pollution from hazardous wastes, the legislature has enacted Hazardous Wastes (Management and Handling) Rules, 1989, which were amended in 2000.

B. Hazardous Wastes (Management and Handling) Rules, 1989

These Rules were passed by the legislature by exercising its powers under section 3 of the Environment (Protection) Act, 1986, which gives power to the Central Government to take measures for the protection and improvement of the environment. It empowers Central Government to take all such measures as it deems necessary or expedient for the purpose of laying down procedures and safeguards for the handling of hazardous substances.

Section 6 of the Environment (Protection) Act, 1986 empowers the Union of India to make rules in respect of all or any matter provided under section 3 of Act, such rules were enacted by taking into consideration the following points:-

(i) The procedures and safeguards for the handling of hazardous substances.

(ii) Some areas would be earmarked, where use of hazardous substances would not be permitted.
(iii) There would be restriction on the location of the industries and carrying on the processes and operation in different areas.

(iv) To adopt such procedure and safeguards for the prevention of accidents which may cause environmental pollution and to provide for remedial measures for such accidents. Section 8 of the Environment (Protection) Act, 1986 lays down procedure regarding, handling of hazardous substances.

The Central Government can make rules for the carrying out the purpose of the Environment (Protection) Act. It provides that such rules which are laid down by the Central Government may provide the procedure regarding handling of hazardous substances according to the procedure laid down under section 8 of the Environment (Protection) Act, 1986. 42 Therefore, the Central Government enacted these Rules by exercising its powers under sections 3, 6, 8 and 25 of the Environment (Protection) Act, 1986.

Rule 2 of the Hazardous Wastes (Management and Handling) Rules 1989 as amended by Rules 2000, describes application and scope of these Rules and stresses that only those hazardous wastes are mentioned in the schedules to the Rules and shall not apply to the following wastes:-

(a) Waste water and exhaust gases, which are covered under the provisions of the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981 and Rules there under.

42 Section 25 The Environment (Protection) Act, 1986.
(b) Waste which is discharged by ships beyond five kilo meters, covered under the provisions of the Merchant Shipping Act, 1958 and Rules made there under.

(c) Radioactive wastes covered under the Atomic Energy Act, 1962 and Rules made there under.

Rule 3 deals with the definitions. Some of the important definitions are given below:

"Authorization" means, when any person or organization gets permission from any competent authority for the collection, reception, treatment, transport, storage and disposal of hazardous wastes.\(^43\) Rule 3 (g) defines "Facility" which means, any location wherein the processes incidental to the waste generation collection, reception, treatment, storage and disposal are carried out.

"Hazardous Wastes" means, waste substances, which are generated in the process indicted in column 1 of schedule I and consists of wholly or partly of the waste substances referred to in column 3 of the same schedule.\(^44\) It also includes waste substances which consists wholly or partly of substances indicated in schedule 2, unless the concentration of the substances is less than the limit indicated in the same schedule.\(^45\) It also includes wastes indicated in part A list A and part B of schedule 3 to category of wastes specified in this schedule.

\(^43\) Rule 3 (c) The Hazardous Waste (Management and Handling) Rules, 1989.
\(^44\) Rule 3 (i), Schedule I Column I of The Hazardous (Management and Handling) Rules, 1989 includes petrochemical processes and pyrolytic operations and column 3 includes, petrochemical process and pyrolytic operation and column 3 includes, production or used zinc, zinc oxide. Production and use of copper oxide copper including electro-refining and electro winning operations.
\(^45\) Schedule 2 is divided into five classes i.e. class A, B, C, D and E. Concentration limit of waste substances is prescribed against each class, i.e. in Class A concentration limit 50mg/kg in Class B: 500mg/kg, Class C: 20,000mg/kg, Class D: 50,000mg/kg and Class E: no limit is prescribed.
applies only to Rules 12, 13 and 14 unless they do not possess any of the hazardous characteristics in part B of the same schedule.46

“Hazardous Waste Site” means, a place for collection, reception, treatment, storage and disposal of hazardous wastes which has been duly approved by the competent authority.47 A person who owns or operates a facility for collection, storage and disposal of hazardous wastes is known as “operator of a facility”.48 Rule 3 (q) defines, “Disposal”. It means deposit, treatment, storage and recovery of any hazardous wastes.

‘Storage’ means keeping hazardous wastes for a temporary period at the end of which the hazardous waste is treated and disposed off.49 Rule 3 (x) defines environmentally sound management of hazardous wastes. It emphasizes to take all steps to ensure that the hazardous wastes are managed in a manner which will protect human health and the environment from such wastes.

When hazardous wastes or other wastes are moved from one area under the national jurisdiction of one country to an area under the national jurisdiction of another country or through an area which is not under the national jurisdiction of any country with a condition that at least two countries are involved in the movement. This activity is known by the name of “Transboundary Movement.”50

46 Schedule 3 applies only for such wastes which are transported for imports and exports purposes.
47 Rule 3 (j).
48 Rule 3 (m).
49 Rule 3 (t).
50 Rule 3 (p).

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The occupier or operator of any facility who is generating or producing hazardous wastes, which exceed from the prescribed limit given in the schedule of the Rules shall be responsible, to take all practical steps to ensure that such wastes are properly handled and disposed of without any adverse effects on the environment. It further provides that the occupier shall also be responsible for proper collection, reception, treatment, storage and disposal of these wastes either himself or through the operator of a facility.\footnote{Rule 4.}

The occupier of the hazardous wastes if wants to get the hazardous wastes treated he is bound to give all the information regarding such wastes to the operator of the facility to whom he has engaged for the cleanliness of the waste. The information would be in accordance with the specification by the State Pollution Control Board or Committee.\footnote{Ibid.}

Rule 5 provides that occupier, who generates hazardous wastes whether having facility for collection, reception, treatment etc. of the hazardous wastes or not will have to take permission in the following manner from the concerned authority:-

(i) The hazardous wastes shall be collected, treated, stored and disposed of only in facilities, which are authorized for this purpose.

(ii) The occupier who is generating hazardous wastes and having a facility for collection, reception, treatment, transport, storage and disposal of such wastes shall make

\footnote{Rule 4.}
\footnote{Ibid.}
an application in Form 153 to the (State Pollution Control Board or Committee) for the grant of authorization within a period of six months from the date of commencement of these rules.

(iii) Any person who intends to be an operator of a facility for the collection, reception, treatment, transport, storage and disposal of hazardous wastes, shall make an application in Form 1 to the (State Pollution Control Board or Committee) for the grant of authorization for any of the above activities, provided that the operator engaged in the business of the collection, reception, treatment, transport, storage and disposal of hazardous wastes, shall make an application to the (State Pollution Control Board or Committee) in Form 1 for the months from the date of commencement of these Rules.

(iv) The (State Pollution Control Board or Committee) shall not issue an authorization unless it is satisfied that the operator of a facility or an occupier, as the case may be, possesses appropriate facilities, technical capabilities and equipment to handle hazardous wastes safely.

(v) The authorization, which has to operate a facility shall be issued in Form 254 and will be subject to conditions prescribed therein.

(vi) Authorisation granted under this rule shall remain in force, unless suspended earlier.

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54 Form 2 Provides: Authorisation for operating a facility for collection, reception, treatment, storage, transport and disposal of hazardous wastes.
(vii) An authorization can be renewed before its expiry in form I.

(viii) The authorization shall continue to remain in force until it is renewed or revoked.

(ix) The State Pollution Control Board or Committee has power to refuse to grant authorization after giving reasonable opportunity of being heard to the applicant.

The State Pollution Control Board or Committee has power to cancel or suspend authorization issued under these rules, if the authorized person has failed to comply with any of the conditions of the authorization or with any provision of the Act, or these rules, however, an opportunity is given to the authorized person to explain why his authorization may not be cancelled? Reasons must also be recorded for taking such an action.55

The Courts are trying their best to strictly enforce the provisions of Environment Acts and penalised the defaulters, who violates the provisions of the Hazardous Waste Rules, provision of the Water Act and Environment (Protection) Act. The Courts do not hesitate even to take strict action against the government if it fails to comply with the provisions of environment protection Acts. The similar views were expressed by Court in *K. Purushotham Reddy and Another v. Union of India*56. In this case the petitioner, prayed for the issuance of writ of mandamus against the respondents to direct them to strictly follow the Rules known as Hazardous Waste (Management and Handling) Rules, 1989 (for short, “The Rules”) while handling and disposing of the used oil

55 Rule 6.
56 AIR 2002 AP 138.
for re-refining or re-processing and also disposal of the waste generated during the process.

It was alleged in this case that the lubricating oil, which was used by the Andhra Pradesh State Road Transport, after use were recycled for the purpose of their being reused. It was also alleged that some persons purchased used oil from the users of the lubricating oils including the A.P, States Electricity Board, for the purpose of refining the same with various chemicals, which posed threat to the environment. By reason of such process, without taking precautionary measures, even the quality of the underground water was affected.

It was further alleged that the respondents do not have license, which is necessary under the Rules, 1989. the unauthorized persons who purchased the used oil from the Corporation in order to make money by refining it with the sulphuric acid, caused serious threat to environment, especially fresh water including ground water.

The A.P State Pollution Control Board, accepted that possessing of such used lubricating oils is covered by Rules 1989. These Rules were framed by the Central Government in the Environment (Protection) Act, 1986. It was further contended that Rule 6 empowers the State Pollution Control Board to suspend or cancel any authorization issued under the Rules if the authorized person fails to comply with any of the conditions of the authorization.

The Andhra Pradesh High Court held:

It is necessary that all authorities including the A.P State Pollution Control Board must strictly comply with the
provision of the said Rules. It further directed that in the event if any person is found to be unauthorizedly handling such hazardous waste products and/or if any person authorized therefore, violates any of the terms and conditions or any law operating in the field, the State Pollution Control Board should take strict view of the matter and shall take steps for the cancellation of their authorization in terms of Rule 6 of the Rules.\textsuperscript{57}

From this decision it is proved that for the protection of water, which is vital organ of our life support system, courts do not restrain even to pass strict orders against government. This shows judiciary’s crusade against environmental menace.

It is responsibility of the occupier or operator of a facility to ensure before the delivery of hazardous wastes at the hazardous waste site the waste is packed in a manner suitable for storage and transport and the labelling and packaging is easily visible and able to withstand physical conditions and climatic factors. The rule further provides that for packaging, labeling and transportation of hazardous wastes which shall be in conformity with the provisions of the rules made by the Central Government under the Motor Vehicles Act, 1988 and other guidelines issued from time to time.\textsuperscript{58} The State Government or a person authorized by it shall under take a continuing programme to identify the sites and compile and publish periodically an inventory of disposal sites within the state for the disposal of hazardous waste.\textsuperscript{59}

\textsuperscript{57} ibid.

\textsuperscript{58} Rule 7.

\textsuperscript{59} Rule 8.
It is responsibility of the State Government or a person authorized by it to undertake an environment impact study before identifying a site as waste disposal site in the State.\textsuperscript{60} It is submitted that the waste disposal sites should not be set up near rivers, lakes, canals and other water resources, because such waste would pose threat to the water resources because there is every possibility that waste disposed of near water resource would mix-up with water.

It is also duty of the State Government or a person authorized by it to undertake an inventory of sites within the State at which hazardous wastes have at any time been stored or disposed of and such inventory shall contain, besides the location and description, information relating to the wastes at each such site as may be associated with such site.\textsuperscript{61} It is responsibility of the occupier whether any association or operator of a facility to design and set-up disposal facility as per the guidelines issued by the Central Government. It is further provided under the Rules that it is mandatory for the occupier to get the design and layout the facility approved from the State Pollution Control Board before, setting it up. The State Pollution Control Board shall monitor the setting and operation of the facility regularly.\textsuperscript{62}

It is provided under Rule 8 B that, it is responsibility of the occupier to operate the facility safely and it should be environmentally sound. He will have to ensure that the closure of the landfill is according to the design approved under Rule 8A by the State Pollution Control Board. Because if landfill of any industry, factory etc. would not be properly closed, it would pose

\textsuperscript{60} Ibid. \\
\textsuperscript{61} Ibid. \\
\textsuperscript{62} Rule 8 A.
threat to the ground water and other water resources by run off of the hazardous substances from the landfills.

Rule 9 defines the maintenance of records by the occupier who is generating hazardous waste and operator of the facility for collection, reception, treatment, transport, storage and disposal or hazardous waste this maintenance would be in accordance with Form 3. The rule further provides that, annual returns by the occupier and the operator of a facility shall be sent to the State Pollution Control Board or Committee in Form 4. Hence, when the occupier of any facility will maintain records, regarding how much hazardous wastes he has discharged, then the State Pollution Control Board can keep a check over the occupier whether they are discharging waste within the prescribed limit or it is beyond that, which may deteriorate quality of water.

Sometimes an accident occurs at the facility site or on a hazardous waste site or during transportation of hazardous wastes then the occupier or operator of a facility shall report immediately to the State Pollution Control Board or Committee about the accident in Form 5. For the import of hazardous wastes, following conditions are necessary:

(a) The import of hazardous wastes from any country to India shall not be permitted for dumping and disposal of such wastes. However, there is one exception to this Rule that the import of such wastes, may be allowed for processing or reuse as raw material, after examining each case on merit

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63 Form 3 Provides: Format for maintaining records of hazardous wastes at the facility.
64 Form 4 Provides: Format for the submission of returns regarding disposal of hazardous waste.
65 Rule 10, Form 5 Provides: To inform the State Pollution Control Board, regarding the date and time of the accident, which hazardous wastes were involved in the accident, what steps were taken to alleviate the effect of accident on the environment.
by the State Pollution Control Board or Committee or by an officer authorized in this behalf.

(b) It is mandatory for the exporting country or exporter of hazardous wastes to communicate in form 6 with the Central Government e.g. the ministry of environmental and forests about the proposed transboundry movement of hazardous wastes.

(c) The Central Government shall, after examining the communication received under sub rule 2 and on being satisfied that the import of such hazardous wastes is to be used for processing or reuse as is to be used for processing or reuse as raw material, may grant permission for the import of such wastes subject of such conditions as the Central Government may specify in this behalf, however, if the Central Government is not satisfied with the communication received under sub rule (2), it may refuse permission to import such hazardous wastes.

(d) When importer imports hazardous wastes, he is bound to provide necessary information regarding the type of hazardous waste, which is to import in Form 6, to the State Pollution Control Board or Committee and the Central Pollution Control Board in the case of union territories.

(e) The information which is received under sub-rule 4 from the importer is examined by the State Pollution Control Board or Committee. It has also power to issue instructions to the importer.

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66 Form 6 Provides: Format for notification and movement of documents.
(f) It is also responsibility of the Central Government, the State Pollution Control Board and Committee to inform the concerned Port Authority to take appropriate steps regarding the safe handling of the hazardous wastes at the time of loading the same.

(g) Person who imports hazardous wastes is bound to maintain the records of the hazardous wastes imported as specified in Form 7 and the records so maintained shall be open for inspection by the State Pollution Control Board or Committee and the Ministry of Environment/ the Central Pollution Control Board in the case of Union Territories or an officer appointed by them in this behalf.

Hence, Rule 11 prohibits import of hazardous wastes to India for recycling purposes. Before, the amendment of Hazardous Wastes Rules in the year 2000, the import of hazardous wastes into India was not prohibited, which was degrading water resources of the country. It was banned only when India signed Basel Convention 1989, which regulates the importing of hazardous wastes in international trade.

Rule 12 is an exception to Rule 11, which provides that import and export of hazardous wastes shall be permitted only as a raw material for recycling or reuse. The Ministry of Environment and Forests shall be the nodal ministry to deal with the transboundary movement of hazardous wastes. The decision of the Central Government in respect of grant of permission of shall be final. Any occupier exporting or importing hazardous wastes from outside to India as the case may be shall comply with the articles

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67 Form 7 Provides: Format for maintaining records of hazardous wastes imported.
68 Rule 11.
of the Basel Convention to which the Central Government is a signatory.\textsuperscript{69}

It is provided in Rule 16, that the occupier, transporter and operator of a facility shall be liable for damages caused to the environment resulting due to improper handling and disposal of hazardous wastes listed in schedules 1, 2 and 3 of the Rules. It is also provided that the occupier and the operator of the facility shall also be liable to reinstate or restore damaged or destroyed elements of the environment and shall be liable to pay a fine as levied by the State Pollution Control Board with the approval of the Central Pollution Control Board for any violation of the provisions of these Rules. Hence, this Rule seems to be based on the Polluter Pays Principle, as the occupier of hazardous wastes is liable to restore the degraded ecology.

There is a provision of appeal under the Act, against any order of suspension or cancellation or refusal of an authorization by the State Pollution Control Board to the State Government or Committee and in the case of Union Territory to the Ministry of Environment and Forests and the Central Pollution Control Board. It is mandatory to file every appeal in writing and should be accompanied by a copy of the order appealed against and shall be prescribed within thirty days of the order passed.\textsuperscript{70}

These Rules are helping to great extent to protect our water sources from pollution as hazardous wastes pose a severe threat to our life support system i.e. water. These Rules are first

\textsuperscript{69} Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, Basel, (1989) Provides: Not to transport any hazardous waste in any country from any foreign country, if it poses threat to the environment of importing country.

\textsuperscript{70} Rule 18.
comprehensive Rules to deal with one segment of the toxic i.e. hazardous wastes.

C. The Municipal Solid Waste (Management and Handling) Rules, 2000

In India Municipal waste poses a great threat to our environment, particularly, water bodies, because there is no systematic arrangement for the disposal of the municipal garbage. Most of the municipalities throw garbage in the open grounds of the outskirt of cities, which either flows into the water source during rains or with the passage of time seeps into ground and pollute the water. To solve this problem, The Municipal Solid Waste (Management and Handling) Rules 2000 were passed by the Central Government. These Rules apply to all the Municipalities and regulate the procedure for the collection, segregation, storage, transportation processing and disposal of municipal solid wastes. These Rules consist of 9 rules and IV schedules.

Rule 3 provides various definitions, important one for the purpose of present study are discussed below:

“Anaerobic Digestion” means a controlled process which involves microbial decomposition of organic matter in the absence of oxygen. A substance which can be degraded by microorganisms is known as biodegradable substance. Rule 3 (iv) defines “biomethanation,” which means a process which entails enzymatic decomposition of the organic matter by microbial action to produce methane rich biogas. Collection means lifting.

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and removal of solid wastes from collection points or from other places where it is lying.72

According Rule 3 (vi), a controlled process which involves microbial decomposition of organic matter is known as composting. Rule 3 (vii) defines demolition and construction waste, which means wastes of building materials, debris, rubble resulting from construction, re-modeling, repair and demolition operation. Disposal means final disposal of municipal solid wastes in terms of the specified measures to prevent contamination of ground water, surface water and ambient air quality.73 “Landfills” means disposal of residential solid wastes on land in a facility designed with protective measures against pollution of ground water, surface water and air fugitive dust, wind blown litter, bad odour, hazard, pests or rodents.74

Liquid which seeps through solid wastes or other medium and has extracted of dissolved or suspended material from it is known as leachate.75 “Municipal Solid Waste” includes commercial and residential wastes generated in a municipal area either in solid or semi solid form. It does not include industrial hazardous wastes, but it includes treated bio-medical wastes.76 Industrial waste is full of trade effluents, if it is discharged untreated, it contaminates water resources. Hence, industrial wastes should not be discharged into municipal sewage without treatment, because industrial waste requires different treatment for its purity than the domestic waste.

72 3 (v).
73 Rule 3 (viii).
74 Rule 3 (xi).
75 Rule 3 (xii).
76 Rule 3 (xv).
A person who owns or operates a facility for collection, segregation, storage, transportation and disposal of municipal solid wastes or any other agency appointed by the municipal authority for the management and handling of municipal solid wastes in the respective areas is called operator of a facility.\textsuperscript{77}

Following are responsibilities of the Municipal Authority:

i. Every Municipal Authority is responsible to implement the provisions of Rules 2000 within its territory which will cover infrastructure development for collection, storage, segregation, transportation, processing and disposal of municipal solid wastes.

ii. The Municipal Authority or operator of a facility should make an application in Form-\textsuperscript{I}\textsuperscript{78} for the grant of authorization for setting up waste processing and disposal facility which includes landfills from the State Board or the Committee in order to comply with the implementation programme laid down in schedule I.\textsuperscript{79}

iii. The Municipality shall comply with these Rules as per the implementation schedule laid down in schedule I.

iv. The Municipality is bound to furnish its annual report in form II\textsuperscript{80} to the following officials:

(a) To the Secretary-in-charge of the Department of Urban Development of the concerned State or Union Territory in case of metropolitan city.

\textsuperscript{77} Rule 3 (xvi).
\textsuperscript{78} Form-\textsuperscript{I} of \textit{the Municipal Solid Wastes (Management and Handling) Rules 2000} Provides: application for obtaining authorization from the Pollution Control Board.
\textsuperscript{79} Schedule I is implementation schedule it provides: setting up of waste processing and disposal facilities, monitoring the performance of waste processing and disposal facilities, improvement of existing landfill sites as per provisions of these rules and identification of landfill sites for future use and making sites ready for operation.
\textsuperscript{80} Form II Provides: Format of Annual Report to be submitted by the Municipal Authority.
(b) To the District Magistrate or the Deputy Commissioner in case of all other towns and cities with a copy of the State Board or Committee on or before the 30th day of June every year.

Rule 5 lays down the responsibility of the State Government and Union Territory Administrations for the enforcement of the provisions of these Rules. The Secretary, who is incharge of the Department of Urban Development of the concerned State or Union Territory shall have over all responsibility to implement these rules on the metropolitan cities. The District Magistrate or Deputy Commissioner would be responsible to implement these Rules in the district.

Responsibility of the Central Pollution Control Board and the State Board or the Committee is laid down under Rules 6, which is followings:-

i. The State Board or the Committee shall monitor the compliance of the standards regarding ground water, ambient air, leachate quality and the compost quality including incineration standards as specified under Schedule II, III and IV.81

ii. The State Board or the Committee, after the receipt of application from the municipality or operator of the facility for the grant of authorisation for the setting up of waste

81 Schedule II Provides: Management of Solid Wastes. It has laid down parameters for the collection segregation, storage, transportation, processing and disposal of municipal solid wastes.

Schedule III Provides: Specifications for landfill sites. It mentions how to select landfill sites, what facilities would be provided on that site, what steps should be taken to prevent pollution from the landfill site, it also lays down that before the establishment of landfill site, the State Board or the Committee should monitor ground water quality of the landsite and such monitoring shall be carried out to cover different seasons in the year that is, summer, monsoon and post monsoon peri.

Schedule IV Provides: Standards for composting, treated leachates and incineration.
processing and disposal facility including landfills shall examine the proposal after taking into consideration the views of other agencies like the State Urban Development Department, the Town and Country Planning Department, Air Port or Air Base Authority, the Ground Water Board or any such other agency prior to issuing the authorisation.

iii. The State Board or the Committee shall issue the authorization to the Municipal Authority or an operator of the facility within forty five days stipulating compliance criteria and standards as specified in schedule II, III and IV including such other conditions as may be necessary.

iv. The Central Pollution Control Board shall co-ordinate with the State Boards and the Committees with particular reference to implement and review the standards and guidelines and compilation of monitoring data.

Rule 7 lays down the procedure for the management of municipal solid waste. According to it the municipal solid waste generated in a city should be managed and handled in accordance with the compliance criteria and procedure mentioned in schedule-II of the Rules. It further lays down that the waste processing and disposal facilities to be set up by the municipal authority either on their own or through an operator of a facility and it is bound to meet the specifications and standards specified in schedule III and IV of the Rules 2000.

Whenever an accident occurs at any municipal solid waste collection site, segregation, storage, processing treatment and disposal facility or landfill site or during the transportation of such wastes, the municipal authority shall forthwith report with
accident to the secretary in charge of the Urban Development Department in metropolitan cities and the District Collector or Deputy Commissioner in all other cases. Because if necessary parameters to remove the municipal wastes is not taken immediately then it will pollute ground water of the area.

From the above discussion it is clear that these Rules are very important for the control of the municipal solid waste and it also helps in protecting our water resources from contamination, provided these rules are implemented properly, because in the State of Punjab about 80% water is polluted due to untreated municipal waste and sewer.


These Rules were made by the Central Government by exercising its powers under sections 6, 8 and 25 of the Environment (protection) Act, 1986. These Rules apply to all persons who generate, collect, receive, store, transport, treat, dispose off or handle bio-medical waste in any form.

Rule 3 gives the important definitions which are being discussed here:

Rule 3 (2) defines, “Animal House”, to mean a place where animals are reared and kept either for experiments or testing purposes. “Authorisation” means permission granted by the prescribed authority for the generation, collection, reception, storage, transportation, treatment, disposal or any other form of handling of bio-medical waste in accordance with these Rules and

82 Rule 9.
any guidelines issued by the Central Government.\textsuperscript{84} According to Rule 3 (5) any waste which generates during the diagnosis, treatment or immunisation of human beings or animals, research activities pertaining thereto, production or testing of biological and categories mentioned under schedule I\textsuperscript{85} is known as Bio-medical waste.

Any facility which provides treatment, disposal of biomedical waste or processes incidental to such treatment or disposal is carried out, which also includes common treatment facilities is known as Bio-medical waste treatment facility.\textsuperscript{86}

Rule 3 (8) defines “Occupier”. It means in relation to any institution which generates bio-medical waste. It includes waste of, hospitals, nursing home, clinic, dispensary, veterinary institution, animal house, pathological laboratory, blood bank, the person who will have control over these institutions, is known as occupier.

‘Operator’ of a bio-medical waste facility is defined under Rule 3 (9). It means a person who owns, controls or operates a facility collection, reception, storage, transportation, treatment, disposal or any other form to handle the bio-medical waste.

It is duty of every occupier of an institution generating biomedical waste to take appropriate steps to ensure that such waste is handled without any adverse effect to human health and the ecology.\textsuperscript{87} Bio medical wastes contain a number of germs, if it is left unattended, it will pose great threat to ground water, because if it remain lying on the ground without proper treatment, after

\textsuperscript{84} Rule 2 (3), \textit{Bio Medical Waste (Management and Handling) Rules, 1998.}
\textsuperscript{85} Schedule I Provides: Categories of Bio-Medical Waste.
\textsuperscript{86} Rule 3 (7).
\textsuperscript{87} Rule 4.
some time it will seep into ground and would contaminate the water.

It is duty of occupier to have requisite bio-medical waste treatment facilities like incinerator, autoclave, microwave system for the treatment of waste. If it is not affordable than common waste facility or any other waste treatment facility can also be used.88 During segregation, packaging, transpiration and storage, the occupier of bio-medical waste will have to take care of following conditions:

i. The bio-medical waste shall not be mixed with any other wastes.

ii. It shall be segregated into containers or bags at the point of generation the container will be yellow, red, blue-white translucent or black in accordance with schedule II89 before its storage, transportation, treatment and disposals, it is necessary to put labels on these containers in accordance with schedule III90 of the Rules, 1998.

iii. When container is transported from the premises where bio-medical waste is generated to any waste treatment facility outside the premises, it is necessary that the container shall apart from the label prescribed in schedule III also carry information prescribed in schedule IV.91

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88 Rule 5.
89 Schedule 2 Provides: Colour coding and type of container for disposal of bio-medical wastes.
90 Schedule III Provides: Label for bio-medical waste containers/ bags which mentions biohazard symbol, cytotoxic hazard symbol, biohazard, cytotoxic. It further provides that label shall be non-washable and prominently visible.
91 Schedule IV Provides: Label for transport of bio-medical waste containers bags.
iv. It is mandatory to transport bio-medical waste in such vehicle as may be authorised for the purpose by the competent authority.

v. Untreated bio-medical waste shall not be kept or stored beyond a period of 48 hours the occupier must take permission from the prescribed authority and should take precautions so that the waste does not leave adverse effect on the human health and atmosphere.

vi. The municipality of the area should continue to pick up and transport segregated non bio-medical solid waste generated in hospitals and nursing homes and duly treated bio-medical waste for the disposal at municipal dump site. Hence, the municipal waste should be dumped at municipal dump site after its proper treatment so that it may not pollute ground water, because if municipal solid waste would be disposed of without proper care in open grounds, it will pose threat to the ground water.

The Rule 7 provides that:

i. The prescribed authority for the enforcement of these Rules shall be State Pollution Control Boards in case of states and the Pollution Control Committees in respect of the Union Territories and all pending cases with a prescribed authority appointed earlier shall stand transferred to the concerned State Pollution Control Board or the Pollution Control Committees.

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92 Rule 6.
ii. The prescribed authority for the State or Union Territory shall be appointed within one month of the coming into force of these Rules.

iii. The prescribed authority shall on receipt of form I[^93] make such enquiry as it deems fit and if it is satisfied that the applicant possesses the necessary capacity to handle biomedical waste in accordance with these Rules, grant or renew an authorisation as the case may be.

iv. The authorisation should be granted for a period of three years, which will include an initial trial period of one year from the date of issue. Thereafter an application shall be made by the occupier for renewal. All such subsequent authorisation will be granted for the trial period to enable the occupier to demonstrate the capacity of the facility.

v. The authority can give reasonable opportunity of being heard to the applicant and if he refuses to give renewal it should be in writing.

vi. It is mandatory for the authority to dispose of the application within ninety days from the receipt of the application.

vii. The prescribed authority can also cancel the authorisation, if the occupier has failed to comply with the provisions of the Rules. But before canceling the authority reasonable opportunity must be given to the occupier.

Every occupier of an institution generating, collecting, receiving, storing, transporting, treating, disposing and handling bio-medical waste in any other manner except such occupier of

[^93]: Form I Provides: Application for authorisation / renewal of authorisation.
clinics, dispensaries, pathological laboratories, blood banks which provide treatment and service to less than one thousand patients per month shall make an application in form I to the prescribed authority for grant of authorisation.94

There shall be an advisory committee, which will be constituted by the Government of every State and Union Territory. This Committee will be consisted of experts in the field of medical and health, animal husbandry and veterinary sciences, environmental management, municipal administration. It also includes non-governmental organization.95 Hence, health Centres, veterinary hospitals, municipalities all pose threat to water sources. As all these departments generate solid waste. Therefore, it is necessary to take advice from such persons who are expert in these fields, so that they may give their suggestions regarding the judicious disposal of solid waste generated by these institutions and our water resources may be protected from pollution.

It is mandatory for every occupier to submit report to the prescribed authority by 31st January every year, in which information about the categories and quantities of bio-medical wastes which they handled during the preceding year will be prescribed. year. It is responsibility of the municipal corporations, municipal boards or urban local bodies to provide suitable common disposal/ incineration on sites to those institutions which generate bio medical waste under their jurisdiction. It further provides that areas which are outside the jurisdiction of any municipal body. It shall be the responsibility of the occupier generating bio-medical waste to arrange suitable sites for the bio-

94 Rule 8.
95 Rule 9.
medical waste treatment facility either individually or in association. Hence, it is submitted that the authority should select such sites for the disposal of bio medical wastes, which are at a reasonable distance from water resources i.e. oceans, rivers, lakes etc., because if these sites would be near water resources, then the waste would be mixed into water resources and would pollute the water of those resources.

From this discussion it is clear that if the Bio-Medical Waste (Management and Handling) Rules, 1998 are applied with proper care, then it can help to control water pollution of natural resources to a great extent.

E. Common Law Remedies under The Law of Torts

Modern environmental law has its roots in the Common Law principles of nuisance. The substantive law for the protection of the citizens right of pollution free environment is basically that of Common Law relating to nuisances. Actions brought under law of torts are among the oldest legal remedies available of abating pollution, though at that time the function of common law was to protect the interest of landowners and industrialists in land. The development to protect or rectify any damage to environment in reality is an indirect consequence of this primary objective to protect the interest of land.96

The word “Common Law” is derived from Latin words Lex Communis. It is a body of customary Law of England, which is based upon judicial decisions. The Common Law continues to be in force in India under article 372 of the Constitution of India (sic)

in so far it is not altered, modified or repealed by statutory law.\textsuperscript{97} The rules of tort law were introduced into India under British rule. Initially, disputes arising within the Presidency towns of Calcutta, Madras and Bombay were subjected to Common Law rules.\textsuperscript{98} Later Indian Courts outside the Presidency towns were required by Acts of British Parliament and Indian laws to reconcile disputes according to justice, equity, good conscience where no statute was applicable.\textsuperscript{99} Consequently, in suits for damages for torts, courts followed the English Common Law in so far as it was consonant with these principles. By the eighteenth century, Indian courts had evolved a blend of tort law adopted to Indian conditions.\textsuperscript{100}

In \textit{Vellore Citizen's Welfare Forum v. Union of India}, \textsuperscript{101} the Apex Court held that the constitutional and statutory provisions protect a person's right to fresh air, clean water and pollution free environment, but the source of the right is the inalienable Common Law right of clean environment. [The Court proceeded to quote a paragraph from Blackstone's Commentaries on the Laws of England (1876) in respect of nuisance]. The Court further held that our legal system having been founded on the British Common Law the right of a person to pollution free environment is part of the basic jurisprudence of the land.\textsuperscript{102}

The Apex Court reiterated it's view that environmental pollution amounts to civil wrong, because it affects general public,
therefore, it is tort committed against the whole community in *M.C. Mehta v. Kamal Nath.*103 In this case the court observed:

Pollution is a civil wrong. By its very nature, it is a tort committed against the community as a whole. A person, therefore, who is guilty of causing pollution has to pay damages (compensation) for restoration of the environment and ecology. He has also to pay damages to those who have suffered loss on account of the act of the offender. In addition to damages the person guilty of causing pollution can also be held liable to pay exemplary damages, so that it may act as a deterrent for others not to cause pollution in any manner.104

Tort is a civil wrong, it is different from breach of trust and contract. Generally, cases relating to pollution under law of torts fall under the following categories:

a. Nuisance  
b. Trespass  
c. Negligence  
d. Strict Liability  
e. Absolute Liability  

By the eighteenth century, Indian courts had evolved a blend of tort law adapted to Indian conditions.105 Principles of torts are operated under Article 372 of the Indian Constitution, which ensures the continuance of existing laws.

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104 *Id.* at 224.  
105 Supra note 100 at 53.
a. **Nuisance**

Modern environmental law has its roots in the common law's principle of nuisance. Truly, the substantive law for the protection of the citizen's environment is basically that of common law relating to nuisance. Nuisance means an unlawful interference with a person's use or enjoyment of land or some right over or in connection with it. It may be in the form of obnoxious smells, fumes, water or air pollution due to the effluent discharge or it may any kind of obstruction which interferes with the right of person to which he is otherwise entitled. Under the Common Law Principle, the nuisance is concerned with the unlawful interference with the person's right over wholesomeness of land or of some right over or in connection with it.

In *Durga Prasad v. State*[^107], the Court held that nuisance ordinarily means anything, which annoys, hurts or offends. In this decision, Court did not directly dealt with water pollution, but indirectly it applied to water pollution also. Because when our oceans, rivers, lakes etc. are contaminated, it annoys people because it gives foul smell, bad taste and it also negatively effect their health.

Therefore, the acts of interfering with the comfort, health or safety are covered under nuisance. The intervention may be due to water, smells, germs etc. It is of two types public nuisance and private nuisance. Public nuisance, means unreasonable interference with a right common to general public though, it is a crime, but it is also covered under tort. The kind of activities that


[^107]: AIR 1962 Raj. 92.
amount to ecologically damaging public nuisance include, rubbish dumps, cess pit or other collection of filth that affects the health of people. *J.C. Galstaun v. Dunia Lal Seal*\(^{108}\) the brief facts of this case were that the plaintiff had a garden house in the Manicktollah Municipality in the suburbs of Calcutta and the defendant had a shellac factory situated 200 or 300 yards from the plaintiff's house. The plaintiff alleged that the defendant used to discharge the refuse of his factory into a municipal drain, that drain passed along the plaintiff garden. The defendant alleged that the liquid had foul smell and noxious to the health of neighbourhood particularly to him, he further alleged that it had damaged him in health, comfort and the market value of garden property. Therefore, the plaintiff filed civil suit against the defendant for the perpetual injunction to restrain the appellant from discharging the liquid refuse into the municipal drain and to pay Rs. five thousand as damages. The defendant admitted that he discharged refuse of his factory in the municipal drain, but claimed that it was neither noxious nor affected the plaintiff's property. He further claimed that he is running this factory since 1896 and that it did not constitute nuisance.

The subordinate Judge decreed the suit and granted the plaintiff perpetual injunction against the defendant and also awarded the plaintiff damages of rupees one thousand. The defendant filed appeal against this order. The Court held that the appellant's/defendant's action consists of two parts first he has discharged the refuse-liquid into the drain, and secondly, he has done so knowingly that it cannot be efficiently carried away, but must stagnate, decompose and give off an offensive and

\(^{108}\) (1905) 9 CWN 612.
intolerable stench. The Court held the first part of his action constitutes a legal nuisance which, the respondent/plaintiff is entitled to restrain. Carrying on an offensive trade so as to interfere with another's health and comfort or his corporation of property has been constantly held in England to be a legal nuisance against which courts give relief. The second part of the appellant's action also constitutes a legal nuisance, because he is responsible for the consequences that arose necessarily out of his action. The Court upheld the decision of the subordinate judge and restrained the appellant/defendant from discharging the refuse into the municipal drain.\textsuperscript{109}

Perhaps this was the earliest reported pollution control case in India. This judgement has historical significance and is still relevant. From this case it is proved that the common law regulatory system was relevant even pre-industrialized society to check pollution.

Private Nuisance means unlawful interference with a person's use or enjoyment of land or some other right over it. In \textit{Pride of Derby and Derbyshere Angling Association v. British Celanese Ltd.},\textsuperscript{110} the Court held that discharging of untreated effluents of sewer, by Derby Corporation, industrial effluents by British Celanese Ltd. and discharge of hot water by British Electricity Authority polluted the water of river and was unreasonably interfered with the flow of water of river therefore, it is a nuisance.

\textsuperscript{109} \textit{Ibid.}
\textsuperscript{110} Ch. (1953) 1 at 149.
In *Haigh v. Deudraeth Rural District Council*\(^1\), the brief facts of this case were that the plaintiff owned certain fields which were in part interested and in part bounded by a stream into which crude sewage matter had been discharged in inconsiderable amount. The Court held that it amounted to nuisance.

b. **Trespass**

Trespass is an intentional or negligent direct interference by the defendant in the plaintiff’s interest in the property which in his exclusive possession. It may be either direct or through tangible object. Depositing waste on someone else’s land will be a trespass, even if the waste can be removed without contaminating the soil or causing injury or disease.\(^2\) Hence, when waste is thrown on the land of other, it seeps into ground and contaminates quality of ground water. Trespass is generally considered as nuisance, but it is rarely invoked in ecological matters. The Court applied this term in *Southport Corporation v. Esso Petroleum*.\(^3\) The brief facts of this case were that an oil tanker of the defendants stranded in an estuary jettisoned oil to lighten the ship and to try it to refloat. The oil drifted ashore and polluted the plaintiff’s foreshore. Therefore, the plaintiff claimed the costs of cleaning up the beach, however the plaintiff did not plead the trespass.

The Court held that the deliberate placement of waste in such circumstances as will carry it to the land of plaintiff by natural forces may amount to pollution, but since the plaintiff did

\(^1\) (1945) 2 K.B, 661.
\(^3\) (1954) 2 Q.B 240.
not plead trespass and pollution is also not evitable therefore, the plaintiff's plea is not maintainable. It is submitted that this case was not properly decided, because in pollution cases it is very difficult to directly prove that due to trespass of some waste on the land of plaintiff, pollution was caused to his water resources. In the above case there was no inevitability about the fact that oil was deposited on the foreshore of the plaintiff and polluted it.

*Jones v. Llanrust Urban District Council*\(^{114}\), in this case the plaintiff, who was owner of a river bed filed suit against the defendants, that sewage waste was being discharged by the defendants into river, which caused pollution to river water. However, the defendant pleaded, the discharge of sewage waste into river was not intentional, but accidental, therefore, they were not liable.

The Court held that there was trespass when sewage was discharged into plaintiff's river, though, it was accidental. It polluted banks of a river down stream, because solid waste was deposited in the river bed. The Court further held that the interference was direct because it effected natural flow of the river. The Court passed injunctions against the defendants and compensation was granted to the plaintiff.

*Martin v. Reynolds Metal Co.*,\(^{115}\) in this case also the Court expressed the view that mere setting of fluoride deposits upon the plaintiff's land was sufficient to constitute actionable trespass.

Trespass requires direct physical interference by one against the person or property of another, but contamination of nature

\(^{114}\) (1911) 1 Ch 393.
\(^{115}\) (1959) 22 Ore. 86.
generally tends to be indirect in its nature, therefore, for aggrieved person it is difficult to bring legal action for trespass.

c. Negligence

Negligence means breach of a legal duty which is to take care otherwise which causes damages, undesired by the defendant to the plaintiff. It is based on principle of fault. It is another form of specific tort on which a common law action to control ecological degradation can be invoked before the Court. In pollution matters the tort of negligence can be invoked only when other torts of nuisance or trespass are not available. In order to succeed in action for negligence, it is necessary to establish that there was direct link between the negligence and harm caused. Despite the frequent use of negligence in everyday legal life, it is perhaps surprising to find just how little it has been used to try to control environmental pollution. This appears to be changing slightly, perhaps in part because of the actions of a number of campaigning lawyers prepared to take on toxic tort cases.116

When any industry or factory causes pollution to any water source and fails to disclose to people who use water of those sources regarding the contamination of water and due to use of polluted water, if people suffer, then polluter will have to bear all the expenses for the treatment of effected party. The similar view was expressed by Court in *Barnes v. Irwell Valley Water Board*.117 In this case the Court held that there was a common law duty of care on a water company to warn consumers of potentially unwholesome water and if it failed to do so and it effected negatively on their health. The Court held since the defendants

117 (1930) 1 KB 21.
failed to warn the consumers, the Court further held that the defendants were negligent in their duty, therefore, they would pay damages to the plaintiffs.

The principle of polluter's liability was also invoked by Court in Scott-Whitehead v. National Coal Board.\textsuperscript{118} In this case the defendants discharged a chlorine solution into a river. Due to drought in the river there was insufficient water to dilute the strength of the pollutant. The Plaintiffs who were farmers were abstracting water from the down stream for cultivating their land, due to contaminated water, it harmed crops of the petitioner.

The Court held the second defendant, the regional water authority liable, because they failed to warn the farmers about the potential danger of water which they were abstracting from down stream for cultivation purposes. The Court further held that it would be possible to bring an action against the environmental regulation in negligence, if it could be shown that a failure to warn materially contributed to damage.

The Court applied the common law action of negligence in Mukesh Textiles Mills (P) v. H.R. Subramaniya Sastry.\textsuperscript{119} The brief facts of this case were that the respondent suffered loss to their sugarcane and paddy crops due to discharge of polluted water by the appellant’s sugar factory. The molasses were stored in a earthen tank. The tank became dilapidated as it has been dug into by rodents and due to embarkment collapsed and large quantity of molasses over flowed and emptied into water channel that passed into plaintiff's land. The Court held that when large quantity of molasses in tanks were stored, there was a duty to

\textsuperscript{118} (1987) P & CR 263.
\textsuperscript{119} AIR 1987 Kant. 87.
take reasonable care on the appellant, if it was not performed carefully, it amounted to negligence, therefore, the appellant is liable for the loss occurred to the respondent.

The Court further pointed out that if the duty to take care was not properly performed then it amounted to negligence on the part of the appellant. The appellant could reasonably foresee the damage, which was likely to be caused if there was a breach in the tank. The Court held that the liability also arises whenever the land is put to the non-natural use. Therefore, the Court held that the appellant was liable for the consequences of the escape of the fluid from its tank.\textsuperscript{120}

d. Strict Liability

The principle of strict liability is laid down in \textit{Raylands v. Fletcher}\textsuperscript{121} case. The brief facts of this case were that the defendant constructed a reservoir on his land, but the contractors failed to detect and block off mine shafts so that, when the reservoir filled up, water entered the shafts and flooded the claimant’s mine.

The Court held that a person who for his own purposes bring on his lands and keeps there anything likely to do mischief, if it escapes must keep in his peril, if he does not do so, he would be answerable for all the damages, which is the natural cause of it’s escape. However some exceptions were introduced in this principle, which are following:

i. act of God,

ii. the plaintiff’s consent,

\textsuperscript{120} Ibid.
\textsuperscript{121} (1868) LR 3 HL 330.
iii. the plaintiff's own fault,
iv. the act of third party,
v. the natural use of the land by the defendant,
vi. statutory authority.

Therefore, even if the defendant is not negligent or even if he
does not intentionally cause the injury but plaintiff is injured due
to store of some unnatural articles at the premises of the
defendant, he could still be made liable under the rule of strict
liability.

The rule of strict liability is very useful in cases of
environmental pollution, particularly, in those cases where harm
is caused by the leakage of hazardous substances. In order to
have the applicability of this rule, two conditions must be
satisfied, firstly there must be non-natural use of the land,
secondly, there must be escape from the land of something which
is likely to cause some harm or mischief if it escapes.

e. Absolute Liability

With the expansion of chemical-based industries in India,
increasing number of enterprises store and use hazardous
substances. These activities are not banned because they have
great social utility (e.g. the manufacture of fertilisers and
pesticides). Traditionally, the doctrine of strict liability was
considered adequate to regulate such hazardous enterprises. The
doctrine allows for the growth of hazardous industries, while
ensuring that such enterprises will bear the burden of damage
they cause when a hazardous substance escapes. In India shortly
after the Bhopal gas leak tragedy of 1984, the traditional doctrine
was replaced by the rule of 'absolute liability', a standard stricter
than strict liability. Absolute liability was first articulated by the Supreme Court and has since been adopted by Parliament.  

M.C. Mehta v. Union of India, the brief facts of this case were that there was leakage of oleum gas on 4th and 6th December 1985 from one of the units of Shriram Foods and Fertilisers Industries in city of Delhi, belonging to Delhi Cloth Mills Ltd. Against this leakage public interest litigation was filed, it was alleged in the writ petition, that one practising advocate in the Tis Hizari Court had died. The Court while deciding this petition had in mind that within a period of one year this was second case of large scale leakage of deadly gas in India, as a year earlier due to leakage of methyl isocynate (MIC) gas from the Union Carbide plant in Bhopal more than 2,500 persons had died and lacs of others were subjected to serious diseases of various kinds.

The Supreme Court took a bold decision and held that if the rule of strict liability laid down in Rylands v. Fletcher, applied to such like situations then those who had established hazardous and inherently dangerous industries in and around thickly populated areas could escape the liability for the havoc caused thereby pleading some exceptions to the rule in Raylands v. Fletcher. For instance, when the escape of the substance causing damage is due to the act of a stranger, say due to sabotage, there is no liability under the rule.

The rule of strict liability was evolved in the 19th century when the development of science and technology had not taken place. It cannot afford any guidance in evolving any

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122 Supra note 40 at 105-106.
123 AIR 1987 SC 1086.
124 (1868) LR 3 HL 330
125 Ibid.
standard of liability consistent with constitutional norms and the needs of the present day economy and social structure. Law has to grow in order to satisfy the needs of the fast changing society and keep abreast with the economic development taking place in the country. As new situations arise the law has to be evolved in order to meet the challenges of the new situations, because law cannot remain static.\footnote{M. C. Mehta v. Union of India.\textit{AIR} 1987 SC 1086.}

The Supreme Court thus evolved a new rule creating absolute liability for the harm caused by dangerous substances as was hitherto not there. The Chief Justice Bhagwati stated:

We are of the view that the enterprise which is engaged in a hazardous or inherently dangerous industry which poses a potential threat to the health and safety of the persons working in the factory and residing in the surrounding areas owes an absolute and non-delegable duty to the community to ensure that no harm results to anyone on account of hazardous or inherently dangerous activity which it has undertaken. The enterprise must be held to be under an obligation to provide that the hazardous or inherently dangerous activity in which it is engaged must be conducted with the highest standards of safety and if any harm results on account of such activity, the enterprise must be absolutely liable to compensate for such harm and it should be no answer to the enterprise to say that the harm occurred without any negligence on its part.\footnote{Id. at 1099.}
The Apex Court summed up the rule of absolute liability with the assertion that this rule will not be subject to any of the exceptions recognized and the rule in *Ryland v. Fletcher*\(^{128}\):

"We would therefore hold that where an enterprise is engaged in a hazardous or inherent dangerous activity and harm results to anyone on account of an accident in the operation of such hazardous or inherently dangerous activity resulting for example, in the escape of toxic gas the enterprise is strictly and absolutely liable to compensate all those who affected by the accident and such liability is not subject to any of the exceptions which operate vis-a-vis the tortious principle of strict liability under the rule in *Rylands v. Fletcher*\(^{129}\).

From the above discussion it is clear that the law has to grow to satisfy the requirements of the fast changing society and keep pace with the economic developments which are taking place in the country. The law has to be evolved with new situations to meet the new challenges. Therefore, in India the law of strict liability is shifted to the principle of the absolute liability.

The Parliament of India also recognized the rule of absolute liability by enacting "Public Liability Insurance Act, 1991". By enacting this legislature the Parliament has recognized the "no fault" liability in small measures. After this Act, the victims of a hazardous industrial accident are not entitled to get fixed compensation, without proof of negligence.

As we all are aware, whenever any accident takes place in any hazardous industry, it not only leaves negative effects on

\(^{128}\) (1868) LR 3 HL 330.

\(^{129}\) Ibid.
human beings, but also degrades our natural resources, for example, rivers, oceans etc. Hence, from the hazardous industrial accidents both human begins and nature is affected. To stop these accidents, it is necessary that the owners of these industries must carry their business carefully, otherwise, in case of any accident they should be penalised heavily, so that it can set examples for others not to act negligently. Therefore, the “National Environment Tribunal Act” was passed in 1995, by passing this Act, the Parliament has extended the application of absolute liability to all cases where death or injury occurs to any person or damage to any property or environment results from an accident involving any hazardous substance.

The Apex Court reiterated the principle of absolute liability in Indian Council For Enviro-Legal Action v. Union of India.130 In this case the Court held:

We are of opinion that any principle evolved in this behalf should be simple, practical and suited to the conditions obtaining in this country. We are convinced that the law stated by this Court in Oleum Gas Leak case (M.C. Mehta v. Union of India.)131 is by far the more appropriate one apart from the fact that it is binding upon us. (We have disagreed with the view that the law stated in the said decision in obiter). According to this rule, once the activity carried on is hazardous or inherently dangerous, they person carrying on such activity is liable to make good the loss caused to any other person by his activity irrespective of the fact whether he took reasonable care while carrying on his activity. The

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130 (1996) 3 SCC 212.
131 AIR 1986 SC 1086.
rule is premised upon the very nature of the activity carried on.\textsuperscript{132}

The Court further held:

Such an activity can be tolerated only on condition that the enterprise engaged in such hazardous or inherently dangerous activity indemnifies all those who suffer on account of carrying on of such hazardous or inherently dangerous activity regardless of whether it is carried on carefully or not.\textsuperscript{133}

Hence, from the above discussion it is clear that under the Common Law Remedies there is a potential for evolving new principles suiting the present day or emerging new socio-economic conditions. Whenever there is a tort action, the plaintiff can sue the defendant either for the damages or for the injunctions. A person who suffers loss due to pollution activity of another and the injured person wants to obtain recompense for his stoppage of the activity which causes pollution then such person would have following remedies:

f. Damages

g. Injunction

\textbf{f. Damages}

Damages is the most important relief which the plaintiff can seek after the commission of tort against him. It is pecuniary compensation. Damages are of two types, substantial and exemplary. Substantial damages are those, which are provided to restore to the plaintiff to the position he would have been in, if the

\textsuperscript{132} Id. at 241.
\textsuperscript{133} Ibid.

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tort had not been committed. On the other hand, the exemplary
damages are intended to punish the defendant with a view to
prevent similar behaviour in future. Such damages are not
compensatory in nature, but are by way of punishment to the
defendant.

As regards water pollution injunctive and damages remedies
(sic) have been granted to prevent the pollution or compensate the
plaintiff for the injury suffered by him on account of pollution of
surface, underground and tidal waters caused by the
defendant.\textsuperscript{134} The damages can be calculated in two ways; on the
cost of clean-up operations necessary to restore the property to
it’s previous state, or the difference between the value of the
property as it was after the pollution has affected it, and before.\textsuperscript{135}

In \textit{Marquis of Granby v. bakewell UDC}.\textsuperscript{136}, the defendant was
operating a gas works which discharged poisonous effluents into
a river over which the plaintiff had fishing rights. Due to
discharge of poisonous effluents into river, water of the river was
polluted, therefore, a number of fish was killed.

The Court held, that the plaintiff is entitled to get
compensation equivalent to the costs for the reckoning of the river
and also for the loss of a large amount of the food supply for other
stocks. In this case the Court also took into account the effects of
pollution on higher quality areas of the river and held that the
damages would be higher, where the environmental pollution was
greater.

\textsuperscript{134} Kailash Thakur, \textit{Environmental Protection Law and Policy in India}, 187 (1999).
\textsuperscript{136} (1923) 87 JP 105.
In *M.C Mehta v. Union of India*, the Apex Court held:

“Where an enterprise is engaged in a hazardous or inherently dangerous activity and harm results to anyone on account of an accident in the operation of such hazardous or inherently dangerous activity resulting for example, in the escape of toxic gas the enterprise is strictly and absolutely liable to compensate all those who are affected by the accident.”

Damages are the main remedy in a tort action. But such a relief contains some loopholes. Because such relief does not impose any deterrent punishment on the polluter. Therefore, this remedy is not effective and sufficient for the abatement of pollution. No doubt damages are the main remedy in a tort action, but in practice injunctions are more effective in fight against environmental pollution.

**g. Injunction**

Injunction means an order of Court, which refrains the commission, continuation and repetition of a wrongful act of the defendant. It is discretionary power of the Court. Injunctions are of two types temporary and perpetual injunction. Temporary injunction is granted to maintain the state of things at a given date until trial on the merits. On the other hand the perpetual injunction is granted to restrain the defendant from doing the act complained of and protect the plaintiff forever. Injunctions are discretionary remedy. If the offender, who is degrading the quality of water sources is government itself then the Court has power even to pass injunction against the Government as held by the

137 AIR 1987 SC 1086.  
138 Id. at 1099.
In this case the Court granted injunction, against the defendants and the local authorities against polluting the river on account of discharge of insufficiently treated effluents of sewers into the river.

In *J.C. Galstaun v. Dunia Lal Seal*, 140 the Court granted perpetual injunctions against the defendant from discharging waste of his factory into municipal drain which was flowing near the garden house of the plaintiff as it was emitting foul smell and also posed health hazard to the appellant.

**F. Statutory Remedies**

There are various statutory provisions in India which play a very important role in preventing and controlling all kinds of pollution. In addition to the specific legislations relating to environment protection, the statutory provisions regarding the environmental pollution are also discussed under the following heads:

(a) **Statutory Remedies under Indian Penal Code**

In India, perhaps the adoption of Indian Penal Code in the year 1860 was the first step in the direction to control the menace of environmental pollution. The provisions of the Code undoubtedly represent the broad sweep with which the penal legislation has attempted to encompass wide area of common law of torts relating to acts of negligence and nuisance and render other criminal offences leaving, however the Common Law remedies untouched.141

139 (1953) Ch. 149.
140 (1905) 9 CWN 612.
141 Supra note 28 at 231.
containing provisions 268 to 294-A, which deal with the offences relating to the public health and safety but here only those are being analyzed, which contains environment relating provisions and are important for the purpose of present study.

Section 268 of the Act deals with public nuisance. According to it nuisance means anything which causes inconvenience, annoyance or any type of damage by polluting natural resources, which include oceans, rivers, lakes etc. it is of two kinds:

i. Public or Common Nuisance

ii. Private Nuisance

Public nuisance is a common annoyance, which affects the public and is a substantial annoyance to all the subjects on the other hand the private nuisance is anything which causes material discomfort and annoyance to a man in the use of ordinary purpose of his house or property, it affects some particular person. From this provision it is clear that if any person contaminates natural resources i.e. water, land etc. by any means, that would also amount to nuisance.

Section 269 of the Act, provides that if any person does anything without proper care, which spreads infectious disease in the society, he would be punished with imprisonment for six months or fine or with both. Therefore, if any person, industry, municipality etc. discharges it’s waste into any water source i.e. river, sea, lake etc. then it would contaminate water of that source, which would spread various infectious diseases in human beings for example, cholera, plague, skin problems etc. therefore, offender who is responsible for the pollution of water can be tried under this section of the Act.
Section 270 of the Act also deals with the similar problem which we have discussed in the previous section the only difference is that under this section the act is done with mala fide intention. If a person voluntarily fouls the water of any public spring or reservoir, the water of which belongs to general public hence, any person who contaminates it, commits a public nuisance. To invoke this provision it is necessary to prove that due to the act or omission of any person the water is rendered less fit for the purpose for which it is ordinarily used.

Section 278 of the Act entails penal consequences for making nature injurious to health. This section provides that whoever knowingly pollute the atmosphere which affects negatively on the health of persons, who are residing near the place which was contaminated, working place or on public highway, which is used by public at large would be punished with fine.

(b) Statutory Remedies under Criminal Procedure Code

Indian Penal Code defines how a person contaminates natural sources, due to his act, omission, negligence and nuisance etc. and procedure to handle those offenders who are responsible for the degradation of ecology is provided under the Code of Criminal Procedure 1973 (hereinafter, Act).

Section 133 of the Act empowers a District Magistrate, Sub-divisional Magistrate or an executive Magistrate to take action where there has been an invasion of public right, which may amount to public nuisance. The nuisance contemplated under this section may be of following kinds:

142 Section 277 Indian Penal Code 1860.
(a) Unlawful obstruction or nuisance, in any public way, river or channel lawfully used by the public or to a public place.

(b) Any trade or keeping of goods which is injurious to public health or comfort of the community.

(c) The construction of any building or the disposal of any substance as likely to occasion conflagration or explosion. The Magistrate can issue injunctions against such person, who is responsible for such public nuisance.

(d) That any tank, well or excavation adjacent to any such way or public place should be fenced in such manner as to prevent danger arising to the public.

On the complaint of aggrieved person, the Magistrate can pass following order:

(i) to remove such obstruction or nuisance;

(ii) to desist from carrying on or to revive or regulate in such manner as may be directed such trade or occupation or to remove such goods or merchandise or to regulate the keeping thereof as may be directed;

(iii) to prevent the construction of such building or alter the disposal of such substance as the Magistrate can invoke his power under this section even without recording any evidence.

Section 133 of the Act is also applicable against statutory bodies i.e. municipalities, corporations etc. if they do something which causes public nuisance and ecological degradation. This section was broadly interpreted by the Apex Court in *Ratlam*
The brief facts of this case were that the residents of the appellant municipality used to suffer due to smell caused by open drains. There was an alcohol plant, effluents of which usually flown into streets, there was no proper arrangement of sanitation and slum dwellers of nearby area used streets for excretion. The residents of the locality filed complaint before the Magistrate under section 133 of the Act against the Municipality. The Magistrate directed the appellant to draft a plan within six months for the removal of this nuisance. Instead of complying with the order of the Magistrate, it went in appeal before the sessions Court. The Sessions Court quashed the order of the Magistrate. Against the order of the Sessions Court, the residents went in appeal before the High Court, the High Court set aside order of the Sessions Court and restore order of the Magistrate. The Municipality went in appeal before the Apex Court, and it pleaded financial inability to abate the nuisance. The Apex Court held:

The guns of section 133 go into action wherever there is public nuisance. The power of the Magistrate under the Code is public duty to the members of the public who are victims of the nuisances and so he shall exercise it when the jurisdictional facts are present as here. Discretion becomes a duty when the beneficiary brings home the circumstances for its benign exercise.144

The Supreme Court held that the Code of Criminal Procedure operates against the statutory bodies and other regardless of the cash in their coffers and directed the appellant

143 AIR 1980 SC 1622.
144 Ibid.
to provide drainage systems within one year, stop effluents from alcohol plant into the streets and improve other sanitary conditions.\textsuperscript{145}

Justice Krishna Iyer pointed out:

Had the Municipal council and its executive officers spent half of this litigative zeal on cleaning up the streets and constructing the drains by rousing the people's shramdan resources and laying out city's limited financial resources, the people's need might have been largely met long ago.\textsuperscript{146}

The Court further held:

Although both Indian Penal Code and Criminal Procedure Code, are of ancient vintage the new social justice orientation imparted to them by the Constitution of India makes them a remedial weapon of versatile use for the protection of environment.\textsuperscript{147}

If some factory discharges very few effluents into water bodies, which do not impair the quality of water, and the concerned factory has taken permission from the concerned State Pollution Control Board, then no action would be taken against such factory by the Court. The similar views were expressed by the Court in \emph{Tata Tea Ltd. v. State of Kerala}.\textsuperscript{148} The brief facts of this case were that a complaint was filed against the appellant who were the owners of the tea factory and were discharging effluents of the factory in nearby river. The Magistrate ordered them to restrain from doing that because it was polluting water of

\begin{flushright}
\textsuperscript{145} Ibid. \\
\textsuperscript{146} Ibid. \\
\textsuperscript{147} \textit{Id.} at 1628. \\
\textsuperscript{148} KLT 1984 at 645.
\end{flushright}
the river. The appellant took the plea that they have got sanction under the Water (Prevention and Control of Pollution) Act, 1974 from the State Pollution Control Board to discharge the effluents into the river.

The High Court held that there was no reason to assume that while executive Magistrate could move expeditiously the State Board could not do so. On the other hand, the State Board had considerable expertise and machinery, therefore, in case of water pollution it can function purposefully and fruitfully.\(^{149}\) Hence, the provision of the Water Act impliedly repealed the provisions of section 133 of the Criminal Procedure Code in so far as they related to prevention and control of water pollution. Therefore, the executive Magistrate had no jurisdiction to deal with in under section 133 of Criminal Procedure Code.

In *Nagarujuna Paper Mills Ltd. v. Sub Divisional Magistrate and Divisional Officer, Sangareddy*,\(^{150}\) a Magistrate put conditional order on the Appellants for shutting down their paper mills because it failed to take adequate pollution control measures. The Magistrate decided this complaint on the bases of a report submitted by the superintendent engineer of the pollution control board, which stated that water pollution from the paper mill was harming people and cattle. Against the order of the Magistrate the appellant moved to the Andhra Pradesh High Court. The appellant took the plea that the Magistrate did not have any power to regulate water pollution because in case of water pollution only the State Pollution Control Board has exclusive power to regulate it.

\(^{149}\) Ibid.

\(^{150}\) 1987 Cr.L.J 2071.
The High Court upheld that Magistrate’s power to regulate pollution by restraining a public nuisance. The Court held that a less stringent rule pertaining under section 133 with an relief is available as long as it did not interfere with an order of State Pollution Control Board issued under the Water Act, 1974. The Court held since the order of the Magistrate was based on a report submitted by the superintend Engineer of the Board, therefore, there was no contravention of the provisions of the Water Act.

State of M.P v. Kedia Leather and Liquor Ltd,\textsuperscript{151} in this case the Magistrate while exercising the jurisdiction to abate public nuisance under section 133 of the Criminal Procedure Code, ordered to close down the liquor factories that were before the High Court by the liquor factory owners.

The High Court held that the Magistrate had no jurisdiction to deal with water pollution under section 133 of the Criminal Procedure Code as this section was to be considered as impliedly repealed by the enactment of Water (Prevention and Control of Pollution) Act, 1974 so far as allegations of public nuisance or water pollution caused by industries or persons covered by the Water Act. The State filed special leave petition in the Supreme Court against the order of the High Court.

The Apex Court did not comment on the legal position, whether or not there was implied repeal of section 133 of the Criminal Procedure Code after the enactment of the Water Act. However, the Supreme Court stayed the order of the High Court and asked for a joint inspection from the Central and State Pollution Control Boards. The reports of the Boards disclosed that

\textsuperscript{151} (2001) 9 SCC 605.
three liquor factories were closed but first respondent was still continuing and causing pollution despite the order of the Sub-Directional Magistrate.

The Court held:

The State Board had failed in its duty in stopping the factory from causing pollution and no purpose is served in maintaining such a statutory Board. The Court finally issued directions to the Chief Secretary to identify and take appropriate action against the Board officers who were responsible for the failure.\textsuperscript{152}

(c) Statutory Remedies under the Civil Procedure Code

The Civil Procedure Code also deals with the provisions for the abatement of ecological degradation. In case of public nuisance or other wrongful act affecting or apprehending to affect, the public, then a suit for seeking injunction or any other appropriate relief may be filed:

a) by the advocate general

b) by two or more persons, with the leave of the Court, though no special damage has been caused to such persons by reason of such public nuisance or other wrongful act.\textsuperscript{153}

(d) Statutory Provisions under the Fisheries Act, 1897

The Fisheries Act, has also included provisions for the protection of water from contamination. Under this Act, if any person pollutes water by any act then he would be punished severally. When any person uses any dynamite or other explosive substance in any water with intent to catch or destroy any of the fish that may be therein he shall be punished with imprisonment.

\textsuperscript{152} Ibid.
\textsuperscript{153} Section 91 Civil Procedure Code.
for two months or with fine upto rupees two thousand. Under this provisions water includes the sea within a distance of one marine league of the sea coast. From this provision it is clear, that use of explosive substances in water bodies pollute the water, therefore, to maintain the purity of water use of explosives is banned even for the destruction of fish.

If any person puts any poison, lime or noxious mateiral into any water with intent thereby to catch or destroy any fish, he would be punished with imprisonment for two months or with fine which may extend to two hundred rupees. Hence, an attempt was made in this legislation for the protection and maintenance of purity of water in the nineteenth century, which is relevant even in twenty first century.

The environment in the modern world is polluted through modern agricultural activities also. The extensive and excessive use of agro-chemicals such as fertilizers and pesticides, herbicides, soil conditioners, fumigants etc. contribute to soil pollution problem effecting directly or indirectly human health and creates ecological imbalance due to accumulation of the injurious chemicals constituent in the soil.

The excessive use of these pollutants not only reduces the fertility of the soil by decreasing plant nutrients, phosphates, nitrates and potassium constituents but also cause water pollution resulting in excessive aquatic plant-growth, fish loss. Chemical warfare on pests has too, back fired with beneficial pests being wiped out and resurgence of the insect and pest

154 Section 4 Fisheries Act, 1897.
155 Section 5.
population consequent to their developing resistance to pesticides already in use. Due to ill effect of pesticides on human beings, animals, natural resources like water, the Parliament decided to pass a legislation on the use, manufacture, sale etc. of the pesticides. Therefore in the year 1968, the Insecticide Act was enacted.

(e) **Statutory Provisions under the Insecticide Act, 1968**

As use of insecticides in agriculture cause contamination of not only ground water, but also surface water. Some important provisions of this Act, which are relevant for the present study are being discussed here. Under the Act, there is provision for the establishment of Insecticides Board, which will look into matters relating to the use of pesticides.

The Central Insecticides Board may advice regarding the impact of pesticides of some matters, which include the risk to human beings or animals involved in the use of insecticides and the safety measures necessary to prevent such risk. It also advises regarding the storage, transportation and distribution of the insecticides which do not pose threat to the safety of human beings and animals.158

The Board would be consists of the Director-General of Health Services, who would be its Chairman, the Director of Agriculture, the Animal Husbandry Commissioner, the Joint Commissioner Fisheries, the Deputy Inspector General of Forest (Wild Life), the Industrial Adviser (Chemicals), one person representing the Ministry of Petroleum and Chemicals, one ecologist nominated by the Central Government. The main

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157 Ibid.
158 Section 4 *The Insecticide Act, 1968*. 220
functions of the Board are to control and administer the provisions of the Act to secure human health and to protect plants and animals for the stability and purity of environmental ecology.159

Section 26 of the Act, prohibits the use of such pesticides and insecticides which causes poison. It provides that the State Government may issue notification, which requires some persons to report all occurrence of poisoning which is due to use or handling of any insecticide, if it comes within his or their cognizance to such officer.

If the Central Government or State Government get information under section 26 of the Act, regarding poisoning due to the use of pesticides, which poses risk to human health or animals and requires immediate action to control it under that eventuality the Government has power to ban the sale, distribution or use of the such insecticide.

The above discussed scattered provisions in different legislations relating to the abatement of water pollution have remained ineffective in combating the burning problem of water pollution, because these provisions require adherence to strict rules of evidence. Besides those seeking to launch a private prosecution are discouraged by the sampling requirements under the pollution control laws which confer the power to draw the effluent samples exclusively on government officials. Pollution Control Board officials from Tamil Nadu, Karnataka and Maharashtra confirm until January, 1999 that (sic) there were no successful private prosecution in their states.160 On the other

159 Ibid.
160 Supra note 40 at 133.
hand the provisions under the Environment Acts are speedy and less technical. The writ remedy is easy and judges of Higher Judiciary adjudicate complex environmental issues without undergoing time consuming evidence, and evidence is recorded only by filing affidavit. Therefore, the public interest litigation has led to neglect the remedies under Common Law and other statutory provisions under the Indian Penal Code and the Criminal Procedure Code, the Civil Procedure Code etc.