

Part-IV

(Indian Response)

**Chapter-8-Constitutional Provisions, Policies and
Legislations**

8.1-Constitutional Provisions

8.1.1.1-Power of Parliament to give effect to International Agreements

It is to be examined that which provisions of the constitution deals with the conservation of natural resources. India can make law by following the international development with the help of Art. 253. In India the implementation of international treaties on environment is of recent origin.¹ The term 'treaty' has been given a wide interpretation in general international law under. The Vienna convention of 1969, a "treaty means an international agreement concluded between states in written form governed by international law²." But, international law has given due recognitions to oral agreement as for example in the *Legal Status of Eastern Green land case*³ whereby the declaration was treated as legally binding obligation of Norway disabling it from contesting Danish sovereignty over Greenland. France's statements on nuclear testing were treated on binding on it⁴. But this federal scheme also be gives general treaty power to Parliament an overriding power.

"to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any country or countries or any decision made at any international conferences, association or there body⁵.

... Of opinion that parliament should have the power to make any law for any state of part thereof for implementing any treaty or agreement with any portion country, irrespective of whether the Government or Rule of such state has agreed⁶.

After a strong exchange the final version dealing with the definition of the executive power included a proviso which made it clear that in so far as the concurrent list was concerned, the executive power of the union would extend to matters contained in the list only to the extent "expressly provided in the constitution or in any law made by

¹ The first implementation of the International treaties on environment was made by enacting the Air (prevention and control of pollution) Act of 1981. Under the Indian Constitution Articles like 51 (C), 73 and 253 usually deal with implementation of treaties.

² Vienna Convention on the Law of Treaties A-J.I.L. 875, at I (a), 1969.

³ Eastern Green land case, (1933) PCIJ, series A/B No. 53.

⁴ Nuclear Test case (Australia v France), I.C.J.R. 253 (1971)

⁵ Constitution of India, Art. 253

⁶ Drafting Committee Meeting of 28Jan. 1948, 447 at p. 450

Parliament⁷. Apart from this general discussion as the extent of the executive power, no discussion took place questioning the extending of the executive power, “to the exercise of such rights and authority and jurisdiction as are exercisable by the Government of India by virtue of any treaty or agreement⁸”. In so far as the legislative aspect of treaty making was concerned, only textual amendment were made. The drafting committee accepted the amendment reposing in parliament power to made law for implementing any treaty, agreement or convention with any other country or countries “for the whole or any part of the territory of India”.⁹

8.1.1.2-Article 51: Promotion of international peace and security. The State shall endeavor to:

Promote international peace and security;

Maintain just and honorable relations between nations;

Foster respect for international law and treaty obligations in the dealing of organized people with one another; and

Encourage settlement of international disputes by arbitration.

Article 51 (C) states that the country will foster respect for international law and treaty obligation in the dealings of organized people with one another¹⁰. Indian courts, too, would apply rules of international law, according to the principle of comity of Nations¹¹, unless they are overridden by clear rules of domestic law¹², and would act upon the general presumption just referred to.

⁷ Draft Commission : art 60(1) (b) 9c): Final Text art. 73

⁸ Art 60

⁹ A further amendment where by legislative power was extended from the narrow parameters of implementing “any treaty, agreement or convention” to also include “any decision made at any international conferences, association or other body” was also accepted routinely without being debated in extension.

¹⁰ This Article was adopted in the constitution upon the realization that there would be no pe.. or progress withing the country if there was in which the country was evolved.

¹¹ *Gramophone Co. v Dhirendra*, AIR 1984 SC 667 (Para 6) and *Tarapore Export & Tarapore Co.* AIR 1971 SCI, para 8

¹² *Ali Akbar v U.A.R.* AIR 1966 SC 230 (para 30)

The same principle has been applied to International Charters, such as the International conventions on civil and political rights, 1966, to which India is a party of the Universal Declaration of Rights¹³. But since India has notified the International covenants on Civil and Political Rights and on Economic, Social and Cultural Rights, these covenants are enforceable against India before an international forum though not in a municipal court¹⁴. Hence, whether a treaty would be ending upon an India court will depend upon its effect on private rights, as in England. Thus –

1. In order to be binding as municipal courts, legislation would be required if a treaty.

provides for payment of many to a foreign power which must be withdrawn from the consolidated fund of India¹⁵ or

affects the justifiable rights of a citizen¹⁶, or

2. Even an amendment of the constitution would be required where the implementation of treaty would involve cession of Indian Territory to forcing powers, but nothing is required where it merely involves the settlement of a boundary dispute not involving ‘cession’¹⁷.

8.1.1.3- Treaties and Executive power

Until legislation is enacted, the power to enter into treaties not derives from Parliament.

(a) to the matters with respect to which Parliament has the power to make laws; and

(b) to the exercise of such rights, authority and jurisdiction as are exercisable by the government of India by virtue of any treaty or agreement¹⁸.

In the *Punjab Tax Book*¹⁹ Case, the Supreme Court did not just limit itself to the question as to whether the government can enter the textbook trade but went into the

¹³ Varghere v Bank of Cochin AIR 1980 SC 470 (para 6)

¹⁴ Cf Kubir v Union of India, AIR 1990 SC 605 (614-15)

¹⁵ Motilal v U.P. AIR 1951 ALL 257 F.B

¹⁶ Maganbhai v Union of India AIR 1969 SC 783 and Berubari Union, in re AIR 1960.

¹⁷ Basu, D.P. “Commentary on the Constitution of India”, Vol, E, 7th Ed 1991, Kamal Law House, at p.185

¹⁸ Consstitution of India Art, 73

larger question of the extent and sweep of the executive power. Unable to find persuasive support from the constitutional text, the court approached the issue by using a wide angled law to portray the requirements of developing state rather than narrowly considering the legal issues and their impact as democratic governance.

The executive function comprises both of determination of the policy as well as carrying it to execution. This evidently includes the initiation of legislation, the maintenance of foreign policy, in fact the carrying as a supervision of the general administration²⁰. In order to fully comprehend this, it is necessary to recall the constitutional provisions relevant to defining, expanding and disciplining the treaty making power. The definition of the treaty power draws from the general executive power which extends²¹” to the matters with respect to which Parliament has the power to make laws”. The power of parliament to legislate on subject areas cognate to the treaty making power includes²².

8.1.1.4- Article 253: Legislation for given effect to international agreements

Notwithstanding anything in the foregoing provisions of this chapter, parliament has the power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country, or countries at any decision made at any international conference, association or body.²³ The Supreme Court shared this wariness for the first two decades. After the *Fundamental Rights*²⁴ case – and more so, the Emergency – the chapter on Directive Principle has been given greater significance, both in terms of interpreting the constitution and other laws as well as in using the Principles as a source for reading substantive rights by incorporation into right to life and liberty which is guaranteed in

¹⁹ Ramjawaya Kappor v State of Punjab, AIR 1955 SC 549.

²⁰ Ibid at Para 13

²¹ Art.73

²² Schedule VII, List-I Entries 10-15

²³ (Art 253, Indian Constitution)

²⁴ *Kesavananda Bharati v State of Kerala*, (1973) 4 SCC 225

India's Bill of Rights²⁵. One aspect of the Directive Principles concerns the pursuit of peace friendly international relations²⁶. The famous constitutional lawyer A.K. Ayer – saw use for Directive principles as precepts for constitutional interpretation. By March 1947 these precepts became proposals – one of which (clause 46) read as follow : The state shall promote international peace and security by the elimination of war as an instrument of national policy, by the prescription of open, just and honorable relations between nations, by the firm establishment of the maintenance of Justice asked the scrupulous respect for treaty obligations in the dealings of organized people with one another²⁷.

8.1.1.5-Implementation of Agreement

In *Ram Kishore Sen v. Union of India*²⁸, it was contended, *inter alia*, that a portion of the village Chilahati (the whole of which had gone to Pakistan under the Radcliff Award of 1947) continued to remain in the administration of India, and since India had been in adverse possession for a number of years it had acquired a title to it under international law and the making over of this territory to Pakistan would tantamount to its cession which could be done only according to the procedure laid down in the First *Berubari case*²⁹.

Gajendragadkar C.J. who delivered the opinion in the case also interpreted Entry 13 of the First schedule to the constitution and concluded.

“It would indeed be surprising that every trough the union of India and the state of West Bengal expressly say that this area belongs to Pakistan under the Radcliffe Award, the petitioners should intervene and contended that Pakistan's, title to this property had been lost because West Bengal had been adversely in possession of it. It is, therefore, unnecessary to examine the point whether a plea of this kind can be made under International Law ...”

²⁵ Constitution of India, art 21

²⁶ Ibid, art 51 (a) to (d)

²⁷ Rao, B. Shiba – “ The Framing of India's Constitution (1966-68)” at p. 142-3

²⁸ AIR 1966 SC 644

²⁹ AIR 1960 SC 845

8.1.1.6-Implementation of an International Award

Hidayatullah, C.J., in a case³⁰ rightly said about the implementation of international treaty and award –

“A treaty really concerns the political rather than the judicial wing of the state. When a treaty or an award after arbitration comes into existence, it has to be implemented and this can only be if all the three branches of government – the legislature, the Executive and the Judiciary, or any of them, possess the power to implement it. If there is any deficiency in the constitutional system it has to be removed and the state must equip itself with the necessary power. In some jurisdictions the treaty or the compromise read with the Award Acquires full effect automatically in the Municipal law the other body of Municipal Law notwithstanding. Such treaties and awards are “self-executing” Legislation may nevertheless be passed in aid of implementation builds usually not necessary”.

Hidayatullah, C.J., relied on article 73(1) the legislative entries and the decision in *Ram Jawaya's*³¹ case in support of the extent of the power of the executive with relation to treaties, but did not later into any detailed examination of scope of article 73(1) : whereas in the concurring judgment *Shah. J.*, observed –

“By article 73 subject to the provisions of the constitution, the executive power of the Union extends to the matters with respect to which the Parliament has power to make laws ... the executive is qua the state competent to represent the state in all matters international and may be agreement, convention or treaties insure obligations which in international law are binding upon the state. But the obligations arising under the agreement or treaties are not by their own force binding upon Indian nationals. The power to legislate in respect of treaties lies with the parliament under Entries 10 and 14 of List I of the seventh schedule. But making of law under that authority is necessary when treaty or agreement operates to restrict any right. If the right of citizens or others which are justifiable are not affected, no legislative measure is

³⁰ *Maganbha's v Union of India* AIR 1969 SC at Para 25

³¹ AIR 1955 SC 549

needed to give effect to the agreement or treaty”.³² Thus, the judgment establishes the principle that the executive without any further legislative action, as an operative treaty, can implement an international award settling a boundary dispute of India.

8.1.1.7 Treaties Contrary to Legislative Enactment

In *Umed Singh v. State of Bombay*³³, the Supreme Court applied the well-known principle that in case of a conflict between a treaty and legislative enactment, the court shall enforce the enactment. In *People's Union's*³⁴ case the Supreme Court said that main criticism against reading the international conventions and covenants into national laws is one pointed out by *Mason, C.J.*, himself, viz..., the ratification of these conventions and covenants is done, in most of the countries by the Executive acting alone and that the prerogative of making the law is that of Parliament alone; unless Parliament legislates, no law can come into existence. It is not clear whether our Parliament has approved the action of the Government of India ratifying the said 1966 covenant. This reservation has, of course, been held to be of little relevance now in view of the decision in *Nilabati Behera*³⁵. Assuming that it has, the question may yet arise whether such approval can be equated to legislation and invests the covenant with the sanctity of a law made by Parliament. As pointed out by this court in *S.R. Bommai's*³⁶ case, every action of Parliament cannot be equated to legislation. Legislation is no doubt the main function of Parliament but it also performs many other functions all of which do not amount to legislate. In *Apparel Export's*³⁷ case the Supreme Court held that in cases involving violation of human rights, the courts must forever remain alive to international instruments and conventions and apply the same to a given case when there is no inconsistency between the international norms and the domestic law occupying the field.

³² See *Supra* Alote 28 at p. 806-807

³³ AIR 1955 SC S40

³⁴ *People's union for Civil liberties v Union of India* (1997) 3 SCC at para 13.

³⁵ *Nilabati Behera v State of Orissa* (1993) 2 SCC 746

³⁶ *S.R. Bommai's v Union of India* (1994) 3 SCC 746

³⁷ *Apparel Export Promotion Council v A.K. Chopra* (1999) 1SCC 759

*In Vellore's*³⁸ case Supreme Court held that even otherwise once the principles of International conference on Environment on Environment are accepted as part of the customary International law those would be no difficulty in accepting them as part of the domestic law. It is almost accepted proposition of law that the rule of customary International law which are contrary to the municipal law shall be deemed to have been incorporated in the domestic law and shall be followed by the courts of law. In *Nayudu's*³⁹ case Supreme Court supported that if the customary domestic law permits the execution of international conference, as it is not volatile of the Indian domestic law, there would be no difficulty to apply them in Indian scenario. It is very clear from the above discussion that international conference on Environment shall be applied on the basis of comity of Nations.⁴⁰

The broad language of Article 253 suggests that in the wake of Stockholm conference in 1972, Parliament has the power to legislate on all matters linked to the preservation of natural resources. Parliament's use of Article 253 to enact the Air Act, Environment Act and National Environment Tribunal Act confirms this view. The subject "Forests" and "Preservation of Wild Animals and Birds" relate to natural resources. It appears, therefore, that the expansion of concurrent powers by the Forty second Amendment in 1976 only made explicit, power that Parliament already under Article 253. The Forty Second Amendment expanded the list of concurrent powers in the constitution. "Forest" and "Protection of wild Animals and Birds" were moved from the state List to the Concurrent List. Parliament has used its power under Article 253 to implement the decisions Stockholm Declaration of 1972 and Rio Declaration of 1992 and enacted various Acts,⁴¹ for the conservation and protection of natural resources.

³⁸ *Vellore Citizen's Welfare Former, Union of India* AIR 1996 SC 2715 of para 14. To support the judgement Supreme Court took the evidence from *A.D.M. Jabalpur's* case AIR 1976 SC 1207, *Joly George's* case AIR 1980 SC 470 and *Gramophone's* case AIR 1984 SC 687.

³⁹ *A.P. Pollution Control Board v M.V. Mayud...* AIR 1999 SC 812 at para 29.

⁴⁰ Article 253 of Indian constitution permits the legislation of international treaties and conference provided that are not contrary of Indian domestic law. In view of the broad range of issue addressed by international conventions, conferences, treaties and agreements, Article 253 apparently gives parliament the power to enact laws on virtually any entry contained in the state list.

⁴¹ *The Air (Prevention and Control of Pollution) Act, 1981. The Environment (Protection) Act, 1986. The National Environment Tribunal Act, 1995.*

8.1.1.8-Fundamental Right

The Indian Constitution is amongst the few in the world that contains specific provisions on environmental protection.⁴² In a case where the Supreme Court intervened to protect the forest wealth and wildlife from the ravages of mining in and around Sariska sanctuary in the Alwar district of Rajasthan, the court viewed its own constitutional role thus:

The litigation concerns environment. A great American Judge emphasizing the imperative issue of environment said that he placed Government above big business, individual liberty above Government and environment above all. The issues and concerns in this case far transcend the trivialities and inhibitions of an adversarial litigation. All the parties must be forthcoming in a concerted effort to find a satisfying solution to the problem, which, in more ways than one, is typical of the India predicament. We are, therefore, entitled to expect that the State Government and the mining-entrepreneurs in their own enlightened self interest will discard the adversarial litigative stance. *The issues of environment must and shall receive the highest attention from this Court*⁴³,

This approach has led the Supreme Court to derive, adopt and apply a range of principles to guide the development of environmental jurisprudence. Notable amongst the *fundamental norms* recognized by the court are:

⁴² The directive principles of state policy and the fundamental duties chapters explicitly enunciate the national commitment to protect and improve the environment. Judicial interpretation has strengthened this constitutional mandate.

⁴³ Emphasis Supplied. Tarun Bharat Sing, Alwar v Union of India (Sariska Case) Writ Petition (Civil) No. 509 of 1991, Supreme Court, 14 May 1992 (M.N. Venkatachaliah and B.P. Jeevan Reddy, JJ.).

(1) Every person enjoys the right to a wholesome environment, which is a facet of the right to life guaranteed under Article 21 of the Constitution of India⁴⁴. (2) Enforcement agencies are under an obligation to strictly enforce environmental laws⁴⁵. (3) Government agencies may not plead non-availability of funds, inadequacy of staff or other insufficiencies to justify the non-performance of their obligations under environmental laws⁴⁶. (4) The 'polluter pays' principle, which is a part of the basic environmental law of the land, requires that a polluter bear the remedial or clean up costs as well as the amounts payable to compensate the victims of pollution⁴⁷. (5) The 'precaution principle' requires government authorities to anticipate, prevent and attack the causes of environmental pollution. This principle also imposes the onus of proof on the developer or industrialist to show that his or her action is environmentally being⁴⁸. (6) Government development agencies charged with decision making ought to give due regard to ecological factors including (a) the environmental policy of the Central and state government; (b) the sustainable development and utilization of natural resources; and (c) the obligation of the present generation to preserve natural resources and pass on to future generations an environment as intact as the one we inherited from the previous generation⁴⁹. (7) Stringent action ought to be taken against contumacious defaulters and persons who carry on industrial or development activity for profit without regard to environmental laws⁵⁰. (8) The power conferred under an environmental statute may be exercised only to advance environmental protection and not for a purpose that would defeat the object of the law⁵¹. (9) The state is the trustee of all natural resources, which are by nature meant for public use and enjoyment. The public at large is the beneficiary of the seashore, running waters, air, forests and

⁴⁴ Subhash Kumar v State of Bihar AIR 1991 SC 420, 424; M.C. Mehta v Union of India (Delhi Stone Crushing Case) 1992 (3) SCC 256, 257; and Virender Gaur v State of Haryana 1995 (2) SCC 577, 581.

⁴⁵ Indian Council for Enviro-Legal Action v Union of India (CRZ Notification Case) 1996 (5) SCC 281, 294, 301

⁴⁶ Dr. B.L. Wadehra v Union of India (Delhi Garbage Case) AIR 1996 SC 2969, 2976

⁴⁷ Indian Council for Enviro-Legal Action v Union of India (Bichhri Case) AIR 1996 SC 1446, 1466

⁴⁸ Vellore Citizens Welfare Forum v Union of India AIR 1996 SC 2715, 2721

⁴⁹ State of Himachal Pradesh v Ganesh Wood Products AIR 1996 SC 149, 159, 163

⁵⁰ M.I. Builders v Radhey Shyam Sahu AIR 1999 SC 2468, 2498

⁵¹ Bangalore Medical Trust v B.S. Muddappa AIR 1991 SC 1902, 1911, 1924

ecologically fragile lands. These resources cannot be converted into private ownership⁵².

8.1.1.9-Division Of Legislative Authority

Under India's federal system, governmental power is shared between the Union or 'Central' Government and the 26 state governments. Part XI of the Constitution governs the legislative and administrative relations between the Union and the states. Parliament has the power to legislate for the whole country, while the State legislatures are empowered to make laws for their respective state. Article 246 of the Constitution divides the subject areas of legislation between the Union and the states. The Union List (List I) in the Seventh Schedule to the Constitution contains defence, foreign affairs, atomic energy, interstate transportation, shipping, major ports, regulation of air traffic, regulation and development of oilfields, mines and mineral development and interstate rivers. The State Legislatures have exclusive power to legislate with respect to 66 subjects in the State List (List II), such as public health and sanitation, agriculture, water supplies, irrigation and drainage and fisheries.⁵³ Parliament has residual power to legislate on subjects not covered by the three Lists⁵⁴. When a central law conflicts with a state law on a concurrent subject, the former prevails. A state law passed subsequent to the central law will prevail, however, if it has received Presidential Assent under Article 254.

8.1.1.10-The Forty-Second Amendment Act, 1976

Environmental protection and improvement were explicitly incorporated into the Constitution by the Constitution (Forty-Second Amendment) Act of 1976. Article 48A

⁵² M.C. Mehta v Kamal Nath (Span Motel Case) 1997 (1) SCC 388

⁵³ Under the Concurrent List (List III), both parliament and the State Legislatures have overlapping and shared jurisdiction over 52 subject areas including forests the protection of wildlife, mines and mineral development not covered in the Union List, population control and family planning, minor ports and factories.

⁵⁴ Article 248

was added to the directive principles of state policy. It declares: The State shall endeavor to protect and improve the environment and to safeguard the forests and wild life of the country.’ Article 51A(g) in a new chapter entitled ‘Fundamental Duties’, imposes a similar responsibility on every citizen ‘to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures. ...’ Although the language in the two articles differs, the forerunes appear to relate to form rather than to substance. Together, the provisions highlight the national consensus on the importance of environmental protection and improvement and lay the foundation for jurisprudence of environmental protection⁵⁵.

There was considerable debate in Parliament over the wording of draft Article 48A. In the Lok Sabha several amendments were moved. One of them required the state to ‘conserve and develop the water, soil and other natural resources’; while another proposed to ensure that the state’s efforts to protect and improve the environment would not harm tribal forest dwellers. None of these amendments were accepted by the government, which took the position that the broad terms of a directive principle need not contain details⁵⁶.

In *M.C. Mehta v. Union of India*⁵⁷ it was held that the Forty-second Constitutional Amendment inserted Article 48-A inserted in the Constitution in Part IV stipulating that the State shall endeavour to protect and improve the environment and to safeguard the forest and wildlife of the country. Article 51-A, inter alia, provides that it shall be the duty of every citizen of India to protect and improve the natural environment including forest, lakes, rivers and wildlife and to have compassion for living creatures. Article 47, which provides that it shall be the duty of the State to raise the level of

⁵⁵ *M.C. Mehta v State of Orissa* AIR 1992 ORI 225, 227

⁵⁶ The Lok Sabha is the House of the People (Lower House of Parliament). Lok Sabha Debates, Eighteenth Session, Fifth Series, Vol. LXV, No. 5, Oct. 29, 1996, columns 94-116. The Constitution (Forty-Forth Amendment) Bill of 1976 after became the Constitution (Forty-Second Amendment) Act of 1976

⁵⁷ (2004) 12 SCC 118, at page 166

nutrition and the standard of living and to improve public health, is also relevant in this connection.⁵⁸

8.1.1.11-Articles 32 And 226

The Supreme Court's jurisdiction under Article 32 is more limited than the jurisdiction of the High Courts under Article 226. Article 32 guarantees the right to seek the Supreme Court's enforcement of fundamental rights. Moreover, Article 32 is itself a fundamental right and, therefore, cannot be abridged by legislation; an indispensable condition for invoking the Supreme Court's jurisdiction under Article 32 is the violation of a fundamental right conferred in Part III of the Constitution. Thus, an illegal government action that does not infringe a fundamental right cannot be challenged in writ proceedings under Article 32. In contrast, the writ jurisdiction of High Courts under Article 226 may be invoked not only for the enforcement of a fundamental right but for 'any other purpose' as well. Ordinary legal rights may also be asserted through a writ petition in High Court. For instance, although the freedom of trade, commerce and intercourse embodied in Article 301 is not a fundamental right and, therefore, cannot be enforced in a petition under Article 32⁵⁹, such a right may be enforced in a High Court under Article 226. Invoking the High Court writ jurisdiction is the most popular method to obtain judicial review of administrative action. Article 226 is curtailed but legislation, since it is a constitutional provision.

Thus, the Supreme Court and the High Courts have concurrent jurisdictions for the enforcements of fundamental rights. A person complaining of infringement of fundamental rights may seek redress in either forum. As noted earlier, if the High Court is approached first, and the petition for relief is dismissed on its merits, the principle of *res judicata* will preclude a further petition to the Supreme Court under Article 32. The petitioner may, however, appeal to the Supreme Court under Article 133 or obtain special leave to appeal under Article 136.

⁵⁸ The most vital necessities, namely, air, water and soil, having regard to right to life under Article 21 cannot be permitted to be misused and polluted so as to reduce the quality of life of others. Having regard to the right of the community at large it is permissible to encourage the participation of amicus curiae, the appointment of experts and the appointments of Monitory Committees. See also Animal and Environment Legal Defence Fund v. Union of India (1997) 3 SCC 549, at page 550

⁵⁹ Ram Chandra Palai v State of Orissa AIR 1956 SC 298, 305

8.2-Policies

8.2.1-FIVE-YEAR PLANS AND ENVIRONMENTAL POLICIES

Five-year plan could be recognised as the first step to conserve natural resources. India's development objectives reflected in our planning process has consistently emphasised the necessity of promoting policies and programmes for economic growth and social welfare. Consequently alleviation of poverty and development of the country's economic and social infrastructure has been emphasised and re-emphasised in the country's succeeding Five Year Plans. Investment resources were targetted to ensure realisation of these concerns. Environmental issues, which have been for a long time part of Indian thought and social processes are reflected in the Constitution of the Republic of India, adopted in 1950.¹ The Directive Principles of State policy, an integral and significant element of our democratic order, contain provisions, which reflect the commitment of the State to protect the environment with regard to forests and wildlife.² The foundations of the present day organisational framework for environmental programmes in India go back to the 1970s with the establishment of the National Committee of Environmental Planning and Coordination by Smt.

Indira Gandhi, former Prime Minister almost immediately after the historic Stockholm Conference on Environment held in 1972. The Committee was gradually to evolve into a Department of Environment in 1980 and five years later to a full-fledged Ministry of Environment and Forests (MOEF) of the Government of India (GOI).³ India too, following the footsteps of other developed countries, set up a separate Ministry of Environment and Forests in the early nineties which is engaged in the task of managing country's environment by focusing on the development of important administrative tools and techniques, impact assessment, research and collection and dissemination of environmental information. However, environment being a multi-disciplinary subject involving complex subject like

¹ http://mospi.nic.in/compenv2000_ch2.htm

² The Directive Principles of State Policy enjoin upon the citizens of India, the special responsibility to protect and improve the environment. The roots of the growing trend towards popular participation in our conservation and natural resource development programme lie in this constitutional requirement.

³ The State Governments also followed this example by establishing their own Departments of Environment to address the rapidly increasing policy initiatives and programmes in the environment and forests sectors.

Bio-diversity, Atmosphere, Water, Land and Soil and Human Settlements, it seemed difficult to collect, analyse and study relationships among them.⁴

Ninth Five-Year Plan 1997-2002⁵

Programmes to be implemented during the plan include popularisation of Science, Rational Management of land and Water Resources, promotion and development of suitable technologies for SC/ST and other weaker sections, creation of facility for Environmental research, management of Mineral resources, creation of facilities for Non-conventional sources of energy, science and Technology for women for self employment, poverty alleviation and improvement in rural economy, disaster management etc. In the people centre approach to development the State Government believes that information technology initiatives should focus on creative and environment for dissemination of information to every citizen pertaining to his own welfare needs and opportunities for individual and social development and for effective delivery of citizen services.

10th Plan 2002-2007 and Annual Plan 2002-2003⁶

The State Government have recently constituted separate Department for Biodiversity and Biotechnology with the intention to focus attention on sustainable use of the State's rich and diverse bio-resources and promote the use of application in biotechnology for deriving benefits in a wide range of sectors such as forestry, environment, agriculture, animal husbandry, fisheries, human health etc.

10th Five-Year Plan 2002-2007 and Annual Plan 2002-2007⁷

Consciousness towards the environment has increased considerably during the last two decades, largely on account of the realization of the damage caused to environment by various human actions.⁸

⁴ It therefore, became necessary to develop an efficient statistical system on environment that could meet the growing demand of various governmental agencies, environmentalists and general public for data on various aspects of environment.

⁵ <http://www.mp.nic.in/annualplan/archive/2002-03/chapter11.htm>

⁶ Ibid.

⁷ Ibid.

The Environmental Planning and Coordination Organisation (EPCO) established by the Housing and Environment Department of the Government of Madhya Pradesh in 1981, was one such initiative. Over the years, EPCO has steadily grown to become the State's premier organisation for environment related matters. It has worked closely with the State Government on various projects; yet it has established its own identity as an autonomous organisation. It is a think-tank for environmental matters, but is also project oriented.

The Planning Commission in its approach paper to Tenth Plan has stressed the need on improvement of environment.⁹ It may just be transfer of resources from the poor to the rich because poor depends upon nature for their daily survival and for them "Gross Nature Product" is more important than the "Gross National Product" Pollution in our air, soil degradation, deforestation, desertification, shrinking wetlands, inadequate public health and sanitation, indoor pollution in rural areas growing water scarcity, falling ground water tables, minimum flow in rivers and over extraction of water for irrigation purposes are some of the environmental problems that need an urgent attention before any poverty alleviation programme can meet success. Therefore in the ultimate analysis environmental management and economic development are mutually supportive aspects of the same Agenda.

Women will be involved and their perspectives reflected in the policies and programmes for environment, conservation and restoration. Considering the impact of environmental factors on their livelihoods, women's participation will be ensured in the conservation of the environment and control of environmental degradation. The vast majority of rural women still depend on the locally available non-commercial sources of energy such as

⁸ Madhya Pradesh is one of the few states in the country which recognised early the imperative need for environmental conservation and management. A separate Department of Environment was created in 1973, with the aim to identify various problems and to co-ordinate development activities in such a manner that the ecological balance is restored and maintained.

⁹ It has been emphasised, that, there is enough empirical evidence to establish that environmental conservation must go hand in hand with economic development, because any eco. dev. which destroy the environment will create more poverty, unemployment and diseases and thus can't be called even economic development.

animal dung, crop waste and fuel wood. In order to ensure the efficient use of these energy resources in an environmental friendly manner, the Policy will aim at promoting the programmes of non-conventional energy resources. Women will be involved in spreading the use of solar energy, biogas, smokeless chulahs and other rural application so as to have a visible impact of these measures in influencing eco system and in changing the life styles of rural women.¹⁰

The rapid growth of Delhi has resulted in significant increase in environmental pollution. The situation is causing serious concern as has been expressed in parliament, in Delhi assembly and by citizens of Delhi. Highly urbanized set up of Delhi with rapid pace of development need priority treatment of Delhi in terms of Environment management.¹¹ Govt. of Delhi has stressed for steps taken for checking pollution and improving the environment. Department of Environment, Govt. of Delhi is taking effective and coordinated measures for controlling pollution with limited facilities.¹²

¹⁰ <http://wcd.nic.in/empwomen.htm>

¹¹ <http://72.14.203.104/search?q=cache:Isn3rTAzINMJ:delhiplanning.nic.in/Write-up/2005-06/Volume%2520I/Science%2520Technology%2520and%2520Environment-final%2520CH-9.doc+environmental+policy+and+five+year+plan&hl=en&gl=in&ct=clnk&cd=11&client=firefox-a>

¹² The overall workload of this department has increased manifolds during last few years particularly for implementation of various environmental Acts and Rules, implementation of policies on behalf of Govt. of Delhi for improvement of environment and control of pollution on the basis of National environmental policies of Govt. of India. In addition, to function as a nodal Department for interaction and co-ordination with other Departments on environmental issues.

8.2.2-POLICY DOCUMENT 1992

The National Conservation Strategy and Policy Statement on Environment and Development 1992

The National Conservation Strategy and Policy Statement on Environment and Development has been prepared and adopted by the Central Government in June, 1992 after extensive consultations at various levels of the Central and State Governments, universities, academic institutions, non-governmental organizations and informed individuals.¹ The preamble of the policy statement highlighting the nexus between development and environment says:

“The survival and well-being of a nation depend on sustainable development. It is a process of social and economic betterment that satisfies the needs and values of all interest group without foreclosing future options.² It is expression of our commitment for reorienting policies and action in unison with the environmental perspective.”

After reviewing the nature and dimensions of environmental problems, the policy statement stresses for reorientation of the developmental process and the need for devising a conservation strategy.³ Development requires the use and modification of nature resources: conservation ensures the sustainability of development for the present and in future. The conservation strategy is to serve as a management guide for integrating environmental concerns with development imperatives⁴.”

The main objective of the strategy and policy statement “is to reinforce our traditional ethos and to build up a conservation society living in harmony with Nature and making frugal and

¹ Sustainable development is the key phrase in the agenda for action and the preamble.

² To this end we must ensure that the demand on the environment from which we derive our sustenance, does not exceed its carrying capacity for the present as well as future generations.... the national conservation strategy and policy statement on Environment and Development are in response to the need for laying down the guidelines that will help to weave environmental considerations into the fabric of our national life and our development process.

³ It states, we can meet the challenges only by redirecting the thrust of our developmental process so that making judicious and sustainable use of our natural resources fulfills the basic needs of our people. Conservation, which covers a wide range of concerns and activities, is the key element of the policy for sustainable development. Framing a conservation strategy is therefore, an imperative step.

⁴ The National Conservation Strategy and Policy Statement on Environment and Development, Ministry of Environment And Forests, Govt. of India (1992), Para 4

efficient use of resources guided by the best available scientific knowledge⁵.” To achieve the objective an agenda for action is provided for in the policy statement, which includes the following:

- a) to ensure sustainable and equitable use of resources for meeting the basic needs of the present and future generations without causing damage to the environment.
- b) to prevent and control future deterioration of our life support systems.
- c) to take steps for restoration of ecologically degraded areas and for environmental improvement in our rural and urban settlements:⁶
- d) To protect the scenic landscapes, areas of geomorphological significance, unique and representatives biomass and ecosystem and wildlife habitats, heritage site/structures and areas of cultural heritage importance⁷.

The instruments for action are set in the agenda for achieving proposed actions. They include the following:

- a) Environmental impact assessment of all development projects right from the planning stage and integrating it with their cost-benefit considerations.
- b) Compulsory prior environmental clearance of all projects above a certain size and proposed to be contracted in ecologically sensitive areas.
- c) Incorporation in policies, planning, site selection, choice of technology and implementation of development projects like agriculture, water resource development, industry, mineral extraction and processing, energy, forestry, transport, and human settlements, of environmental safeguards and protection measures,⁸

⁵ Ibid.

⁶ To ensure that development projects are correctly cited with least adverse environmental consequences. Conservation and protection of coastal areas and marine eco-systems.

⁷ Ibid.

⁸ To encourage research development and adoption of environmentally compatible technologies, and to promote application of the modern tool of science and technology for conservation, bridging of large gaps in supply and demand as well as control and monitoring of natural resources, To encourage public participation in environmental improvement programmers and for integrating the environmental concerns in planning and implementation of development programmers. To create environmental consciousness through education and mass programmes. To aim at moderation of process of demand unleashed by the development process itself by taking measures to recycle waste materials and natural resources, conserve energy, conserve use of natural

- d) To develop appropriate organizational structures and a pool of professional manpower to serve as the cadre for environmental management service, and
- e) To effectively implement the various environmental laws and regulations for environmental protection through creation of strengthening of requisite enforcement machinery⁹.

The policy statement points out the strategies for actions in different fields, the initiative taken under them are expected to resolve the conflicts which often arise between the environmental concerns and development pursuits. The strategies pertain to population control and conservation of Natural Resources (Land and Water, atmosphere, bio-diversity, biomass). Under the conservation of natural resources, the strategies for sustainable use of land include: classification, zoning and apportionment of land for different uses based on assessment of their capabilities and environmental considerations: enactment of laws to protect the soil from erosion, pollution and degradation: measures to ensure equitable assess to sustainable use of land and water resources: micro-level planning to develop appropriate methodology and implementation of action plan through public participation at village level in land use planning and afforestation programme: country-wide campaign to minimise soil and run off losses by soil conservation techniques: restoration and reclamation of degraded areas such as weed infested and mined areas, grazing lands etc.:¹⁰ control and abatement of pollution of water bodies form municipal and industrial wastes; classification, of zoning and regulations for maintaining the quality of water bodies to protect and enhance their capabilities to support vigorous designated uses and adoption of low cost sanitation technology for prevention of pollution of water courses¹¹.

resources in industrial products by measures like wood substitution and generally try to reach moderations in life styles consistent with sustainability and human dignity.

⁹ Ibid.

¹⁰ Prevention of wind erosion in desert areas by conservation and afforestation programmes: development of suitable agro-silvipastoral techniques with special emphases on hilly areas and in arid and semi-arid zones; building up a network of permanent assessment and monitoring of soil and water agencies; measures for water conservation, recycling and optimal conjunctive use of surface and ground water for specific uses; legislative measures to check over exploitation of waters; conservation of wet land for ensuring sustainable ecological and economic benefits; encouragement to and improvement in traditional rain water harvesting and storage methods; stringent measures to prevent and control of land pollution through discharge of solid wastes, effluents, etc. in and water course;

¹¹ Ibid Para 5.1

8.2.3-NATIONAL ENVIRONMENT POLICY 2004

After 1992 policy the present policy also deals with wide range of provisions speaking for conservation of natural resources. A diverse developing society such as ours provides numerous challenges in the economic, social, political, cultural, and environmental arenas. All of these coalesce in the dominant imperative of alleviation of mass poverty, reckoned in the multiple dimensions of livelihood security, health care, education, empowerment of the disadvantaged, and elimination of gender disparities.¹ As our development challenges have evolved, and our understanding of the centrality of environmental concerns in development has sharpened, there is also a need to review the earlier objectives, policy instruments, and strategies.²

The National Environment Policy (NEP, 2004) is a response to our national commitment to a clean environment, mandated in the Constitution in Articles 48 A and 51 A (g), strengthened by judicial interpretation of Article 21. It is recognised that maintaining a healthy environment is not the state's responsibility alone, but also that of every citizen. A spirit of partnership should thus be realized throughout the spectrum of environmental management in the country. While the state must galvanise its efforts, there should also be recognition by each individual – natural or institutional, of its responsibility towards maintaining and enhancing the quality of the environment. The NEP, 2004 is also intended to be a statement of India's commitment to making a positive contribution to international efforts.³

¹ The present national policies for environmental management are contained in the *National Forest Policy, 1988*, the *National Conservation Strategy and Policy Statement on Environment and Development, 1992*; and a *Policy Statement on Abatement of Pollution, 1992*. Some sector policies such as the *National Water Policy, 2002*, have also contributed towards environmental management.

² This dynamic requires an evolving and flexible policy framework with a built in system for monitoring and review, and where necessary, revision. Sustainable development concerns in the sense of enhancement of human well-being, broadly conceived, are a recurring theme in India's development philosophy. For this to occur there is a need for balance and harmony between economic, social and environmental needs of the country.³ India also plays an important role in several significant international initiatives concerned with the environment. It is a party to the key multilateral agreements, and recognises the interdependencies among, and transboundary character of, several environmental problems.

³ The NEP, 2004 has been motivated by the above considerations and is intended to mainstream environmental concerns in all development activities. It briefly describes the key environmental challenges currently and prospectively facing the country, the objectives of environment policy, normative principles underlying policy action, strategic themes for intervention, broad indications of the legislative and

Key Environmental Challenges: Causes and Impacts

The key environmental challenges that the country faces relate to the nexus of environmental degradation with poverty in its many dimensions, and economic growth. The proximate drivers of environmental degradation are population growth, technology and consumption choices, and poverty, leading to changes in relations between people and ecosystems, and development activities such as intensive agriculture, polluting industry, and unplanned urbanisation.⁴ Poverty itself can accentuate environmental degradation, given that institutional failures persist.⁵ If impacts on the environmental resource base are neglected, an incorrect picture is obtained from conventional monetary estimates of national income.⁶

The Objectives of NEP 2004:

The principal objectives of this policy are enumerated below. These objectives relate to current perceptions of key environmental challenges.

They may, accordingly, evolve over time:

- i. Conservation of Critical Environmental Resources:
- ii. Intra-generational Equity: Livelihood Security for the Poor:

institutional development needed to accomplish the strategic themes, and mechanisms for implementation and review. It has been prepared through a process of extensive consultation with experts, as well as diverse stakeholders, and this process is also documented.

⁴ Environmental degradation is a major causal factor in enhancing and perpetuating poverty, particularly among the rural poor, when such degradation impacts soil fertility, quantity and quality of freshwater, air quality, forests, and fisheries. The dependence of the rural poor, in particular, tribal societies on their natural resources, especially biodiversity, is self-evident. The poor are particularly vulnerable to loss of resilience in ecosystems. Large reductions in resilience may mean that the ecosystems, on which livelihoods are based, break down, causing distress. The loss of the environmental resource base can result in certain groups of people being made destitute, even if overall, the economy shows strong growth. Further, urban environmental degradation, through lack of (or inappropriate) waste treatment and sanitation, industry and transport related pollution, adversely impacts air, water, and soil quality, and differentially impacts the health of the urban poor. This, in turn, affects their capability to seek and retain employment, attend school, and enhances gender inequalities, all of which perpetuate poverty.

⁵ For the poor, several environmental resources are complementary in production and consumption to other commodities (e.g. water in relation to agricultural production, fuel-wood in relation to consumption of food), while a number of environmental resources are a source of income or food (e.g. fisheries, non-timber forest produce).

⁶ On the other hand, economic growth permits improvement in environmental quality by making available the necessary resources for environmental investments and generating societal pressures for improved environmental behaviour and institutional and policy change.

- iii. Inter-generational Equity:
- iv. Integration of Environmental Concerns in Economic and Social Development:
- v. Efficiency in Environmental Resource Use:
- vi. Environmental Governance:
- vii. Enhancement of Resources for Environmental Conservation:

Principles:

The above objectives are to be realized through various strategic interventions by different public authorities at Central, State, and Local Government levels. They would also be the basis of partnerships between public agencies, local communities, and various economic actors. However, these strategic interventions, besides legislation and the evolution of legal doctrines for realization of the objectives, need to be premised on a core set of unambiguously stated principles. The following principles, accordingly, would guide the activities of different actors in relation to this policy. Each of these principles has an established genealogy in policy pronouncements, jurisprudence, international environmental law, or international State practice:

- i. Human beings are at the Centre of Sustainable Development Concerns:
- ii. The Right to Development:
- iv. The Precautionary Approach:
- v. Economic Efficiency:
- “Polluter Pays”:
- vi. Cost Minimization:
- vii. Equity:
- viii. Legal Liability:
- ix. Public Trust Doctrine:
- x. Decentralisation:
- xi. Integration:

xii. Environmental Standard Setting:⁷

xiii. Preventive Action:

xiv. Environmental Offsetting:

Land Degradation:

The degradation of land, through soil erosion, alkali-salinization, water logging, pollution, and reduction in organic matter content has several proximate and underlying causes.⁸

Forests

Forests provide a multiplicity of environmental services. Foremost among these is the recharging of mountain aquifers, which sustain our rivers. They yield timber, fuel-wood, and other forest produce, and possess immense potential for economic benefits, in particular for local communities, from sustainable eco-tourism.⁹ Such disempowerment has led to the forests becoming open access in nature, leading to their gradual degradation in a classic manifestation of the “*Tragedy of the Commons*”, besides leading to perennial conflict between the tribals and the Forest Department, and constituting a major denial of justice.¹⁰

⁷ Setting environmental standards would involve several considerations, i.e. risks to human health, risks to other environmental entities, technical feasibility, costs of compliance, and strategic considerations.

⁸ The proximate causes include loss of forest and tree cover (leading to erosion by surface water run-off and winds), excessive use of irrigation (in many cases without proper drainage, leading to leaching of sodium and potassium salts), improper use of agricultural chemicals (leading to accumulation of toxic chemicals in the soil), diversion of animal wastes for domestic fuel (leading to reduction in soil nitrogen and organic matter), and disposal of industrial and domestic wastes on productive land. These in turn, are driven by implicit and explicit subsidies for water, power, fertilizer and pesticides, and absence of conducive policies and regulatory systems to enhance people's incentives for afforestation and forest conservation.

⁹ On the other hand, in recent decades, there has been significant loss of forest cover, although there are now tangible signs of reversal of this trend. The principal direct cause of forest loss has been the conversion of forests for agriculture, settlements, infrastructure, and industry. In addition, commercial extraction of fuel-wood, illegal felling, and grazing of cattle, has degraded forests. These causes, however, have their origins in the fact that the environmental values provided by forests are not realized as direct financial benefits by various parties, at least to the extent of exceeding the monetary incomes from alternative uses, including those arising from illegal use.

¹⁰ It is possible that some site-specific non-forest activities may yield overall societal benefits significantly exceeding that from the environmental services provided by the particular tract of forest. However, large scale forest loss would lead to catastrophic, permanent change in the country's ecology, leading to major stress on water resources and soil erosion, with consequent loss of agricultural productivity, industrial potential, living conditions, and the onset of natural disasters including drought and floods. In any event, the environmental values of converted forests must be restored, as nearly as may be feasible, to the same publics.

Freshwater Resources:

India's freshwater resources comprise the single most important class of natural endowments enabling its economy and its human settlement patterns. The freshwater resources comprise the river systems, groundwater, and wetlands. Each of these has a unique role, and characteristic linkages to other environmental entities.

(i) River Systems:

They are also subject to significant net water withdrawals along their course, due to agricultural, industrial, and municipal use; as well as pollution from human and animal waste, agricultural run-offs, and industrial effluents.¹¹ The result is excessive cultivation of water intensive crops near the headworks, which is otherwise inefficient, water logging, and alkali-Stalinization of soil.¹²

(ii) Groundwater:

Groundwater is present in underground aquifers in many parts of the country. The boundaries of groundwater aquifers do not generally correspond to the spatial jurisdiction of any local public authorities or private holdings, nor are they easily discernable, nor can withdrawals be easily monitored, leading to the unavoidable situation of groundwater being an open access resource.¹³ Given the fact that groundwater is an open access resource, the

¹¹ Although the rivers possess significant natural capacity to assimilate and render harmless many pollutants, the existing pollution inflows in most cases substantially exceed such natural capacities. This fact, together with progressive reductions in stream flows, ensures that the river water quality in the vast majority of cases declines as one goes downstream. The results include loss of aquatic flora and fauna, leading to loss of livelihoods for river fisher folk, significant impacts on human health from polluted water, loss of habitat for many bird species, and loss of inland navigation potential. Apart from these, India's rivers are inextricably linked with the history and religious beliefs of its peoples, and the degradation of important river systems accordingly offends their spiritual, aesthetic, and cultural sensibilities.

¹² The irrigation tariffs also do not yield resources for proper maintenance of irrigation systems, leading to loss in their potential; in particular, resources are generally not available for lining irrigation canals to prevent seepage loss. These factors result in reduced flows in the rivers. Pollution loads are similarly linked to pricing policies leading to inefficient use of agricultural chemicals, and municipal and industrial water use.

¹³ The water table has been falling rapidly in many areas of the country in recent decades. This is largely due to withdrawal for agricultural, industrial, and urban use, in excess of annual recharge. In urban areas, apart from withdrawals for domestic and industrial use, housing and infrastructure such as roads, prevent sufficient recharge. In addition, some pollution of groundwater occurs due to leaching of stored hazardous waste and use of agricultural chemicals, in particular, pesticides. Contamination of groundwater is also due to geogenic

user then “rationally” (i.e. in terms of his individual perspective), extracts groundwater until the marginal value to him equals his now very low marginal cost of extraction.¹⁴

(ii) Wetlands:

Wetlands also provide freshwater for agricultural and domestic use, help groundwater recharge, and provide livelihoods to fisher-folk. They may also comprise an important resource for sustainable tourism and recreation.¹⁵ On the other hand, the reduction in economic value of their environmental services due to pollution, as well as the health costs of the pollution itself, are not taken into account while using them as a waste dump.¹⁶

Pollution Abatement:

Pollution is the inevitable generation of waste streams from the production and consumption of anything. Pollution directly impacts the quality of the receiving medium, i.e. air, water, soil, or electromagnetic spectrum, and when this impaired medium acts upon a receptor, say, a living being, also impacts the receptor.

(i) Air Pollution:

The direct causes of air pollution are emissions from the use of fossil energy, and other industrial processes, and some consumption activities. The deeper causes arise in a multiplicity of policy, and institutional, including regulatory shortcomings, in particular, inefficient pricing of fossil fuel based energy.¹⁷

causes, such as leaching of arsenic from natural deposits. Since groundwater is frequently a source of drinking water, its pollution leads to serious health impacts.

¹⁴ The result is inefficient withdrawals of groundwater by all users, leading to the situation of falling water tables. Support prices for several water intensive crops with implicit price subsidies aggravate this outcome by strengthening incentives to take up these crops rather than less water intensive ones. Falling water tables have several perverse social impacts, apart from the likelihood of mining of deep aquifers, “*the drinking water source of last resort*”. The capital costs of pump sets and bore wells for groundwater extraction when water tables are very deep may be relatively high, with no assurance that water would actually be found. In such a situation, a user who may be a marginal farmer able to borrow the money only at usurious rates of interest, may, in case water is not found, find it impossible to repay his debts. This may lead to destitution, or worse. Even if the impacts were not so dire, there would be excessive use of electricity and diesel.

¹⁵ They may be employed as an alternative to power, technology, and capital intensive municipal sewage plants; however, if used for this purpose without proper reckoning of their assimilative capacity, or for dumping of solid and hazardous waste, they may become severely polluted, leading to adverse health impacts. The inadvertent introduction of some alien species of flora in wetlands has also degraded their ecology.

¹⁶ There also does not yet exist a formal system of wetland regulation outside the international commitments made in respect of Ramsar sites.

¹⁷ Indoor air pollution, a special case, arises from the low societal status of women, leading to continued use of polluting, inefficient biomass stoves, besides pricing policies for agricultural chemicals which lead to

(ii) Water Pollution:

The direct and indirect causes of pollution of surface (river, wetlands) water sources, groundwater, and coastal areas have been discussed above.

(iii) Soil Pollution:

Similarly, the immediate and deeper causes of soil pollution have been considered above. The following are elements of an action plan:

Develop and implement viable models of public-private partnerships for setting up and operating secure landfills and incinerators for toxic and hazardous waste, both industrial and biomedical, on payment by users, taking the concerns of local communities into account. The concerned local communities and State Governments must have clear entitlements to specified benefits from hosting such sites, if access is given to non-local users.

Climate Change:

While climate change is a global environmental issue, different countries bear different levels of responsibility for increase in atmospheric GHGs concentrations. Further, the adverse impacts of climate change will fall disproportionately on those who have the least responsibility for causing the problem, in particular, developing countries, including India.¹⁸ On the other hand, India's policies for sustainable development, by way of promotion of energy efficiency, renewable energy, fuels mix, energy pricing, pollution abatement, Afforestation, mass transport, besides differentially to manufacturing, results in a relatively GHGs benign growth path.¹⁹

substitution of biomass based fertilizer by chemicals, the biomass then being used inefficiently as fuel. These deeper causes need to be addressed through policies and programmes for redressing women's status, and dialogue aimed at consideration of the environmental impacts of pricing policies for agricultural chemicals.

¹⁸ India's GHG emissions at 1994 level were 1228 million ton (Mt) CO₂ equivalent (India's initial National Communication to UNFCCC 2004), which is below 3% of global GHG emissions. In per-capita terms, it is 23 per cent of the global average, and 4 per cent of USA, 8 per cent of Germany, 9 per cent of UK and 10 per cent of Japan per capita emissions in 1994. In terms of the GHG intensity of the economy, in Purchasing Power Parity terms, India emitted a little above 0.4 tones CO₂ equivalent per 1000 US dollars in 2002, which is lower than those of the USA and the global average. In terms of primary energy use, India's share of renewable energy (being a non – GHG emitting energy form) at 36 per cent is far higher than industrialized countries can hope to reach in many decades.

¹⁹ Anthropogenic climate change, significant responsibility for which clearly does not lie with India or other developing countries, may, on the other hand, have severe adverse impacts on India's precipitation patterns,

Environmental Awareness, Education, and Information:

Awareness relates to the general public, as well as specific sections, e.g. the youth, urban dwellers, industrial and construction workers, municipal and other public employees, etc. Awareness involves not only internalization of environmentally responsible behaviour, but also enhanced understanding of the impacts of irresponsible actions, including to public health, living conditions, and livelihood prospects.²⁰

The reality behind the 2004 policy is that the provisions are good enough to control pollution and have given the mechanism to combat with all the odds but the experiment remains with the task that the enforcement of the policy will give the real challenge. Fact to be considered that the sayings of the policy can come forward to abate pollution and conserve natural resources. A number of Legislations have been discussed in the next part of this research work showing the relevant provisions for conservation and also the lacunae to overcome.

ecosystems, agricultural potential, forests, water resources, coastal and marine resources, besides increase in range of several disease vectors. Large-scale resources would clearly be required for adaptation measures for climate change impacts, if catastrophic human misery were to be avoided.

²⁰Environmental education is the principal means of enhancing such awareness, both among the public at large, and among focused groups. Such education may be formal, or informal, or a combination of both. It may rely on educational institutions at different levels; the print, electronic, or live media; and various other formal and informal settings. Access to environmental information is the principal means by which environmentally conscious stakeholders may evaluate compliance by the concerned parties with environmental standards, legal requirements, and covenants.

8.3-Legislations

8.3.1-THE INDIAN FOREST ACT, 1927

The definition of forest as mentioned in the Forest Conservation Act was of a forest as defined in the Indian Forest Act 1927. In 1996, however, the Supreme Court enlarged the definition of forest to cover even those areas, which were notified as village forests on revenue land. This gave immense power to the officers in Paryavaran Bhavan such that anyone who wanted to set up an industry, take up mining leases or projects of irrigation, road, power involving even a fraction of an acre had to use all their resources to get a clearance from the Paryavaran Bhavan in New Delhi¹.

In 1995, T.N Godavarman filed public interest litigation on the issue of depletion of forest areas. They managed a directive from the Supreme Court that the Collector should not write the confidential report (CR) of the divisional forest officer (DFO), nor should any officer of the Indian Administrative Service (IAS) write the confidential report of officers of the Indian Forest Services. The Godavarman case still continues in the Supreme Court². But after the restrictions imposed on forestry practices by the Supreme Court, the misery of the people living in forest villages deepened and most families suffered from malnutrition³.

B.D. Sharma, a retired IAS officer of the Madhya Pradesh cadre, has been raising issues concerning tribals ever since he was Collector Bastar and is closely identified with the plight of tribals in India.⁴ Sharma was able to influence Purno Sangma who was then Speaker of the Lok Sabha to have the recommendations of the Bhuria Committee report incorporated in

¹ <http://www.india-seminar.com/2005/552/552%20digvijaya%20singh.htm>

² But through different orders the Supreme Court has set up an empowered committee to look into each case of conversion of forest land for non-forest use and report to it. This, in literal terms, implies that the Supreme Court has assumed the management of forests.

³ Although the Supreme Court empowered committee has recommended the conversion of forest villages into revenue villages, unfortunately this is being done on a case-to-case basis through a lengthy and tedious procedure. Clearly it will take a long time for all forest villages in the country to be converted into revenue villages.

⁴ Through the Bharat Jan Andolan he managed to influence the government to set up a committee to look into tribal issues. Subsequently, a committee under Dilip Singh Bhuria, a former Member of Parliament, was set up to extend the provisions of part IX of the Constitution concerning Panchayat to the scheduled areas.

a constitution amendment, which was known as the Panchayat Extension to the Scheduled Areas Act 1996⁵.

The Scheduled Tribe (Recognition of Forest Rights) Bill 2005, is a honest attempt to give the rights to forest dwelling scheduled tribes, but the safety valves incorporated in the bill may well negate the very intent of the government.⁶ Consequently any government that is not sensitive to the cause of the tribals can veto any proposal of the gram sabha⁷. Although a majority of forest dwellers belong to the scheduled tribes, there are a large number of scheduled caste (SC) and other backward castes (OBCs) whose economic condition is no different from the STs, and their rights cannot be ignored.⁸ The forest should not be seen merely as a source of revenue for the state but as a source of livelihood for the forest dwellers⁹. Post-1980 encroachments too can be taken up by the state governments through formulating a scheme in which encroachers are assured livelihood with food security in protecting the forest and making them owners of the timber and non-timber forest produce.¹⁰ Despite the Forest Conservation Act, no state could check the depletion neither of forest area nor save the dwindling wildlife because it is not humanly possible.¹¹ The satellite images have shown an increasing trend of forest cover in most states¹². An estimate of the total revenue from timber and non-timber forest produce of all states in the country would be less than Rs 3000 crore¹³.

⁵ (PESA)

⁶ As per the draft bill, every decision of the gram sabha will go for ratification to a sub-divisional committee and a district committee.

⁷ (Section 6)

⁸ It will not be able to look after the interest of the tribals effectively until and unless we involve the other forest dwellers also.

⁹ See supra 1.

¹⁰ They can be given employment in water harvesting schemes or digging a pond/dug well, and permitted inter-cropping between the rows of tree plantation.

¹¹ It was only once the community was empowered and involved through participatory management of forests in the nineties that the decline has been arrested.

¹² In my opinion, instead of introducing legislation, either in the form of forest conservation and wildlife preservation acts or in the form of a tribal bill, it would be more fruitful to draft a new Indian Forest Act which would give rights of forest to the forest dwellers and involve them in the conservation and preservation of forests.

¹³ See supra 1.

The move to evict forest dwellers and forest dependent communities from the forest is an unsubtle attempt at re-imagining their role as a foe of the forest and of wild life, and as a threat to national, and global, environment.¹⁴ In one sense, this is a continuation of the legal regime that was imprinted into the statute books, such as the Indian Forest Act 1927¹⁵. The Indian Forest Act 1927 sanctions the state to exercise of control over the forests, and to assert a species of ownership. Forests were classed as reserve forests, village forests and protected forests¹⁶. Enacted to assert state proprietorship, and ownership, over forest resources, the Forest Act 'reserved' 'protected' and declared forests in which it then shrank the rights of the forest communities, as the state deemed apt.¹⁷ The relationship of forest communities to the forest were reductively perceived as interests and rights that could be 'settled'. In the process of settling forest rights, forest communities were reduced to claimants.¹⁸ In the 1950s and 1960s, the colonial agenda of commercial exploitation of forest by the state for its expansionist projects, was refashioned to include an emphasis on industrial growth as development. So it is that industry was allowed access to forests, at pitifully low rates, to clear forest growth for its purposes.¹⁹ It is instructive to read the Statement of Objects and Reasons for these two legislations: both categorically trace the problem of pollution and deterioration of air, and of water sources, to 'the growth of industries and the increasing tendency to urbanisation' (Water Act) and 'the increasing industrialisation' (Air Act).²⁰

The Forest (Conservation) Act 1980, enacted to shift, and centralise, the power over forests was intended to check deforestation, which, the Statement of Objects and Reasons states,

¹⁴ This is based not on empirical fact, but on what may be termed 'institutionalized prejudice'.

¹⁵ (Which had a predecessor in the Indian Forest Act 1878)

¹⁶ <http://www.ielrc.org/content/f0401.htm>

¹⁷ In this process, notions of common property, and use, were forced aside, and replaced by state control to serve the interests, then usually commercial and expansionist, of the state.

¹⁸ Even as the Forest Act spells out the many things that the state may prohibit forest communities from doing in relationship to the forest, there were no such limitations placed on the state.

¹⁹ See supra 16.

²⁰ Yet, when the depleting forest cover was under scrutiny, the predominant role played by industry in the loss of forest was not given centrality. There is no other way that the handing over of forest land to Harihar Polyfibres, after the importance of forest conservation had been set into the statute – in the Forest (Conservation) Act 1980 – can be explained.

'had been taking place on a large scale in the country'.²¹ Increasingly, the large scale displacement that 'development projects' such as dams engender, have had the consequence of state governments seeking the central government's permission to de-reserve forest areas so as to provide rehabilitation sites to the displaced: the option of altering the project of what turns out to be 'destructive development' has almost never been considered.²² While making the provisions of the Act more effective and stringent due regard has also been given to the rights of the local people, particularly the tribals.²³ And the effort is to be towards harmonising the interests of the tribals with that of the forest; not tearing them asunder.²⁴

The 42nd Constitution Amendment Act, 1976 inserted Article 48A into the Directive Principles of State Policy: 'The State shall endeavor to protect and improve the environment and to safeguard the forests and wildlife of the country.' And Article 51A, also introduced by the 42nd Amendment, which lists out the fundamental duties said: 'It shall be the duty of every citizen of India – (g) to protect and improve the national environment and forests, lakes, rivers, wildlife and to have compassion for living creatures.'²⁵ In tandem with this development in judicial process, the substantive content of the 'right to life' in Article 21 was expanded.²⁶

In *S.P. Gupta v. Union of India*²⁷, the Supreme Court set out in unmistakable terms that PIL had been devised to provide access to justice to the indigent, illiterate and ignorant that were

²¹ The Act, like the Ordinance that preceded it, 'made the prior approval of the Central Government necessary for dereservation of reserved forests and for use of forest land for non-forest purposes.'

²² It is in this context of industry, mining interests and 'project development' that last, in the case of dams as an example, invariably drowns forest resources and demands diversion of those forests that escape submergence, in which 'conservation' is being spoken. Yet, it is the people of the forest who have been projected as its arch depredator.

²³ . It is being provided that except for the areas under reserve forests, (where the rights of the people have already been settled) and the territorial waters, no area can be declared as sanctuary unless the rights of the people have been settled. State Wild Life Advisory Boards are also being made responsible for suggesting ways and means to harmonise the needs of tribals and the protection of wildlife.'

²⁴ Yet, when the order of the Supreme Court was interpreted to mean forcible eviction of forest communities, this parliamentary purpose was not even acknowledged.

²⁵ In directing that all forest communities be evicted, there has been no attempt to ascertain what the relationship between the forest communities and the forest is.

²⁶ The right to dignity, health, clean environment, education, livelihood and shelter were some aspects of this wider meaning given to the law.

²⁷ (1981 Supp SCC 81)

unable to reach rights, and would so remain if there were no intervention to further their cause.²⁸ The court often ordered temporary closure of the industry involved, and negotiated the setting up of effluent treatment plants and central effluent treatment plants and, upon the installing of these clean-up technologies, the industries were permitted to restart operations²⁹. So are the various constitutional injunctions that would require respect for the forest communities.³⁰

Recognising the importance of protecting the habitat from incursions and being taken over, the Constitution carves out 'scheduled areas', which the President will notify for special protection.³¹ Embargoes on alienation of land by a tribal to a non-tribal have been enacted in relation to scheduled areas, to reduce the potential for exploitation of tribals.³²

The ineligible are those whose claim to be recognised as having interests are not accepted.³³ That many forests dwellers have remained uncouncted, they have not been given pattas, and the law into various states of illegality has forced them, also lends it to creating this unjust situation.³⁴ It is a steep decline in policy – from special protection to exile and disarray – that this move portends.³⁵ The right of everyone to an adequate standard of living for himself

²⁸ In the early years of the '80s, when the degradation of the environment was taken to the court in PIL, it was the pollution of rivers, especially by industrialisation, that was in issue.

²⁹ (Clean-up technologies, it may be added, did not and were not expected to stop the pollution; only to reduce it.)

³⁰ For instance, a significant proportion of the forest communities are scheduled tribes. Scheduled tribes have a special status in the Constitution.

³¹ The 5th Schedule and the 6th Schedule to the Constitution provide a different dispensation in the matter of administering Scheduled Areas.

³² In 1998, the Supreme Court ruled, in *Samata v. State of A.P.*, that the prohibition of alienation meant that the state too could not acquire land from a tribal to hand it over to a non-tribal. And that ruling continues to be the law despite attempts by a range of vested interest to change this situation, by amending the 5th Schedule to the Constitution, if necessary.

³³ And the invisibles are those who do not feature in any government document or register, and the whole exercise of dispossession and displacement is affected as if they do not exist.

³⁴ It is also significant that those least dispossessed in the working of the law, i.e., the eligibles, have only the right to reduce their interests to a claim – and they may then receive compensation which will then be seen as 'settling' their rights. The inevitable impoverishment that results is not accounted for anywhere.

³⁵ This also negates, in totality, the letter and the spirit of the Panchayats (Extension to Scheduled Areas) Act, 1996 which was a stride towards recognising the autonomy of communities in scheduled areas over the resources in their region, including water, forest produce and minor minerals.

and his family, including adequate food, clothing, and housing, and to the continuous improvement of living conditions.³⁶

The obligation to *protect* requires states to prevent violation of such rights by third parties...The obligation to *fulfil* requires states to take appropriate, legislative, administrative, budgetary, judicial and other measures towards the full realisation of such rights.³⁷

General Comment 4 of the Committee on Economic, Social and Cultural Rights on the Right to Housing denounces forced evictions when it says³⁸:

18. In this regard, the Committee considers that instances of forced eviction are prima facie incompatible with the requirements of the Covenant and can only be justified in the most exceptional circumstances, and in accordance with the relevant principles of international law.

The Committee on Economic Social Cultural Rights, in General Comment 7 on forced evictions recognised the burden of suffering placed especially on particular populations when it said³⁹

‘ Women, children, youth, older persons, indigenous people, ethnic and other minorities, and other vulnerable individuals and groups all suffer disproportionately from the practice of forced evictions.’

and proposed that the least that needed to be done was to provide a procedure to precede forced evictions, where forced eviction cannot be avoided.⁴⁰

³⁶ (Article 11)

³⁷ (Maastricht Guidelines, para 6)

³⁸ (In para 18)

³⁹ (in para 11)

⁴⁰ These procedural protections include (para 16): an opportunity for genuine consultation with those affected; adequate and reasonable notice for all affected persons prior to the scheduled date of eviction; information on the proposed evictions and where applicable, on the alternative purpose for which land or housing is to be used, to be made available in reasonable time to those affected; especially where groups of people are

Important Cases

In *State of W.B. v. Sujit Kumar Rana*⁴¹ the Court said that the legislature has inserted the aforementioned provisions with a laudable object. Forest is a national wealth, which is required to be preserved. In most of the cases, the State is the owner of the forests and forest produce. Depletion of forests would lead to ecological imbalance. It is now well settled that the State is enjoined with a duty to preserve the forests so as to maintain ecological balance and, thus, with a view to achieve the said object forests must be given due protection. Statutes, which provide for protection of forests to maintain ecological balance, should receive liberal construction at the hands of the superior courts.⁴²

involved, government officials or their representatives to be present during an eviction; all persons carrying out the eviction to be properly identified; evictions not to take place in particularly bad weather or at night unless the affected persons consent otherwise; provision of legal remedies; and provision, where possible, of legal aid to persons who are in need of it to seek redress from the courts.

41 (2004) 4 SCC 129, at page 137

42 Interpretive exercise of such power should be in consonance with the provisions of such statutes not only having regard to the principle of purposive construction so as to give effect to the aim and object of the legislature; keeping the principles contained in Articles 48-A and 51-A(g) of the Constitution of India in mind. The provisions for confiscation have been made as a deterrent object so that felling of trees and deforestation is not made. See also *State of Bihar v. Kedar Sao* (2004) 9 SCC 344, at page 358, *State of M.P. v. S.P. Sales Agencies* (2004) 4 SCC 448, at page 454, *State of Jharkhand v. Govind Singh* (2005) 10 SCC 437, at page 446, *Union of India v. Jitendrasinh M. Parmar* (2005) 4 SCC 444, at page 444.

8.2.2-WILD LIFE (PROTECTION) ACT, 1972

Conservation of wild life is the integral part of conservation of forests and both are interrelated. Wildlife is rather dependant on forest for its habitat. From international sector to national level all the developments have been made to conserve the wildlife.

Yet magnificent antelope with distinctive lyre-shaped horns has been classified under Appendix 1 of the Convention on International Trade in Endangered Species¹; *An International Campaign to Save The Endangered Tibetan Antelope*, a study by International Fund for Animal Welfare² and Wildlife Trust of India (WTI)³. This wool is very soft and light. Traditionally, shawls made of this wool are prized possessions of northern Indian families and are very expensive. ⁴ Trade in this wool was always very lucrative and profitable, and has today turned into one of the main threats to the existence of this highly endangered species. There is rampant poaching of chiru, especially across the China border where the largest populations of the species live.⁵ At the outset, this number might still seem substantial but not when one looks at some of these figures closely.⁶ Wildlife organizations concerned with this scenario have for the last several years been trying to get some action against this illegal hunting and trade.⁷

So, when wildlife organizations ⁸approached the High Court of Jammu and Kashmir for the first time, the chiru was only partially protected as per the State law, in contrast to the central Wild Life (Protection) Act, 1972 which had included it as a Schedule I species granting it

¹ (CITES)

² (IFAW)

³ <http://www.indiatogether.org/2005/nov/env-chiru.htm#continue>

⁴ The price of a shawl depends on its size, colour, the extent and quality of any embroidery and the purity of the wool. In India pure shahtoosh shawls cost between Rs.35,000 and 250,000.

⁵ Only 200-250 chirus migrate to Ladakh. Therefore, to meet the local demand in India the wool is illegally imported across the border where the shawls are made and then sold.

⁶ The study by IFAW and WTI indicates that typically the making of a shawl for a woman requires killing of three Tibetan antelopes and for the men's shawls, five antelopes.

⁷ While there are some developments taking place on the ground - looking at habitat conservation as well as alternate livelihoods of weavers who were engaged traditionally in making Shahtoosh shawls - there is an interesting set of debates taking place in the courts as well.

⁸ (Wildlife Protection Society of India)

complete protection. In February 2003, the petition was disposed off in the Jammu and Kashmir High Court. The key points of the court's order were⁹:

- The Court has no power to direct the State to make a law;
- The State has already recognized chiru as a Schedule I species;
- The State government should ensure that the trade is regulated, and that the art and artisans dependent on it survive. If both become extinct, it would be disastrous for the State;

In response to this order, in 2004 the Wildlife Protection Society of India in the Supreme Court filed by wildlife conservationist Ashok Kumar and appeals¹⁰. In November 2004, the Union of India filed its response and gave the complete legal history of the case¹¹. They have also not issued any permit for hunting of Tibetan antelope ... the Import and Export Policy of the Government of India completely prohibits the import and export of shahtoosh".¹² The response brings to light that there are more than 50,000 people in the state who are dependent on the production of shahtoosh shawls¹³. Since then even the females with thin coats - and even pregnant females - are poached.¹⁴ As the final decision on this case is pending, far off in the mountains, the chiru wanders around, perhaps oblivious, perhaps aware of its endangered existence¹⁵.

Objectives of The Forensic Laboratory :¹⁶

To prepare a perspective plan for the development of wildlife forensic technology in India.

To establish close linkages with national and international institutions of repute in wildlife

⁹ <http://www.indiatogether.org/2005/nov/env-chiru.htm#continue>

¹⁰ These drew the attention of the court to stop the rampant illegal trade of shahtoosh, which is the cause of the poaching of the chiru. It also brought to light the inadequate action by the State and Central governments to check the trade.

¹¹ It reiterated that the Tibetan Antelope being a Schedule I species, there is a complete ban on the sale and other transaction of shahtoosh wool, shawl etc. by any other mode except inheritance.

¹² But it also questions the 2003 High Court judgment, which had claimed that no Tibetan Antelopes were being killed for trade in the state, and states that killing is indeed taking place.

¹³ A large percentage of this is women, either widows or others who don't have any alternate source of income.

¹⁴ There is none of the discretion that existed traditionally.

¹⁵ And for some of us following the debate, myriad questions remain.

¹⁶ <http://www.wii.gov.in/forensic.htm>

forensic technology. To create the required infrastructure (work space, storage facility, reference sample and data base). To become proficient in species-specific identification of Indian vertebrates using external morphological characteristics. A Memorandum of Understanding has been signed with BPRD for preparing DNA profiles of various species at CFSL, Kolkata.¹⁷ Various Officers from the Forest Research Institute, State Forest Service College, Indira Gandhi National Forest Academy, Madras Veterinary College, National Institute of Immunology and Ministry of Environment and Forest visited the Wildlife Forensic Laboratory.¹⁸

Offences pertaining to hunting of endangered species and altering of boundaries of protected areas¹⁹

For offences relating to wild animals (or their parts and products) included in schedule-I or part II of Schedule- II and those relating to hunting or altering the boundaries of a sanctuary or national park the punishment and penalty have been enhanced, the minimum imprisonment prescribed is three years which may extend to seven years, with a minimum fine of Rs. 10,000/-. For a subsequent offence of this nature, the term of imprisonment shall not be less than three years but may extend to seven years with a minimum fine of Rs. 25,000.²⁰ This has been amended with a view to curb illegal trade, and thus no person can now acquire Schedule I or Part II of Schedule II animals, articles or trophies except by way of inheritance²¹. Offences related to trade and commerce in trophies, animals articles etc. derived from certain animals²² attracts a term of imprisonment upto three years and/or a fine upto Rs. 25,000/-. The animals that inhabit our national parks capture our curiosity and our

¹⁷ At WII various techniques such as PCR-RFLP, mitochondrial DNA analysis will be standardized for identifying species. With the close cooperation of Zoological Parks at New Delhi, Mysore, Chennai and Kanpur, it has been possible to procure sixty three reference tissue samples of forty species which includes 24 mammals and sixteen birds during the reported period. At present we have tissue sample repository of 188 species.

¹⁸ Shri C.P. Sharma, the Laboratory Technician who was on study leave for his Master Course in Forensic Science from Punjabi University, Patiala, sponsored under Wildlife Institute of India-US Fish and Wildlife Service collaborative project, has rejoined us after successfully completing the course.

¹⁹ <http://projecttiger.nic.in/wildlifeprotection.htm>

²⁰ Also a new section (51- A) has been inserted in the Act, making certain conditions applicable while granting bail:

²¹ (Except live elephants)

²² (except chapter V A and section 38J)

hearts²³. The opportunity to see these animals in their natural setting has become a major attraction to parks such as Yellowstone, Yosemite, and Everglades²⁴.

Project Tiger was formed in 1972 and launched on the 1st April 1973 at Corbett National Park. Its aims were²⁵: To ensure maintenance of a viable population of tigers in India for scientific, economic, aesthetic, cultural and ecological values. To preserve, for all times, areas of such biological importance as a national heritage for the benefit, education and enjoyment of the people. Genuinely the tiger skin is not fashionable but the smuggling of Tiger fur coats and rugs are not difficult for the impoverished hunters.²⁶ But more wildlife conservation laws and awareness among people is still required to make Indian sanctuaries a safe haven for tigers.²⁷

Rajasthan is a heaven for a wide spectrum of wild life. On the one part while you have desert land, the east is the green, fertile land dotted with lakes thickly wooded and through which the beautiful river Chambal flows.²⁸ Rajasthan boasts of two National parks, over a dozen Sanctuaries & two closed areas. All wildlife sanctuaries are accessible by car and all have accommodation within or near them.²⁹

Restriction on entry in sanctuary³⁰

- (1) No person other than,-
 - (a) a public servant on duty,

²³ http://www.npca.org/wildlife_protection/wildlife_facts/

²⁴ Our national parks provide some of the best, and sadly some of the last, remaining habitats for countless species. In fact, one-third of endangered and threatened species in our nation can be found within park boundaries

²⁵ <http://www.lairweb.org.nz/tiger/project.html>

²⁶ Even after the bans made by the government warning not to gather even wood from the former hunting grounds, poaching of tigers continue.

²⁷ <http://indianwildlifeportal.com/project-tiger/>

²⁸ The jungles are alive with tiger, leopard, black bucks, chinkara, the rare desert fox, the endangered caracal, the great Indian bustard, gaviyal, monitor lizard, wild boars, Sambhar, nilgai.

²⁹ http://www.tdil.mit.gov.in/E_TOURISM_CDAC/tourism1/Wildlife.HTML

³⁰ Section 27

(b) a person who has been permitted by the Chief Wild Life Warden or the authorised officer to reside within the limits of the sanctuary,

(c) a person who has any right over immovable property within the limits of the sanctuary,

(d) A person passing through the sanctuary along a public highway, and

(e) The dependants of the person referred to in clause (a), clause (b) or clause

(c), shall enter or reside in the sanctuary, except under and in accordance with the conditions of a permit granted under section 28³¹.

(2) Every person shall, so long as he resides in the sanctuary, be bound-

(a) to prevent the commission, in the sanctuary, of an offence against this Act;

(b) where there is reason to believe that any such offence against this Act has been committed in such sanctuary, to help in discovering and arresting the offender;

(c) to report the death of any wild animal and to safeguard its remains until the Chief Wild Life Warden or the authorised officer takes charge thereof;

(d) to extinguish any fire in such sanctuary of which he has knowledge or information and to prevent from spreading, by any lawful means in his power, any fire within the vicinity of such sanctuary of which he has knowledge or information; and

(e) to assist any Forest Officer, Chief Wild Life Warden, Wild Life Warden or Police Officer demanding his aid for preventing the commission of any offence against this Act or in the investigation of any such offence.³²

Important Cases

In *Consumer Education and Research Society v. Union of India*³³ the Apex Court held that the State Government referred the issue to the expert body namely "Gujarat Ecological

³¹ (1) The Chief Wild Life Warden may, on application, grant to any person a permit to enter or reside in a sanctuary for all or any of the following purposes, namely:- (a) investigation or study of wild life and purposes ancillary or incidental thereto; (b) photography; (c) scientific research; (d) tourism; (e) transaction of lawful business with any person residing in the sanctuary. (2) A permit to enter or reside in a sanctuary shall be issued subject to such conditions and on payment of such fee as may be prescribed.

³² (3) No person shall, with intent to cause damage to any boundary-mark of a sanctuary or to cause wrongful gain as defined in the Indian Penal Code, 1860 (45 of 1860), alter, destroy, move or deface such boundary-mark. (4) No person shall tease or molest any wild animal or litter the grounds of sanctuary.

³³ (2005) 10 SCC 185, at page 186, see also *Balram Kumawat v. Union of India* (2003) 7 SCC 628, at page 640, *Essar Oil Ltd. v. Halar Utkarsh Samiti*, (2004) 2 SCC 392, at page 407.

Education and Research (GEER) Foundation”. The expert body after intensive study has submitted a report and the recommendation of the expert body is as follows:

“The inferences drawn from the present study indicate that mining operations, if carried out within 2.5 km from the boundaries of Narayan Sarovar Wildlife Sanctuary, should be considered as detrimental to the wildlife and wildlife habitat of the sanctuary. It is opined, therefore, that mining operations should not be allowed within 2.5 km beyond the boundaries of Narayan Sarovar Wildlife Sanctuary.”

In order to make more conservation friendly provisions to the present Act the Government has passed many rules and notification, e.g. The national board for wild life, 2003,³⁴ The breeding of and experiments on animals (control and supervision) Amendment rules, 2005.³⁵

It may be concluded that after the Act came into operation many provisions were not sufficient for conservation of wildlife animals. Proper way of implementation of the Act was always a question. But, with certain amendments and issuing of notifications work for conservation of living resources may be possible. The water is inevitable for wildlife conservation, therefore, first conservation of water is outmost important.

³⁴ See for details Annex 4.

³⁵ See for details Annex 1.

8.3.3-THE WATER (PREVENTION AND CONTROL OF POLLUTION) ACT, 1974

All the living resource will have their existence with the availability of good quality of water, and this fact is possible only through protection and conservation of Water resources, as it has been seen in the previous topic that even forest resources are well dependant on water.

India is the first country, which has made provisions for the protection and improvement of environment in its Constitution. In the 42nd amendment to the Constitution in 1976, provisions to this effect were incorporated in the Constitution of India with effect from 3rd Jan 1977.¹ In the Directive Principles of State Policy in Chapter IV of the Constitution, Article 48-A was inserted which enjoins the State to make endeavour for protection and improvement of the environment and for safeguarding the forest and wild life of the country. Another landmark provision in respect of environment was also inserted, by the same amendment, as one of the Fundamental Duties of every citizen of India. This is the provision in Article 51-A (g) of the Constitution. It stipulates that it shall be the duty of every citizen of India 'to protect and improve the natural environment including forests, lakes, rivers, and wild life and to have compassion for living creatures'.

There were provisions already existing in various enactments to tackle environmental pollution. The Indian Penal Code, The Criminal Procedure Code, The Factories Act, The Indian Forest Act, The Merchant Shipping Act etc. have provisions for regulation and legal action for some specific environmental issues². The Water (Prevention and Control of Pollution) Act, 1974, is the first enactment by the Parliament in this direction. This is also the first specific and comprehensive legislation institutionalizing simultaneously the regulatory agencies for controlling water pollution. The Pollution Control Boards at the Centre and in the States came into being in terms of this Act. Another related legislation

¹ <http://hppcb.nic.in/intro.htm>

² However, with our country's emerging environmental scenario with industrialization in the post-independence era, these were found either inadequate or being not effectively applicable to check the degradation of our environment. After the Stockholm Conference on Human Environment in June 1972, it was considered appropriate to have uniform laws all over the country for broad environmental problems endangering the health and safety of our people as well as of our flora and fauna.

enacted was the Water (Prevention and Control of Pollution) Cess Act, 1977 in order to conserve this vital natural resource and to augment the finance of these regulatory agencies.³

The responsibility for implementation of provisions of the Environment (Protection) Act has to a large extent been entrusted to the same regulatory agencies created under the Water (Prevention and Control of Pollution) Act, 1974. Other agencies besides the Central and State governments are also entrusted with the responsibility of implementing specific provisions of this Act and the Rules made there under depending on their operational requirements.

Prevention and control of pollution is being regulated under the Water (Prevention and Control of Pollution) Act, 1974, Air (Prevention and Control of Pollution) Act, 1981 and the Environment (Protection) Act, 1986 in addition to the Rules framed under these Acts. The State Pollution Control Board was constituted in 1975 under the provision of the Water (Prevention and Control of Pollution) Act, 1974. Subsequently, the implementation of the provisions contained in Water (Prevention and Control of Pollution) Cess Act, 1977, Air (Prevention and Control of Pollution) Act, 1981 and the Environment (Protection) Act, 1986 was also entrusted to the State Board. The prime object of all these acts is maintaining, restoring and reserving the wholesomeness of quality of environment and prevention of hazards to human being and terrestrial and aquatic flora and fauna.⁴

Pollution of the rivers, streams and water resources are issues causing concern to mankind. This Act was enacted to provide for the prevention and control of pollution and for

³ Thereafter, The Air (Prevention and Control of Pollution) Act was likewise enacted in the year 1981 and the task of implementation of this legislation was also entrusted to the same regulatory agencies created under the Water (Prevention and Control of Pollution) Act, 1974. As the Water (Prevention and Control of Pollution) Act and the Air (Prevention and Control of Pollution) Act were designed to deal with only water and air pollution problems, it was in the year 1986 that the Parliament enacted a comprehensive or umbrella legislation for environment in its entirety. This is The Environment (Protection) Act, 1986.

⁴ In order to achieve the objectives of the Pollution Control Legislation, the State Board as having its head quarter at Shimla with 10 Regional Offices functioning at various parts of the State catering to the functional requirements of contiguous districts. Beside this, the State Board is also having a well equipped laboratory at Parwanoo with state of the art equipment for conducting analysis and research activities and three Regional Laboratories at Jassur, Paonta and Sundernagar.

maintaining or restoring the wholesomeness of water. The provisions of this Act are applicable to both individuals and body of individuals. In case of individuals, when the person himself is liable for compliance of the provisions at the same time in case of body of individuals the Occupier is liable for the compliance of the provisions of this Act.⁵

Occupier with reference to a factory is a person who has control over the affairs of the factory. In case where the affairs are entrusted to any managerial personnel then such person is deemed to be the Occupier.⁶

Legal Authorities Under The Act:

There are two levels of authorities under the Act. Central Pollution Control Board and State Pollution Control Board. These two authorities are constituted by the Central Government and respective State Governments respectively to exercise the powers conferred on and to perform the functions assigned under the Act for the prevention and Control of pollution under the Act.

Obligations Of The Occupier:

To ensure that no poisonous, noxious or polluting matters enter into any stream or well or sewer or on land.⁷ Not to permit or let any other matter enter into any stream, which may impede the proper flow of the water in a manner likely lead to pollution.⁸ To furnish all the information regarding the construction, installation, or operation of the establishment or any disposal system or any extension or addition to the establishment and any other particulars as required by the Board.⁹ To apply for the previous consent of the State Board in such form and accompanied by such fees as may be specified to: Before making any new discharge or sewage of effluents, which is different in composition to the old effluents or has an increased

⁵http://www.corpmen.com/environmentallaw/waterpollution_brief.htm?PHPSESSID=f049364a4b3aa9cbad425588a75ccf1e

⁶ The designation is not the criteria to hold any person to be the occupier. It is the substance control over the affairs which hold the person to be the occupier under the Act.

⁷ [Section 24]

⁸ Ibid.

⁹ [Section 20]

temperature, volume or rate of discharge; On Board's refusal to grant or withdrawal of consent to prefer an Appeal to the Appellate Authority within 30 days of the date on which the order of refusal or withdrawal is communicated to him.¹⁰ To comply with the conditions imposed with the consent granted by the Board. To request for the samples to be analysed by the Central or State Water Laboratory as the case may be, if he is not satisfied by the result of analysis of the samples¹¹. The occupier to inform the Central/State Board as the case may be immediately on happening of any accident or unforeseen event in the industry, operation process or disposal system, by the result of which the water is being polluted or may be polluted.¹²

Liability of the occupier: If the samples get analysed by the Central or State Water Laboratory as per the occupier's request, or due to his or his agents willful absence at the time of taking the samples for analysis and he is not ready to pay the cost of analysis, the costs can be recovered from him as arrear of land revenue or as public demand.¹³

Offences And Penalties Under The Act: All the offences bellow are punishable with imprisonment for a term upto 3 months or with fine upto Rs.10, 000/- or both.

Non-complying the directions issued by the Board for furnishing of information.

Knowingly or willfully furnishing any false information to the Board.

Destroying or injuring any post, pillar fixed in the ground by the Board, etc.

Knowingly interfering with any device so as to preventing it from correct monitoring, which device is used by the Board for the purpose of monitoring the pollution level for grant of consent.¹⁴

Continuance of offences is punishable with fine upto Rs.5, 000/- per day during the failure continues: Failure to comply with the orders issued by the Board or Court to restrain from discharging any polluting or noxious matter into the stream or to remove the polluting matter from the stream, is punishable with imprisonment upto 6 years and fine. Incase failure

¹⁰ [Section 28]

¹¹ To pay the cost of analysis of the samples by the Central or State Water Laboratory, if done on his request. To comply with all notices, orders or directions if any served or given by the Board.

¹² [Section 31]

¹³ The expenses incurred by the Board by the order of the Court for the removal of pollutants discharged from the establishment can be recovered from the occupier as arrears of land revenue.

¹⁴ Contravening of any of the provisions of the Act, or non-complying of any direction of the Board or Authority, where no penalty has been provided.

continues, additional penalty will be imposed upto Rs.5000/- for every day, during which the failure continues. If the failure continues beyond 1 year, the offender is punishable with imprisonment upto 7 years and fine.¹⁵ Establishing or taking steps to establish any industry, process, operation or treatment and disposal system or makes any addition or extension thereto without the consent of the Board, is punishable with imprisonment upto 6 years and with fine. Further conviction for the same offence, is punishable with imprisonment upto 7 years and with fine.

Offences by companies: Both the company and the person who was in charge of the company and was responsible for the conduct of business are liable to be punished accordingly. However, such person shall not be liable for the conduct of business if he proves that he had exercised all due diligence to prevent the offence.¹⁶

Compoundability and cognizance of offences: All the offences under this Act are non-Compoundable. Court shall take cognizance of the offence on a complaint made by¹⁷:

The Board or any authorised officer by the Board in this behalf.

Any other person who has given a notice of at-least 60 days to the Board or authorised officer of the Board, specifying the alleged offence and his intention to make a complaint.

The Central Pollution Control Board (CPCB) constituted in September 1974 under the provisions of The Water (Prevention & Control of Pollution) Act, 1974.

Functions Of The Central Board: The main functions of CPCB, as spelt out in The Water (Prevention and Control of Pollution) Act, 1974, and The Air (Prevention and Control of Pollution) Act, 1981, are: (i) to promote cleanliness of streams and wells in different areas of

¹⁵ Discharging or permitting any other to discharge any polluting, noxious or any other matter to enter into the stream by the result of which the water is or may be polluted, will be punishable with imprisonment upto 6 years and with fine. Further conviction for the same offence, is punishable with imprisonment upto 7 years and with fine.

¹⁶ If it is found that an offence has been committed by the company, and it is also proved that the offence has been committed with the consent or neglect on the part of any Director, Manager, Secretary or other Officer then such Director, Manager, Secretary or other Officer will be liable for the offence.

¹⁷[L.R. Wadhvani Vs. The Haryana, State Board for the Prevention and Control of Water Pollution, Chandigarh and another, [1989 (1) FAC 268, (270) (P&H)]

the States through prevention, control and abatement of water pollution; and (ii) to improve the quality of air and to prevent, control or abate air pollution in the country.

Functions of the Central Board (at the national level)

Advise the Central Government on any matter concerning prevention and control of water and air pollution and improvement of the quality of air;

Plan and cause to be executed a nationwide programme for the prevention, control or abatement of water and air pollution;

Co-ordinate the activities of the State Boards and resolve dispute among them;¹⁸

Collect, compile and publish technical and statistical data relating to water and air pollution and the measures devised for their effective prevention, control or abatement;

Prepare manuals, codes and guidelines relating to treatment and disposal of sewage and trade effluents as well as for stack gas cleaning devices, stacks and ducts;

Disseminate information in respect of matters relating to water and air pollution and their prevention and control;

Lay down, modify or annul, in consultation with the State Governments concerned, the standards for stream or well, and lay down standards for the quality of air; and

Perform such other functions as and when prescribed by the Government of India.

Functions of the Central Board as State Board for the Union Territories

Advise the Governments of Union Territories with respect to the suitability of any premises or location for carrying on any industry, which is likely to pollute a stream or well or cause air pollution;

¹⁸ Provide technical assistance and guidance to the State Boards, carry out and sponsor investigations and research relating to problems of water and air pollution, and for their prevention, control or abatement; Plan and organise training of persons engaged in programmes on prevention, control or abatement of water and air pollution; Organise through mass media, a comprehensive mass awareness programme on prevention, control or abatement of water and air pollution;

Lay down standards for treatment of sewage and trade effluents and for emissions from automobiles, industrial plants, and any other polluting source;

Evolve efficient methods for disposal of sewage and trade effluents on land;¹⁹

Assess the quality of ambient air and water, and inspect wastewater treatment installations, air pollution control equipment, industrial plants or manufacturing processes to evaluate their performance and to take steps for the prevention, control and abatement of air and water pollution. As per the policy decision of the Government of India, the Central Pollution Control Board, delegated its powers and functions under The Water (Prevention and Control of Pollution) Act, 1974, The Water (Prevention and Control of Pollution) Cess Act, 1977 and The Air (Prevention and Control of Pollution) Act, 1981 with respect to Union Territories to respective Pollution Control Committees under the local Administration.²⁰

Water pollution has many sources. The most polluting of them are the city sewage and industrial waste discharged into the rivers. The facilities to treat waste water are not adequate in any city in India. Presently, only about 10% of the waste water generated is treated; the rest is discharged as it is into our water bodies. Due to this, pollutants enter groundwater, rivers, and other water bodies. Such water, which ultimately ends up in our households, is often highly contaminated and carries disease-causing microbes. Agricultural run-off, or the water from the fields that drains into rivers, is another major water pollutant as it contains fertilizers and pesticides.²¹

The effects of water pollution are not only devastating to people but also to animals, fish, and birds. Polluted water is unsuitable for drinking, recreation, agriculture, and industry. It diminishes the aesthetic quality of lakes and rivers. More seriously, contaminated water destroys aquatic life and reduces its reproductive ability. Eventually, it is a hazard to human

¹⁹ Develop reliable and economically viable methods for treatment of sewage, trade effluents and air pollution control equipment; Identify any area or areas within Union Territories as air pollution control area or areas to be notified under the Air (Prevention and Control of Pollution) Act, 1981; and

²⁰ http://www.cpcb.nic.in/annual_report1999-2000-1.htm

²¹ <http://edugreen.teri.res.in/explore/water/pollu.htm>

health. Nobody can escape the effects of water pollution.²² The monitoring is done on monthly or quarterly basis in surface waters and on half yearly basis in case of ground water.²³ Biomonitoring is also carried out on specific locations. In view of limited resources, limited numbers of organic pollution related parameters are chosen for frequent monitoring i.e. monthly or quarterly and major cations, anions, other inorganic ions and micro pollutants²⁴ are analysed once in a year to keep a track of water quality over large period of time. The water quality data are reported in Water Quality Status Year Book. The water quality data on all the monitoring locations is computed for the year 2004 and is summarized as minimum, maximum and mean value for all the rivers in a basin.²⁵

Important Cases

In *State of M.P. v. Kedia Leather & Liquor Ltd*²⁶ the Apex Court held that the two statutes relate to prevention and control of pollution and also provide for penal consequences in case of breach of statutory provisions. Environmental, ecological air and water pollution amount to violation of the right to life assured by Article 21 of the Constitution of India, 1950 (in short “the Constitution”). Hygienic environment is an integral facet of healthy life. Right to live with human dignity becomes illusory in the absence of humane and healthy environment.

In *State of M.P. v. Kedia Leather & Liquor Ltd*²⁷ Supreme Court said that the doctrine of implied repeal is based on the theory that the legislature, which is presumed to know the existing law, did not intend to create any confusion by retaining conflicting provisions and,

²² The individual and the community can help minimize water pollution. By simple housekeeping and management practices the amount of waste generated can be minimized.

²³ The monitoring network covers 189 Rivers, 51 Lakes, 4 Tanks, 2 Ponds, 3 Creeks, 4 Canals, 10 Drains and 218 Wells. Among the 870 stations, 566 are on rivers, 55 on lakes, 10 on drains, 12 on canals, 4 on tank, 3 on creeks and 2 on pond and 218 are groundwater stations.

²⁴ (Toxic Metals & POP's)

²⁵ The monitoring locations are arranged according to the longitudinal profile of the river from its origin to its confluence with the deeper valley of the larger river or before meeting to the sea. Basinwise summarized data may be accessed through below given links.

²⁶(2003) 7 SCC 389, at page 394

²⁷(2003) 7 SCC 389, at page 395

therefore, when the court applies the doctrine, it does no more than give effect to the intention of the legislature by examining the scope and the object of the two enactments and by a comparison of their provisions. The matter in each case is one of the construction and comparison of the two statutes. The court leans against implying a repeal, unless two Acts are so plainly repugnant to each other that effect cannot be given to both at the same time, a repeal will not be implied, or that there is a necessary inconsistency in the two Acts standing together. While, as noted above, the provisions of Section 133 of the Code are in the nature of preventive measures, the provisions contained in the two Acts are not only curative but also preventive and penal. The provisions appear to be mutually exclusive and the question of one replacing the other does not arise. Above being the position, the High Court was not justified in holding that there was any implied repeal of Section 133 of the Code. The appeals deserve to be allowed to the extent indicated above, which we direct.

In *A.P. Pollution Control Board II v. Prof. M.V. Nayudu*²⁸ the Apex Court held that the provisions of the Water Act, 1974, it is clear that in view of sub-sections 2(e), 2(k) read with Sections 17 and 18 of the Water Act, the fundamental objective of the statute is to provide clean drinking water to the citizens. Having laid down the policy prohibiting location of any industries within 10 km under GO No. 111 dated 8-3-1996, the State could not have granted exemption to the 7th respondent Industry, nor to any other industry, from any part of the main GO No. 111 dated 8-3-1996. Section 19 permitted the State to restrict the application of the Water Act, 1974 to a particular area, if need be, but it did not enable the State to grant exemption to a particular industry within the area prohibited for location of polluting industries. Exercise of such a power in favour of a particular industry must be treated as arbitrary and contrary to public interest and in violation of the right to clean water under Article 21 of the Constitution of India.

In *M.C. Mehta v. Union of India*²⁹ the Court held that the Forty-second Constitutional Amendment inserted Article 48-A inserted in the Constitution in Part IV stipulating that the

²⁸(2001) 2 SCC 62, at page 78

²⁹(2004) 12 SCC 118, at page 166

State shall endeavour to protect and improve the environment and to safeguard the forest and wildlife of the country. Article 51-A, inter alia, provides that it shall be the duty of every citizen of India to protect and improve the natural environment including forest, lakes, rivers and wildlife and to have compassion for living creatures. Article 47, which provides that it shall be the duty of the State to raise the level of nutrition and the standard of living and to improve public health, is also relevant in this connection. The most vital necessities, namely, air, water and soil, having regard to right to life under Article 21 cannot be permitted to be misused and polluted so as to reduce the quality of life of others. Having regard to the right of the community at large it is permissible to encourage the participation of amicus curiae, the appointment of experts and the appointments of Monitory Committees. The approach of the Court has to be liberal towards ensuring social justice and protection of human rights.³⁰

From the appropriate point of view and after the above analysis it may be concluded that conservation of water resources is as much as important as to sustain life on earth, and the present Act has many provisions that promotes conservation, only proper implementation is required. By conserving water resources forest resources can also be conserved, which is the lung of the earth.

³⁰ On 22 April 2002, more than 2,000 irate protestors, consisting mostly of indigenous people and dalits gathered at the gates of the Hindustan Coca Cola factory in Plachimada, Palghat district, Kerala. Residents from the villages surrounding Coke's Greenfield soft-drink bottling factory here say that Coke's indiscriminate mining of groundwater has dried up many wells, and contaminated the remainder. At least 50 villagers have maintained a picket outside the factory gate every day since the strike began. Coke's recent placatory gesture of supplying a truckload of water each day to the two worst affected villages hasn't impressed the protestors. They say that Coke will have to pay for restoring the damaged groundwater aquifers and for long-term water supply to all the impacted villages. Coca Cola's bottling plant was set up three years ago in the middle of fertile agricultural land. "Coca Cola's plant is illegal because they haven't even obtained clearance for putting agricultural land to non-agricultural uses," says M. Swaminathan, a tribal leader from Velloor, one of the tribal villages affected by Coke's activities. Kerala states Land Utilization Act requires prior approval for conducting non-agricultural activities on designated agricultural land. In this connection it is to be noted that the Government introduced The Ground Water Bill, 2005, for controlling the extraction of ground water. Available on <http://www.indiatogether.org/environment/water/drinkcoke.htm>

8.3.4-THE FOREST (CONSERVATION) ACT, 1980

As it has been seen in the last topic that without water, conservation of living resources is never possible. But when water is abundantly available the conservation of forest resources requires certain guidelines, which have provided by the present Act. The Forest (Conservation) Act, 1980 is a regulatory act, not prohibitory. The Act provides for judicious non-forestry use of forestland irrespective of the area being tribal or non-tribal. As far as the tribal areas are concerned, the Central Government is committed for the development of the tribal villages at par with revenue villages.¹ So far, 384 forest villages involving forest area of about 34024 hectare have been converted into revenue villages in respect of Madhya Pradesh and Maharashtra. About 85 per cent population of these forest villages is tribal.² In respect of big projects, guidelines have been issued on 20-10-2003 under Forest (Conservation) Act, 1980, to set aside five per cent project cost for development of indigenous skills of tribals, providing basic amenities and services like education, health and sports facilities etc³.

Article 8(j) of the United Nations Convention on Biological Diversity ratified by the government of India is instructive for preservation of traditional knowledge and wisdom of the indigenous peoples. However, the Biological Diversity Act⁴ of India of 2002 fails to protect and promote the rights of indigenous and tribal peoples' traditional knowledge⁵.

The Draft National Policy on Tribals also contains similar misconceptions on the Intellectual Property Rights (IPR) that are given to persons or corporates over the creations of their minds.⁶ This can create further disintegration of the community values and practices and cause infighting between indigenous communities as to who can claim ownership over a

¹ It is therefore, has issued Guidelines on 18th September 1990, for conversion of forest villages into revenue villages under the Forest (Conservation) Act, 1980.

² Further, one time clearance under the Forest (Conservation) Act, 1980 has been granted in respect of projects like underground drinking water supply, electricity, telephone lines etc., in tribal areas.

³ http://www.doccentre.org/docsweb/adivasis_&_forests/fca.htm

⁴ (BDA)

⁵ <http://www.achrweb.org/Review/2004/31-04.htm>

⁶ Contrary to the IPR regime of the World Trade Organisation agreements, indigenous and tribal peoples' knowledge and cultural heritage are usually evolved through generations and owned by the community.

particular knowledge or innovation.⁷ The few quantitative studies on the experiences in Sarawak and Thailand have shown that land clearing in traditional shifting cultivation had the lowest amount of erosion and sediment loss from the system compared to any other forms of land clearing and tillage systems.⁸ Rather, the lack of productivity improvements is the result of a consequent neglect of shifting cultivation in agronomic research and extension⁹. The National Policy on Tribals provides that the indigenous and tribal peoples who constituted 8.1% of the total population of India in 1991 also constituted 55.16% of total displaced people¹⁰. What might be questioned is the process of evictions and not the decision to evict itself.¹¹

In addition to displacement, land alienation has been responsible for pauperization of indigenous and tribal peoples. According to the 10th Plan of the Government of India “as per the information available with the Ministry of Rural Development, as many as 4.65 lakh cases of alienation of tribal land covering an area of 9.17 lakh acres were registered in the states of Andhra Pradesh, Assam, Bihar, Gujarat, Himachal Pradesh, Karnataka, Madhya Pradesh, Maharashtra, Orissa, Rajasthan and Tripura in January 1999”¹². The Supreme Court in its order has restrained the Central Government from regularisation of alleged encroachments of forest lands in the country under the Forest Conservation Act, 1980 and ordered to frame a time bound programme for eviction of the alleged encroachers from the forest lands.¹³

⁷The identity and survival of indigenous peoples as distinct peoples to a large extent depend on the age-old practices of common sharing of some resources, knowledge and skills which are not alienable.

⁸ The reasons for low erosion despite farming on steep slopes are very short periods with exposed soil (after burning, before plant establishment), limited or no tillage, and traditional measures such as placing unburned logs horizontally on the slope.

⁹ Yields of staple crops such as rice, maize, or cassava, are often quite low, but many other plants are intercropped in the swidden fields and collected from the secondary forest, making overall productivity much higher.

¹⁰ Yet, the Draft National Policy on Tribals fails to suggest any measures both to provide justice to past victims of forced evictions and prevent future evictions.

¹¹ <http://www.achrweb.org/Review/2004/31-04.htm>

¹² Against this, only 2 lakh cases were disposed of in favour of 1.56 lakh tribal families covering an area of 5.31 lakh acres. The Draft National Policy fails to suggest effective measures for restoration of the alienated lands and prevention of further land alienation

¹³ Majority of about 10 million victims are indigenous peoples.

A large area of cultivable lands of indigenous tribal peoples are being categorised as encroachment areas. Many of these cultivable lands are not encroachments but existed prior to both the Indian Forest Act of 1927 and the Forest Conservation Act of 1980. Moreover, the differentiation between the pre-1980 and post-1980 encroachments is quite immaterial at the ground level.¹⁴ The Biological Diversity Act of 2002 and bans transfer of traditional knowledge and wisdom of indigenous and tribal peoples to non-tribal areas without guarantees for benefit sharing and the right to free, prior and informed consent.¹⁵ The Draft National Policy also should recognize shifting cultivation as a separate agricultural sector and among others, should also provide budgetary allocations and establish a research center on shifting cultivation¹⁶.

A “National Commission on Forced Evictions of the Indigenous and Tribal Peoples” be set up to study incidents of forced evictions since the constitution came into force and make appropriate recommendations for resettlement and rehabilitation of the victims of forced evictions under the constitution¹⁷ and in the event of indigenous and tribal peoples giving free, prior and informed consent for undertaking certain projects, no development projects, private or State, be launched unless all the potential victims are fully rehabilitated first. It is a classic clash of two visions. The draft Scheduled Tribes (Recognition of Forest Rights) Bill 2005 aims to provide Adivasis rights to forest resources still reeling from the shock of the tiger crisis in Rajasthan, they fear that the Bill would be another nail in the coffin of India's wildlife.¹⁸ The Bill aims to reverse the alienation of tribes from their own habitat caused by past policies and laws¹⁹.

¹⁴ The National Commission on Scheduled Castes and Scheduled Tribes noted that as a result of the Forest Conservation Act, 1.48 lakh persons, mainly tribals, occupying 1.81 lakh hectares of lands in forest areas in Madhya Pradesh suddenly became encroachers on October 24, 1980, and thus liable for eviction.

¹⁵ The government of India should adopt “Indigenous and Tribal Peoples Intellectual Property Rights Act” to provide for a system of community intellectual rights protection of indigenous and tribal peoples with respect to the development of genetic resources and the conservation of the country's biological diversity in consultation with indigenous peoples.

¹⁶ See supra 12.

¹⁷ (5th Schedule and 6th Schedule and other related provisions)

¹⁸ <http://www.hinduonnet.com/fline/fl2211/stories/20050603001508800.htm>

¹⁹ Ibid.

The rights proposed to be accorded to Adivasis include pattas to forest lands occupied before 1980. This is not new; it has been a stated policy of the government for years now.²⁰ This includes the primary function of recognising forest rights, regulating access to forest resources, and punishing those who violate the provisions of the Act. But gram sabha decisions are subject to approval by higher authorities.²¹

What may have been perfectly harmless activity then may not be so anymore. Even non-commercial activities in some cases could cause wildlife loss²². However, the term 'sustainable' is not defined; nor is it clear who is to determine the levels of sustainability. Some years ago, this term was used in a proposed Forest Bill²³ and was criticised for providing potentially arbitrary powers to forest officers. What precisely is the jurisdiction of authorities vested under these laws? In the case of a wildlife-related offence, is the gram sabha's decision on punishment final, or do the wildlife officials of the area have some authority?²⁴ The Bill needs to include a 'prior informed consent' clause, requiring that any major development project²⁵ on relevant forest lands can be cleared in the area only if the affected communities are fully informed of the implications of the project and provide their full formal consent. This could be a powerful tool to stop destructive projects on forestland, which are today the biggest cause of deforestation in India²⁶. However, the Bill needs to elaborate on how such protection would take place and how it would relate to the Biological Diversity Act, which also proposes such protection²⁷.

²⁰ A number of other rights are also to be granted: nistar (usufruct) or ownership rights to forest resources, grazing rights including seasonal ones of nomadic communities, habitation rights (for those classified as Primitive Tribal Groups), conversion of forest villages into revenue villages, and so on.

²¹ Sub Divisional Committees are to hear appeals against them and also resolve inter-village conflicts. District Committees are to act as appellate authorities and give the final approval of the record of forest rights.

²² (For instance, of a medicinal plant that was once quite common but has now become threatened)

²³ (It was shelved after widespread opposition from NGOs and the public)

²⁴ This becomes especially crucial in the case of threatened species or wildlife species with a high trade value, where pressure on gram sabhas to look the other way would be intense.

²⁵ (Dams, mines, industries, expressways, power stations, and so on)

²⁶ But what if communities misuse such a provision? The Bill does state that regularised lands cannot be alienated. But in addition it could explicitly mention that the Forest Conservation Act will continue to apply in the case of large development projects so that there is a further check on clearance.

²⁷ The Bill, if enacted, would mark a huge step forward in securing the rights of forest-dwelling Adivasis. In fact, one wishes that it might also extend to other forest-dwelling communities (especially small-scale Dalit farmers) and to fishing communities and shepherds occupying grasslands, wetlands and coastal and marine areas, of course, with appropriate and strong conservation requirements. These sections of Indian society have

In 2002, when the erstwhile PWG circulated a questionnaire among sympathetic intellectuals and community groups on its future agenda, the feedback recommended it look at forest-related issues as an entry point into future activities.²⁸ The Karnataka state unit of the Maoist Party has demanded that the government immediately end the eviction of tribals from the KNP in Chikmagalur district²⁹.

Probably disappointed by the reaction of the home minister, on September 25, the Orissa Chief Minister Naveen Patnaik wrote to Prime Minister Manmohan Singh demanding that the Union government take the initiative in settling the ownership rights of tribals living on forestland.³⁰ “Before coming face to face with the Naxalites we need to do our homework on what we can do and what we can’t. It is clear that land settlement is proving to be very difficult. That is the reason why we need to involve the Union government very actively in the process.”³¹ In the national interest and in the interest of future generations, this Act, therefore, regulates the diversion of forest lands to non forestry purposes³². The basic objective of the Act is, to regulate the indiscriminate diversion of forest lands for non forestry uses and to maintain a logical balance between the developmental needs of the country and the conservation of natural heritage.³³

been as underprivileged as Adivasis. There is also a need for more open public discussion and participation in the finalisation of the Bill than has been the case so far. With more dialogue, especially with wildlife conservationists and communities, a stronger united front could be achieved to secure both tribal rights and conservation.

²⁸ In fact, the Maoist Party (then PWG) conducted a survey called SOCOMA (social conditions in Malnad, Karnataka) in the early-1990s to assess whether conditions in the Western Ghats were conducive to the expansion of the Naxalites’ base in the region. The survey found that forest-related land problems allowed the group easy access. The result: the CPI (Maoist) has established its base in areas around the Kudremukh National Park (KNP).

²⁹ <http://www.infochangeindia.org/features217.jsp>

³⁰ . His letter included a request that the FCA be amended. Orissa is home to around 5,113 tribal families who live on 4,729.0802 hectares of forestland.

³¹ See supra 30.

³² <http://www.envfor.nic.in/divisions/forcon/forcon.html>

³³ The, guidelines have been issued under the Act from time to time, to simplify the procedures, to cut down delays and to make the Act more user friendly. To ensure this, recently, new rules under this Act have been framed and notified on 10/1/2003 by the Ministry of Environment and Forests.

But, with the advent of the Forest (Conservation) Act, 1980, the rate of diversion of forestlands has come down to around 15000 ha. per annum and mostly diversion of forest land is allowed to meet the developmental needs for Drinking water projects, Irrigation projects, Transmission lines, Railway lines, Roads, Power projects, Defense related projects, Mining etc.³⁴

Important Cases

In *M.C. Mehta v. Union of India*,³⁵ it was held that it is not necessary to decide the legal effect of issue of the notification under Sections 4 and/or 5 of the Act. Not only in their record has the area been shown as forest but also affidavits have been filed in this Court stating the area to be “forest”. In *Godavarman* this Court held that the term “forest” is to be understood in the dictionary sense and also that any area regarded as a forest in government records, irrespective of ownership, would be a forest. The State of Haryana, besides having filed affidavits in the forest matters treating such areas as forest for the purposes of the FC Act has been seeking prior approval from the Central Government for diversion of such land for non-forestry purpose. Reference in this connection may also be made to the affidavit dated 8-12-1996 filed by Banarsi Das, Principal Chief Conservator of Forests, Chandigarh, Haryana. Our attention has also been drawn to letter dated 26-11-2002 addressed by the Divisional Forest Officer, Faridabad to the Mining Officer, Faridabad forwarding to him a list of blocked forest areas of Faridabad district and requesting him to ensure that the said forest areas are not affected by any mining operations as also to a letter dated 17-9-2001 sent by the Principal Chief Conservator of Forests, Haryana (Panchkula) to the Director of Environment, Haryana stating therein that no mining activity can be permitted in the area. On the facts and circumstances of the case, we cannot permit the State Government to take a complete somersault in these proceedings and contend that the earlier stand that the area is forest was under some erroneous impressions. In the present case, for the purposes of the FC

³⁴ For such diversions of forest lands for non forestry purposes, compensatory afforestation is stipulated and catchment area treatment plan, wildlife habitat improvement plan, rehabilitation plan etc. are being implemented, to mitigate the ill effects of diversion of such vast area of green forests.

³⁵ (2004) 12 SCC 118, at page 181

Act, these areas shall be treated as forest and for use of it for non-forestry purpose; it would be necessary to comply with the provisions of the FC Act.

In *Essar Oil Ltd. v. Halar Utkarsh Samiti*³⁶ the Supreme Court said that the permits to be granted by the Central Government under the FCA and under the EPA are independent of each other and of the permission, which the State Government is required to give under Sections 29 and 35 of the WPA. Clearance under each of the three statutes is essential before any activity otherwise prohibited under those Acts may be proceeded with. In these appeals there is no challenge to the grant of permission to the appellant under the FCA and the EPA by the Central Government. The challenge by the respondent-writ petitioners before the High Court which was accepted, rested on an interpretation of Sections 29 and 35 of the WPA. Construing Section 29, the High Court held that the Marine Sanctuary and Marine National Park were not to be utilized for any purpose other than the purposes prescribed under the Wild Life (Protection) Act and except in accordance with Sections 26-A(3), 30 and Section 35(6) thereof. The High Court said that

“the Government could arrive at the satisfaction that it is necessary to grant such permission for destruction of wildlife, as otherwise in case such permission for destruction, exploitation or removal is not granted, the same would adversely affect the improvement and better management of the wildlife”.

The word “necessary” was construed to mean indispensable, needful or essential. It was held that unless the Government was satisfied “beyond reasonable doubt” that the laying of the pipeline was indispensable for the better management of the wildlife, no permission could be granted under Section 29. The High Court found that it could not be said that the laying of crude oil pipeline was necessary or indispensable for the purpose of improvement and better management of the wildlife. The reports given by the Institute of Oceanography and NEERI were held not to be binding on the Court. It was further held that neither of the expert bodies had reported that the laying of the crude pipeline in the sanctuary area was necessary for the better health, improvement and management of the wildlife therein. The High Court was also

³⁶(2004) 2 SCC 392, at page 403

of the view that it was not open to the executive to interfere with the power of the legislature under Section 26-A(3) by granting permission to lay pipelines thus “directly or indirectly” affecting the alteration of the boundaries of the sanctuary. Summing up, the High Court’s view was that the State Government can accord permission under Section 29 of the Wild Life (Protection) Act only if it is necessary for improvement and better management of wildlife and since the laying of pipeline through the sanctuary was not for the improvement and better management of the wildlife.

In *T.N. Godavarman Thirumalpad v. Union of India*³⁷ the Supreme Court said that it cannot be disputed that no development is possible without some adverse effect on the ecology and environment, and the projects of public utility cannot be abandoned and it is necessary to adjust the interest of the people as well as the necessity to maintain the environment. A balance has to be struck between the two interests. Where the commercial venture or enterprise would bring in results, which are far more useful for the people, difficulty of a small number of people has to be bypassed. The comparative hardships have to be balanced and the convenience and benefit to a larger section of the people has to get primacy over comparatively lesser hardship.

Sustainable development is essentially a policy and strategy for continued economic and social development without detriment to the environment and natural resources on the quality of which continued activity and further development depend. Therefore, while thinking of the developmental measures the needs of the present and the ability of the future to meet its own needs and requirements have to be kept in view. While thinking of the present, the future should not be forgotten. We owe a duty to future generations and for a bright today, a bleak tomorrow cannot be countenanced. We must learn from our experiences of the past to make both the present and the future brighter. We learn from our experiences, mistakes from the past, so that they can be rectified for a better present and the future. It cannot be lost sight of that while today is yesterday’s tomorrow, it is tomorrow’s yesterday.³⁸

³⁷(2002) 10 SCC 606, at page 629

³⁸ Ibid at page 631.

So far as the effect of Rule 24-B of the Concession Rules is concerned, it is to be noted that Section 2(ii) of the Conservation Act rules out non-forest activities. The section begins with a non obstante clause providing that notwithstanding anything contained in any other law for the time being in force in a State, no State Government or other authority shall make, except with the prior approval of the Central Government any order of the nature enumerated in the provision. Section 3 of the Conservation Act deals with constitution of an Advisory Committee and Section 4 deals with the power to make rules. Rules 4, 5 and 6 of the Forest Conservation Rules, 1981 (in short “the Conservation Rules”) are relevant. Rule 5 deals with the powers of the Committee to advise on proposals received by the Central Government. The Committee referred to therein is the one constituted under Section 3 of the Act. Rule 6 deals with action of the Central Government on the advice of the Committee. Admittedly, the Central Government has not accorded the approval for use of any forest land or any portion thereof for being used for any non-forest purpose. That being so, Rule 24-B of the Concession Rules cannot be of any assistance to the Company. So far as the order dated 14-11-2000 in WP No. 337 of 2000 is concerned, it is clear there from that dereservation of forests, sanctuaries and national parks was prohibited. Therefore, exclusion of the Company’s land in terms of the notification under Section 35(4) of the Act, though the same was being used for mining by the Company, was not in order to that extent.³⁹

In *Orpherts (P) Ltd., Calcutta v. Triloki Nath Agrawal*⁴⁰ the Apex Court said that in view of this subsequent development, the entire area forming subject-matter of mining lease dated 31-7-1951 along with such other area as may have been added to it (i.e. such other area as was available for grant pursuant to the notification dated 27-7-1984) may be available for mining without running into conflict with the provisions of the Forest Conservation Act, 1980. Secondly, under the mining lease dated 31-7-1951, the appellant would have been entitled to a renewal for a period of twenty years which period too has expired with effect from 31-7-2001 during the pendency of these proceedings. Thirdly, there were sixty-one applicants for fresh grant who suffered dismissal of their applications out of which some

³⁹ Ibid at page 632.

⁴⁰ (2004) 12 SCC 410, at page 413

only challenged the order of dismissal, by filing revisions before the Central Government and, therefore, there are less than sixty-one applicants for fresh grant and the appellant in the fray claiming for the grant of mining leases.

In *B.L. Wadhera v. Union of India*⁴¹ the Supreme Court held that Section 2 of the Forest Conservation Act mandates that no State Government or authority shall make an order directing that any forest land or any portion thereof shall cease to be reserved or any forest land or any portion thereof may be used for non-forest purposes or forest land or any portion thereof may be assigned by way of lease or otherwise to any private person or to an authority, corporation, agency or any other organisation owned and controlled by the Government or any such land or portion thereof be cleared of trees which have grown therein — without the prior approval of the Central Government. The gifting of land, in the instant case, cannot, in any way, be termed to be for a forest purpose. Learned counsel appearing for the State of Haryana showed us a government order which had declared the area, covered by gift deeds, as forest prohibiting the cutting of the trees, declared as forest though for a limited period of 25 years. It is submitted that as the period of 25 years was not extended, the land, earlier declared as forest, had ceased to be a forestland. Such a plea is contradictory in terms.

For the purpose of upgrading the provisions of the Act many notifications and rules have been pronounced by the Government of India in which one of the important rules is the Forest (Conservation) Rules, 2003.⁴² Another aspect of the forest conservation is rather dependant on conservation of air as because in the process of making food forest requires carbon dioxide, which is the integral part of air.

⁴¹(2002) 9 SCC 108, at page 140

⁴² For details see Annex 8.

8.3.5-THE AIR (PREVENTION AND CONTROL OF POLLUTION) ACT, 1981

Conservation of Air, which is the part of natural resources, is important as it helps to sustain life on earth. The Act was enacted to provide the prevention, control and abatement of air pollution, for the establishment, with a view to carry out the aforesaid purposes, of Boards, for conferring on and assigning to such Boards powers and functions relating thereto and for matters connected therewith.¹ It was considered necessary to implement the decisions aforesaid in so far as they relate to the preservation of the quality of air and control of air pollution². In this way the Air Act came into being. Some of the important provisions are as follows:

Central Board for the Prevention and Control of Air Pollution³.

The Central Board for the Prevention and Control of Water Pollution constituted under section 3 of the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974), shall, without prejudice to the exercise and performance of its powers and functions under this Act, exercise the powers and perform the functions of the Central Board for the Prevention and Control of Air Pollution under this Act.

State Boards for the Prevention and Control of Water Pollution to be, State Boards for the Prevention and Control of Air Pollution⁴.

In any State in which the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974), is in force and the State Government has constituted for that State a State Board for the

¹ The decisions were taken at the United Nations Conference on the Human Environment held in Stockholm in June, 1972, in which India participated, to take appropriate steps for the preservation and conservation of the natural resources of the earth which, among other things, include the preservation of the quality of air and control of air pollution.

² "Air pollution" means the presence in the atmosphere of any air pollutant Section 2.b

³ Section 3 For sections 3 and 4, the following sections shall stand subs. by s.3 *ibid.*, (date to be notified) namely :- 3. Central Pollution Control Board-The Central Pollution Control Board constituted under section 3 of the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974), shall, without prejudice to the exercise and performance of its powers and functions under that Act, exercise the powers and perform the functions of the Central Pollution Control Board for the prevention and control of air pollution under this Act.

⁴ Section 4 State Pollution Control Boards constituted under section 4 of Act 6 of 1974 to be State Boards under this Act.-In any State in which the Water (Prevention and Control of Pollution) Act, 1974, is in force and the State Government has constituted for that State a State Pollution Control Board under section 4 of that Act, such State Board shall be deemed to be the State Board for the Prevention and Control of Air Pollution constituted under section 5 of this Act, and accordingly that State Pollution Control Board shall Without prejudice to the exercise and performance of its powers and functions under that Act, exercise the powers and perform the functions of the State Board for the prevention and control of air pollution under this Act.

Prevention and Control of Water Pollution under section 4 of that Act, such State Board shall be deemed to be the State Board for the Prevention and Control of air Pollution constituted under section 5 of this Act and accordingly that State Board for the Prevention and Control of Water Pollution shall, without prejudice to the exercise and performance of its powers and functions under that Act, exercise the powers and perform the functions of the State Board for the Prevention and Control of Air Pollution under this Act.

Constitution of State Boards⁵.

A State Board constituted under this Act shall consist of the following members, namely:-

a Chairman, being a person, having a person having special knowledge or practical experience in respect of matters relating to environmental protection, to be nominated by the State Government: such number of officials, not exceeding five, as the State Government may think fit, to be nominated by the State Government to represent that government; such number of persons, not exceeding five, as the State Government may think fit, to be nominated by the State Government from amongst the members of the local authorities functioning within the State; such number of non-officials, not exceeding three, as the State Government may think fit, to be nominated by the State Government to represent the interest of agriculture, fishery or industry or trade or labour or any other interest, which in the opinion of that government, ought to be represented; two persons to represent the companies or corporations owned, controlled or managed by the State Government, to be nominated by that Government; a full-time member-secretary⁶ having such qualifications knowledge and experience of scientific, engineering or management aspects of pollution control as may be prescribed, to be appointed by the State Governments.⁷

⁵ Section 5

⁶ Subs. by s. 4, *ibid.*, for cl. (f) (w.e.f. 1-4-1988).

⁷ Provided that the State Government shall ensure that not less than two of the members are persons having special knowledge or practical experience in, respect of matters relating to the improvement of the quality of air or the prevention, control or abatement of air pollution. Every State Board constituted under this Act shall be a body corporate with the name specified by the State Government in the notification issued under subsection (1), having perpetual succession and a common seal with power, subject to the provisions of this Act, to acquire and dispose of property and to contract, and may by the said name sue or be sued.

Powers And Functions Of Boards

Functions of Central Board⁸.

Subject to the provisions of this Act, and without prejudice to the performance, of its functions under the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974), the main functions of the Central Board shall be to improve the quality of air and to prevent, control or abate air pollution in the country.

In particular and without prejudice to the generality of the foregoing functions, the Central Board may- advise the Central Government on any matter concerning the improvement of the quality of air and the prevention, control or abatement of air pollution; plan and cause to be executed a nation-wide programme for the prevention, control or abatement of air pollution; co-ordinate the activities of the State and resolve disputes among them; provide technical assistance and guidance to the State Boards, carry out and sponsor investigations and research relating to problems of air pollution and prevention, control or abatement of air pollution; perform such of the function of any State Board as may, be specified in and order made under sub-section (2) of section 18;⁹ plan and organise the training of persons engaged or to be engaged in programmes for the prevention, control or abatement of air pollution on such terms and conditions as the Central Board may specify; organise through mass media a comprehensive programme regarding the prevention, control or abatement of air pollution; collect, compile and publish technical and statistical data relating to air pollution and the measures devised for its effective prevention, control or abatement and prepare manuals, codes or guides relating to prevention, control or abatement of air pollution; lay down standards for the quality of air., collect and disseminate information in respect of matters relating to air pollution; perform such other functions as may be prescribed.¹⁰

⁸ Section 16

⁹ Ins. by Act 47 of 1987. s. 7 (w.e.f. 1-4-1988).

¹⁰ (3) The Central Board may establish or recognise a laboratory or laboratories to enable the Central Board to perform its functions under this section efficiently. (4) The Central Board may- (a) delegate any of its functions under this Act generally or specially to any of the committees appointed by it; (b) do such other things and perform such other acts as it may think necessary for the proper discharge of its functions and generally for the purpose of carrying into effect the purposes Of this Act.

Functions of State Boards¹¹.

subject to the provisions of this Act, and without prejudice to the performance of its functions, if any, under the Water (Prevention and Control of Pollution) Act, 1974 (Act 6 of 1974), the functions of a State Board shall be- to plan a comprehensive programme for the prevention, control or abatement of air pollution and to secure the execution thereof-, to advise the State Government on any matter concerning the prevention, control or abatement of air pollution; to collect and disseminate information relating to air pollution; to collaborate with the Central Board in organising the training of persons engaged or to be engaged in programmes relating to prevention, control or abatement of air pollution and to organise mass-education programme relating thereto; to inspect, at all reasonable times, any control equipment, industrial plant or manufacturing process and to give, by order, such directions to such persons as it may consider necessary to take steps for the prevention, control or abatement of air pollution; to inspect air pollution control areas at such intervals as it may think necessary, assess the quality of air therein and take steps for the prevention, control or abatement of air pollution in such areas; to lay down, in consultation with the Central Board and having regard to the standards for the quality of air laid down by the Central Board, standards for emission of air pollutants into the atmosphere from industrial plants and automobiles or for the discharge of any air pollutant into the atmosphere from any other source whatsoever not being a ship or an aircraft: ¹² to advise the State Government with respect to the suitability of any premises or location for carrying on any industry which is likely to cause air pollution; to Perform such other functions as may be prescribed or as may, from time to time, be entrusted to it by the Central Board or the State Government; to do such other things and to perform such other acts as it may think necessary for the proper discharge of its functions and generally for the purpose of carrying into effect the purposes of this Act. ¹³

¹¹ Section 17

¹² Provided that different standards for emission may be laid down under this clause for different industrial plants having regard to the quantity and composition of emission of air pollutants into the atmosphere from such industrial plants;

¹³ (2) A State Board may establish or recognise a laboratory or laboratories to enable the State Board to perform its functions under this section efficiently.

Prevention And Control Of Air Pollution

Power to declare air pollution control areas¹⁴, The State Government may, after consultation with the State Board, by notification in the Official Gazette declare in such manner as may be prescribed, any area or areas within the State as air pollution control area or areas for the purposes of this Act.

The State government may, after consultation with the State Board, by notification in the Official Gazette,- alter any air pollution control area whether by way of extension or reduction ; declare a new air pollution control area in which may be merged one or more existing air pollution control areas or any part or parts thereof. If the State Government, after consultation with the State Board, is of opinion that the use of any fuel, other than an approved fuel, in any air pollution control area or part thereof, may cause or is likely to cause air pollution, it may, by notification in the Official Gazette, prohibit the use of such fuel in such area or part thereof with effect from such date as may be specified in the notification.¹⁵

Power to give instructions for ensuring standards for emission from automobiles¹⁶.

With a view to ensuring that the standards for emission of air pollutants from automobiles laid down by the State Board under clause (g) of sub-section (1) of section 17 are complied with, the State Government shall, in consultation with the State Board, give such instructions as may be deemed necessary to the concerned authority in charge of registration of motor vehicles under the Motor Vehicles Act, 1939 (Act 4 of 1939), and such authority shall, notwithstanding anything contained in that Act or the rules made there under be bound to comply with such instructions.

¹⁴ Section 19

¹⁵ (4) The State Government may, after consultation with the State Board, by notification in the Official Gazette, direct that with effect from such date as may be specified therein, no appliance, other than an approved appliance, shall be used in the premises situated in an air pollution control area : Provided that different dates may be specified for different parts of an air pollution control area or for the use of different appliances. (5) If the State Government, after consultation with the State Board, is of opinion that the burning of any material (not being fuel) in any air pollution control area or part thereof may cause or is likely to cause air pollution, it may, by notification in the Official Gazette, prohibit the burning of such material in such area or part thereof.

¹⁶ Section 20

Restrictions on use of certain industrial plants¹⁷.

Subject to the provisions of this section, no person shall, without the previous consent of the State Board, establish or operate any industrial plant in an air pollution control area. If he has made an application for such consent within the said period of three months, till the disposal of such application¹⁸. An application for consent of the State Board under sub-section (1) shall be accompanied by such fees as may be prescribed and shall be made in the prescribed form and shall contain the particulars of the industrial plant and such other particulars as may be prescribed.¹⁹

Within a period of four months after the receipt of the application for consent referred to in sub-section (1), the State Board shall, by order in writing, [and for reasons to be recorded in the order, grant the consent applied for subject to such conditions and for such period as may be specified in the order, or refuse consent:]²⁰

Provided that in the case of a person operating any industrial plant ^{**}²¹in an air pollution control area immediately before the date of declaration of such area as an air pollution control area, the period so specified shall not be less than six months : after the installation of any control equipment in accordance with the specifications under clause (i), or after the alteration or replacement of any control equipment in accordance with the directions of the State Board under clause (ii), or after the erection or re-erection of any chimney under clause

¹⁷ Section 21

¹⁸ Subs. by Act 47 of 1987, s. 9, for sub-section (1) (w.e.f. 1-4-1988).

¹⁹ Provided that where any person, immediately before the declaration of any area as an air pollution control area, operates in such area any industrial plant, ^{**}¹⁹such person shall make the application under this sub-section within such period (being not less than three months from the date of such declaration) as may be prescribed and where such person makes such application, he shall be deemed to be operating such industrial plant with the consent of the State Board until the consent applied for has been refused,

²⁰ Certain words omitted by s. 9, *ibid.*, (w.e.f. 1-4-1988). Provided that it shall be open to the State Board to cancel such consent before the expiry of the period for which it is granted or refuse further consent after such expiry if the conditions subject to which such consent has been granted are not fulfilled: Provided further that before cancelling a consent or refusing a further consent under the first provision, a reasonable opportunity of being heard shall be given to the person concerned. Subs. by Act 47 of 1987, s. 9, for certain words (w.e.f. 1.4 1981).

²¹ Certain words omitted by Act 47 of 1987, s. 9, (w.e.f. 1-4-1988).

(iv), no control equipment or chimney shall be altered or replaced or, as the case may be, erected or re-created except with the previous approval of the State Board.

Power of Board to make application to court for restraining person from causing air pollution²².

On receipt of the application under sub-section (1), the court may make such order as it deems fit.²³ According to the World Health Organization, the capital city of New Delhi is one of the top ten most polluted cities in the world. Surveys indicate that in New Delhi the incidence of respiratory diseases due to air pollution is about 12 times the national average²⁴. The Act includes the preservation of the quality of air and control of air pollution.²⁵

Effects of air pollution on human beings²⁶

Hydrocarbons emitted by automobiles are toxic and react with hemoglobin in the blood. The effect of nitrogen is adverse and permanent. It increases children's susceptibility to diseases like influenza. Sulphur dioxide in the air spreads air acidity and corrodes buildings. It causes irritation to various parts of the respiratory systems. Reference to the environment has also been made in the Directive Principles of State Policy as well as the Fundamental Rights. The Department of Environment was established in India in 1980 to ensure a healthy environment for the country. This later became the Ministry of Environment and Forests in 1985.²⁷

²² Section 22A Ins by s. 11, *ibid.* (w.e.f. 1-4-1988).

²³ (3) Where under sub-section (2), the court makes an order restraining any person from discharging or causing or permitting to be discharged the emission of any air pollutant, it may, in that order,- (a) direct such person to desist from taking such action as is likely to cause emission; (b) authorise the Board, if the direction under clause (a) is not complied with by the person to whom such direction is issued, to implement the direction in such manner as may be specified by the court. (4) All expenses incurred by the Board in implementing the sections of the court under clause (b) of sub-section (3) shall be recoverable from the person concerned as an-ears of land revenue or of public demand.

²⁴ <http://www.helplinelaw.com/docs/airact1981/index.php>

²⁵ The Air (Prevention and Control of Pollution) Act, 1981 extends to the whole of India.

²⁶ "Air pollutant" means any solid, liquid or gaseous substance 2[(including noise)] present in the atmosphere in such concentration as may be or tend to be injurious to human beings or other living creatures or plants or property or environment; "Air pollution," means the presence in the atmosphere of any air pollutant.

²⁷ <http://edugreen.teri.res.in/explore/laws.htm>

The major threat to clean air is now posed by traffic emissions. Petrol and diesel-engined motor vehicles emit a wide variety of pollutants, principally carbon monoxide (CO), oxides of nitrogen (NO_x), volatile organic compounds (VOCs) and particulates (PM₁₀), which have an increasing impact on urban air quality.²⁸ However, traffic pollution problems are worsening world-wide.²⁹

Important Cases

In *Noise Pollution (V), In re v*³⁰ the Supreme Court held that Noise is a type of atmospheric pollution. It is a shadowy public enemy whose growing menace has increased in the modern age of industrialisation and technological advancement. Although a soft rhythmic sound in the form of music and dance stimulates brain activities, removes boredom and fatigue, but its excessiveness may prove detrimental to living things. Research has proved that a loud noise during peak marketing hours creates tiredness, irritation and impairs brain activities so as to reduce thinking and working abilities. Noise pollution was previously confined to a few special areas like the factory or the mill, but today it engulfs every nook and corner of the globe, reaching its peak in urban areas. Industries, automobiles, rail engines, aeroplanes, radios, loudspeakers, tape recorders, lottery ticket sellers, hawkers, pop singers, etc., are the main ear contaminators of the city area and its marketplace. The regular rattling of engines and intermittent blowing of horns emanating from the caravan of automobiles do not allow us to have any respite from irritant noise even in suburban zones. Noise is defined as unwanted sound. Sound, which pleases the listeners, is music and that which causes pain and annoyance is noise. At times, what is music for some can be noise for others.

Section 2(a) of the Air (Prevention and Control of Pollution) Act, 1981, includes noise in the definition of "air pollutant".

²⁸ In addition, photochemical reactions resulting from the action of sunlight on nitrogen dioxide (NO₂) and VOCs from vehicles leads to the formation of ozone, a secondary long-range pollutant, which impacts in rural areas often far from the original emission site.

²⁹ http://www.airquality.co.uk/archive/what_causes.php

³⁰ (2005) 5 SCC 733, at page 749

“2. (a) ‘air pollutant’ means any solid, liquid or gaseous substance including noise present in the atmosphere in such concentration as may be or tend to be injurious to human beings or other living creatures or plants or property or environment;”

Article 21 of the Constitution guarantees life and personal liberty to all persons. It is well settled by repeated pronouncements of this Court as also the High Courts that the right to life enshrined in Article 21 is not of mere survival or existence. It guarantees a right of persons to life with human dignity. Therein are included, all the aspects of life which go to make a person’s life meaningful, complete and worth living. Human life has its charm and there is no reason why life should not be enjoyed along with all permissible pleasures. Anyone who wishes to live in peace, comfort and quiet within his house has a right to prevent noise as pollutant reaching him. None can claim a right to create noise even in his own premises, which would travel beyond his precincts and cause nuisance to neighbours or others. Any noise, which has the effect of materially interfering with the ordinary comforts of life judged by the standard of a reasonable man, is nuisance. How and when a nuisance created by noise becomes actionable has to be answered by reference to its degree and the surrounding circumstances, the place and the time.³¹

From the analysis of the provisions of the Act it may be concluded that most of the thing depends on pollution control board for the proper and appropriate implementation of the task of conservation of natural resource like air. For the purpose of conservation of wholesome environment the Government of India Enacted The Environment (Protection) Act 1986.

³¹ Ibid at page 747, see also M.C. Mehta v. Union of India (2004) 12 SCC 118, at page 166

8.3.6-THE ENVIRONMENT (PROTECTION) ACT, 1986

Unlike the Air Act, which gives certain provisions for the conservation of natural resource like air that means not to the entire resources, the present Act provides a unique setup of legislation that help to conserve the natural resources as a whole. ¹ It was considered necessary further to implement the decisions aforesaid in so far as they relate to the protection and improvement of environment² and the prevention of hazards to human beings, other living creatures, plants and property. The Act was enacted with the help of Article 253 of the Constitution of India. Some of the important provisions are as follows:

Power Of Central Government To Take Measures To Protect And Improve Environment³

(1) Subject to the provisions of this Act, the Central Government, shall have the power to take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of the environment and preventing controlling and abating environmental pollution.

(2) In particular, and without prejudice to the generality of the provisions of sub-section (1), such measures may include measures with respect to all or any of the following matters, namely:-- co-ordination of actions by the State Governments, officers and other authorities--

(a) under this Act, or the rules made thereunder, or (b) under any other law for the time being in force which is relatable to the objects of this Act; planning and execution of a nation-wide programme for the prevention, control and abatement of environmental pollution; laying down standards for the quality of environment in its various aspects; laying down standards for emission or discharge of environmental pollutants from various sources

¹ The Act was enacted to provide for the wholesome conservation, protection and improvement of environment and for matters connected there with. The decisions were taken at the United Nations Conference on the Human Environment held at Stockholm in June 1972, in which India participated, to take appropriate steps for the protection and improvement of human environment.

² "Environment" includes water, air and land and the inter- relationship which exists among and between water, air and land, and human beings, other living creatures, plants, micro-organism and property; Section 2.a

³ Section 3

whatsoever:⁴restriction of areas in which any industries, operations or processes or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards; laying down procedures and safeguards for the prevention of accidents which may cause environmental pollution and remedial measures for such accidents; laying down procedures and safeguards for the handling of hazardous substances; examination of such manufacturing processes, materials and substances as are likely to cause environmental pollution; carrying out and sponsoring investigations and research relating to problems of environmental pollution; inspection of any premises, plant, equipment, machinery, manufacturing or other processes, materials or substances and giving, by order, of such directions to such authorities, officers or persons as it may consider necessary to take steps for the prevention, control and abatement of environmental pollution; establishment or recognition of environmental laboratories and institutes to carry out the functions entrusted to such environmental laboratories and institutes under this Act; collection and dissemination of information in respect of matters relating to environmental pollution; preparation of manuals, codes or guides relating to the prevention, control and abatement of environmental pollution; such other matters as the Central Government deems necessary or expedient for the purpose of securing the effective implementation of the provisions of this Act.⁵

Rules To Regulate Environmental Pollution⁶

(1) The Central Government may, by notification in the Official Gazette, make rules in respect of all or any of the matters referred to in section 3.

⁴ Provided that different standards for emission or discharge may be laid down under this clause from different sources having regard to the quality or composition of the emission or discharge of environmental pollutants from such sources;

⁵ (3) The Central Government may, if it considers it necessary or expedient so to do for the purpose of this Act, by order, published in the Official Gazette, constitute an authority or authorities by such name or names as may be specified in the order for the purpose of exercising and performing such of the powers and functions (including the power to issue directions under section 5) of the Central Government under this Act and for taking measures with respect to such of the matters referred to in sub-section (2) as may be mentioned in the order and subject to the supervision and control of the Central Government and the provisions of such order, such authority or authorities may exercise and powers or perform the functions or take the measures so mentioned in the order as if such authority or authorities had been empowered by this Act to exercise those powers or perform those functions or take such measures.

⁶ Section 6

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-- the standards of quality of air, water or soil for various areas and purposes;⁷ the maximum allowable limits of concentration of various environmental pollutants (including noise) for different areas; the procedures and safeguards for the handling of hazardous substances;⁸ the prohibition and restrictions on the handling of hazardous substances in different areas;⁹ the prohibition and restriction on the location of industries and the carrying on process and operations in different areas;¹⁰ the procedures and safeguards for the prevention of accidents which may cause environmental pollution and for providing for remedial measures for such accidents.¹¹

Persons carrying on industry operation, etc., not to allow emission or discharge of environmental pollutants in excess of the standards¹²

No person carrying on any industry, operation or process shall discharge or emit or permit to be discharged or emitted any environmental pollutants in excess of such standards as may be prescribed.¹³

Persons Handling Hazardous Substances To Comply With Procedural Safeguards¹⁴

No person shall handle or cause to be handled any hazardous substance except in accordance with such procedure and after complying with such safeguards as may be prescribed.¹⁵

⁷See r. 3 of Environment (Protection) Rules, 1986 and Schedules thereto. i. Schedule I lists the standards for emission or discharge of environmental pollutants from the industries, processes or operations and their maximum allowable limits of concentration; ii. Schedule II lists general standards for discharge of effluents and their maximum limits of concentration allowable; iii. Schedule III lists ambient air quality standards in respect of noise and its maximum allowable limits; and iv. Schedule IV lists standards for emission of smoke, vapour etc. from motor vehicles and maximum allowable limits of their emission.

⁸See r. 13 of Environment (Protection) Rules, 1986, and i. Hazardous Wastes (Management and Handling) Rules, 1989; ii. Manufacture, Storage and Import of Hazardous Chemicals Rules, 1989; and iii. Rules for the Manufacture, Use, Import, Export and Storage of Hazardous Micro organisms, Genetically engineered organisms or Cells.

⁹ Rule 13 SUPRA.

¹⁰ See r. 5 of Environment (Protection) Rules, 1986.

¹¹ See r. 12 of Environment (Protection) Rules and Schedule 11, and relevant provisions of Hazardous Wastes (Management and Handling) Rules, Manufacture, Storage and Import of Hazardous Chemicals Rules and Rules for the Manufacture, Use, Import Export and Storage of hazardous Microorganisms, Genetically Engineered Organisms or Cells.

¹² Section 7

¹³ See r. 3 of Environment (Protection) Rules, 1986 and Schedule I.

¹⁴ Section 8

¹⁵See r. 13 of Environment (Protection) Rules, 1986 and i. Hazardous Wastes (Management and Handling) Rules, 1989; ii. Manufacture, Storage and Import of Hazardous Chemicals Rules, 1989; and iii. Rules for the

Powers Of Entry And Inspection¹⁶

Subject to the provisions of this section, any person empowered by the Central Government in this behalf¹⁷ shall have a right to enter, at all reasonable times with such assistance as he considers necessary, any place-- for the purpose of performing any of the functions of the Central Government entrusted to him; for the purpose of determining whether and if so in what manner, any such functions are to be performed or whether any provisions of this Act or the rules made thereunder or any notice, order, direction or authorisation served, made, given or granted under this Act is being or has been complied with; for the purpose of examining and testing any equipment, industrial plant, record, register, document or any other material object or for conducting a search of any building in which he has reason to believe that an offence under this Act or the rules made thereunder has been or is being or is about to be committed and for seizing any such equipment, industrial plant, record, register, document or other material object if he has reason to believe that it may furnish evidence of the commission of an offence punishable under this Act or the rules made thereunder or that such seizure is necessary to prevent or mitigate environmental pollution.

Power To Take Sample And Procedure To Be Followed In Connection Therewith¹⁸

(1) The Central Government or any officer empowered by it in this behalf,¹⁹ shall have power to take, for the purpose of analysis, samples of air, water, soil or other substance from any factory, premises or other place in such manner as may be prescribed.²⁰

(2) The result of any analysis of a sample taken under sub-section (1) shall not be admissible in evidence in any legal proceeding unless the provisions of sub-sections (3) and (4) are complied with.

Manufacture, Use Import, Export and Storage of Hazardous Micro organisms, Genetically Engineered organisms or Cells.

¹⁶ Section 10

¹⁷ The Central Govt. has empowered 60 persons listed in the Table (p. 251) vide S.O. 83 (E) published in the Gazette of India No. 66 dated 16-2-87 and S.O. 63 (E) published in the Gazette of India No. 42 dated 18-1-88.

¹⁸ Section 11

¹⁹ In exercise of powers conferred under sub-section (i) of section 11 the Central Government has empowered 60 officers listed in the Table (p. 254) vide S.O. 84. (E) published in the Gazette No. 66 dated 16-2-87 and S.O. 62(E) published in the Gazette No. 42 dated 18-1-88.

²⁰ For procedure for taking samples see r. 6 of Environment (Protection) Rules, 1986, also.

(3) Subject to the provisions of sub-section (4), the person taking the sample under sub-section (1) shall-- serve on the occupier or his agent or person in charge of the place, a notice, then and there, in such form as may be prescribed, of his intention to have it so analysed; in the presence of the occupier or his agent or person, collect a sample for analysis; cause the sample to be placed in a container or containers which shall be marked and sealed and shall also be signed both by the person taking the sample and the occupier or his agent or person; send without delay, the container or the containers to the laboratory established or recognised by the Central Government under section 12.

Environmental Laboratories²¹

The Central Government²² may, by notification in the Official Gazette,-- establish one or more environmental laboratories; recognise one or more laboratories or institutes as environmental laboratories to carry out the functions entrusted to an environmental laboratory under this Act.²³ The Central Government may, by notification in the Official Gazette, make rules specifying-- the functions of the environmental laboratory;²⁴ the procedure for the submission to the said laboratory of samples of air, water, soil or other substance for analysis or tests, the form of the laboratory report thereon and the fees payable for such report;²⁵ such other matters as may be necessary or expedient to enable that laboratory to carry out its functions. Whoever fails to comply with or contravenes any of the provisions of this Act, or the rules made or orders or directions issued thereunder, shall, in respect of each such failure or contravention, be punishable with imprisonment for a term which may extend to five years with fine which may extend to one lakh rupees, or with both, and in case the failure or contravention continues, with additional fine which may extend to five thousand rupees for every day during which such failure or contravention continues after

²¹ Section 12

²² The Central Government has delegated its powers under clause (b) of sub-section (i) of section 12 and section 13 of the Act to the Central Pollution Control Board vide Notification No. S.O. 145 (E) dated 21-2-91 published in the Gazette No. 128 dated 27-2-91.

²³ The list of laboratories/institutes recognised as environmental laboratories: and the persons recognised as Govt. Analysts is given in the table (p. 223).

²⁴ See r. 9 of Environment (Protection) Rules, 1986.

²⁵ See r. 8 of Environment (Protection) Rules, 1986.

the conviction for the first such failure or contravention²⁶. Where any offence under this Act has been committed by a company²⁷, every person who, at the time the offence was committed, was directly in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly²⁸: Where an offence under this Act has been committed by any Department of Government, the Head of the Department shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly²⁹. No civil court shall have jurisdiction to entertain any suit or proceeding in respect of anything done, action taken or order or direction issued by the Central Government or any other authority or officer in pursuance of any power conferred by or in relation to its or his functions under this Act³⁰.

Important Cases

In *Goa Foundation v. Diksha Holdings (P) Ltd*³¹ the Apex Court held that the relevant materials had not been placed before the appropriate authority before the environmental clearance was obtained from the Ministry of Environment and Forests and before the Municipal Council sanctioned the plan for construction of the hotel. According to the appellant, coastal stretches having been declared as Coastal Regulation Zone (for short CRZ) in exercise of powers conferred under Sections 3(1) and 3(2)(v) of the Environment (Protection) Act, 1986 and Rule 5(3)(d) of the Environment (Protection) Rules, 1986 and restrictions on the setting up and expansion of industries having been put within the said CRZ, which lies up to 500 metres of the high-tide line, the authorities concerned committed gross error in granting environmental clearance as well as in granting permission to the respondent for setting up the hotel complex.

²⁶ Section 15.1

²⁷ "company" means any body corporate and includes a firm or other association of individuals;

²⁸ Section 16.1

²⁹ Section 17.1

³⁰ Section 22

³¹(2001) 2 SCC 97, at page 99

In *N.D. Jayal v. Union of India*³²: the Supreme Court held that the present status of the dam project, keeping in view the pari passu condition on which “environmental clearance” has been granted by MoEF, calls for issuing the following directions to the respondents who represent various Ministries and Departments of the Central and State Governments as also the Corporation to which the project has been entrusted for implementation. To ensure sustainable development is one of the goals of the Environment (Protection) Act, 1986 (for short “the Act”) and this is quite necessary to guarantee the “right to life” under Article 21. The conditions glued to the environmental clearance for the Tehri Dam Project given by the Ministry of Environment vide its order dated 19-7-1990 has to be viewed from this perspective.³³

In *A.P. Pollution Control Board II v. Prof. M.V. Nayudu*³⁴ the Court said that under Section 3(2)(v) above extracted, the Central Government or the State Government as its delegate, could issue directions as permitted by Section 5. Now Section 3(2)(v) permits restriction specifying “areas” in which industrial operations or processes shall not be carried out or shall be carried out subject to certain safeguards

In *Narmada Bachao Andolan v. Union of India*³⁵ the Court said that the notification under Section 3 of the Environment Protection Act cannot be regarded as having any retrospective effect. The said notification dated 27-1-1994, inters alia, provides as follows:

“Now therefore, in exercise of the powers conferred by sub-section (1) and clause (v) of sub-section (2) of Section 3 of the Environment (Protection) Act, 1986 (29 of 1986) read with clause (d) of sub-rule (3) of Rule 5 of the Environment (Protection) Rules, 1986, the Central Government hereby directs that on and from the date of publication of this notification in the Official Gazette expansion or modernisation of any activity if pollution load is to exceed the existing one, or a new project listed in Schedule I to this notification, shall not be undertaken

³²(2004) 9 SCC 362, at page 419

³³Ibid at page 384

³⁴(2001) 2 SCC 62, at page 78

³⁵(2000) 10 SCC 664, at page 729

in any part of India unless it has been accorded environmental clearance by the Central Government in accordance with the procedure hereinafter specified in this notification;”³⁶

In *M.C. Mehta v. Union of India*³⁷ the Apex Court held that it is not possible to accept that all these years, these private operators were “unaware” of the directions issued by this Court on 28-7-1998. All private operators, who operate their buses in Delhi are bound by these orders, which were made to safeguard the health of the citizens, being a facet of Article 21 and had been publicised from time to time both in the electronic as well as print media. That apart, the Bhure Lal Committee had been set up under the Environment (Protection) Act and it was directed by this Court that the Committee could give directions towards effective implementation of the safeguards of Environment Protection Act.

In *Noise Pollution (V), In re v*³⁸ the Court said that “Pollution” is a noun derived from the verb “pollute”. Section 2(c) of the Environment (Protection) Act, 1986 defines “environmental pollution” to mean the presence in the environment of any environmental pollutant. Section 2(b) of the said Act defines “environmental pollutant” to mean any solid, liquid or gaseous substance present in such concentration as may be, or tends to be injurious to environment. Thus, the disturbance produced in our environment by undesirable sound of various kinds is called “noise pollution”.

In *Church of God (Full Gospel) in India v. K.K.R. Majestic Colony Welfare Assn.*³⁹ the Supreme Court said that under the Environment (Protection) Act, 1986, rules for noise-pollution level are framed which prescribe permissible limits of noise in residential, commercial, industrial areas or silence zone. The question is — whether the appellant can be permitted to violate the said provisions and add to the noise pollution. In our view, to claim such a right itself would be unjustifiable.

³⁶ This notification is clearly prospective and inter alia prohibits the undertaking of a new project listed in Schedule I without prior environmental clearance of the Central Government in accordance with the procedure now specified. In the present case clearance was given by the Central Government in 1987 and at that time no procedure was prescribed by any statute, rule or regulation. The procedure now provided in 1994 for getting prior clearance cannot apply retrospectively to the project whose construction commenced nearly eight years prior thereto.

³⁷ (2001) 3 SCC 756, at page 759

³⁸ (2005) 5 SCC 733, at page 748

³⁹ (2000) 7 SCC 282, at page 285

In *U.P. Pollution Control Board v. Mohan Meakins Ltd.*⁴⁰ the Court held that lapse of seventeen years is no doubt considerable, but the Board is not the least to be blamed for it. Since it is not a pleasant task to probe into the causes, which contributed for such a long delay we choose to refrain from doing that exercise. It must reach its logical culmination. Courts cannot afford to lightly deal with cases involving pollution of air and water.

In *M.C. Mehta v. Union of India*⁴¹ the Supreme Court held that the Environment Pollution (Prevention and Control) Authority is a statutory authority constituted under Section 3 of the Environment (Protection) Act, 1986, and its directions are final and binding on all persons and organisations concerned.

In *T.N. Godavarman Thirumalpad v. Union of India*⁴² the Court said that to protect and improve the environment is a constitutional mandate. It is a commitment for a country wedded to the ideas of a welfare State. The world is under an impenetrable cloud.

In *Deepak Nitrite Ltd. v. State of Gujarat*⁴³ the Apex Court stated that the industrial units in question have not conformed to the standards prescribed by GPCB cannot be seriously disputed in these cases. But the question is whether that circumstance by itself can lead to the conclusion that such lapse has caused damage to environment.

In *M.C. Mehta v. Kamal Nath*⁴⁴ the Apex Court held that the industrial revolution brought an awakening among the men inhabiting this Earth that nature, with all its resources was not unlimited and forever renewable. The uncontrolled industrial development generating tonnes of industrial waste disturbed the ecological balance by polluting the air and water, which in turn, had a devastating effect on the wildlife, and, therefore, the early efforts to protect the environment related to the protection of wildlife.

In *M.C. Mehta v. Union of India*⁴⁵ the Court held that “While it is true that in a developing country there shall have to be developments, but that development shall have to be in closest possible harmony with the environment as otherwise there would be development but no environment, which would result in total devastation, though, however, may not be felt in

⁴⁰ (2000) 3 SCC 745, at page 752

⁴¹ (2002) 4 SCC 356, at page 363

⁴² (2002) 10 SCC 606, at page 627

⁴³ (2004) 6 SCC 402, at page 407

⁴⁴ (2000) 6 SCC 213, at page 219

⁴⁵ (2001) 4 SCC 577, at page 581

praesenti but at some future point of time, but then it would be too late in the day, however, to control and improve the environment. Nature will not tolerate us after a certain degree of its destruction and it will, in any event, have its toll on the lives of the people. Though the Act is said to be the umbrella legislation with respect to conservation and protection of natural resources, but the earlier legislations like IPC and CRPC also provide certain thoughtful provisions, which also protect and conserve natural resources.

It has been seen that the Present Act has widened its scope to cover many areas for conservation of natural resources. After this Act there are number of notifications and rules came into existence, which further helps to conserve natural resources. The Government of India has issued many notifications and rules, e.g. The Environment (Protection) Second Amendment Rules, 2004,⁴⁶ The Environment (Protection) Amendment Rules, 2003,⁴⁷ The Bio-Medical Waste (Management and Handling) (Amendment) Rules, 2003,⁴⁸ The Recycled Plastics Manufacture and Usage (Amendment) Rules, 2003,⁴⁹ The Municipal Solid Wastes (Management and Handling) Rules, 2000,⁵⁰ The Ozone Depleting Substances (Regulation and Control) Rules, 2000⁵¹. The Act also examines the reality of environment impact assessment, which will ensure the scope for conservation of natural resources. In this context there is a notification in 1994.⁵²

From the above analysis this is rather concluded that the intention for which the Act was brought into to some extent requires amendment further, that will give more scope to conserve natural resources. Apart from Courts the quasi-judicial authority also takes part in the conservation of natural resources. For instance the environment tribunals that may be a great help for preserving the right to conserve natural resources.

⁴⁶ For details see Annex 4.

⁴⁷ For details see Annex 6.

⁴⁸ For details see Annex 5.

⁴⁹ For details see Annex 7.

⁵⁰ For details see Annex 9.

⁵¹ For details see Annex 10.

⁵² For details see Annex 11.

8.3.7-THE NATIONAL ENVIRONMENT TRIBUNAL ACT, 1995

The conservation of natural resources is the central notion of every environmental legislation including protection of the same. Judicial and quasi-judicial authorities are also involved to a great degree to conserve natural resources. The present Act is unlike Environment Protection Act and covers a specific area for adjudication and thereby conservation. The Act was enacted to provide for strict liability for damages arising out of any accident¹ occurring while handling² any hazardous substance³ and for the establishment of a National Environment Tribunal for effective and expeditious disposal of cases arising from such accident, with a view to giving relief and compensation for damages to persons, property and the environment⁴ and for matters connected therewith or incidental thereto. The decisions were taken at the United Nations Conference on Environment and Development held at Rio de Janeiro in June 1992, in which India participated, calling upon the States to develop national laws regarding liability and compensation for the victims of pollution and other environmental damages.⁵ In this way the Act came into being. Some of the important provisions are as follows:

Liability to pay compensation in certain cases on principle of no fault⁶

Where death of, or injury to, any person (other than a workman) or damage to any property or environment has resulted 'from an accident, the owner shall be liable to pay compensation

¹ "Accident" means an accident involving a fortuitous or sudden or unintended occurrence while handling any hazardous substance resulting in continuous or intermittent or repeated exposure to death of, or injury to, any person or damage to any property or environment but does not include an accident by reason only of war or radio-activity;

² "Handling", in relation to any hazardous substance, means the manufacture, processing; treatment; package; storage; transportation by vehicle, use, collection, destruction, conversion, offering for sale, transfer or the like of such hazardous substance;

³ "Hazardous substance" means any substance or preparation which is defined as hazardous substance in the Environment (Protection) Act, 1986, (29 of 1986.) and exceeding such quantity as specified by the Central Government under the Public Liability Insurance Act, 1991; (6 of 1991.)

⁴ "Environment" includes water, air and land and the interrelationship which exists among and between water, air and land, and human beings, other living creatures, plants, microorganism and property;

⁵ It is considered expedient to implement the decisions of the aforesaid Conference so far as they relate to the protection of environment, conservation of natural resources and payment of compensation for damage to persons, property and the environment while handling hazardous substances.

⁶ Section 3

for such death, injury or damage under all or any of the heads specified in the Schedule. In any claim for compensation under sub-section (1), the claimant shall not be required to plead and establish that the death, injury or damage in respect of which the claim has been made was due to any wrongful act, neglect or default of any person.⁷

Establishment of National Environment Tribunal⁸

The Central Government shall, by notification, establish a Tribunal, to be known as the National Environment Tribunal, to exercise the jurisdiction, powers and authority Conferred on it by or under this Act.

Composition of Tribunal and Benches thereof⁹

The Tribunal shall consist of a Chairperson and such number of Vice-Chairpersons, Judicial Members and Technical Members as the Central Government may deem fit and, subject to the other provisions of this Act, the jurisdiction, powers and authority of the Tribunal may be exercised by Benches thereof. Subject to the other provisions of this Act, a Bench shall consist of one Judicial Member and one Technical Member. Notwithstanding anything contained in sub-section (1), the Chairperson- may, in addition to discharging the functions of the Judicial Member of the Technical Member of the Bench to which he is appointed, discharge the functions of the Judicial Member or, as the case may be, the Technical Member, of any other Bench; may transfer the Vice-Chairperson or other Member from one Bench to another Bench; may authorise the Vice-Chairperson or the Judicial Member or the Technical Member appointed to one Bench to discharge also the functions of the Vice-Chairperson or, as the case may be, the Judicial Member or the Technical Member of another Bench; and may, for the purpose of securing that any case or cases which, having regard to the nature of the questions involved, requires or require, hi his opinion or under the rules

⁷ Explanation-For the purposes of this section- (i) "workman" have the meaning assigned to it in the Workmen's Compensation Act, 1923; (8 of 1923.) (ii) "injury" includes permanent total or permanent partial disability or sickness resulting out of an accident.

⁸ Section 8

⁹ Section 9

made by the Central Government in this behalf, to be decided by a Bench composed of more than two Members issue such general or special orders, as he may deem fit:

Procedure and powers of Tribunal¹⁰

On receipt of an application under sub-section (1) of section 4, the Tribunal may, after such inquiry as it may deem fit, reject the application summarily. The Tribunal shall have, for the purpose of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, (5 of 1908.) while trying a suit, in respect of the following matters. namely:- summoning and enforcing the attendance of any person and examining him on oath; requiring the discovery and production of documents; receiving evidence on affidavits; subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872, (1 of 1872.) requisitioning any public record or document or copy of such record or document from any office; issuing commissions for the examination of witnesses or documents; reviewing its decisions; dismissing an application or default or deciding it *ex parte*; setting aside any order of dismissal of any application for default or any order passed by it *ex parte*; and any other matter which is to be, or may be, prescribed. Whoever fails to comply with any order made by the Tribunal, he shall be punishable with imprisonment for a term, which may extend to three years, or with fine, which may extend to ten lakh rupees, or with both¹¹. Where any offence under this Act has been committed by a company, every person who, at the time the offence was committed, was directly in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly¹².

Important Cases

In *A.P. Pollution Control Board v. Prof. M.V. Nayudu*¹³ it was held that different statutes in our country relating to the environment provide appeals to appellate authorities. But most of

¹⁰ Section 5

¹¹ Section 25. Penalty for failure to comply with orders of Tribunal

¹² Section 26. Offences by companies

¹³ (1999) 2 SCC 718, at page 736

them still fall short of a combination of judicial and scientific needs.¹⁴ Again, under the National Environmental Tribunal Act, 1995, which has power to award compensation for death or injury to any person (other than workmen), the said Tribunal under Section 10 no doubt consists of a Chairman who could be a Judge or retired Judge of the Supreme Court or High Court and a technical member. But Section 10(1)(b) read with Section 10(2)(b) or (c) permits a Secretary to the Government or the Additional Secretary who has been a Vice-Chairman for 2 years to be appointed as the Chairman. We are citing the above as instances of the grave inadequacies.

It is clear from the above discussion that the present Act deals with a specific area for conservation through adjudication. This Act propels a new age enactment in the name of The National Environment Appellate Authority Act, 1997, which is also contributory to conservation of natural resources.

¹⁴ For example, the qualifications of the persons to be appointed as appellate authorities under Section 28 of the Water (Prevention and Control of Pollution) Act, 1974, Section 31 of the Air (Prevention and Control of Pollution) Act, 1981, under Rule 12 of the Hazardous Wastes (Management and Handling) Rules, 1989 are not clearly spelled out. While the appellate authority under Section 28 in Andhra Pradesh as per the notification of the Andhra Pradesh Government is a retired High Court Judge and there is nobody on his panel to help him in technical matters, the same authority as per the notification in Delhi is the Financial Commissioner (*see* notification dated 18-2-1992) resulting in there being in NCT, neither a regular judicial member nor a technical one.

8.3.8-THE NATIONAL ENVIRONMENT APPELLATE AUTHORITY ACT, 1997

As it has been seen from the last topic that for the purpose of conservation of natural resources quasi-judicial authority has been established and in the same way for the conservation of certain natural resources through appellate authority the present enactment came into existence.¹ Some of the important provisions are as follows:

Establishment Of Authority

The Central Government shall, by notification in the Official Gazette, establish a body to be known as the National Environment Appellate Authority to exercise the powers conferred upon, and to perform the functions assigned to, it under this Act. The head office of the Authority shall be at Delhi². The Authority shall consist of a Chairperson, a Vice-Chairperson and such other Members not exceeding three, as the Central Government may deem fit³. According to Section 5 the following are the qualifications: A person shall not be qualified for appointment as a Chairperson unless he has been-a Judge of the Supreme Court; or the Chief Justice of a High Court. A person shall not be qualified for appointment as a Vice-Chairperson unless he has-for at least two years held the post of a Secretary to the Government of India or any other post under the Central or State Government carrying a scale of pay which is not less than that of a Secretary to the Government of India; and expertise or experience in administrative, legal, managerial or technical aspects of problems relating to environment. A person shall not be qualified for appointment as a Member unless he has professional knowledge or practical experience in the areas pertaining to conservation, environmental management, law or planning and development. The President shall appoint the Chairperson, the Vice-Chairperson and the Members. The Chairperson, the

¹ The Act has been enacted to provide for the establishment of a National Environment Appellate Authority to hear appeals with respect to restriction of areas in which any industries, operations or processes or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards under the Environment (Protection) Act, 1986 and for matters connected therewith or incidental thereto. This act has been made to consolidate the provisions of The Environment (Protection) Act, 1986, which was been enacted for the protection and conservation of natural resources.

² Section 3

³ Section 4

Vice-Chairperson or a Member shall hold office as such for a term of three years from the date on which he enters upon his office, but shall be eligible for re-appointment for another term of three years⁴.

Jurisdiction And Powers Of Authority⁵

Any person aggrieved by an order granting environmental clearance in the areas in which any industries, operations or processes or class of industries, operations and processes shall not be carried out or shall be carried out subject to certain safeguards may, within thirty days from the date of such order, prefer an appeal to the Authority in such form as may be prescribed.⁶

The Civil Procedure Code does not bind the Authority⁷

The Authority shall not be bound by the procedure laid down in the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice and subject to the other provisions of this Act and of any rules made by the Central Government, the Authority shall have power to regulate its own procedure including the fixing of places and times of its inquiry and deciding whether to sit in public or in private.

The Authority shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely:- summoning and enforcing the attendance of any person and examining him on oath; requiring the discovery and production of documents; receiving evidence on affidavits; subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872 requisitioning any public record or document or copy

⁴ Section 7

⁵ Section 11

⁶ For the purposes of sub-section (1), "person" means-any person who is likely to be affected by the grant of environmental clearance; any person who owns or has control over the project with respect to which an application has been submitted for environmental clearance; any association of persons (whether incorporated or not) likely to be affected by such order and functioning in the field of environment; the Central Government, where the environmental clearance is granted by the State Government and the State Government, where the environmental clearance is granted by the Central Government; or any local authority, any part of whose local limits is within the neighbourhood of the area wherein the project is proposed to be located.

⁷ Section 12

of such record or document from any office; issuing commissions for the examination of witnesses or documents; reviewing its decisions; dismissing a representation for default or deciding it, *ex parte*; setting aside any order of dismissal of any representation for default or an order passed by it *ex parte*; and any other matter which is required to be, or may be, prescribed by the Central Government.

Bar Of Jurisdiction⁸: With effect from the date of establishment of the Authority, no civil court or other authority shall have jurisdiction to entertain any appeal in respect of any matter with which the Authority is so empowered by or under this Act. All proceedings before the Authority shall be deemed to be judicial proceedings within the meaning of sections 193, 219 and 228 of the Indian Penal Code⁹. The Chairperson, the Vice-Chairperson and the Members and the officers and other employees of the Authority shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code¹⁰. Whoever fails to comply with any order made by the Authority, he shall be punishable with imprisonment for a term, which may extend to seven years, or with fine, which may extend to one lakh rupees, or with both¹¹.

Offences by Company¹²

Where any offence under this Act has been committed by a company, every person who, at the time the offence was committed, was directly in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.¹³

⁸ Section 15

⁹ Section 16

¹⁰ Section 17

¹¹ Section 19

¹² Section 20

¹³ Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he has exercised all due diligence to prevent the commission of such offence.

Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company¹⁴, such director¹⁵, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Important Cases

In *A.P. Pollution Control Board v. Prof. M.V. Nayudu*,¹⁶ it was held that Environmental concerns arising in this Court under Article 32 or under Article 136 or under Article 226 in the High Courts are, in our view, of equal importance as human rights concerns. In fact, both are to be traced to Article 21, which deals with the fundamental right to life and liberty. While environmental aspects concern “life”, human rights aspects concern “liberty”. In our view, in the context of emerging jurisprudence relating to environmental matters, — as is the case in matters relating to human rights, — it is the duty of this Court to render justice by taking all aspects into consideration. With a view to ensure that there is neither danger to the environment nor to the ecology and, at the same time, ensuring sustainable development, this Court in our view, can refer scientific and technical aspects for investigation and opinion to expert bodies such as the appellate authority under the National Environmental Appellate Authority Act, 1997. The said authority comprises a retired Judge of the Supreme Court and members having technical expertise in environmental matters whose investigation, analysis of facts and opinion on objections raised by parties, could give adequate help to this Court or the High Courts and also the needed reassurance. Any opinions rendered by the said authority would of course be subject to the approval of this Court. This is rather clear that if the Act is properly implemented the conservation is possible but it is unlike Biological Diversity Act, which conserves the entire Bio-diversity.

¹⁴ "Company" means any body corporate and includes a firm or other association of individuals;

¹⁵ "Director", in relation to a firm, means a partner in the firm

¹⁶ (1999) 2 SCC 718, at page 740

8.3.9-THE BIOLOGICAL DIVERSITY ACT, 2002

To provide for conservation of Biological Diversity¹, sustainable use of its components and equitable sharing of the benefits arising out of the use of biological resources² and for matters connected therewith or incidental thereto this enactment came into being, and this present Act is unlike the appellate authority Act, which covers only certain area as discussed in the last topic. India is rich in biological diversity and associated traditional and contemporary knowledge system relating thereto. India is a party to the United Nations Convention on Biological Diversity signed at Rio de Janeiro on the 5th day of June 1992. The said Convention came into force on the 29th December 1993; the said Convention reaffirms the sovereign rights of the States over their biological resources. The said Convention has the main objective of conservation of biological diversity, sustainable use³ of its components and fair and equitable sharing⁴ of the benefits arising out of utilisation of genetic resources. It is considered necessary to provide for conservation, sustainable utilisation and equitable sharing of benefits arising out of utilisation of genetic resources and also to give effect to the said Convention, under Article 253 of Indian Constitution the enactment was passed. Some of the important provisions are as follows:

Regulation Of Biological Diversity

Certain persons not to undertake Biodiversity related activities without prior approval of National Biodiversity Authority⁵

No person referred to in sub-section (2) shall without previous approval of the National Biodiversity Authority obtain any biological resource occurring in India or knowledge

¹ "Biological diversity" means the variability among living organisms from all sources and the ecological complexes of which they are part and includes diversity within species or between species and of ecosystems;

² "Biological resources" means plants, animals and micro-organisms or parts thereof, their genetic material and by-products (excluding value added products) with actual or potential use or value but does not include human genetic material;

³ "Sustainable use" means the use of components of biological diversity in such manner and at such rate that does not lead to the long-term decline of the biological diversity thereby maintaining its potential to meet the needs and aspirations of present and future generations.

⁴ "Fair and equitable benefit sharing" means sharing of benefits as determined by the National Biodiversity Authority under section 21;

⁵ Section 3

associated thereto for research or for commercial utilisation or for bio-survey and bio-utilisation.

The persons who shall be required to take the approval of the National Biodiversity Authority under sub-section (1) are the following, namely:- a person who is not a citizen of India; a citizen of India, who is a non-resident as defined in clause (30) of section 2 of the Income-tax Act, 1961; a body corporate, association or organisation-not incorporated or registered in India; or incorporated or registered in India under any law for the time being in force which has any non-Indian participation in its share capital or management.

Results of research not to be transferred to certain persons without approval of National Biodiversity Authority⁶

No person shall without the previous approval of the National Biodiversity Authority, transfer⁷ the results of any research relating to any biological resources occurring or obtained from India for monetary consideration or otherwise to any person who is not a citizen of India or a body corporate or organisation which is not registered or incorporated in India or which has any non-Indian participation in its share capital or management.

Sections 3 and 4 not to apply to certain collaborative research projects⁸

The provisions of sections 3 and 4 shall not apply to collaborative research⁹. Projects involving transfer or exchange of biological resources or information relating thereto between institutions, including Government sponsored institutions of India, and such institutions in other countries, if such collaborative research projects satisfy the conditions specified in sub-section (3).

⁶ Section 4

⁷ "Transfer" does not include publication of research papers or dissemination of knowledge in any seminar or workshop, if such publication is as per the guidelines issued by the Central Government.

⁸ Section 5

⁹ "Research" means study or systematic investigation of any biological resource or technological application, that uses biological systems, living, organisms or derivatives thereof to make or modify products or processes for any use.

All collaborative research projects, other than those referred to in sub-section (1) which are based on agreements concluded before the commencement of this Act and in force shall, to the extent the provisions of agreement are inconsistent with the provisions of this Act or any guidelines issued under clause (a) of sub-section (3), be void. For the purposes of sub-section (1) collaborative research projects shall, -conform to the policy guidelines issued by the Central Government in this behalf; be approved by the Central Government.

Application for intellectual property rights not to be made without approval of National Biodiversity Authority¹⁰.

No person shall apply for any intellectual property right by whatever name called in or outside India for any invention based on any research or information on a biological resource obtained from India without obtaining the previous approval of the National Biodiversity Authority before making such application. The National Biodiversity Authority may, while granting the approval under this section, impose benefit sharing fee or royalty or both or impose conditions including the sharing of financial benefits arising out of the commercial utilisation of such rights.

National Biodiversity Authority

Establishment of National Biodiversity Authority¹¹

With effect from such date as the Central Government may, by notification in the Official Gazette, appoint, there shall be established for the purposes of this Act, a body to be called the National Biodiversity Authority. The National Biodiversity Authority shall be a body corporate by the name aforesaid, having perpetual succession and a common seal, with power to acquire, hold and dispose of property, both movable and immovable, and to contract, and shall by the said name sue and be sued¹².

¹⁰ Section 6

¹¹ Section 8

¹² The head office of the National Biodiversity Authority shall be at Chennai and the National Biodiversity Authority may, with the previous approval of the Central Government, establish offices at other places in India.

The National Biodiversity Authority shall consist of the following Members, namely: a Chairperson, who shall be an eminent person having adequate knowledge and experience in the conservation and sustainable use of biological diversity and in matters relating to equitable sharing of benefits, to be appointed by the Central Government; three members *ex officio* to be appointed by the Central Government, one representing the Ministry of Tribal Affairs and two representing the Ministry of Environment and Forests of whom one shall be the Additional Inspector General of Forests or the Inspector General of Forests; seven members *ex officio* to be appointed by the Central Government to represent respectively the Ministries of the Central Government dealing with- Agricultural Research and Education; Biotechnology; Ocean Development, Agriculture and Cooperation; Indian Systems of Medicine and Homoeopathy; Science and Technology; Scientific and Industrial Research; five non-official members to be appointed from amongst specialists and scientists having special knowledge of, or experience in, matters relating to conservation of biological diversity, sustainable use of biological resources and equitable sharing of benefits arising out of the use of biological resources, representatives of industry, conservers, creators and knowledge holders of biological resources.

Functions of National Biodiversity Authority¹³

The National Biodiversity Authority may advise the Central Government on matters relating to the conservation of biodiversity, sustainable use of its components and equitable sharing of benefits arising out of the utilisation of biological resources; advise the State Governments in the selection of areas of biodiversity importance to be notified under sub-section (1) of Section 37 as heritage sites and measures for the management of such heritage sites; perform such other functions as may be necessary to carry out the provisions of this Act.

Transfer of biological resource or knowledge¹⁴

No person who has been granted approval under section 19 shall transfer any biological resource or knowledge associated thereto which is the subject matter of the said approval

¹³ Section 18

¹⁴ Section 20

except with the permission of the National Biodiversity Authority. Any person who intends to transfer any biological resource or knowledge associated thereto referred to in sub-section (1) shall make an application in such form and in such manner as may be prescribed to the National Biodiversity Authority.¹⁵

Establishment of State Biodiversity Board¹⁶

The Board shall consist of the following members, namely.- a Chairperson who shall be an eminent person having adequate knowledge and experience in the conservation and sustainable use of biological diversity and in matters relating to equitable sharing of benefits, to be appointed by the State Government; not more than five *ex officio* members to be appointed by the State Government to represent the Departments of the State Government; not more than five members to be appointed from amongst experts in matters relating to conservation of biological diversity, sustainable use of biological resources and equitable sharing of benefits arising out of the use of biological resources.

Functions of State Biodiversity Board¹⁷

The functions of the State Biodiversity Board shall be to,-- advise the State Government, subject to any guidelines issued by the Central Government, on matters relating to the conservation of biodiversity, sustainable use of its components and equitable sharing of the benefits arising out of the utilisation of biological resources; regulate by granting of approvals or otherwise requests for commercial utilization or bio-survey and bio- utilisation of any biological resource by Indians; perform such other functions as may be necessary to carry out the provisions of this Act or as may be prescribed by the State Government.

Power of State biodiversity board to restrict certain activities violating the objectives of conservation, etc¹⁸: Any citizen of India or a body corporate, organisation or association registered in India intending to undertake any activity referred to in section 7 shall give prior

¹⁵ On receipt of an application under sub-section (2), the National Biodiversity Authority may, after making such enquires as deemed fit and if necessary after consulting an expert committee constituted for this purpose, by order, grant approval subject to such terms and conditions as it may deem fit, including the imposition of charges by way of royalty or for reasons to be recorded in writing reject the application.

¹⁶ Section 22

¹⁷ Section 23

¹⁸ Section 24

intimation in such form as may be prescribed by the State Government to the State Biodiversity Board.

Central Government to develop National strategies, plans, etc. for conservation, etc., of biological diversity¹⁹

The Central Government shall develop national strategies, plans, programmes for the conservation and sustainable use of biological diversity including measures for identification and monitoring areas rich in biological resources, promotion of *in situ*²⁰ conservation and *ex situ*²¹ conservation of biological resources, incentives for research, training, public education to increase awareness with respect to biodiversity. The Central Government shall undertake measures,-- wherever necessary, for assessment of environmental impact of that project which is likely to have adverse effect on biological diversity, with a view to avoid or minimise such effects and where appropriate provide for public participation in such assessment, to regulate, manage or control the risks associated with the use and release of living modified organisms resulting from biotechnology likely to have adverse impact on the conservation and sustainable use of biological diversity and human health.

Power of Central Government to notify threatened species²²

Without prejudice to the provisions of any other law for the time being in force, the Central Government may from time to time notify, any species which is on the verge of extinction or likely to become extinct in the near future as a threatened species and prohibit or regulate collection thereof for any purpose and take appropriate steps to rehabilitate and preserve those species.

Constitution of Biodiversity Management Committees²³

Every local body shall constitute a Biodiversity Management Committee within its area for the purpose of promoting conservation, sustainable use and documentation of biological

¹⁹ Section 36

²⁰ "*in situ* conservation" means the conservation of ecosystems and natural habitats and the maintenance and recovery of viable populations of species in their natural surroundings and, in the case of domesticated or cultivated species, in the surroundings where they have developed their distinctive properties.

²¹ "*ex situ* conservation" means the conservation of components of biological diversity outside their natural habitats;

²² Section 38

²³ Section 41

diversity including preservation of habitats, conservation of land races²⁴, folk varieties²⁵ and cultivars²⁶, domesticated stocks and breeds of animals and micro organisms and chronicling of knowledge relating to biological diversity.

The provisions of this Act shall be in addition to, and not in derogation of, the provisions in any other law for the time being in force, relating to forests or wildlife²⁷. It is evident that the implementation of the provisions of the Act will give a wide area for conservation. Government of India issued an important rule in the name of the biological diversity rules, 2004,²⁸ which further facilitates the process of conservation. Even the Indian Judiciary has responded positively to the task of conservation of natural resources, which has been discussed in the next part of the research work.

²⁴ "landrace" means primitive cultivars that was grown by ancient farmers and their successors.

²⁵ "folk variety" means a cultivated variety that was developed grown and exchanged informally among farmers;

²⁶ "cultivar" means a variety of plant that has originated and persisted under cultivation or was specifically bred for the purpose of cultivation;

²⁷ Section 59

²⁸ For details see Annex 3.