

CHAPTER- III

LEGISLATIONS

RELATING TO

ENVIRONMENT

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CHAPTER THREE

ENVIRONMENT RELATING LEGISLATION

3.1 Introduction: Evolution of Environmental Laws

The planet Earth which is inhabited by human beings and other living creatures, including animals and birds, has been so created so as to cater to the basic needs of the all living creatures. Living creatures do not necessarily mean the human beings, the animals, birds, the fish the worms, the serpents the hydras but also the plants of different varieties the creepers the grass and the vast forest. With the advent of industrialization the environmental conditions and the quality of the environment started degrading. And, there arose a basic need for the protection of the quality of the environment. This necessitated the need for various legislations at the national and international level. The industrially developed nations are have been experimenting with anti-pollution laws.

The problem of environmental pollution is as old as the evolution of Homo sapiens on this planet. With the development of science and technology and with the ever increasing world population came tremendous changes in the human environment. These changes upset the eco laws, shook the balance between human life and environment and brought along innumerable problems affecting the environment. It became necessary to regulate human behaviour and social transactions with new laws, designed to suit the changing conditions and values. A new branch of law called environmental law grew at this stage in order to manage and face the myriad challenges of such a system.

Environmental law relates to the management of the environment and strategies for tackling the problems of the environment. It is generally believed that environmental protection is mostly confined to control of pollution by hazardous products gases and effluents which are the byproducts of industrialization. However, preventive and remedial measures to meet the hazards of the pollution are also major concerns of environmental laws. The law embraces a wide spectrum of issues. Environmental law involves conservation of natural resources for their better use by the present day society as well as by future generations and it also governs the inter-relationship between natural resources and human beings. Its large domain also extends to the relationship between natural resources and other living creatures.

The global concern for the protection found expression in the UN conference on human environment held at Stockholm in 1972. The conference adopted an action plan relating to subject areas of human settlement and human health, territorial ecosystems; environment and development; oceans energy and natural disasters, it proposed institutional arrangements for carrying out the action plan within the UN systems. The recommendations of the conference shall be discussed at length later. Environmental problems are growing at the need to take concrete measures is very necessary. And the positive point is the countries across the world are taking serious note of this and have enacted several legislations to control environmental pollution

3.2 Environmental Laws in various countries

3.2.1 United States of America

Laws and regulations are a major tool in protecting the environment. Congress passes laws that govern the United States. To put those laws into effect, Congress authorizes certain government agencies, including Environment Protection Agency, to create and enforce regulations.

The oldest federal statute of United States of America is the Rivers and Harbors Act of 1898 which aims at abatement of water pollution. It prohibited the discharge of **refuse other than liquids from streets and sewer, into the navigable waters of United States, violation of this law is subject to criminal prosecution resulting in imprisonment for 30 days to one year or a fine of \$500 to \$2500 or both.** Enforcement activity under this law was relatively rare until 1969 but now it is vigorously utilized by the United States Government as one of its most powerful regulatory instrument to control pollution.

Another important legislation is The Public Health Service Act of 1912. The next in the list is the Oil Pollution Control Act which prohibited the dumping of oil into navigable waters except in life threatening emergencies or unavoidable accidents. To deal with water pollution The Water Pollution Control Act of 1948 was passed, which initially was a temporary legislation but was extended through Water Pollution Control Act (Extension) of 1952. Later on the Water Control Pollution Act of 1956 was passed which was amended in 1961, 1965, 1966 and 1970. It is at present the backbone of their national water cleaning campaign.

In 1965 the Water Quality Act was passed. Under this Act the Federal Water Pollution Control Administration has been created in the Department of Health, Education and Welfare. This Act instituted a programme of mandatory water quality standards for interstate waters.

Yet another important legislation relating to water pollution is the Clean Water Act. It consists of two major parts, one being the provisions which authorize federal financial assistance for municipal sewage treatment plant construction. The other is the regulatory requirement that apply to the industrial and municipal discharges. Under this Act, federal jurisdiction is broad, particularly regarding establishment of National standards or effluent limitations. Certain responsibilities are delegated to the States and the Act embodies a philosophy of federal-state partnership in which the federal government states the agenda and standard for pollution abatement, while states carries out day to day activities of implementation and enforcement.

To achieve its objectives, the Act embodies the concept that all discharges into the nation's waters are unlawful, unless specifically authorized by a permit which is the Act's principal enforcement tool. The law has civil, criminal and administrative enforcement provisions and also permits citizen suit enforcement.

Air Pollution is another growing problem. The legislation brought to combat this problem was entitled The Clean Air Act. The 1990 Clean Air Act is a piece of United States legislation relating to the reduction of smog and atmospheric pollution. It follows the Clean Air Act in 1963, the Clean Air Act Amendment in 1966, the Clean Air Act Extension 1970 and the Clean Air Act Amendments in 1977.

Although the 1990 Clean Air Act is a federal law covering the entire country, the States do much of the work to carry out the Act. For example, a state air pollution agency holds a hearing on a permit application by a power or chemical plant or fines a company for violating air pollution limits.

Under this law, the Environment Protection Agency sets limits on how much of a pollutant can be in the air anywhere in the United States the States are not allowed to have weaker pollution controls than those set for the whole country.

The law recognizes states should lead in carrying out the Clean Air Act, because pollution control problems often require special understanding of local industries, geography, housing patterns, etc.

States must develop state implementation plans (SIPs) that explain how each state enforces the Clean Air Act. A state implementation plan is a collection of the regulations a state will use to clean up polluted areas. The states are obligated to notify the public of these plans, through hearings and that offer opportunities to comment, in the development of each state implementation plan.

The United States of America have also legislated the National Environmental Policy Act of 1969 which is the basic national charter for protection of the environment. It establishes policy, sets goals, and provides means for carrying out the policy.

Implementation of the law is very necessary. That is looked after by the enforcement agencies. The procedural intricacies are looked after by the enforcement agencies that create their own

regulations. Laws often do not include all the details. In order to make the laws work on a day-to-day level, Congress authorizes certain government agencies--including Environmental Protection Agency-- to create regulations.

Regulations set specific rules about what is legal and what isn't. For example, a regulation issued by **Environment Protection Act, 1986**, to implement the Clean Air Act might state what levels of a pollutant--such as sulfur dioxide--are safe. It would tell industries how much sulfur dioxide they can legally emit into the air, and what the penalty will be if they emit too much. Once the regulation is in effect, **Environment Protection Act, 1986** then works to help Americans comply with the law and to enforce it.

The other environment related legislations enacted by Congress among others :

- 1938 Federal Food, Drug, and Cosmetic Act**
- 1947 Federal Insecticide, Fungicide, and Rodenticide Act**
- 1948 Federal Water Pollution Control Act (also known as the Clean Water Act)**
- 1955 Clean Air Act**
- 1965 Shoreline Erosion Protection Act**
- 1965 Solid Waste Disposal Act**
- 1970 National Environmental Policy Act**
- 1970 Pollution Prevention Packaging Act**
- 1970 Resource Recovery Act**
- 1971 Lead-Based Paint Poisoning Prevention Act**
- 1972 Coastal Zone Management Act**
- 1972 Marine Protection, Research, and Sanctuaries Act**
- 1972 Ocean Dumping Act**
- 1973 Endangered Species Act**

- 1974 Safe Drinking Water Act**
- 1974 Shoreline Erosion Control Demonstration Act**
- 1975 Hazardous Materials Transportation Act**
- 1976 Resource Conservation and Recovery Act**
- 1976 Toxic Substances Control Act**
- 1977 Surface Mining Control and Reclamation Act**
- 1978 Uranium Mill-Tailings Radiation Control Act**
- 1980 Asbestos School Hazard Detection and Control Act**
- 1980 Comprehensive Environmental Response,
Compensation, and Liability Act**
- 1982 Nuclear Waste Policy Act**
- 1984 Asbestos School Hazard Abatement Act**
- 1986 Asbestos Hazard Emergency Response Act**
- 1986 Emergency Planning and Community Right to Know Act**
- 1988 Indoor Radon Abatement Act**
- 1988 Lead Contamination Control Act**
- 1988 Medical Waste Tracking Act**
- 1988 Ocean Dumping Ban Act**
- 1988 Shore Protection Act**
- 1990 National Environmental Education Act**

3.2.2. Great Britain

The sufferings of the people world over due to the deteriorating condition of environment became a matter of concern for the United Nations.. There has been continuous growth of deformities among working class.⁴⁰ The United Nations Organisation had to take a lead and drive itself to bring coordination between law of nature and human activities which are regulated within nations by local statutes.

⁴⁰ Principles of International Environmental Law, p.34

In Great Britain, in 1971 the Royal Commission on Environmental pollution addressed the question, as to why there has been a pollution problem. According to its report it is for two reasons.

1. One is rooted in a basic law of nature
2. Second is growing conflict of economy.

It was found that it is impossible to add to material resources and it is impracticable to dispose off waste outside the world. However, the second problem could be taken care of. And so the new civilization diverted its thinking to find a device as how to make use of natural resources, which are limited in growth and quantity and how to make their use benefiting the ecology rather than economics.

The United Kingdom has a law relating to Control of Pesticides Regulations. The other legislations relating to environment protection include the Environmental Protection Act. The Environmental Protection Act, 1990 was enacted in Great Britain which is a very comprehensive enactment. The United Kingdom's Environmental Protection Act has some glaring provisions like provisions relating to Genetically Modified Organism, provisions to deal with the waste on land etc. It is broadly divided into nine parts.

The following are the basic objects of the Act.

- The improved control of pollution arising from certain industrial and other processes;
- To re-enact the provisions of the Control of Pollution Act 1974 relating to waste on land with modifications as respects the

functions of the regulatory and other authorities concerned in the collection and disposal of waste and

- to make further provision in relation to such waste;
- to restate the law defining statutory nuisances and Improve the summary procedures for dealing with them,
- to provide for the termination of the existing controls over offensive trades or businesses and
- to provide for the extension of the Clean Air Acts to prescribed gases;
- to amend the law relating to litter and make further provision imposing or conferring powers to impose duties to keep public places clear of litter and clean;
- to make provision conferring powers in relation to trolleys abandoned on land in the open air; to amend the Radioactive Substances Act 1960;
- to make provision for the control of genetically modified organisms;
- to make provision for the abolition of the Nature Conservancy Council and for the creation of councils to replace it and discharge the functions of that Council and, as respects Wales, of the Countryside Commission; to make further provision for the control of the importation, exportation, use, supply or storage of prescribed substances and articles and the importation or exportation of prescribed descriptions of waste;
- to confer powers to obtain information about potentially hazardous substances;
- to amend the law relating to the control of hazardous substances on⁴¹, over or under land;
- to amend the provisions of the Food and Environment Protection Act 1985 as regards the dumping of waste at sea; to

⁴¹ to amend section 107(6) of the Water Act,1989 and sections 31 (7) (a) ,31 A (2)(c)(i) and 32 (7) (a) of Control of Pollution Act,1974

make further provision as respects the prevention of oil pollution from ships;

- to make provision for and in connection with the identification and control of dogs; to confer powers to control the burning of crop residues; to make provision in relation to financial or other assistance for purposes connected with the environment;
- to make provision as respects superannuation of employees of the Groundwork Foundation and for remunerating the chairman of the Inland Waterways Amenity Advisory Council;

3.2.3 European Community

The concept of European Community came into being earlier to 1945 to revamp Western Europe. Later the European countries realized that only collectively they could meet the challenges of the economic might of the United States. Now the community is recognized as a special entity and in that capacity the community has become party to several treaties.

The European Parliament laid down the Sixth Community Environment Action Programme.⁴² This Decision establishes the Sixth Community Environment Action Programme. It lays down the objectives, timetables and priorities, the main avenues of the strategic approach and the four areas of action as described by the Communication on the Sixth Environmental Action Programme of the European Community "Environment 2010: Our future, our choice". No more than four years after the adoption of the Decision, initiatives must be taken in each area of action. During the fourth year of operation of the Programme and upon its

⁴² Source: Decision 1600/2002/EC-Official Journal L.242,10.09.2002

completion, the Commission is to submit assessment reports to the European Parliament and the Council.

The European Community has devised the Sixth Environment Programme named 'Environment 2010: Our future, Our Choice'⁴³ to define the priorities and objectives of Community environmental policy up to 2010 and beyond and to describe the measures to be taken to help implement the European Union's sustainable development strategy. It covers the period from 1 January 2001 to 31 December 2010. This is guided by the Fifth Environment Action Programme.

Here the challenges of today's environmental problems means looking beyond a strictly legislative approach and taking a strategic approach, using a whole range of instruments and measures to influence decisions made by business, consumers, policy planners and citizens. It proposes five priority avenues of strategic action: improving the implementation of existing legislation; integrating environmental concerns into other policies; working closer with the market; empowering people as private citizens and helping them to change behaviour; and taking account of the environment in land-use planning and management decisions. Specific action is proposed for each of these avenues.

To improve the implementation of legislation, the following specific actions are outlined:

- support for the implementation network and its extension to the candidate countries;
- reporting on the implementation of environmental law;

⁴³ Source: <http://europa.eu/scadplus>

- a "name, shame and fame" strategy on the implementation of environmental law;
- the improvement of environmental standards of inspection;
- initiatives to combat environmental crimes;
- Pursuing action in the European Court to ensure implementation.

To integrate environmental concerns into other policies, the European Community's Action Plan proposes:

- establishing additional integration mechanisms;
- implementing the Treaty requirements on integration;
- the further development of indicators to monitor the integration process.

Working in partnership with business could involve:

- encouraging a wider uptake of the Community's Eco-Management and Audit Scheme;
- encouraging companies to publish their performance and to comply with environmental requirements;
- introducing company environmental performance reward schemes;
- encouraging voluntary commitments;
- establishing an integrated product policy;
- promoting the use and evaluating the effectiveness of the eco-label scheme.
- the promotion of green procurement;
- the adoption of legislation on environmental liability.

To empower citizens and change behaviour, the following actions are suggested:

- helping citizens to benchmark and to improve their environmental performance;

- improving the quality of information on the environment.

To take account of the environment in land-use planning and management, the following actions are proposed:

- publishing a communication on the importance of integrating the environment into land-use planning and management;
- improving the implementation of the Environmental Impact Assessment Directive;
- spreading best practice and fostering the exchange of experience on sustainable development, including urban development;
- including sustainable development in Community regional policy;
- boosting agri-environmental measures within the Common Agricultural Policy;
- developing active partnership for sustainable tourism.

The Sixth Environment Action Programme focuses on four priority areas for action: climate change; biodiversity; environment and health; and sustainable management of resources and wastes.

3.2.3.1 Climate Change

The objective in this area is to reduce greenhouse gases to a level that will not cause unnatural variations of the earth's climate.

In the short term, the European Union's aim is to achieve the objectives of the Kyoto Protocol, i.e. to reduce greenhouse gas emissions by 8% by 2008-2012 compared to 1990 levels. In the longer term, by 2020 it will be necessary to reduce these emissions by 20 to 40% by means of an effective international agreement.

Community efforts to meet the challenges of climate change will be varied:

- the integration of climate change objectives into various Community policies, in particular energy policy and transport policy;
- the reduction of greenhouse gases by means of specific measures to improve energy efficiency, to make increased use of renewable energy sources, to promote agreements with industry and to make energy savings;
- the establishment of an EU-wide emission trading scheme;
- improved research on climate change;
- the improvement of information given to citizens on climate change;
- a review of energy subsidies and their compatibility with climate change objectives;
- Preparing society for the impact of climate change.

3.2.3.2. Nature and Biodiversity

The objective given in the Communication in this area is to protect and restore the structure and functioning of natural systems and halt the loss of biodiversity both in the European Union and on a global scale.

The actions proposed to achieve this objective are as follows:

- the implementation of environmental legislation, in particular in the areas of water and air;
- extension of the scope of the Seveso II Directive;
- coordination of Community Member States' action on accidents and natural disasters;

- examination of the need to protect plants and animals from ionising radiation;
- protection, conservation and restoration of landscapes;
- protection and promotion of the sustainable development of forests;
- establishment of a Community strategy for the protection of the soil;
- the protection and restoration of marine habitats and the coast and extension of the Natura 2000 network to include them;
- reinforcement of controls on labelling, monitoring and traceability of GMOs;
- the integration of nature conservation and biodiversity into commercial and development cooperation policies;
- the creation of programmes for gathering information on nature conservation and biodiversity;
- Support for research in the field of nature conservation.

3.2.3.3. Environment and health

The objective described in the Communication in this field is to achieve a quality of the environment which does not give rise to significant impacts on, or risks to, human health.

The Communication proposes:

- identifying the risks to human health, including children and the elderly, and setting standards accordingly;
- introducing environment and health priorities into other policies and standards on water, air, waste and soil;
- strengthening research on health and the environment;

- developing a new system for evaluation of risk management of new chemicals ;
- banning or limiting the use of the most hazardous pesticides and ensuring that best practice is applied;
- ensuring the implementation of legislation on water;
- ensuring the application of air quality standards and defining a strategy on air pollution;
- Adopting and implementing the directive on noise. .

3.2.3.4. Management of Natural Resources and Waste

The objective is to ensure that the consumption of renewable and non-renewable resources does not exceed the carrying capacity of the environment and to achieve a decoupling of resource use from economic growth through significantly improved resource efficiency and the reduction of waste. With regard to waste, the specific target is to reduce the quantity going to final disposal by 20% by 2010 and 50% by 2050.

The actions to be undertaken are as follows:

- the development of a strategy for the sustainable management of resources by laying down priorities and reducing consumption;
- the taxation of resource use;
- the removal of subsidies that encourage the overuse of resources;
- the integration of resource efficiency considerations into integrated product policy, eco-labelling schemes, environmental assessment schemes, etc.;
- establishing a strategy for the recycling of waste;
- the improvement of existing waste management schemes and investment in quantitative and qualitative prevention;

- The integration of waste prevention into the integrated product policy and the Community strategy on chemicals.

3.2.3.5. The International Context

The integration of environmental concerns into all aspects of the European Union's external relations is one of the Sixth Environment Action Programme's objectives. This objective takes account of the prospect of European Union enlargement and suggests that there should be an extended dialogue with the administrations in the candidate countries on sustainable development and establishing close cooperation with the NGOs and business in these countries. The application of international agreements on the environment is strongly encouraged.

3.2.3.6.A Solid Scientific Basis

The Sixth Programme proposes a new approach to the development of environmental measures so that the parties concerned and the general public are more involved in their application. This approach includes a broad dialogue and the participation of industry, NGOs and the public authorities.

The programme will be increasingly based on scientific and economic analyses and on environmental indicators. For this purpose, the Commission will work in close cooperation with the European Environment Agency.

3.2.4. Russia

The socio-economic development of society in the twentieth century, aimed primarily at rapid rates of economic growth, has caused unprecedented damage to the natural environment. Mankind has been confronted with contradictions between the

growing demands of world society and the inability of the biosphere to satisfy these demands.

In 1947, Soviet Constitution, envisaged improvement of human environment, the phenomenon, in the meanwhile, could not get appropriate grounding. In Russia the major issues relating to Environment are air pollution from heavy industry, emissions of coal-fired electric plants, and transportation in major cities; industrial, municipal, and agricultural pollution of inland waterways and sea coasts; deforestation; soil erosion; soil contamination from improper application of agricultural chemicals; scattered areas of sometimes intense radioactive contamination; ground water contamination from toxic waste

Impairment of human environment, due to development and industrialization had adverse effect on public health and also gave birth to new ailments and diseases. In July 1968 a resolution, first proposed by Sweden, mentioned "the continuing and accelerating impairment of the quality of the human environment." and stressed on convening UN conference.⁴⁴

In 1992 Russia, together with 178 other States at the United Nations Conference on Environment and Development in Rio de Janeiro, signed a number of programme documents establishing the agreed policy of all the countries of the world for ensuring sustainable development and preserving the Earth's ecosystem. The transition to sustainable development may be seen as a national idea which could unite all strata of society in the cause of Russia's rebirth.

⁴⁴ Inuagral address by Justice V.R. Krishna Iyer on Waste Management. P 5

An all Russian Conference on combating violations of environmental law was held in 1996. It adopted a very important resolution, the implementation of Agenda 21. Here a review of progress made since the United Nations Conference on Environment and Development 1992 was made.

A Decree of the President of the Russian Federation of 1 April 1996 asserted the Concept of the transition of the Russian Federation to sustainable development. This Concept states the implementation in the Russian Federation of a transition to sustainable development which will ensure the balanced solution of socio-economic problems and the problems of maintaining a favourable environment and natural resource potential in order to meet the requirements of present and future generations.

It is party to various international agreements including Rio de Janeiro. Antarctic-Environmental Protocol, Antarctic Treaty, Biodiversity, Climate Change, Endangered Species, Environmental Modification, Hazardous Wastes, Law of the Sea, Marine Dumping, Nuclear Test Ban, Ozone Layer Protection, Ship Pollution, Tropical Timber Wetlands, Whaling signed, but not ratified: Air Pollution-Sulphur Climate Change-Kyoto Protocol

3.2.5 Switzerland

In Switzerland, there is no definition of water pollution as such. However, it is laid down that measures necessary to control the pollution or other deterioration of surface water and ground water shall be taken, so that health of men and animals is protected. Here, ground water and spring water is to be made fit for consumption.

Around 115 countries participated in the Stockholm Conference. However, this Conference was not free from controversy. Each participant had different socio –cultural and geographical conditions and perspectives.

3.3 International Instruments on Environment

3.3.1. Stockholm Declaration on the Human Environment, 1972

The most comprehensive law regarding environmental pollution in the international level is the United Nations' Declaration on the Human Environment, Stockholm, 1972. It begins with the following words:

"Having considered the need for a common outlook and for common principles to inspire and guide the people of the world in the preservation and enhancement of the human environment proclaims that:

Man is both creature and moulder of his environment, which gives him an opportunity for intellectual, moral, social and spiritual growth. In the long and tortuous evolution of the human race on this planet a stage has been reached when, through the rapid

acceleration of science and technology, man has acquired the power to transform his environment in countless ways and on an unprecedented scale. Both aspects of man's environment, the natural and the man made, are essential to his well being and to the enjoyment of basic human rights even the right to life itself. The protection and improvement of the human environment is a major issue which affects the well-being of people and economic development throughout the world, it is the urgent desire of the people of the whole world and the duty of all the governments.

Dignity of life depends on the quality of environment which in turn depends on the commitment of man to protect the nature. The Declaration called upon to-

2. Safeguard natural ecosystem by careful planning and ensure no irreversible damage was caused to it and wisely manage heritage and wildlife
3. Maintain capacity of earth to produce vital renewable resources , whenever applicable
4. Plan integrated programme for the rationalization of management of resources and coordinated approach to development⁴⁵
5. Cautioned to use non-renewable resources so as not to result in complete exhaustion

The Declaration recognized the quality of environment as a fundamental right to mankind and special responsibility of man to protect it. Also it spelt out relationship between man and environment as well as corresponding right and liability. What was more significant was that the Declaration recognized that besides

⁴⁵ Iyer, Environment Pollution and Law, p.17

biological other forms of growth viz. moral, social, and spiritual depends on the environmental crisis.

This Declaration can be said to be a landmark in the history of eco-civilisation. It was an international event, which made an endeavour to trace the origin of relationship between man and nature. The Declaration carried the environmental issues from local to global sphere. The Declaration, inter alia brought a worldwide evolution with a manifesto "protect environment to save mankind." The Declaration spread the very valuable message to the world community. However the declaration was subject to several modifications. Obviously, constraints were due to political philosophy of the region, religion, sovereignty of the nation over natural resources and national priorities qua environment. Despite shortcomings and controversies about the object of the conference, the Stockholm Declaration is a Magna Carta on human environment.

3.3.2. Rio Declaration on Environment and Development, 1992

The Second United Nations Organisations' Conference on Environment and Development was held in Rio De Janeiro, Brazil In 1992. It produced a vast array of documents. The formal 12 day conference of government delegations, called the United Nations Conference on Environment and Development (UNCED), was held at Rio. Simultaneous to UNCED, a large gathering of non-governmental organizations was held in Flamengo Park under the umbrella title of the global forum. The formal inter-governmental UNCED process yielded five documents signed by heads of state.

- i). the Rio Declaration, a statement of broad principles to guide national conduct on environmental protection and development
- ii). Treaty on climate change
- iii). Treaty on biodiversity
- iv). A statement of forest principles
- v) Agenda 21, a massive document, including goals, responsibilities and estimates for funding.

The Rio Declaration is seen as mankind's last chance to save itself. Here are the essentials of Rio's soul:

Principle 1: Human beings are at the centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature.

Principle 3: The right to development must be fulfilled so as to equitably meet the developmental and environmental needs of present and future generations.

Principle 4: In order to achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it.

Principle 7: States shall cooperate in a spirit of global partnership to conserve, protect and restore the health and integrity of the earth's ecosystems. In view of the different contributions to global environmental degradation, states have common but differentiated responsibilities. The developed countries acknowledge the responsibility they bear in the international pursuit of sustainable development in view of the pressures their societies place on the global environment and of the technologies and financial resources they command.

Principle 14: The State should effectively cooperate to discourage or prevent the relocation and transfer to other states of any activities and substances that cause severe environmental degradation or are found to be harmful to human health.

Principle 16: National authorities should endeavour to promote the internalization of environmental costs and the use of economic instruments, taking into account the approach that the polluter should, in principle, bear the cost of pollution, with due regard to the public interest and without distorting international trade and investment.

Principle 22: Indigenous people and their communities and other local communities, have a vital role in environmental management and development because of their knowledge and traditional practices. States should recognize and duly support their identity, culture and interests and enable their effective participation in the achievement of sustainable development.

The significance of Rio is that it once again focused on issues of social justice in the context of protection of environment. The two most significant contributions of this Declaration are the development of concept of 'sustainable development' and recognition of inter-generational equities. The present generation has to keep in mind the needs of the future generations. It cannot exploit the nature to the optimum in the name of development.

3.3.3. Convention on Biodiversity, 1992

The threats to biodiversity are threats to all components of it. Biodiversity is a concept which occurs at the balance between the spiritual understandings that the diversity of life is interconnected.

Convention on Biodiversity concluded on 22 May 1992 in Nairobi. The, issues of biodiversity and biotechnology were originally treated by separate working groups, but were merged to be handled by a single inter –governmental negotiating committee in 1991, over the objections of the United States and other nations. The treaty has the following goals.

- (i) The conservation and sustainable use of biological diversity.
- (ii) Fair sharing of products made from gene stocks.

To advance the above said goals the signatories must develop plans for protecting habitat and specially provide funds and technology to help developing countries provide protection; ensure commercial access to biological resources for development and share revenues fairly among source countries and developers and establish safety regulations and accept liability for risks associated with biotechnology development. Financial assistance initially set at \$200 million, will ultimately be channeled through some mechanism under the control of the signatories but will be administered by the global Environmental facility on an interim basis.

The negotiations were plagued by conflict over the financial mechanism, the sharing of benefits and biotechnology regulations. France originally threatened not to sign the treaty because it did not include a list of global biodiversity rich regions. Japan threatened not to sign because it feared biotechnology regulation. However, at the last moment , both relented, and only United States refused to sign the treaty because officials felt that the financial mechanism represented an openhanded commitment with insufficient oversight and control; that the benefit – sharing provisions were incompatible with existing international regimes for intellectual property rights and that the requirement to regulate the biotechnology industry

would needlessly stifle innovation. It is very important to note that although only 30 ratifications were needed for it to enter into force nearly 153 nations signed the Convention in Rio.

3.3.4 Agenda 21

Agenda 21 is the only document signed at United Nations Convention on Environment and Development (UNCED) attempts to embrace the entire environment and development agenda. It is also the largest product of UNCED, comprising 40 chapters and 800 pages and states goals and priorities regarding a dozen major resource, environmental, social, legal, financial, and institutional issues. Each chapter contains a description of a program and its cost estimate.

Agenda 21 is not a legally binding document but a "work plan" or agenda for action with a political commitment to pursue a set of goals. It may become "soft law". Agenda 21 includes estimates of the annual costs of its program in developing countries. Although Agenda 21 may be a soft law, the contentions negotiation of many parts of Agenda 21 underscores its importance to the signatories.

3.3.5 Convention on the Regulation of Antarctic Mineral Resource Activities, 1988

The 1988 Convention on the Regulation of Antarctic Mineral Resource Activities (CRAMRA) was held to try to develop a legal framework that would prevent this kind of destructive mineral resource activities.. CRAMRA, which is one of the longest and most complicated of the Antarctic treaties, was instituted to "ensure that Antarctica shall continue forever to be used exclusively for peaceful purposes and shall not become the scene or object of

international discord.. In other words, the treaty was another attempt to ensure that all countries recognize Antarctica as falling under a *res communis* rather than a *res nullis* regime.

According to this Treaty no Antarctic mineral resource activity shall take place until it is judged, based upon assessment of its possible impacts on the Antarctic environment and on dependent or associated ecosystems, that the activity in question would not cause ... damage to Antarctica's environment and global weather patterns.

CRAMRA required the creation of several institutios, including a scientific advisory committee and it established very strict guidelines about how efforts to extract Antarctic minerals might proceed.

The harsh weather conditions make mining difficult in Antarctica. In fact, a would-be miner would have to dig through about 2,000 meters of ice before he would hit anything resembling a rock. Winter temperatures on the continent can drop to -70° C and violent katabatic winds batter the coast. Things don't get much better in the summer: temperatures may only reach -15° C and the coastal ice breaks up into a treacherous maze of icebergs.

These conditions make Antarctica the mineral resource of last resort, because any company would have to be pretty desperate to try to start an operation there, especially since there are more accessible areas of the world that haven't been exploited yet.

But conservationists and environmentalists continue to worry, simply because CRAMRA's framers felt there was something worth regulating under all that ice. They worry that there may come a

time when the nations of the world have depleted their mineral supplies enough and technology has advanced enough to make mining in Antarctica economically feasible.

3.3.6 Convention on Climate Change, 1992

Climate change was recognized for the first time to be a serious global problem in 1979 at the First World Climate Conference in Geneva, organized by the World Meteorological Organization. This Conference called on governments from all over the world to prevent human-induced changes to the climate that may be harmful to human beings. This led, *inter alia*, to a number of intergovernmental conferences in the late 80s and early 90s as well as to more detailed research into climate change. These conferences created such institutions as the 'World Climate Programme' under the auspices of the World Meteorological Organization, the United Nations Environment Programme, and the International Council of Scientific Unions. At the Toronto Conference of 1988, scientists, politicians and officials from 48 countries as well as the UN called for a 20% reduction of the CO₂ emissions by 2005.

Also in 1988, the World Meteorological Organisation (WMO) and the United Nations Environment Programme (UNEP) jointly created the 'Intergovernmental Panel on Climate Change'. This global network of over 2 000 scientists was entrusted with the task of making an inventory of current scientific knowledge of our climate system, of the effects of climate change and of possible response strategies.

The Second World Climate Conference in Geneva in 1990, which was also sponsored by the WMO and UNEP and was attended by

representatives of 137 countries and the European Union, called for the drafting of an international convention on climate change by June 1992. It also called for the establishment of national programmes to reduce greenhouse gas emissions. The proposal of more specific targets was stymied by the United States and the then Soviet Union.

In December of the same year, the supreme decision-making body of the United Nations, the General Assembly, decided to enter into negotiations that had to lead to such a Framework Convention on Climate Change. To this end, it established the 'Intergovernmental Negotiating Committee for a Framework Convention on Climate Change (INC/FCCC)'. This Committee started the negotiations in February 1991.

In the Climate Convention of May 1992, the negotiators of some 150 countries agreed on the text. It was signed by 154 countries (including Belgium) and the European Communities at the United Nations Conference on Environment and Development (UNCED, Rio de Janeiro) in June of the same year.

The Convention entered into force on March 21, 1994, ninety days following the date of deposit of the fiftieth instrument of ratification as provided for in Article 23.1. Belgium ratified the Convention on 16 January 1996.

The global nature of climate change requires maximum cooperation of all the countries of the world and the appropriate response will help to control additional warming of earth's surface and atmosphere. Here especially the target is the developed nations whose per capita emissions of greenhouse gases are comparatively higher than the developing nations. The

determination of the Convention on Climate Change is to protect the climate for the future generations. It was also affirmed at the Convention that the responses to climate change should be coordinated with social and economic development of the respective country and also taking into account the legitimate priority needs of developing countries.

3.3.8. Kyoto Protocol.

The Kyoto Protocol to the United Nations Framework Convention on Climate Change (UNFCCC) is an amendment to the international treaty on climate change, assigning mandatory targets for the reduction of greenhouse gas emissions to signatory nations.

The Kyoto Protocol is an agreement under which industrialized countries will reduce their collective emissions of greenhouse gases by 5.2% compared to the year 1990. However, if compared to the emissions levels that would be expected by 2010 without the Protocol, this target represents a 29% cut. The goal is to lower overall emissions of six greenhouse gases - carbon dioxide, methane, nitrous oxide, sulfur hexafluoride, Hydrofluorocarbon, and Perfluorocarbon- calculated as an average over the five-year period of 2008-12. National targets range from 8% reductions for the European Union and some others to 7% for the US, 6% for Japan, 0% for Russia, and permitted increases of 8% for Australia and 10% for Iceland."

The objective is the "stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system" The Inter Governmental Panel on Climate Change has predicted an average global rise in temperature of 1.4°C (2.5°F) to 5.8 °C (10.4°F)

between 1990 and 2100⁴⁶ Current estimates indicate that even if successfully and completely implemented, the Kyoto Protocol will reduce that increase by somewhere between 0.02 °C and 0.28 °C by the year 2050 ⁴⁷.

Proponents also note that Kyoto is a first step as requirements to meet the UNFCCC will be modified until the objective is met, as required by United Nations Framework Convention on Climate Change

India signed and ratified the Protocol in August, 2002. Since India is exempted from the framework of the treaty, it is expected to gain from the protocol in terms of transfer of technology and related foreign investments.

3.3.8. Johannesburg Summit 2002

Ten years after Rio, the World Summit on Sustainable Development was held at Johannesburg .This Summit 2002 brought together tens of thousands of participants, including heads of State and Government, national delegates and leaders from non-governmental organizations (NGOs), businesses and other major groups to focus the world's attention and direct action toward meeting difficult challenges, including improving people's lives and conserving our natural resources in a world that is growing in population, with ever-increasing demands for food, water, shelter, sanitation, energy, health services and economic security.

At the 1992 Earth Summit in Rio, the international community adopted Agenda 21, an unprecedented global plan of action for sustainable development. But the best strategies are only as good

⁴⁶ www.grida.no/climate/ipcc. Climate Change 2001: Working Group 1: The Scientific Basis.

⁴⁷ source: Nature. October 2003)

as their implementation. Ten years later, the Johannesburg Summit presents an exciting opportunity for today's leaders to adopt concrete steps and identify quantifiable targets for better implementing Agenda 21.

The Summit took place in Johannesburg, South Africa from 26 August to 4 September 2002. The Summit was held in the Sandton Convention Centre, just outside Johannesburg. A non-governmental forum took place at the nearby NASREC Centre and numerous other parallel events also took place around Johannesburg at the same time.

It is expected that this will strengthen the commitment on sustainable development.

The Summit introduces the third component of social development to the well-known two components of sustainable development, namely economic development and environment protection. Accordingly, the Summit focuses at the efforts to promote the integration of the three components of sustainable development- Economic development, social development and environment protection- as inter dependent and mutually reinforcing pillars. Poverty eradication changing unsustainable patterns of production and consumption, and protecting and managing the natural resource base of economic and social development are overarching objectives of, and essential requirements for sustainable development.

The Summit focuses at eradication of poverty to achieve sustainable development. It recognizes that poverty and S.D cannot coexist. We cannot have a safer, happier and healthier planet when we know that many of our fellow humans live in abject poverty. -when 1.2 billion people live in absolute poverty, when over 800 million

people; go to bed hungry- when over a billion people do not have access to safe water or adequate sanitation. Eliminating poverty is the cornerstone of sustainable development. It was stated at the Summit that fortunately, in the recent approved rich mosaic of international; Agreements-on Environment, trade, finance and development-we have, at least, array of hope that the world community means business. The global environmental Treaties on Climate Change, Biodiversity, decertification, and persistent organic pollutants together the recent successful replishment of global environmental facilities (GEF) provides a basis for linking the global environment to local sustainable development.

This Summit laid down the responsibility on each individual nation of its own sustainable development and therefore all countries should promote Sustainable Development at national level by inter alia enacting and enforcing clear and effective laws that support Sustainable Development.

3.4 National Legislations on Environmental Law

Indian environmental statutes chiefly employ a system of criminal sanctions to preserve natural resources and regulate their use. Civil compensation recovered through private citizens' suits plays a peripheral role in the overall regulatory strategy.

The Stockholm Declaration and Rio Declaration have significantly influenced the development of environmental law in India. In the realm of statutory law the Indian response to the Stockholm Declaration was the enactment of the Water (Prevention and Control of Pollution) Act in 1974 followed by the Air (Prevention and Control of Pollution) Act in 1981. The various legislations relating to environment are discussed below.

3.4.1. The Wild Life (Protection) Act of 1972

In 1972, Parliament enacted the Wild Life Act pursuant to the enabling resolutions of 11 States under Article 252(1) of the Constitution. The Wild Life Act provides for state wildlife Advisory Boards, regulations for hunting wild animals and birds, establishment of sanctuaries and national parks, regulations for trade in wild animals, animal products and trophies and judicially imposed penalties for violating the Act. Harming endangered species listed in Schedule I of the Act is prohibited throughout India. Hunting other species like those requiring special protection (Schedule II), big game (Schedule III), small game (Schedule IV) is regulated through licencing. A few species classified as vermin (Schedule V) may be hunted without restrictions. The Act is administered by Wildlife Wardens and their staff.

The Act was amended in 1982. It introduced provisions permitting the capture and transportation of Wild Animals for the scientific management of animal population.

3.4.2 The Water (Prevention and Control of Pollution) Act of 1974

The Water Act of 1974 was the culmination of over a decade deliberation between the Centre and the States. The history and the preamble of the Water Act suggest that only state governments can enact water pollution legislation. The Act therefore was passed under Article 252(1) of the Constitution. Article 252 empowers Parliament to enact laws on state subjects for two or more states, where the state legislatures have consented to such legislation.

The Act vests regulatory authority in State Boards and empowers these Boards to establish and enforce effluent standards for factories discharging pollutants into bodies of water. A Central Board performs the same functions for Union Territories and coordinates activities among the States.

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

The Water Cess Act was passed to help meet the expenses of the Central and State Water Boards. The Act creates economic incentives for pollution control and requires local authorities and certain designated industries to pay cess for water consumption. These revenues are used to implement the Water Act. The Board and the States such sums as it deems necessary to enforce the provisions of the Water Act. To encourage capital investment in pollution control, the Act gives a polluter a 70 % rebate of the applicable cess upon installing effluent treatment equipment.

3.4.4 The Air (Prevention and Control of Pollution) Act of 1981

The Air Act's framework is similar to its predecessor, the Water Act of 1974. To enable an integrated approach to environmental problems, the Air Act expanded the authority of Central and State Boards established under the Water Act, to include air pollution control. States not having Water Pollution Boards were required to set up air pollution Boards.

Under the Air Act, all industries operating within designated air pollution control areas must obtain "consent" (permit) from the State Boards. The States are required to prescribe emission

standards for industry and automobiles after consulting the Central Board and noting its ambient air quality standards.

Prior to its amendment in 1987, the Air Act was enforced through mild court –administered penalties on violators. The Air (Prevention and Control of Pollution) Amendment Act, 1987 was passed with the legislative intent to overcome the above said difficulties. The 1987 Amendment has now strengthened the enforcement machinery and introduced stiffer penalties. Sections 3 and 4 of the principal act have been substituted with new ones. Now the Board has been given more powers. According to the amended sections the Board constituted for administration of water Act shall exercise the powers and perform the functions of Boards for the prevention and control of Air Pollution under the Air Act. Section 18 has been amended to the effect that Central Board has been empowered to exercise the powers and functions of a state Board in certain situations, especially when a State Board fails to act and comply with directions issued by it and a grave emergency has arisen.

The amendment in section 21 has made prior consent/approval of the relevant board obligatory while establishing an industrial plant in an air pollution control area. Section 22A has been inserted in the Act which empowered the Board to make applications to the Court for restraining persons from air pollution if it is apprehended that the emission of any air pollutant in excess of the standards laid down is likely to occur.

The insertion of Section 31-A is an important step. Now, the Board may close down a defaulting industrial plant or may stop its supply of electricity or water.

Sections 37 and 39 have been substituted with new ones laying down stringent punishments by way of imprisonment and fine. .. Notably, the 1987 Amendment in order to ensure public cooperation in controlling pollution and violation of the provisions of this Act has introduced a citizen's suit provision into the Air Act and extended the Act to include noise pollution. However a prior notice of 60 days has to be given to the Board or the officer authorized. The Schedule to the principal Act has been omitted in order to make the Act applicable to all industries causing Air pollution. The Rules issued under the Air Act focus on procedural matters.

3.4.5The Indian Forest Act of 1927

This Act consolidates, with minor changes, the provisions of the Indian Forest Act of 1878 and its Amending Acts. This Act deals with four categories of forests, namely, reserved forests, village forests, protected forests and non-government (private) forests. A state may declare forest lands or waste lands as reserved forests, and may sell the produce from these forests. Any unauthorized felling of trees, quarrying, grazing, and hunting in reserved is punishable with a fine or imprisonment, or both. Reserved forests assigned to a village community are called village forests. The State governments are empowered to designate protected forests and may prohibit the felling of trees, quarrying and the removal of forest produce from these forests. The preservation of protected forest is enforced through rules , licences and criminal prosecutions.

The Forest Act is administered by Forest Officers who are authorized to compel the attendance of witnesses and the production of documents, to issue search warrants and to take evidence in an inquiry into forest offences. Such evidence is admissible in a Magistrate's Court.

3.4.6 Forest (Conservation) Act of 1980

Rapid deforestation was taking place in India. This resulted in environmental degradation. To curb this and to restore the quality of environment, the Central Government enacted the Forest (Conservation) Act, 1980. As amended in 1988, the Act requires the approval of the Central Government before the State 'dereserves' a reserved Forest, uses forest land for non forest purposes, assigns forest land to a private person or corporation, or clears forest land for the purpose of reforestation. An Advisory Committee constituted under the Act advises the Center on these approvals.

3.4.7. The Environment (Protection) Act of 1986

It is important to note that there is no entry on 'environment protection' in the legislative list in the Constitution of India. This Act was enacted to cope with the situation arisen out of the Bhopal tragedy. This Act is enacted under Article 253 of the Constitution. The purpose of this Act is to implement the decisions of the United Nations Conference on the Human Environment of 1972, in so far as they relate to the protection and improvement of the human beings, other living creatures, plants and property. It is also an attempt to provide a comprehensive legislation for environmental protection; air, water, noise, solid waste and hazardous substances by liberally interpreting 'Environment pollution'. The Act is an umbrella legislation designed to provide a framework for Central Government co-ordination of the activities of various Central and State authorities established under previous laws such as the Water Act and Air Act This Act aims at

- (a). protection and improvement of environment and
- (b). prevention of, control and abatement of environmental pollution.

The EPA was formulated out of the need felt for a general legislation for environmental protection and to fill in uncovered gaps in areas of major environmental hazards. Coordination of activities of the various regulatory agencies, creation of authorities with adequate powers for environmental protection, regulation of discharge of environmental pollutants and handling of hazardous substances, speedy response in the event of accidents threatening the environment and provisions for deterrent punishment were the objective of the Legislation.

The object as stated in the Act is: "The decline in the environmental quality due to various reasons has been evidenced way back in 1972. Government of India along with the world community strongly voiced the environmental concern. Existing laws generally focus on specific types of pollution or on specific categories of hazardous substances. Because of a multiplicity of regulatory agencies, there is need for an authority which can assume the lead role for studying, planning and implementing long- term requirements of environmental safety and to give direction to and co-ordinate a system of speedy and adequate response to emergency situations threatening the environment."

Concentration of power in the hands of the central government is the main feature of the law. This is a sweeping power perhaps found only in wartime regulation. ⁴⁸The power to protect and improve the quality of environment, a Constitutional commitment is stated to be one coupled with a duty.

The scope of this Act is very broad. According to Sec. 2 a .the term "Environment" includes water, air and land and the inter

⁴⁸ The Essential Commodities Act, 1955 giving such a power (Sec 3) is an illustration of peacetime legislation which has its genesis during the post-World War II period.

relationship which exist among water , air and land and human beings and other living creatures, plants , micro-organisms and property.

Environmental Pollutant means any solid, liquid or gaseous substance present in such concentration as may be, or tend to be injurious to environment.S.2(6)

Environmental Pollution is the presence of any environmental pollutant , defined as any solid, liquid or gaseous substance present in such concentration as may be , or may tend to be injurious to the environment. Hazardous substances include any substance or preparation which may cause harm to human beings, other living creatures, plants, micro-organisms, property or the environment.

Section 3(1) of the Act empowers the Centre "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." Specifically, the Central Government is authorized to set new national standards for controlling emissions and effluent discharges; to regulate industrial locations; to prescribe procedures for managing hazardous substances; to establish safeguards for preventing accidents; and to collect and disseminate information regarding environmental pollution. The task to fix Minimum National Standard needs experts opinion.

This Act empowers the Central Government authority to issue direct written orders, including orders to close, prohibit or regulate any industry, operation or process or to stop or regulate the supply of electricity, water or any other service. Other powers granted to the Central Government to ensure compliance with the Act include

the power u/s 10 of entry for examination, testing of equipment and other purposes and the power u/s 11 to take samples of air, water, soil or any other substance from any place for analysis.

The Act explicitly prohibits discharges of environmental pollutants in excess of prescribed regulatory standards. There is also a specific prohibition against handling hazardous substances except in compliance with regulatory procedures and standards. Persons responsible for discharges of pollutants in excess of prescribed standards must prevent or mitigate the pollution and must report the discharge to governmental authorities.

Yet another feature of this Act is provision relating to seizure and penalty. This Act provides for several penalties. Any person who fails to comply with or contravenes any of the provisions of the Act, or the rules, orders or directions issued under the Act shall be punished for each failure or contravention with a prison term of up to five years or a fine up to one lakh or both. The Act imposes an additional fine of up to Rs. 5000 for every day of continuing violation. If a failure or contravention occurs for more than one year after the date of conviction, an offender may be punished with a prison term which may extend to seven years. Corporate officials directly in charge of a company's business are liable for offences under the Act, unless the official can establish that the offence was committed without his or her knowledge or that he or she exercised all due diligence to prevent the commission of the offence. In addition, if an offence is committed with the consent or connivance of or is attributable to any neglect on the part of any director, manager, secretary or other officer, that person shall also be liable for the offence. Similar provisions extend liability to the heads of departments of government and other department officers.

It is very interesting to note that unlike the Water and the air Act, the penalty provisions are concerned, they stress more on the monetary sanction than imprisonment. This trend is moving towards liability in Torts, which is the need of the hour.

If there is reason to believe that seizure of any equipment, industrial plant or other object is necessary to prevent or mitigate environmental pollution the Central Government is empowered by the same to seize it. This is an effective instrument to achieve one of the objectives of the Act.

Section. 24 provides that if any act or omission constitutes an offence punishable under this Act as well as under any other law the offender shall be punishable under the other law and not under this Act

A deeper scrutiny of the Act discloses that the law has several missing links. But for two provisions the EPA does not contain a mechanism of carrying out wider objectives of protecting or improving the environment with a holistic perspective , although a wide net is drawn over pollutants not covered by other laws. Scientists ⁴⁹ consider the definition clause disappointing. According to them, heat, radiation and plasma and organisms like bacteria are not included in the definitions of environmental pollutant and environmental pollution. They believe that it is not only the presence of pollutants but also the absence or decrease of essential non-pollutants for example, the decreased quantity of oxygen that will also result in environmental pollution. ⁵⁰ There is a provision that if an act or omission under the Environment Protection Act,

⁴⁹.Krup P.G., ' Environment Protection Act : A Scientist's view' (pp 251-257) and Madhavan Pillai. 'Environmental Protection and Biotechnology' (p 250,251) in P Leelakrishnan, Law and Environment (1992)

⁵⁰.Krup P.G. ibid pp255

1986 is an offence under any other Act, the offender can be proceeded against not under the EPA. It is said that the provision reduces the deterrent effect of enhanced fine and takes the wind out of the sail of the law. Obviously this is the reason why the Environment Protection Act, 1986 was compared with a barking dog that never bites.⁵¹ Or with a cobra which, though seemingly fierce raising its head and fussing menacingly, has no venom in its fangs when its jaws are open.⁵²

In the light of the above study the following suggestions are made:

1. Legislation will hardly serve any useful purpose unless (a) it has parity with social change, public opinion is built up and a proper implementation is ensured.
2. In the present context there is need to shift environmental law from criminal liability to liability in torts to avoid procedural delay and to provide adequate compensation to victims of environment hazards.

3.4.8 National Environment Tribunal Act,1995(NETA)

The Act provides the provision for the establishment of National Environment Tribunal for affecting an expeditious disposal of the case arising from any accident against the occupier while handling any hazardous substance. The Act covers absolute liability of the occupier and provides relief and compensation for the damages to the person, property and the environment caused due to accident in the establishment. S.3 of the Act creates liability of the owner to pay compensation on the principle of no default in case of death, injury to any person (other than workman) or damage to any

⁵¹ Susan G Hadden, "Statutes and Standards of Pollution Control in India" (1987) Economic and Political Weekly XXII, No 16, p709

⁵² Darryl D'Monte, ' Environment law has no teeth', The Indian Express. 10 September 1986

property or environment resulting from an accident. The Act excludes workman from claiming immediate relief like any other person in case of injury or death. But immediate relief enables the people to get medical and legal help so quickly which is quite different from the nature of compensation that can be claimed under the Workman Compensation Act, 1922, therefore, the exclusion of the workman from the benefit of the Act can be said to be one of its aspects. The limitation of time to make application for compensation has been fixed five years from the date of accident.

The National Environment Tribunal under the Act has some jurisdiction, power and authority as the Collector may exercise under Public Liability Insurance Act 1971(PLIA) .Any claimant making an application under Public Liability Insurance Act may also make an application before the tribunal, but no application shall be made if the relief has been received by the claimant earlier or an application made by him to the Collector is pending and has not been withdrawn.

It indicates how the provisions relating to jurisdiction under PLIA and NETA overlap each other. Such provisions need a fresh look by Law Commission. This gives dire need to have Special Environment Courts in India. to avoid overlapping of decisions of jurisdictions.

3.4.9 National Environmental Appellate Authority, 1997

The object of the Act is to provide for the establishment of the Environmental Appellate authority to hear appeal 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 for matters connected herewith or incidental thereto. Under Section 11 of the Act, the aggrieved

person may go in appeal to authority in case of aforesaid matters within 30 days but the time may be extended up to 90 days, if he satisfies the authority that he has prevented by some sufficient reason for filing an appeal. According to section 3 and 4 of the Act, authorities shall have a chairperson, one Vice Chair person along with 3 members. For the post of Chairperson, one should be either a judge of Supreme Court or Chief Justice of a High Court. While for the Post of Vice- Chair person, one should have been Secretary to the Government of India at least for 2 years or any person of Central or State Government having pay scale equivalent to Secretary of India and should have administrative, legal managerial or technical aspects of the problem relating to the environment. For the appointment of member one should have knowledge or practical experience in matters relating to environment, management, and law or planning and Development. The President shall appoint the Chairperson and Vice Chairperson.

3.5 Constitutional Commitments

Dr. Upendra Baxi once commented that prior to the Forty Second Amendment the Indian Constitution was environmentally blind. The Indian Constitution is amongst the few in the world that contains specific provisions on environmental protection. 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 which has raised the right to healthy and wholesome environment a fundamental right. Now today the right to a wholesome environment has been recognized as a fundamental right in right to life. Apart from the above provisions, in the Constitution we find the division of the legislative authority for the legislation on enactments pertaining to environment.

3.5.1. Division of Legislative Authority

The allocation of the legislative authority is very important. Several environmental problems such as sanitation and waste disposal are best tackled at local level itself. Others, like water pollution and wildlife protection are better regulated by uniform national laws. Under India's federal system, Governmental power is shared between the Union Government and the State Governments. Part XI of the Constitution governs the legislative and administrative relations between the Union and the States.

The Constituent Assembly did not specifically consider the question of whether parliament or the State Legislatures should regulate environmental matters. Instead, the distribution of environmental subjects within the three lists was influenced by the Government of India Act of 1935 and by the conflict between those who wished to create a strong centre and others who preferred to secure more powers for the States.⁵³ In July 1949 the Drafting Committee of the Constituent Assembly convened a meeting of the Premiers of the Indian States to discuss the division of the legislative powers. At this meeting, proposals from the Ministry of Agriculture that "Forests" and "Fisheries" be transferred from the State List to the Concurrent List were opposed by the provincial representatives. The argument of the Ministry was forest and fisheries affect the agricultural development and prosperity of the country as a whole and no province or state should, even inadvertently, follow a policy that could be detrimental to the rest of the country. But the arguments failed and the proposals were rejected and the topic "Forests" was classified as a State subject.

⁵³ Seervai H.M, Constitutional Law of India: A Critical Commentary, 62.Vol I.1983 . Rao S. The Framing of India's Constitution: A Study, Vol V. 1968

Another proposal jointly sponsored by the Ministries of health and Home Affairs aimed at removing "Public Health and Sanitation" from the State list and placing it with "Vital Statistics including registration of births and deaths" in the Concurrent list. It was argued that central legislation would be necessary to prevent the spread of diseases from one province to another. Unconvinced, the Premiers of the United Provinces, Assam, Bombay and Bihar, successfully resisted the move. Only the second part, placing "Vital Statistics" in the Concurrent List, was accepted at the meeting.

In these deliberations only, the Ministry of Health successfully proposed an expansion of Parliament's power to regulate interstate rivers so that pollution of rivers by industrial wastes and sewage could be controlled. The Ministry proposed that the draft Entry 74 in the Union List be widened to read: "The development of inter-state rivers and inter State waterways for purposes of flood control, irrigation, navigation and hydro-electric power and for other purposes, where such development under the control of the Union, is declared by parliament by law to be expedient in the public interest. This instance of environmental sensitivity was exceptional. The larger question of a decentralized federal structure prevailed over the issue of whether the central or state legislature was better situated to regulate the matters.

Parliament has power to legislate for the whole country, while the state legislatures are empowered to make laws for their respective states. Article 246 of the Constitution divides the subject areas of legislation between the Union and the States. This division is made under the Seventh Schedule of the Constitution. The Union List,(List I) State List(II) and the Concurrent List (List III) include the subjects upon which the laws can be made.

Under the Concurrent list (List III) both Parliament and the state legislatures have overlapping and shared jurisdiction over subject areas like forests, the protection of wildlife, mines and mineral development not covered in the Union list, population control and family planning , minor ports and factories.

List II covers subjects like public health and sanitation, agriculture, water supplies, irrigation and drainage and fisheries.

List I includes subjects like 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.

Parliament has the residuary power to legislate on subjects not covered by any of the three lists. The general principle is that whenever there is a conflict between the Union and the State made laws, the Union laws prevails. A State law passed subsequent to the Union legislation can prevail if it has received Presidential assent under Article 254.

Article 248 empowers the Parliament to legislate in the national interest on matters enumerated in the State List. In addition the Parliament may enact laws on state subjects, for states whose legislatures have consented to central legislation. Various environment pollution prevention laws have been enacted invoking these provisions. For eg. The Water (Prevention and Control of Pollution) Act of 1974 was enacted by parliament pursuant to the consent resolutions passed by 12 State legislations.

Four years after the Stockholm Declaration, the 42nd amendment added to the Constitution of Indian had certain significant provisions relating to environment. The 42nd Amendment also expanded the

list of concurrent powers in the Constitution. The Amendment introduced a new Entry, "Population Control and Family Planning" while "Forests "and "Protection of Wild Animals and Birds" were moved from the State list to the Concurrent List. Let us examine the impact of the addition of these powers on the environmental legislations.

Article 253 of the Constitution empowers the Parliament to make laws implementing India's International obligations as well as any decision made at an international conference, association or other body. Article 253 states: **"Notwithstanding anything in the foregoing provisions of this chapter, parliament has 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 countries or any decision made at any international conference, association or other body"**. In view of the broad range of issues addressed by international conferences, treaties and agreements, Article 253 apparently gives Parliament the power to enact laws on virtually any entry contained in the State list.

Parliament has used its power under Article 253 to enact the **Air (Prevention and Control of Pollution) Act of 1981** and **Environment (Protection) Act of 1986**. The Preambles to both laws state that these Acts were enacted to implement the decisions reached at United Nations Conference on the Human Environment held at Stockholm in 1972. At the Conference, members of the United Nations agreed to work to preserve the world's natural resources, and called on each country to carry out this goal.

3.5.2 Directive Principles of State Policy

The Directive Principles are prescriptions to guide the government. Although unenforceable by the courts, the Directive Principles are increasingly being cited by the judges as complementary to the fundamental rights. The Indian Constitution is one of the few countries in the world that contains specific provision for environment protection. This provision was added by the 42nd Amendment Act of 1976. Article **48 A** was added to the Directive Principles of State Policy. It declares: "The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country."

There was considerable debate in Parliament over the wording of draft Article 48 A. 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. However, none of these amendments were accepted by the government, which took the position that the broad terms of a directive principle need not contain details.⁵⁴

In several environmental cases the courts have been guided by the language of Article 48 A. In one of the leading cases⁵⁵ way back in 1987 the Supreme Court has held:

"Whenever ecology is brought before the Court, the Court is bound to bear in mind Art 48 A of the Constitution And Article 51 A (g) When the Court is called upon to give effect to the

⁵⁴ Lok Sabha Debates Eighteenth Session. Fifth Series Vol LXV , No. 5. Oct.29 columns 94-116

⁵⁵ Sacchidanand Pandey v/s State of West Bengal, AIR1988 SC 2187 and Kinkeri Devi v St of Himachal Pradesh, AIR HP 4

Directive Principles of State Policy and the Fundamental Duty, the Court is not to shrug its shoulders and say that priorities are a matter for policy-making authority. The least that the Court may do is to examine whether appropriate considerations are borne in mind and irrelevancies excluded. In appropriate cases, the Court may go further, but how much further will depend on the circumstances of the case. The Court may always give necessary directions. However the Court will not attempt to nicely balance relevant considerations.

3 5.3.Fundamental Duties

The same Amendment Act⁵⁶ added Chapter IV-A of the Constitution embodying the Fundamental Duties of the citizens. In this chapter Article 51 A (g) was added which 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...."

3.5.4. Fundamental Rights

Article 21 of the Indian Constitution embodies the right to life and personal liberty. After Supreme Court's landmark judgment in Maneka Gandhi's case, the meaning of life has expanded greatly and today it also includes right to healthy and wholesome environment. The Supreme Court has tried to evolve jurisprudence of strict liability for the harm caused by the industry engaged in hazardous or inherently dangerous activities. Also, we find environmental legislation deriving their powers from the Constitution of India.

⁵⁶ 42nd Amendment Act,1976

The slow poisoning caused by environmental and atmospheric pollution amounts to violation of Article 21 of the Constitution. In fact, the **right to life** guaranteed in Article 21 of the Constitution embraces the protection and preservation of nature's gifts without which life cannot be enjoyed. Moreover, environmental degradation has disastrous impact on right to livelihood which is a part of the right to life. The right to decent environment and right to life are so interconnected that the two cannot be separated. The contaminated environment will kill human life. Thus the right to pure and decent environment underlies the right to life which is meaningless in the absence of pure decent and healthy life supporting ecosystem which sustains life.

In **Chhetriyar Mukti Sangharh Samiti v State of U.P**⁵⁷, the Supreme Court has held as under:

Every citizen has a fundamental right to have the enjoyment of quality of life and living as contemplated by Article 21 of the Constitution. Anything which endangers or impairs by conduct of anybody either in violation or derogation of laws, that quality of life or living by people is entitled to be taken recourse of Article 32 of the Constitution.

The various other landmark judgments in which the Supreme Court has time and again upheld the right to healthy and wholesome environment as a fundamental right has been discussed at length in the oncoming chapters

⁵⁷ Chettiyar Mukti Sangharsh Samiti v. State of U.P AIR 1990 SC 2060