The population explosion and modernisation have severely disturbed the ecological balance in the world. The developing countries like India is the worst sufferer. The environmental protection cannot be looked upon as an afterthought. It needs to be integrated into planning and costing of industries. A sincere effort is required from all levels to save our society from ecological degradation.

6.1 Pre-Constitutional Efforts:

The most important issue of the world today is to save environment, the destruction of which has threatened the
survival of this planet. The environment came on the world's agenda after it was discovered that the growth and a very reckless one at that, has taken place at the cost of nature whose capacity to meet man's needs is limited. To protect the environment of our planet became the topmost priority of all human beings. Universally it is accepted that the Law of the Environment is in the process of drastic change, but it is well established and recognised that the environment was free for use to all States. The need of the hour was to have an international convention on the environment. The International Law Association at Vienna in 1926 attempted on codification in relation to the Law of the Sea. According to Vienna Conference Resolution, the League of Nations decided to convene an international conference on the subject which was held at the Hague from March, 13 to 12th April, 1930 and was attended by the representatives of 42 States. Attempts were made to codify the rules in the main for the exercise of civil and criminal jurisdiction which ultimately lead to pollution of the sea by the coastal States. Due to the failure of the Hague codification Conference of 1930, some of the coastal States however extended unilaterally limit to 200 miles in the name of continental shelf and the conservation of aquatic life though it was heavily destroyed after the world wars. The General Assembly of United Nations is given mandatory power for the initiation of study and codification of International Law. Under Article 13 of the U-N. Charter, it may make recommendations for objectives which serve to encourage international co-operation
concerning political issues as well as for promotion of codification and development of international law. The General Assembly through its quasi-parliamentary function established the International Law Commission on March, 1947. Normally, a State is deemed to possess independence and sovereignty over its subjects and territory, but for the purpose of international law the States have restricted their sovereignty. At present, all States have accepted restriction on their liberty of action for the interests of the international community. Not only States but many other international organisations and institutions associated with the United Nations have undertaken obligations limiting their unfettered discretion in matters of international policy. This theory has been applied in the case of enforcement of international environmental law also. In this matter the duties imposed upon the States import a wide interpretation and connotes the transboundary pollution, Law of States and Corporation also. The Trial Smelter Tribunal which applies the maxim sic utero tuo lit alienum laedus (hereafter referred to as sic utero tuo) expressed the view that under the principles of international law, no State has the right to use or permit the use of territory in such a manner as to cause injury by fumes in or to the territory of another or the properties of persons, therein, when the case of serious consequences and the injury was established by clear and convincing evidence. It may be

observed that the tribunal while applying the principle of sic utero tuo and strict liability had affirmed the scope of restrictive sovereignty. The theory received recognition in a very important case known as the Corfu Channel Case. In this case, the ICJ held that the obligation of every State not to allow its territory to be used for acts contrary to the rights of other States. Although this case was not one of the pollution, however it gave the basic rule of State Responsibility for acts done within its territorial waters, and this included polluting activities. The importance of environment has also been taken into account in the case of New Jersey Vs New York where it was upheld that the environment is important to the degree that is useful to man's immediate interest and if any alteration is made in it that should be halted only if the benefits of doing so outweigh the costs. By nature, all nations are equal the one to other. Nations are considered as individual free persons living in a State of nature. Therefore, since by nature, all men are equal and thus it is inferred that all nations too are equal. At present, this theory with a minor change in its concept, subsists and imports not merely equality before the law but also specify for equal rights and equal duties for the utilization and protection of the environment. The International Law Commission in its 39th Session held in 1987 applied this theory in matters of sharing of water of international rivers and their

safe use by riparian States. Though the utility of the concept in the adoption of different declarations, conventions and treaties cannot be ruled out, its applicability has been questioned because of the recent trends in changes of the rule of unanimity to the rule of majority\(^1\). Thus, side by side with the principle of equality there were, however de facto inequalities which were perforce recognised.

In relatively modern times, efforts to ameliorate the grave danger to the ecological balance were undertaken through statutory measures all over the world. In Great Britain, the Smoke Nuisance Laws in 1273 were passed to stop smoke pollution. Attempts were also made from time to time to control pollution to a bare minimum. A comprehensive legislation was passed regarding control of water pollution in 1923 by enacting Salmon and Fresh Water Fisheries Act. The health is the most important factor for the survival of human beings and to protect it from hazards, the Public Health Act, 1936 was passed. The Public Health (Drainage of Trade Premises) Act, 1937 was passed to put the health of the respective State in a more sound footing. The passing of these Acts symbolise the serious hazard to life, health and to the aquatic life. The advent of industrial revolution produced its staggering environmental effects in urban and industrial centres.

\(^{1}\) "The unanimity rule, conceived as the safeguard of the minority has through exaggerating the doctrine of equality, become an instrument of tyranny against the majority". Politis Les Nouvel Les Tendances du Droit International (1927), p.2, cf. Starke, J.G. op.cit., p.104.
The resulting effect of the modernisation made them conscious to put a heed on it.

The oldest federal statute of the United States is the Rivers and Harbours Act of 1899 for the abatement of water pollution. It prohibited the discharge of refuse other than liquids from streets and sewers, into the navigable waters of the United States. The Public Health Service Act of 1912 required an organisation to conduct research concerning the health aspects of water pollution. In 1924, Congress passed the Oil Pollution Control Act which prohibited the dumping of oil into navigable waters except in life-threatening emergencies or unavoidable accidents. The Water Pollution Control Act of 1948 is a bold experiment in dealing with aquatic pollutions. This Statute was a temporary measure designed to expire after five years. The Act specifically recognised the primacy of the States regarding control of water pollution. The Surgeon-General of the United States was authorised to assist in encouraging States to formulate studies and plans to grapple with the problem and to bring about Uniform State laws to control water pollution. It authorised the Justice Department to bring suits against individuals or organisations not conforming to pollution regulations.

The provisions for the environmental policy in India and its impact can be found in Kautilya's Arthashastra written between 321 and 300 B.C. The core materials are on forest

policy and conservation of wild animals. The law concerning the environment in Kautilyan Jurisprudence has been described as stated below:

**State to Maintain Forests:**

The ruler shall not only protect produce-forests, elephant-forests but also set up new ones. Forests shall be grown, one for each forest produce and factories for goods made from forest produce shall be erected, and foresters working in the produce-forests shall be settled there.

**Forest Reserves for Wild Animals:**

On the borders of the country or in any other suitable locality, animal forests shall be established where all animals are welcomed as guests and given full protection. Similar provisions have been made for selling of trees, damaging forests, forest produce, fees for hunting and for the protection of wild animals.

A similar approach is also found in the period of Samrat Ashok. But it is only during the British Rule in India we find Acts in the form of a code to deal with environmental nuisance. The provisions of the Acts made efforts to protection environment in India. The earliest Act on the Statute book concerning control of water pollution in India is the Shore Nuisance (Bombay and Kolaba) Act, 1853 \(^1\) which declared it lawful for the

\(^1\) Act XI of 1853.
collector of Land Revenue, Bombay to give notice to an offending party, requiring the removal of any nuisance anywhere below highwater mark in the Bombay harbour. If the nuisance was not removed or abated within one month of the notice, the Collector was authorized to get it removed or abated. Another old Statute is the Orient Gas Company Act of 1857, that comprehensively attempts to thwart water pollution such as that which concerned the company. The Oriental Gas Company was registered in England as a joint stock company and was later incorporated in India for the purpose of manufacture and supply of gas for lighting the town of Calcutta and its neighbourhood. It was found expedient to give this company powers and facilities to enable them to carry out their undertaking of lighting with gas the city of Calcutta under statutory provisions. The Indian Penal Code of 1860 also contains detailed provisions punishing offences affecting the public health, safety, convenience, decency and morals. A large number of the sections of the Act are concerned with matters that are directly or indirectly relevant to environment law. The Serais Act of 1867 enjoined upon a Keeper of a Serai or an inn to keep a certain quality of water fit for consumption by persons and animals using it to the satisfaction of the District Magistrate or his nominees. Failure for maintaining the standard entailed a liability of civil offence. The Northern India Canal and Drainage Act was passed in 1873

3. Act XXII of 1867.
which also listed certain offences under the Act contained in its provisions. Section 8 of the Obstruction in Fairways Act\textsuperscript{1} of 1881 empowered the Central Government to make rules or regulate or prohibit the throwing of rubbish in any fairway leading to a port causing or likely to give rise to a bank or shoal. Failure to comply with this requirement was visited with civil or criminal offence or both. The Indian Easement Act of 1882 protected riparian owners against "unreasonable" pollution by upstream users. The Indian Fisheries Act\textsuperscript{2} deals with the aquatic life and any destruction in it may lead to civil or criminal offence. The Criminal Procedure Code, 1898, also contain provisions to prevent a discharge from a factory into a river of a noxious effluent which might be injurious to the health of the community which has right to the use of water in such river. Water pollution by oil has been regulated by the Indian Ports Act\textsuperscript{3}. By virtue of Section 6, the Government is empowered to make necessary rules for the purpose of 'regulating the manner in which oil or water mixed with oil shall be discharged in any such port and for the disposal of the same'. The Inland Steam Vessels Act\textsuperscript{4} lays down a mandatory rule of 'fresh' water for the use of passengers. Section 26 (i) of the Indian Forest Act\textsuperscript{5} makes it punishable if any person, who in contravention of the rules

\textsuperscript{1} Act XVI of 1881.
\textsuperscript{2} Act IV of 1897.
\textsuperscript{3} Act XV of 1908.
\textsuperscript{4} Act I of 1917.
\textsuperscript{5} Act XVI of 1927.
made by the State Government, poisons water of a forest area. The State Government has been empowered under section 32 (f) to make rules relating to poisoning of water in forests. The Factories Act\(^1\) directs every factory to keep the premises clean and free from effluvia arising from any drain, privy or other nuisance\(^2\). It further enjoins upon them to make effective arrangements for the disposal of wastes and effluents due to the manufacturing process carried on therein\(^3\). All arrangements for disposal of effluents are required to be approved by the State Government. The earliest laws aimed at controlling air pollution in India were the Bengal Smoke Nuisance Act, 1905 and the Bombay Smoke Nuisance Act of 1912. These Acts consolidated, codified and amended the law on the subject by providing for a machinery for "the abatement of nuisances arising of furnaces or fire places". To protect human health and any effect to it from the insects and pests, the Mysore Destructive Insects & Pests Act, 1917 and Andhra Pradesh Agricultural Pest and Disease Act, 1919 were passed. Under the Motor Vehicles Act, 1939 there are certain restrictions on trucks regarding the use of double sirens while passing through certain localities, violation of which leads to prosecution. It is to be noted further that the Motor Vehicles Act, 1939 does not make any provisions to control

\(^1\) Act LXIII of 1948.
\(^2\) Section 11 of 1948.
\(^3\) Section 12 (i) of 1948.
emission of smoke, hydrocarbons, carbon monoxide and oxides of nitrogen from motor vehicles and diesel engines. To save the land from degradation and for its improvement the Bihar Waste Lands (Reclamation, Cultivation and Improvement) Act, 1946 and the Andhra Pradesh Improvement Schemes Act, 1949 were passed. The poison Act, 1919 was passed to save the land and its environment from pollution by the use of pesticides. In the field of wildlife protection, early legislation was limited to specific areas and particular species. In 1873, Madras enacted the first wildlife statute for the protection of wild elephants. The first effort by the Central Government came six years later with the passing of the Elephant's Preservation Act of 1879. In 1912, the Central Government enacted a broader Wild Birds and Animal Protection Act. Extending to most British India, this law specified closed hunting seasons and regulated the hunting of designated species through licences. Indeed, all the statutes related primarily to the regulation of hunting and did not regulate trade in wildlife and wildlife products - both major factors in the decline of Indian wildlife. As a consequence, wildlife depredation continued and many species became extinct. The first comprehensive law for the protection of wildlife and its habitant was perhaps the Hailey National Park Act of 1936 which established the Hailey (now Corbett) National Park in the State of Uttar Pradesh. This review suggests that early legislative efforts were piecemeal and inadequate. Not until the 1970's did the Central Government begin enacting comprehensive environmental
laws. The next set of readings trace the transformation in governmental policy, from environmental indifference to environmental concern, that guided India into an era of comprehensive environmental legislation.

The law of tort is one of the oldest of the legal remedies to abate pollution. Most pollution cases in law of tort fall under the categories of nuisance, negligence and strict liability. The rules of law of tort were introduced into India under the British Rule. Initially disputes arising within the Presidency towns of Calcutta, Madras and Bombay were subject to common law rules. Under the Acts of British Parliament Indian Courts and existing personal laws of India outside the Presidency towns were required to reconcile disputes according to justice, equity and good conscience in the absence of availability of law.

The water of a public spring or reservoir belongs to every member of the public in common and if any person voluntarily fouls it, he commits public nuisance. It is indeed very unfortunate that the courts in India have given a very restrictive interpretation for the terms 'public spring' and 'reservoir' so as to defeat the very purpose of the enactment of the Indian Penal Code, 1860. Section 277 of the Indian Penal Code provides:

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

The terms are interpreted as not to include flowing waters of rivers, canals and streams in Emperor v. Nama Ram. It was held that fouling of the water of river running in a continuous stream is not an offence under section 277 of the Indian Penal Code. But yet it may be an offence under section 290, of the evidence shows that the act was such as to cause common injury or danger to the public. In Queen v. Vittichakkan, it was held that the public spring contemplated in Section 277 of the Indian Penal Code did not include continuous stream of water running along the bed of a river. The Calcutta High Court followed the same principle in Empress v. Halodhar Pooroo. Exemplary damages are intended to punish the defendant for the outrageous nature of his or her conduct, as for instance, when he or she persists in causing a nuisance after being convicted and being fixed for it. This was held in J.C. Galstaun v. Dunia Lal Seal, one of the earliest reported pollution control cases in India. Apart from its historical significance, the Calcutta High Court case is important because it shows how the common law regulatory system can check polluters in a pre-industrialised society.

1. (1904) 6 Bom. L.R. 52.
3. I.L.R. Cal. 383.
4. (1905) 9 CWN 612, 617.
A survey of early environmental legislations indicate the nature and levels of government awareness to environmental issues. Apart from forest laws, nineteenth century legislation also partially regulated two other aspects of India's environment: water pollution and wildlife. The twentieth century legislation dealt with other spheres and in furtherance of some of the above mentioned. These laws, however had a narrow purpose and limited territorial reach.

6.2 Post Constitutional Safeguard on Environment:

After independence, the planners of the government tried to make it responsible as insurer and guardian of people in the country. Therefore, State have been declared as welfare State in the framework of the Indian Constitution. Political and economic democracies are the pillars of the welfare State. The government is under obligation to provide number of guarantees to the people to fulfil the goals of the welfare state and pollution-free environment is one of them. Thus a conscious attempt has been on the agenda of the Government to minimise the ecological degradation to a bare minimum since the enforcement of the new Indian polity. A thorough study of the governmental actions in this context is highly desirable to explore the real causes for the environmental degradation in India even after forty five years of the new governmental set up.
6.2.1 **International Law and the Environment**

The tremendous rise of the problem of environmental pollution in the Earth poses a serious concern to the present and future generations to come. Several Nations of the globe tried to arrest it considerably through treaties and conventions. But for a positive result there are many obstacles which is to be overcome. With a view to combat this menace the emergent tasks are to facilitate access to the necessary resources and technologies, to accelerate the process of equitable income distribution and to implement poverty elevation programmes, rapidly. These were to be attempted from the point of view of international jurisprudence for issuing them in protecting the environment at the global level.

6.2.1.1 **Marine Pollution**

The legal measures adopted at international level to control environmental pollution are different for various kinds of pollution. One kind of such pollution is marine pollution. In order to control this type of pollution in the sea at the International level, a few states adopted measures in the first quarter of the present century. For instance, the Great Britain took the first step in 1922, for prohibiting the deliberate discharge of oil in its inland water and territorial sea.
It was followed by the U.S.A in 1924. But these were not sufficient after the second world war due to the ever increasing use of petroleum products and their transportation. Therefore, at the invitation of Britain, thirty-two States met at London in 1954, to discuss the issue of marine pollution. They finally signed the International Convention for the prevention of sea by Oil, 1954 which came into force in July, 1958. The convention ensured that in order to avoid unwanted discharges, their ships shall be equipped with better fittings and reception facilities for oil ballast water or tank washings. The convention also ensured that the tankers of contracting States would not discharge oil or mixtures more than 100 parts of oil to 1,00,000 parts of the mixture. The Convention on High Seas in 1958, was one of the four conventions adopted by the first United Nations Conference on Law of Sea (UNCLOS - I). The Convention under its Article 4 inter alia called upon the States to draw up regulations to prevent pollution of the seas by oil, subject to Oil Convention 1954: The Convention for the Safety of Life at Sea, 1960; International Regulations for Preventing Collisions at Sea, 1960; Tankers Owners Voluntary Agreement on Liability for Oil Pollution, 1969 and Contract Regarding an Interim Settlement of Tanker Liability for Oil Pollution, 1971 (CRISTAL), adopted thereafter were though valuable but due to their escape clauses failed to achieve required result.

The Torrey Canyon disaster, 1967, and other sea accidents which occurred during that period marked the failure
of different standards set by the above conventions. The tide of public opinion against the rising tanker's accidents and oil discharges in sea was so adverse that this matter was issued at Stockholm Conference of 1972 and some guiding principles were laid down in this regard. Principle 7 of the Conference laid down that States shall take all possible steps to prevent pollution of the seas by substances that are liable to create hazards to human health, to harm living resources and marine life, to damage amenities or to interfere with other legitimate uses of the sea. After the Stockholm Conference of 1972, several International Conventions were concluded by States to protect marine environment. The Convention for the Prevention of Marine Pollution, 1973 (MARPOL), Intervention Convention, 1975, Civil Liability Convention, 1975, were in accordance with the spirit of Conference and were important since they provided a nexus for shipping standards and to remedy the injured. However, because of lack of uniformity, paucity of funds, and extent of their limited scopes, these conventions could not prove worthwhile. The Third United Nations Conference on Law of Sea (UNCLOS - III) started discussing the framing of international law for the administration of sea since 1974. The conference after prolonged discussion, adopted a convention known as the United Nations Convention on the Law of the Sea, 1982 LOS (Convention). LOS Convention, in its Part XII (consisting of 42 articles) dealt about the protection and preservation of the marine environment.
Of special interest are sections on international rules and national legislations to prevent, reduce, and control pollution of the marine environment; on procedures for the enforcement rules and on safeguards. LOS convention though apparently appears equipped with effective provisions barring few exceptions, failed to give any positive result as neither oil accident in sea could be prevented nor oil discharges could be checked. In January 1993, Shetland Island, and in the same month Andaman Nicobar Island, Oil leakage accidents have affected large areas of these islands. It is therefore very much essential to protect marine environment from oil.

Dumping of wastes and other matters is another form of marine pollution which attracted the minds of the participants of Geneva Convention on High Seas of 1958. The Convention contained many regulations in this regard. The Convention concluded on the "Prevention of Marine Pollution by Dumping of Wastes and other matters of 1972", was an important step in curbing the dumping of wastes and other matters. The LOS Convention of 1982, has taken prevention of all those matters through which marine is affected. Article 207 and 208 of the Convention is relevant in this regard. It authorizes the States to adopt laws and regulations to prevent, reduce and control pollution of the marine environment from land based sources and sea-bed activities including rivers, estuaries, pipelines and outfall structure, taking into account internationally agreed rules, standards and
recommended practices and procedures. The Montevideo Programme of 1981 led to the establishment of UNEP Governing Council of an Adhoc working group of experts for the protection of marine environment against pollution from land-based sources, which held three working sessions between 1983 and 1985 and 'produced' the Montreal Guidelines for the Protection of Marine Environment against pollution from Land-based Sources, which was finalized in Montreal in 1985. The United Nations Conference on Environment and Development 1992 enunciated international principle to strengthen regional agreement and to provide for exchange of information and transfer of technologies and other resources and for a more effective system of data-collection and monitoring. The Earth Summit thereby gave recognition to the regional conventions like, the Convention for the Protection of the Marine Environment from Land-Based Sources of 1974 ; and the Convention Relating to Marine Environment of Baltic Sea area and Mediterranean Sea of 1974 and 1976, respectively. Although the different Conventions provide international standards on different related matters to control marine pollution, but these could not be maintained because of various geographic regions and climate conditions of sea throughout the world. After studying in detail the ecological regions and its related matters, it would be wise to set strict international standards for all States and to abide by it for preserving the marine and water environment.
The States enjoy the sovereign equality and sovereign right to dispose freely of their resources in conformity with the policy of environment and also implies that each State will respect that right in relation to their States. They have equal rights and duties and are equal members of international community, notwithstanding differences in economic, social, political, or other nature. The International Law Commission in its 39th Session held in 1987 upheld this theory in matters of sharing of water of international rivers and their safe use by riparian States. The Commission introduced the concept of equitable participation which emphasizes the active involvement and cooperation by States in the use, management and development of International water courses. It may be observed that the Smelter Tribunal while applying the principle of sic utero tuo and strict liability had affirmed the scope of restrictive sovereignty. The theory received wide recognition in the Namibia Case, 1971 where the ICJ in its advisory opinion, reiterated that physical control of a territory rather than sovereignty or legitimacy or title constituted the basis of a State Liability for acts affecting other State. In a case between India and Pakistan concerning the diversion of the waters of Indus, it was decided that the water resources of the Indus Basin must be exploited jointly and used in the way which best promotes the economic development of the basin considered as a whole and also held that neither

1. ICJ Reports (1971).
party might take action likely to damage the interests of the other party.

In addition to above, theory of restrictions on States sovereignty has found support in different promulgations, declarations, treaties and conventions etc. The ILA Conference 1956 emphasized on the reasonable use of water and recognise State's responsibility arising as a result of harm or injury done to another State in the sense that a detrimental change in the environment has been brought about through some resolutions. Further the Helsinki Rules, 1966 have made detailed provisions regarding the question of State responsibility for extra-territorial damage. Article 10 of the Rules, stipulated about the prevention of water pollution and stands to face legal consequences arising out of growing pollution. The fact is that the environment knows no man-made boundaries and Earth is one for all its inhabitants. It is the responsibility of the international community to protect our environment. Success in this endeavour depends on our commitment which should find expression through our thought, words and deeds. We must protect our environment and save our planet which is a common concern.

6.2.1.2 **Transboundary Air Pollution**

The pollution of air occurs through substances like carbon dioxide, sulphur dioxide, hydrocarbons and nitrogen, combustion of coal, power plants, industrial process, etc. Air pollution is a threat to life through the problem of acid rain, ozone depletion or greenhouse effect. All these have adverse effect on climate, and upon every living and non-living organisms. Therefore, its control is very essential not only at the national but also at the international level. A customary law have been developed through Trial Smelter Arbitration 1941, which applied the maxim sic utero tuo internationally. This principle was acclaimed by international community, by courts, and politicians too. The Stockholm Conference, 1972 while recognizing this theory in its principle 21, proclaimed that the States sovereign right to exploit their own resources pursuant to their own environmental policies and responsibility to ensure short activities within their jurisdiction or control do not cause damage to the environment of other States. The Convention on Long Range Transboundary Air Pollution, 1979, adopted this principle accordingly to prevent or reduce the long range transboundary air pollution. The problem and its related affairs regarding the Transboundary Air Pollution were tried to remove in the subsequent protocols; Protocol to the 1979 Convention on Long-Range Transboundary Air Pollution, 1979 and the Protocol on Long-Term Financing of the co-operative programme for
monitoring and evaluation of the Long Range Transmission of Air Pollutants in Europe (EMEP), 1984. According to the Protocol, 1984, the EMEP shall be funded by the parties. Further the protocol to 1979 Convention accords international recognition to the problem of acid rain only. According to this protocol the parties agreed to reduce their annual sulphur emissions, or their transboundary fluxes to at least 30% below 1980 levels by 1993. The Earth Summit of June, 1992 declared that environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it, obligate States to prevent environmental pollution from all sides. Agenda 21 considered as a blue print for action envisages to control transboundary atmospheric pollution control technologies, strengthen assessment, and for mitigation of transboundary air pollution, especially from industrial and nuclear accidents to reduce emissions of harmful gases which cause such pollution.

6.2.1.3 Ozone Depletion (Green House Gases):

The problem of ozone depletion came before the world as a great challenge. Ozone depletion not only causes various types of diseases to human beings, animals and plants etc. but it also affects the climate of the world. The Vienna Convention for the Protection of Ozone Layer, 1985 was the first global convention on the subject, which obligates States to take appropriate measures to prevent ozone depletion. The ninth Conference
of Non-aligned countries was held in September 1989. It was observed that the protection of environment has emerged as a major global concern, dramatically emphasizing the growing interdependence of the world. The Noordwijek Declaration on Environment in 1989 observed climate change as a 'common concern of mankind'. It stated that all countries should now, according to the capabilities and the means of their disposal, initiate actions and develop and maintain effective and operational strategies to control, limit or reduce emissions of greenhouse gases. The Lang-Kawi Summit of 1989 expressed its deep concern at the serious deterioration of the environment and the threat posing the well-being of the present and future generations. The Haque Declaration stressed the right to live in dignity, and consequent duty of the nations vis-a-vis present and future generations.

The Montreal Protocol on substances that deplete the Ozone layer, 1987, as adjusted and amended by the Second Meeting of the Parties, held at London on June, 1990, adopted certain adjustments relating to production and consumption of the controlled substances. The parties also agreed to establish Multilateral Fund. It was later on established in 1991 which shall be financed by contribution from parties on the basis of United Nation's scale of assessment, for the purposes of providing financial and technical cooperation including the transfer of technologies. China demanded a special deal for the third
world. India described it as allowing developed countries to take care of their essential needs but not allowing developing countries to meet their expanding needs. The Earth Summit, 1992, the Second international environment management (the first was Stockholm Conference, 1972 followed by Nairobi Declaration, 1982) preceded by four preparatory committee meetings emphasized the need for adequate resources to correct the prevailing imbalances. The Rio Declaration while listing obligations on participating States suggested that member states must respond to nationally as well as internationally by enacting effective environmental legislations, environmental standards, management objectives and priorities should reflect their environmental and development contact to which they apply. Environmental standards applied may not be contrary to the interest of the developing countries. Environmental measures addressing transboundary or global environmental problems must be based on international consensus. The Global Environmental Facility has broken new ground by making finance available for pilot project to identify the scope for widespread replication of technologies and practices that will low net 'Green House Gas' emissions.

6.2.1.4 Transboundary Movement of Hazardous Wastes:

The need to develop global legal instruments dealing with management of wastes more particularly with their
restriction, control and disposal goes back to early 1980. The Governments clearly recognised at that time that cooperation was required to address the growing transboundary movement of hazardous wastes. To deal with this emerging problem the government officials and experts in environmental law gathered at Montevideo in November, 1981, to prepare a framework, methods and programmes for meeting the problem regionally and globally. The Montevideo Environment Programme developed the principles and identified guidelines with the objectives and strategies agreed at the meeting. The one major area was for transport handling and disposal of toxic and hazardous wastes. The Basel Convention on the Control of Transboundary Movements of Hazardous wastes was adopted in 1989 on the line of these principles. The Basel Convention ensures protection of environment of countries against uncontrolled dumping of toxic wastes and promote environmentally sound waste disposal and the minimization of waste generation. For attaining this object, the Convention has laid down various provisions for banning import of hazardous wastes. It is therefore desirable that the Convention is justified to reduce pollution occurred through the transboundary movement of hazardous wastes by a large number of States.

6.3 National Law and the Environment:

Inspired by the global consciousness to save our planet from environmental degradation, the environmental
regulation in India bristles with new and innovative features. The Parliament inserted the term 'environment' and indicated the protection of it by passing the Forty-Second (Amendment) Act, 1976. The chapter of Directive principles of State Policy and the fundamental duties under the Constitution explicitly enunciate the national commitment to protect and improve the environment. The Supreme Court encouraged by an atmosphere of progressive realisation after the emergency, fortified and expanded the fundamental rights enshrined in Part III of the Constitution. The boundaries of the fundamental right to life and personal liberty guaranteed in Article 21 were expanded in the process to include environmental protection and strengthened it. The viewpoints of the government is also changed and indicated after the Sixth Five-Year Plan (1980-85) that the environment must not be considered as just another sector of national development. It should form a crucial guiding dimension for plans and programmes in each sector. A concern for environment is essentially a desire to see that the national development proceeds along rational sustainable lines. It is clear that environmental conservation is, in fact, the very basis of all development.

6.3.1 Constitutional Provisions and the Environment

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 laid down in the Constitution clearly express Parliament's consciousness to protect and improve the environment. The judicial interpretation has more strengthened the constitutional mandates.

Under India's federal system, Government power is shared between the Central Government on the one hand and its units on the other. Part XI of the Constitution governs the legislative and administrative relations between the Union and the States.

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. Parliament has exclusive powers to legislate on any subjects in the Union List (List I).

These include defence, foreign affairs, shipping, major ports, interstate transportation, regulation of air traffic, mines and mineral development and interstate rivers etc. Similarly the State legislatures have exclusive powers to legislate to all the subjects in the State List (List II), such as public health and sanitation, agriculture, water supplies.

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1. The division is made with reference to the three lists (Union, Concurrent and State Lists) in the Seventh Schedule to the Constitution.
fisheries etc. Under the Concurrent List (List III), both Parliament and the State legislatures have overlapping and shared jurisdiction over all the subject areas including forests, the protection of wildlife, mines and mineral development not covered in the Union List, population control and family planning etc.

Parliament has residual power to legislate on subjects not covered by the three lists. 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. Parliament is also empowered to legislate in the 'national interest' on matters enumerated in the State List.

In addition, Parliament may enact laws on State subjects, for States whose legislatures have consented to central legislation. Thus the water (prevention and control of pollution) Act of 1974 was enacted by Parliament pursuant to consent resolutions passed by 12 State legislatures.

The Constituent Assembly that framed India's Constitution 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.

1. Article 248.
2. Article 249.
Environmental protection and improvement were explicitly incorporated into the Constitution by the Constitution (Forty-Second 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".

Article 51 A(g) in a 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 creature...". Although the language in the two articles differ, the differences appear to relate to form rather than to substance. Together, the provisions highlight the national consensus on the importance of environmental protection and improvement.

The Forty-Second 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. Article 253 of the Constitution empowers 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 or countries or any decision made at any international conference, association or other body".

In view of the broad range of issues 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. Parliament has used its power under Article 253 to enact the Air (Prevention and Control of Pollution) Act of 1981 and the Environment (Protection) Act of 1986. The preambles to both laws state that these Acts were enacted to implement the decisions reached at the United Nations Conference on Human Environment held at Stockholm in 1972. At this 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. The broad language of Article 253 suggests that in the wake of the Stockholm Conference in 1972, Parliament has the power to legislate on all matters linked to the preservation of natural resources. Therefore Parliament under Article 253 has enacted the Air (Prevention and Pollution of Control) Act, 1981 and the Environment (Protection) Act, 1986 which confirms the idea of preservation of natural resources by the central legislature. In the light of Parliamentary power to implement the international mandate under Article 253, the constitutional framers made aptly clear by providing

1. In 1980, the Tiwari Committee recommended that a new entry on "Environmental Protection" be introduced in the Concurrent List to enable the Central Government to legislate on environmental subjects. But it did not consider Parliament's Power under Article 253.
same power to Parliament under concurrent list of seventh
schedule to avert any contradiction with the State law within
the framework of the federal system.

6.3.2 Legislative Efforts by the Parliament

There are about two hundred laws in India
that have some bearing on environmental protection, but in most
cases the environmental concern is incidental to the law's
principal object. It is only after the Stockholm declaration we
see the evolution of national environmental policies resulted in
Parliamentary comprehensive legislations covering the field of
environment in India. To arrest environmental pollution in India,
a number of principal Acts are as under:

6.3.2.1 The Atomic Energy Act, 1962

The regulation of nuclear energy and radio-active substances in India is governed by the Atomic Energy
Act of 1962. The Central Government is empowered to prevent
radiation hazards, guarantee public safety and the safety of
workers handling radio-active substances, and ensure the dis-
posal of radio-active wastes. Nuclear Research, and the pro-
duction and supply of atomic energy and nuclear-generated, elec-
tricity also fall within the Centre's authority.
6.3.2.2 The **Insecticides Act, 1968**

The Act established a Central Insecticides Board to advise the centre and the states on technical aspects of the Act. A committee of this Board registers insecticides after examining their formulas and verifying claims regarding their safety and efficacy. A manufacture and distribution of insecticides is regulated through licensing. A violation of the Act's registration and licensing provisions can lead to prosecution and penalties. The central and state governments are vested with emergency powers to prohibit the sale, distribution and use of dangerous insecticides.

6.3.2.3 The **Wild Life (Protection) Act, 1972**

The Wild Life Act provides for state wild-life 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. An amendment to the Act in 1982, introduced provisions permitting the capture and transportation of wild animals for the scientific management of animal populations.
6.3.2.4 The Water (Prevention and Control of Pollution) Act, 1974:

The Water Act of 1974 was the culmination of over a decade of discussion and deliberation between the Centre and the States. This is an Act to provide for the prevention and control of water pollution and the maintaining or restoring of wholesome of water, for the establishment, with a view to carrying out the purposes aforesaid, of Boards for the prevention and control of water pollution, for conferring on and assigning to such Boards powers and functions relating thereto and for matters connected therewith. 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. The Boards control sewage and industrial effluent discharges by approving, rejecting or conditioning applications for consent to discharge. The State Boards also minimise water pollution by advising State Governments an appropriate sites for new industry. The amendment in 1988 strengthened the Act's implementation provisions. A Board now, may close a defaulting industrial plant or withdraw its supply of power or water by an administrative order; the penalties are more stringent, and a citizen's suit provision bolsters the enforcement machinery.
6.3.2.5 **The Water (Prevention and Control of Pollution) Cess Act, 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 a Cess (Tax) for water consumption. These revenues are used to implement the Water Act. The Central Government, after deducting the expenses of collection, pays the Central Board and the states such sums as it deems fit to enforce the provisions of the Water Act.

6.3.2.6 **The Forest (Conservation) Act, 1980**

This Act was passed by observing our country's rapid deforestation and the resulting environmental degradation. As amended in 1988, the Act requires the approval of the Central Government before a State "de-reserves" 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 Centre on these proposals.
6.3.2.7 The Air (Prevention and Control of Pollution) Act, 1981

To implement the decisions taken at the United Nations Conference on the Human Environment held at Stockholm in June, 1972, Parliament enacted the nationwide Air Act under Article 253 of the Constitution. The Air Act's framework is similar to the one created by its predecessor, the Water Act of 1974. To enable an integrated approach to environmental problems, the Air Act expanded the authority of the 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. An amendment in the original Act in 1987 strengthened the enforcement machinery and introduced stiffer penalties. Now, the Boards may close down a defaulting industrial plant or may stop its supply of electricity or water. A Board may also apply to a court to restrain emissions that exceed prescribed standards. Notably, the 1987 Amendment introduced a citizens' suit provision into the Air Act and intended the Act to include noise pollution.

6.3.2.8 Environment (Protection) Act, 1986

This Act is perhaps the most notable enactment by the Parliamentarians to protect the environment of our country.
The Act has a wide dimension to prevent, control and abate all types of environmental pollution and lay down procedures and safeguards for manufacture and handling of hazardous substances. Some significant features of the Act are:

(a) Making top management responsible for environmental protection and liable for prosecution;

(b) Providing stringent punishment and penalties to the polluters;

(c) Empowering enforcement agencies to effect closure of polluting industries;

(d) Giving rights to private citizens to file cases in appropriate courts against polluting industries after giving sixty days notice to the authority concerned.

The Factories Amendment Act, 1987;

The Factories Act, 1948, underwent a radical restructuring of its safety and health provisions in 1987, placing increased responsibility on top managements as well as manufacturers and suppliers, a new Chapter regulating hazardous processes, and stipulated workers, involvement in safety management and disclosure of information on hazards.
6.3.2.10 Public Liability Insurance Act, 1991:

This Act was enacted with the objective of speedy compensation to the victims of chemical accidents with payment of interim relief to those members of the public injured or killed or whose property got damaged as a result of an accident involving hazardous substances. The scheme does not apply to workmen of the industry covered by the Workmen's Compensation Act. Such compensation is payable on an interim basis without the claimant being required to prove the wrongful act, neglect or default. Under the Act, the industry or owners, who control the handling of hazardous substances are required to take out insurance policy for the workers and keep it periodically renewed to cover liability. The limits of liability per accident, per year and on each insurer are also prescribed.

6.3.2.11 The National Environment Tribunal Act, 1995:

This is one of the recent important Acts made by the Parliament for disposing cases expeditiously in relation to the environment. This Act was passed by the Parliament to provide for strict liability for damages arising out of any accident occurring while handling any hazardous substance and for the establishment of a National Environment Tribunal for
effective and expedacious disposal of cases arising from such accident, with a view to giving relief and compensation for damages to persons, property and the environment and for matters connected therewith or incidental thereto.

With the passing of this Act the Supreme Court will be able to finally dispose of through an effective remedy, the environmental issues cropped in deciding by Environmental Tribunals under Article 136. The Supreme Court under Article 136 is authorised to grant in its discretion special leave to appeal from (a) any judgment, decree, determination, sentence or order, (b) in any case or matter passed or made by any court or tribunal in the territory of India. The wide discretionary power with which the Supreme Court is vested under Article 136 can help the Indian people to have a speedy disposal of environmental cases decided by environmental Tribunals. Thus, the new scheme of Environmental Tribunal Act has paved the way through which Supreme Court will be in a position to arrest the environmental pollution by providing effective remedy to affected persons.

6.4 State Legislations

Comprehensive environment laws are also made to deal with the water pollution of the mentioned States. The Orissa River Pollution Prevention Act of 1953 and the Maharashtra Prevention of Water Pollution Act of 1969 were passed. A similar approach was adopted in relation to smoke pollution and
consequently the Gujarat Smoke Nuisance Act of 1963 was passed. The Act had attempted to abate smoke-nuisances in the State from various sources so that to have a clean atmosphere. This Act though of limited jurisdiction has played a great role to combat air pollution. It has been observed in few States that increasing levels of pesticide recorded in foodstuffs, animal tissues and even human fat. The spread of disease and pests like malarial mosquito to chemical pesticides is on the rise. To combat this situation, The Assam Agricultural Pests and Disease Act, 1954, The Uttar Pradesh Agricultural Disease and Pests Act, 1954 and The Kerala Agricultural Pests and Diseases Act, 1958 were passed. These Acts became very much necessary to arrest the problem for otherwise the situation had proven detrimental effects on the living and non-living organisms. It is widely accepted that land erosion and its abuses may prove fatal to human lives. Flood control is a major problem and its effects thereto. The Delhi Restriction of Uses of Land Act, 1964 was passed to restrict the abuses of land to prevent degradation from the people of Delhi.

6.5 Subordinate Legislations

In addition to laws made by Parliament and State legislatures the subordinate legislation also played an innovative role in curbing environmental pollution in our country. The legislative powers are exercised by an authority other than the legislature in exercise of the powers delegated or conferred
on them by the legislature itself which is of immense value. The rules framed by them has the force of law throughout the territory of India and may help in protecting our environment. The rules are described hereunder:

6.5.1 The Water (Prevention and Control of Pollution) Rules, 1975:

In exercise of the powers conferred by Section 63 of the Water (Prevention and Control of Pollution) Act, 1974, the Central Government made rules known as the Water (Prevention and Control of Pollution) Rules, 1975. Under the Act of 1974, the Central government is authorised to constitute Central Board to prevent water pollution.

6.5.2 The Forest (Conservation) Rules, 1981:

Section 2 of the Forest Conservation Act, 1980 required the state government to seek the consent of central government before deservin any forest or using it for any non-forest purpose. The Forest (Conservation) Rules 1981 provided the procedure by which the state government was to make its proposal to the Ministry of Agriculture of the central government. Rule 5 of the 1981 rules granted the central government the discretion to seek advice from the statutory advisory committee on the state government proposal.
6.5.3  **The (Air Prevention and Control of Pollution) Rules, 1982:**

In exercise of the powers conferred by Section 53 of the Air (Prevention and Control of Pollution) Act, 1981, the central government in consultation with the Central Board made rules for the prevention and control of air pollution.

6.5.4  **Bhopal Gas Leak Disaster (Registration and Processing of Claims) Scheme, 1985:**

The Bhopal disaster, which took place just after midnight on December 3, 1984 is undoubtedly the worst industrial accident in Indian history. Environmental protection includes reparation for environmental disasters. So the above scheme is passed by the appropriate authority to compensate the victims. To ensure that claims arising out of the disaster were dealt with speedily, effectively and equitably, the central government organised a scheme for the registration and processing of the victims claims.

6.5.5  **Environment (Protection) Rules, 1986:**

In exercise of the powers conferred by sections 6 and 25 of the Environment (Protection) Act, 1986, the central government made and passed Environment (Protection) Rules,
1986. The central government created Pollution Control Boards and its relevant necessaries for the prevention and control of environmental pollution. For the purposes of protecting and improving the quality of the environment and preventing and abating environmental pollution, the central government set up standards for emission or discharge of environmental pollutants from the industries, operations or processes. It has even been stated in the Rules that the Central Board or a State Board may specify more stringent standards from those provided in the schedule in respect of any specific industry, operation or process depending upon the quality of the recipient system, than the current uniform standards prescribed in the Rules.

The central government may make rules in respect of all or any of the following matters, namely:

(a) the standards of quality of air, water or soil for various areas and purposes;

(b) the maximum allowable limits of concentration of various environmental pollutants (including noise) for different areas;

(c) the procedures and safeguards for the handling of hazardous substances;

(d) the prohibition and restrictions on the handling of hazardous substances in different areas;

(e) the prohibition and restrictions on the location of industries and the carrying on of processes and operations in different areas;
(f) the procedures and safeguards for the prevention of accidents which may cause environment pollution and for providing for remedial measures for each accidents.

It is worthwhile to mention here that most of the areas have been covered distinctly by the Central Authority of our country.

Under a 1992 amendment to the Environment (Protection) Rules, Rule 14 requires all industries to obtain consent under the Air and Water Pollution Control Acts to furnish an annual Environment statement covering quantities of pollutants discharged, hazardous and solid wastes generated, their characteristics and pollution abatement measures to the State Pollution Control Boards.

6.5.6 Atomic Energy (Safe Disposal of Radioactive Waste) Rules, 1987:

Safe disposal of radioactive wastes is an integral component of environment protection; the Atomic Energy (Safe Disposal of Radioactive Wastes) Rules is thus a subordinate legislation of special significance. Rule 3 lays down that no person shall dispose of radioactive waste unless he has obtained an authorisation from the competent authority under these rules. The rules also require that the conditions attached to location, quantities and manner of disposal specified in the
authorisation should be strictly observed.

The applicant in order to obtain an authorisation provide to the competent authority all the information regarding radioactive wastes, safety devices incorporated in the waste disposal installation which contain radio-active effluents, and covering all the analysis of the accidents which may occur in the installation and the procedures to be followed for safe collection of radio-active wastes arising from such accidents.

6.5.7 Mineral Conservation and Development Rules, 1988

From the standpoint of environmental conservation and scientific exploitation of natural resources the Mineral Conservation and Development Rules, 1988 are of significant importance. In the 1988 rules measures to minimise environmental degradation and to foster environmental conservation is clearly indicated. The rules require precautions to be taken to prevent or reduce the discharge of toxic and objectionable liquid effluents from mines, workshops, beneficiation or metallurgical plants. It has been clearly mentioned that precautionary measures against noise and air pollution must be taken. The holders of prospecting licence or mining lease are required to cause least damage to the flora of the area and to plant twice the number of trees destroyed by reason of any prospecting or mining operations. It has also
been stated in the rules that geologists and mining engineers
be employed temporarily or permanently to promote scientific
mining.

6.5.8 **Radiation Surveillance Procedures for**
the Safe Transport of Radioactive
Materials, 1988 :

Radio-active materials can cause immense harm
to the living and non-living organisms. A realization of the
hazards of radiation requires regulation to control its harmful
effects. The procedures are ostensibly a step in this direction.
The procedures require any individual organisation or government
involved in the transport of radio-active materials to establish
a quality assurance programme. The approval of the competent
authority for shipment has been made subject to a satisfactory
quality assurance programme. The procedures also require the
design, testing, manufacture, inspection, and maintenance of pack­
aging shall meet the requirements of the compliance assurance
programme.

6.5.9 **Hazardous Wastes (Management and**
Handling) Rules, 1989 :

These rules apply to the eighteen categories
of wastes specified in the schedule. The primary purpose of the
rules is to make the exercise of collecting, treating, transporting,
storing and disposing of hazardous wastes a regulated exercise. Thus no person is able to handle hazardous wastes without obtaining a due authorisation from the State Pollution Control Boards. The persons authorised to handle hazardous wastes are required to maintain records of their operations and send annual returns to the State Pollution Control Boards.

These rules do not apply to (i) waste water and exhaust gases as covered under the provisions of the Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981; (ii) radio-active wastes as covered under the provisions of the Atomic Energy Act, 1962; (iii) wastes arising out of the operation from ships beyond five Kilometres as covered under the provisions of the Merchant Shipping Act, 1958.

6.5.10 The Hazardous Micro-Organisms

Rules, 1989

The rules are applicable to genetically engineered organisms/micro-organisms and cells and correspondingly to any substances, products and foodstuffs etc. of which cells, organisms or tissues form part. The rules define biotechnology, cell hybridisation, gene technology, genetic engineering and micro-organisms. The rules shall be applicable to (a) sales storage for the purpose of sale, offers for sale, offers and any kind of handing over with or without consideration; (b) importation and exportation
of genetically engineered cells or organisms; (c) processing, storage, production, manufacturing and import, drawing off-packaging and repacking of the genetically engineered products; (d) production, manufacture etc. of drugs and pharmaceuticals, food-stuffs, distilleries and tanneries etc. which make use of microorganisms/genetically engineered organisms one way or the other.

6.5.11 Manufacture Storage and Import of Hazardous Chemical Rules, 1989 (MSI) Rules, 1989;

Bhopal and other similar catastrophic accidents gave rise to a new classification of industries, i.e. those having the potential for major accidents — a major emission, fire or explosion with potential for off-site consequences on human life and the environment. Based on the so-called European Community "Seveso Directive" and legislation enacted by many countries the MSI Rules enacted in 1989 under the Environment (Protection) Act, 1986 and amended in 1994 represented a comprehensive attempt to regulate major accident hazard installations, comprising factories, isolated storages and cross-country pipelines. The Rules define hazardous chemicals based on their inherent characteristics of toxicity, flammability and explosivity and also name 432 chemicals in Schedule I. The Rules use the quantity of hazardous chemicals in use in an installation to prescribe three levels of control — low, medium and high. The Rules also stipulate that
persons liable to be affected by a major accident are to be in-
formed either by the site management or through the District
Emergency Authority about the nature of the hazard and the safety
measures do's and don'ts in the event of a major accident in a
plant in their neighbourhood.

6.5.12 Central Motor Vehicles Rules,
1989

The Central Motor Vehicles Rules, 1989 incorporate a series of requirements of vehicles transporting hazar-
dous chemicals and placed responsibility on the consignor/owner
for
- display of diamond-shaped class labels containing class no.
  and graphic symbols of the chemicals as per the U.N. classifi-
cation for transport of dangerous goods;
- display of Emergency Information Panel at three places on each
  vehicle containing name, U.N. No. Hazardous Code, Class Label,
  telephone number of emergency service to be contacted and
  brief specialist advice regarding transportation emergency
  response;
- carrying of Transport Emergency Cards specifying nature of
  hazard and type of response required and
- placing responsibility on driver to take precaution to prevent
  accidents, proper parking and appropriate action in event of
  emergency.
A further amendment to these Rules in 1993 provides for a system of driver training through uneven implementation have focussed attention on the problem and set in motion a framework for safe transportation and response, which has to be further developed.

6.5.13 Environment Friendly Products,

1991

A significant development in the realm of environment protection has been a Government of India decision to institute a scheme of labelling all environment friendly products. The scheme will operate on a national basis and provide for household labelling of consumer products which made certain environment criteria, along with the quality requirement of Indian standards for that product.

The specific objects of this scheme are: (i) to provide an incentive for manufacturers and importers to reduce adverse environment impact of products; (ii) to assist consumers to be environmental responsible; (iii) to reward private companies who take initiatives to reduce adverse environment impact of their; (iv) to encourage citizens to purchase products which have less harmful environmental impact.
In exercise of the power conferred by Section 23 of the Public Liability Insurance Act, 1991, the Central government has issued the principal rules, i.e. the Public Liability Insurance Rules, 1991.

The application for relief has to be accompanied with the following documents:

(i) certificate of authorised Physician regarding disability, injury or illness;

(ii) death certificate or postmortem report;

(iii) certificate of the employer regarding loss of wages due to his disability with relevant documents;

(iv) medical bills and receipts;

(v) certificate of cost of repairs and/or replacement of private property;

(vi) any other relevant documents for the claim.

Rule 4 of the Public Liability Insurance Rules empowered the collector to follow such summary procedure on an application for relief under the Act as he think fit. In order to curb arbitrary action of the collector for summary proceedings, the necessary guidelines are to be provided.
Rule 7 provides for public monitoring of the process of implementation by requiring the collector to maintain a register of the application for relief or claim petitions and register the awards and payments made. These registers are to be kept open to public inspection at specified hours.

The central government may issue directions to the appropriate persons which has been clearly stated in the Act. Rule 8 of the Public Liability Insurance (Amendment) Rules 1991 lays down the procedure by which the directions are to be made. The Amendment Rules clearly described the requirements of the directions and also the time, process and other requirements of the right to reply to whom the direction has been issued. The hearings will occur after fulfilling all the conditions of natural justice.

6.5.15 Ecologically Fragile Area, 1992:

A draft notification was issued restricting certain activities in the Aravalli Range to check environmental degradation. This was being done to limit the restriction for the location of any new industry, starting of fresh mining operations but the notification has also imposed restrictions on the expansion and modernisation of existing leases and renewal of mining leases. Whilst the draft notification imposed restrictions on grazing of cattle in all the areas of Sariska National Park and Sariska Sanctuary, but the notification does not do so.
6.5.16 National Awards for Prevention of Pollution, 1992:

The central government has introduced a scheme of national awards in order to encourage industries and operations to take significant steps for the prevention of pollution. The awards will be granted each year to those units which provide a measurable contribution towards the development or use of clean technologies, products or practices that prevent pollution and find innovative solutions to decrease the environmental problems.

6.5.17 Recognition of Zoo Rules, 1992:

A central zoo authority was established under the Wild Life Protection (Amendment) Act, 1991. One of the solemn functions of the authority is to maintain the standards prescribed while evaluating and assessing the functioning of the zoos. The Recognition of Zoo Rules, 1992 specify the standards and norms subject to which recognition under section 38 H of the Wild Life (Protection) Act, 1972 shall be granted. The primary objective of operating any zoo shall be the conservation of wild life and no zoo shall take up any activity that is inconsistent with the objective laid down in the Recognition of Zoo Rules, 1992.

The subordinate legislations made by administrative authorities play a dominant role in protecting the environment. The standards and permissible limits of pollutants to be
emitted set by them is of immense importance for the information to the people. These subordinate legislations will definitely help in enforcing the objectives of the Parent Acts. Factually, these rules are only to help the administration at different levels for the implementation of Central and States laws to arrest the environmental pollution in the light of present administrative law in India.

6.6 Judicial Efforts and Environment in India

Modern environment law provides for a system of regulation by statutes. Administrative agencies created under environmental statutes are required to implement legislative mandates. Due to frequent administrative lapses the agencies fail to implement the laws under which they operate, and pollution continues unabated. In the circumstances the citizens have two types of remedies; the statutory and the constitutional.

6.6.1 Statutory Remedies:

The statutory remedies are provided in a number of statutes with different procedures. These are discussed as under:

6.6.1.1 Tort Law:

Actions brought under tort law are among the oldest of the legal remedies to abate pollution. Nearly all the
pollution cases in tort law fall under the categories of nuisance and strict liability. The rules of tort law were first introduced into India under the British Rule. Initially, disputes arising within the presidency towns of Calcutta, Madras and Bombay were subjected to common law rules and slowly it infiltrated in other existing courts throughout the territory of India. Common law based tort rules continue to operate under Article 300 and 372 of the Indian Constitution which ensured the continuance of the existing laws.

I. Damages and Injunction:

A plaintiff may sue for damages and injunction or both in a tort action which is described below:

(a) Damages:

Damages are pecuniary compensation payable for the commission of a tort. Damages may be either 'substantial' or 'exemplary'. Substantial damages are awarded to compensate the plaintiff for the wrong suffered. The purpose of such damages is restitution, i.e. to restore the plaintiff to the position he or she would have been in if the tort had not been committed. Such damages, therefore correspond to a fair and reasonable compensation for the injury.

Exemplary damages are intended to punish the defendant for the outrageous nature of his or her conduct, as for
instance, when he or she persists in causing a nuisance after being convicted and being fined for it. The object of the court in such cases is to deter a wrongdoer. The deterrence objective has recently prompted the Supreme Court to add a fresh category to the type of cases where exemplary damages may be awarded. The Court in the Shriram Gas Leak Case observed that

"in such cases, compensation must be correlated to the magnitude and capacity of the enterprise because such compensation must have a deterrent effect. The larger and more prosperous the enterprise, the greater must be the amount of compensation payable by it...".

(b) **Injunction**:

An injunction is a judicial process where a person who has infringed, or is about to infringe the rights of another, is restrained from pursuing such acts. An injunction may be either in a negative or positive form. It may require a party to refrain from doing a particular thing or to do a particular thing. Injunctions are granted at the discretion of the Court. Injunctions are of two types, temporary and perpetual. The purpose of a temporary injunction is to maintain the state of things at a given date until trial on the merits. It is regulated by Sections 94 and 95 as well as Order 39 of the Code of Civil Procedure of 1908. It may be granted on an interlocutory application at any stage of a suit.

Perpetual injunctions are regulated by Sections 37 to 42 of the Specific Reliefs Act of 1963. A perpetual injunction permanently restrains the defendant from doing the act complained of. It is granted at the Court's discretion after judging the merits of the suit. A perpetual injunction is intended to protect the plaintiff indefinitely, assuming that the circumstances of the case remain essentially unchanged.

II. Nuisance, Negligence and Strict Liability:

(a) Nuisance:

Modern environmental law has its roots in the common law relating to nuisance. A nuisance is an unlawful interference with the plaintiff's use or enjoyment of land. A plaintiff must, therefore, prove some injury to his enjoyment of property and his own interest in that property.

There are two kinds of nuisance - public and private. A public nuisance injures, annoys or interferes with the quality of life of a class of persons who come within its neighbourhood. It is an unreasonable interference with a general right of the public. It is both a tort and a crime. The remedies for a public nuisance are: (1) a criminal prosecution of causing a public nuisance; (2) a criminal proceeding before a magistrate for

1. Section 268 of the Indian Penal Code of 1860.
removing a public nuisance\(^1\); (3) a civil action by the Advocate General or by two or more members of the public with permission of the Court, for a declaration, on injunction or both\(^2\).

A private nuisance is a substantial and unreasonable interference with the use and enjoyment of land. Reasonableness of the defendant's conduct is the central question in nuisance cases. To determine "unreasonableness", courts will be guided by the ordinary standard of comfort prevailing in the neighbourhood. Minor discomforts that are common in crowded cities will not be viewed as a nuisance by the courts. An action for private nuisance may seek injunctive relief as well as damages.

In B. Venkatappa v. B. Lovis\(^3\), the Andhra Pradesh High Court upheld the lower courts mandatory injunction directing the defendant to close the holes of the chimney facing the plaintiff's property. The Court ensured enforcement of its order by authorising the plaintiff to seal the holes at the defendant's cost, if the defendant failed to do so.

(b) **Negligence**

A common law action for negligence may be brought to prevent environmental pollution. In an action for negligence, the

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2. Section 91 of the Code of Civil Procedure of 1908.
3. AIR 1986 AP 239.
plaintiff must show that (1) the defendant was under a duty to take reasonable care to avoid the damage complained of; (2) there was a breach of this duty; and (3) the breach of duty caused the damage. The degree of care required in a particular case depends on the surrounding circumstances and varies according to the risk involved and the magnitude of the prospective injury.

An act of negligence may constitute a nuisance if it unlawfully interferes with the enjoyment of another's right in land. It may also amount to a breach of the rule of strict liability in Rylands v. Fletcher, if the negligent act allows the escape of anything dangerous which the defendant has brought on the land. Where the pollutant is highly toxic and its effect is immediate, as with the methyl isocyanate that leaked from the Union Carbide Plant in Bhopal, the connection is straightforward between the negligent act and the plaintiff's injury. There may be problematic link in pollution cases. But the Mukesh Textile Mills Case is one of the reported pollution cases in which a judgment was rendered for damages.

(c) **Strict Liability**

The rule in Rylands v. Fletcher holds a person strictly liable when he brings or accumulates on his land

1. (1868) LR 3 HL 330.
3. (1868) LR 3 HL 330.
something likely to cause harm if it escapes, and damage arises as a natural consequence of its escape. But strict liability is subject to a number of exceptions that considerably reduce the scope of its operation. The exceptions of this rule are: (1) an act of God (natural disaster such as flood or earthquake); (2) the act of a third party (e.g. sabotage); (3) the plaintiff's own fault; (4) the plaintiff's consent; (5) the natural use of land by the defendant; and (6) statutory authority.

With the expansion of chemical-based industries in India having a great social utility, increasing number of enterprises store and use hazardous substances. The doctrine of strict liability allows for the growth of hazardous industries, while ensuring that such enterprises will bear the burden of the damage they cause when a hazardous substance escape. The Supreme Court in the Shriram Gas Leak Case has stated a new "principle" of liability for enterprises engaged in hazardous or inherently dangerous activities. Under this "principle", if any harm results from the hazardous activity, the enterprise is absolutely liable to compensate for such harm. Such liability is not subject to any of the exceptions that operate under the rule in Rylands V Fletcher.

6.6.1.2 Public Nuisance

A public nuisance may be broadly defined as an

unreasonable interference with a general right of the public. A public nuisance interferes with a public right, it is not tied to interference with the enjoyment and use of property; and remedies against a public nuisance are, therefore, available to every citizen.

Section 268 of the Indian Penal Code of 1860 defines the offence of a public nuisance:

"A person is guilty of a public nuisance who does any act or is guilty of an illegal omission which causes any common injury, danger or annoyance to the public or to the people in general who dwell or occupy property in the vicinity, or which must necessarily cause injury, obstruction, danger or annoyance to persons who may have occasion to use any public right".

This Section also provides that "(a) common nuisance is not excused on the ground that it causes some convenience or advantage". The penalty for committing this type of offence is not much which makes it pointless for a citizen to initiate a prosecution under Section 268 by a complaint to a magistrate.

A much better course would be utilised as provided in Sections 133 to 144 of the Code of Criminal Procedure of 1973. Section 133 provides an independent, speedy and summary remedy against public nuisance. The Section empowers a magistrate to pass a "conditional order" for the removal of a public nuisance.
within a fixed period of time. The magistrate may act on information received from a police report or any other source including a complaint made by a citizen. Although the magistrate's power to issue a conditional order under Section 133 appears discretionary, the Supreme Court has interpreted the language to be mandatory. Once a magistrate has before him evidence of a public nuisance, he must order removal of the nuisance within a fixed time.

6.6.1.3 **Citizens' Suit Provisions**

Until the enactment of the Environment (Protection) Act of 1986, the power to prosecute under the Indian environmental laws belonged exclusively to the government. Citizens had no direct statutory remedy against a polluter who discharged an effluent beyond the permissible limit. Section 19 of the Environment Act brought about a change. A citizen under this section, may prosecute an offender by a complaint to the magistrate. A similar approach is provided by allowing citizen participation in the enforcement of pollution laws are found in Section 43 of the Air Act as amended in 1987 and in Section 49 of the Water Act as amended in 1988. It is worthwhile to note here that both of these amended sections also require the Pollution Control Boards to disclose all the relevant internal reports to a citizen seeking to prosecute a polluter.

6.6.2 **Constitutional Remedies**

It is true that a declaration of fundamental rights in the Constitution is meaningless unless there is an effective machinery for the enforcement of those rights. It is the remedy that makes the right real and effective. If there is no remedy there is no right at all. To have an effective remedy, the Constitution of India under its Articles 32 and 226 empower the Supreme Court and the High Courts respectively, to issue directions or orders or writs, including writs of habeas corpus, mandamus, prohibition, quo warrants and certiorari. Writs of mandamus, prohibition and certiorari and generally resorted to in environmental cases.

The timeless issues of the 'role of the judiciary' have been the subject of much discussion in our country. The growing awareness of the need for human rights protection has focused the limelight squarely on the judiciary. Judges are increasingly finding it difficult to hide behind the doctrines of judicial 'self-restraint' and passive interpretation. Their judgments in the area of fundamental rights are scrutinized by a growing international audience interested in the need to implement social justices. The prestige and the legitimacy of the judiciary is being constantly called into question as an increasing number of citizens and citizens group bring their grievances directly to the portals of the Supreme Court.
The human rights movement has in many ways made the judiciary a most dynamic and important government institution. Standing between individual citizens and the wielders of power, the judiciary has become the ultimate, and yet unwilling, arbiter in the arena of democratic politics. This sudden thrust onto the centre stage has made judging a difficult and complex exercise, especially in the developing world. The Court often finds that it has the moral responsibility without the necessary safeguards of institutional integrity. Nevertheless, a growing number of judges are gradually beginning to realise that there is really no escape from this increasing responsibility and that the time may be ripe to develop a fresh, innovative, and principles approach to the role that the judiciary can play in a changing society.

Finding the executive response to be absent or deficient, the Supreme Court has used its interim directions to influence the quality of administration, "making it more responsive than before to the constitution principles, ethic and law". The Court has even created its own crude administrative machinery to remove a public hardship.

The traditional rule of locus standi, that a petition under Article 32 can only be filed by a person whose fundamental right is infringed has now been considerably relaxed by the Supreme Court in its rulings. The Court now permits public interest litigations or social action litigations at the instance of public
spirited citizens' for the enforcement of constitutional and legal rights of any person or group of persons who because of their poverty or socially or economically disadvantaged position are unable to approach the Court for relief. This dynamic approach was expressed in various judgments of the Court. In A.B.S.K. Sangh (Rly) V. Union of India\(^1\) it was held that the Akhil Bhartiya Soshit Karmachari Sangh (Railway), though an unregistered association could maintain a writ petition under Article 32 for the redressal of a common grievance. Access to justice through 'class actions', 'public interest litigation' and 'representative proceedings' is the present constitutional jurisprudence. In the Judges Transfer Case\(^2\), a seven-member Bench of the Supreme Court has firmly established the rule regarding the public interest litigation. The Court held that any member of the public having "sufficient interest" can approach the Court for enforcing constitutional or other legal rights of other persons and redressal of a common grievance. The Court also maintained that "where a legal wrong or legal injury is caused to a person or to a determinate class of persons by reason of violation of any constitutional or other legal right and such person or determinate class of persons is by reason of poverty, helplessness or disability or socially or economically disadvantaged position unable to approach the Court for relief, any member of the public can file an application for appropriate direction or order or writ in the High Court under

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1. AIR 1981 SC 298
2. S.P. Gupta and Others V. President of India and Others AIR 1982 SC 149.
Article 226 or in case of breach of any Fundamental Right to this Court under Article 32*.

The procedural requirements of litigation that ensure fairness and uniformity at the trial of convention, adversarial lawsuits, may not be necessary in public interest litigation cases. Judges like to review these cases as a collaborative effort between the court, the citizen, and the public official, where procedural safeguards have a diminished utility and may be relaxed to enable relief. It has to be remembered that every technicality in the procedural law is not available as a defence when the matter of grave public importance is for consideration before the court. To remove all the procedural hurdles, the Supreme Court and the High Courts treat letters written to individual judges or the Court as writ petitions. These letters usually contain a bare outline of the grievance, the unsuccessful steps taken by the writer to secure relief from official agencies, and a request to the Court to dispose of the matter rightly. The Dehradun Quarrying Case is a pointer in this direction where the Supreme Court directed a letter from the petitioner, to be treated as a writ petition under Article 32 of the Constitution. The Courts' assumption of this 'epistolary jurisdiction' has been widely welcomed. This would go a long way in creating a sense of responsibility in public authorities exercising enormous powers under the Constitution and the law.

This jurisdiction may certainly be able to minimise, if not completely, the abuse of power by public authorities.

In Sunil Batra v. Delhi Administration\(^1\), it has been held that the writ of habeas corpus can be issued not only for releasing a person from illegal detention but also for protecting prisoners from inhuman and barbarous treatment. The dynamic role of judicial remedies imparts to the habeous corpus writ a versatile and operational utility as bastion of liberty even within jails. Wherever the rights of a prisoner either under the Constitution or under other laws are violated, the Court observed that its writ power can run and should run to rescue. In Veena Sethi v. State of Bihar\(^2\), the Court was informed through a letter that some prisoners, who were insane at the time of trial but subsequently declared insane, were not released due to inaction of State authorities and had to remain in jails from twenty to thirty years. The Court directed that they be released forthwith. In Sheela Barse v. Union of India\(^3\), the Court directed the Central Government to pay to the petitioner, a social worker, ₹10,000/- only for her expenses and to extend all necessary assistance who offered to personally visit different parts of the country to verify whether the information submitted by the authorities regarding children below the age of eighteen years detained in jails in different parts of the country was correct. The Court

1. AIR 1980 SC 1759.
2. AIR 1983 SC 339.
3. (1986) 3 SCC 596.
directed that the Children's Acts enacted by various States must be brought into force and their provisions be implemented vigorously.

The relative speed, simplicity and cheapness of the writ remedy have made it immensely popular with the litigants. The Supreme Court has interpreted Article 21\(^1\), which guarantees the fundamental right to life and personal liberty, to include the right to a wholesome environment. Accordingly, a litigant may assert his or her right to a wholesome environment against the state, by a writ petition to either the Supreme Court or a High Court. Another significant revealed aspect of the right to life is the right to livelihood. It can potentially check governmental actions with an environmental impact that threaten to dislocate poor people and disrupt their lifestyles. The Supreme Court first recognised the right to livelihood in the case of Olga Tellis V. Bombay Municipal Corporation\(^2\). It has been held by the Court in this case:

"Deprive a person of his right to livelihood and you shall have deprived him of his life... The State may not by affirmative action, be compellable to provide adequate means of livelihood or work of the citizens. But, any person, who is deprived of his right to livelihood except according to just and procedure established by law, can challenge the deprivation as offending

1. "No person shall be deprived of his life or personal liberty except according to procedure established by law".
2. AIR 1986 SC 180.
the right to life conferred by Article 21"

The Court directed the Municipal Corporation to provide an alternative site or accommodation to the slum and pavement dwellers within a reasonable distance of their original sites; to earnestly pursue a proposed housing scheme for the poor, and to provide basic amenities to slum dwellers. The Supreme Court detailed safeguards in Banawasi Seva Ashram V. State of Uttar Pradesh\(^1\) to protect tribal forest dwellers who were being ousted from their forest land by the National Thermal Power Corporation Limited for the Rihand Super Thermal Power Project. The Court permitted acquisition of the land only after the Corporation agreed to provide certain Court approved facilities to the ousted forest dwellers.

As environmental regulation grows more stringent and its enforcement becomes more vigorous, industrial challenge to agency action is likely to increase. Such future clashes between industry and enforcement agencies are presaged in the case of Abhilash Textiles v. Rajkot Municipal Corporation\(^2\). The Gujarat High Court in this case was required to balance the right to carry on business against the danger to public health from the discharge of "dirty water" onto public roads and drains. It may be noted that by discharge of effluent water on public road and/or in the public drainage system, the entire environment of the locality gets polluted. The Court has held that the restrictions placed on the fundamental right to carry on trade or business are in the

\(^1\) AIR 1987 SC 374
\(^2\) AIR 1988 GUJ 57
interest of the general public and constitutionally valid and no citizen can claim absolute right to carry on business without complying with the restrictions placed in this behalf.

In Rural Litigation and Entitlement Kendra V. State of U.P.\(^1\), the Supreme Court has ordered the closure of limestone quarries on the ground that there were serious deficiencies regarding hazards, and safety of workers at that place. It has been observed that a large scale pollution was caused by limestone quarries adversely affecting the safety and health of the people living in that area.

In Shriram Food and Fertiliser Case\(^2\), the Supreme Court directed the Company, manufacturing hazardous and lethal chemicals and gases posing danger to health and life of workmen and people living in its neighbourhood, to take all necessary safety measures before re-opening the plant. The management was directed to deposit a sum of ₹.20 lakhs only by way of security for payment of compensation claims of the victims of Oleum gas leak with the Registrar of the Court. In addition, a bank guarantee for a sum of ₹.15 lakhs only was also directed to be deposited which shall be encashed in case of any escape of chlorine gas within a period of three years from the date of the judgment resulting in death or any injury to any workman or any person living in the vicinity. The Court allowed the partial re-opening of the plant on fulfilling the above conditions. The efforts of the highest Court

in environment pollution control through public interest litigation is indeed laudable, particularly when the legislature is lagging behind in filling up the lacunas in the existing legal system and the administration is not well equipped to meet the challenge. In M.C. Mehta V. Union of India¹, the Supreme Court has ordered the closure of tanneries near Jajmau in Kanpur, polluting the Ganga. The matter was brought to the notice of the Court by the petitioner, through a public interest litigation. The Court held that notwithstanding comprehensive provisions contained in the Water (Prevention and Control of Pollution) Act, 1974 and the Environment (Protection) Act, 1986, no effective steps have been taken by the Government to stop the grave public nuisance caused by the tanneries, but is entitled to order in this circumstances, the closure of tanneries unless they take steps to set up treatment plants. In the Ganga Pollution (Municipalities) Case², the Supreme Court held the standing of a Delhi resident, though not a riparian owner, to sue the government agencies whose prolonged neglect had resulted in severe pollution of the river. The Court in this case opined:

"(The Petitioner) is a person interested in protecting the lives of the people who make use of the water flowing in the river Ganga and his right to maintain the petition cannot be disputed. The nuisance caused by the pollution of the Ganga is a public nuisance, which is wide spread in range and indiscriminate in its effect and it would not be

unreasonable to expect any particular person to take proceedings to stop it as distinct from the community at large. The petition has been entertained as a Public Interest Litigation. On the facts and the circumstances of the case the Court is of the view that the petitioner is entitled to move this Court in order to enforce the statutory provisions which impose duties on the municipal authorities and the Boards constituted under the Water Act".

In Goa Foundation V. Konkan Railway\(^1\), the Court declined to interfere with the project of such magnitude undertaken to fulfil the desire of the people. It was stated that the benefit of a large number of people by the construction of rail line could not be ignored while examining the grievances of possible adverse effect on environment clarified in the public interest writ. The Court clarified that the project was undertaken only after the approval of renewed experts from the country and the prior approval of the Central Government under Section 2 of the Forest (Conservation) Act, 1980 was not necessary. The Court also stated that the public interest litigation could not be used for subserving the public interest or the interest of a local area to the detriment of the public at large.

The Supreme Court in P.N. Kumar V. Municipal Corporation of Delhi\(^2\) held that the citizens should not come to the Court directly for the enforcement of their fundamental rights.

1. AIR 1992 Bom 471.
but they should first seek remedy in the High Courts, and then if the parties are dissatisfied with the judgment of the High Courts, they can approach the Supreme Court by way of appeal.

In Sachidanand Pandey v. State of West Bengal, the appellants through a public interest writ petition challenged the Government of West Bengal's decision to allot a land for the construction of a Five Star Hotel named Taj Bengal in the vicinity of the Alipore Zoological Garden of Calcutta. It was complained that the Hotel in the vicinity of the zoo would disturb the animals and the ecological balance and would affect the bird migration which was a great attraction. The decision was thus taken without considering its impact on the zoo. On a consideration of all the facts and circumstances of the case, the Court is satisfied that the Government of West Bengal acted perfectly bonafide in granting the lease of Begumbari land to the Taj Group of Hotels for the construction of a Five Star Hotel in Calcutta. The Government of West Bengal did not fail to take into account any relevant consideration. Its action was not against the interest of the Zoological Garden or not in the best interests of the animal inmates of the zoo or migrant birds visiting the zoo. The financial interests of the State were in no way sacrificed either by not inviting tenders or holding a public auction or by adopting the 'net sales' method. In the result, the judgments of the Calcutta High Court are maintained and affirmed, and the appeal is dismissed. The Court does not desire to award any costs considering the circumstances of the case.

In M.K. Sharma V. Bharat Electronics Limited, the petitioners claimed that the employees working in this company, were exposed to the effects of X-ray radiation because of the failure on the part of the defendant to comply with the safety rules and measures, and thereby claimed compensation for the violation of their fundamental right. But no ill-effect to the employees was found after examination. But the Court directed that safety rules and safety measures must strictly be complied with and there should be annual checking of it by competent authority. The Court also directed the Company to insure for Rs.1 lakh to Rs.2 lakhs only, respectively in the name of workman and officers working in sensitive departments of the company over and above the general insurances. The cost of these insurance policies should be borne by the company as Business Expenditure.

In Vincent Panikurlangara V. Union of India, the petitioner filed a petition under Article 32, requiring for directions for maintenance of approved standards of drugs and banning of injurious and harmful drugs. The Court held that the writ of public interest was of much significant as it enlightens the maintenance and improvement of public health. Thereby, the Court directed the Central Government to reimburse and compensate the plaintiff for his usual expenses as a commendable service for

bringing the matter before the Court.

In Subhas Kumar v. State of Bihar, it has been held that public interest litigation is maintainable for ensuring enjoyment of pollution free water and air which is included in the right to life under Article 21 of the Constitution. A petition under Article 32 is maintainable at the instance of affected persons or even by group of social workers or journalists. In M.C. Mehta v. Union of India, the Court has held that public interest litigation against pollution in Delhi caused by the petrol and diesel vehicles in maintainable. The Court directed the Delhi Administration to make the Central Motor Vehicles Act, 1989 effective from 1st April, 1991 and to implement it seriously.

In Bangalore Medical Trust v. B.S. Muddappa, an open space which was reserved for public part was allotted to a private person for the purpose of constructing a hospital by the Development Authority, Bangalore. The residents of the locality challenged the allotment on the ground that it was contrary to the object. The Court held that the residents of the locality have locus standi to challenge the allotment under Article 32 and 226 of the Constitution. A private nursing home could neither be considered to be an amenity nor it could be

1. AIR 1991 SC 420.
considered an improvement over necessity like a public park. But a park is a necessity not a mere amenity. For maintaining ecology in urban areas, open space and park is necessary.

It is very much laudable that the courts in most of the cases involving environmental justice emphasized to the protection of the environment over the development programmes. The greatest contribution of public interest action in this area has been the judicial involvement in the spread of environment education to the masses through mass media and educational institutions and to make the people aware of the hazards of environmental pollution. In People United for Better Living in Calcutta Public v. State of West Bengal\(^1\), a public interest writ was brought by an environmental group to restrain the government from encroaching upon wetland for the development process. The High Court of Calcutta held that there should be a proper balance between the protection of environment and the development process.

The society will have to prosper, but not at the cost of the environment. The environment will have to be protected but not at the cost of the development of the society. The Court characterised the issue of environmental degradation as really a social problem and the Courts as the protector of the human rights will deal with the problem of ecological imbalance. The concept of the 'sustainable development' has been clearly stated

\(^1\) AIR 1993 Cal 215.
to bring a balance between 'development' and 'protection of the environment'. The Calcutta High Court, therefore passed an order of injunction, restraining the State Government from reclaiming any wetland for development project. The State Government was further directed to maintain the nature and character of wetland in the present form and to stop all encroachments of the wetland area. In V. LakshmiPATHY v. State of Karnataka, the Karnataka High Court described the importance of governmental accountability in protecting the environment. The Court stated that "when the administrators do not mend their ways, the Courts become the battlefield of social upheaval" and "if the administrators show indifference to the principle of accountability, law will become a dead-letter on the statute book and the public interest will be the casualty".

The case of Satyavani v. A.P. Pollution Control Board involved a public interest writ petition for an injunction restraining the respondents from making any type of killing of animals for any purpose. On a careful examination of the grants of letter of intent and the license issued by the Central Government, the State Government and the Pollution Control Board, the Andhra Pradesh High Court came to the conclusion that all the relevant considerations were taken into account by the authorities in allowing the establishment of meat processing unit. The Court considered the project which could make a

1. AIR 1992 Kant 57.
2. AIR 1993 AP 257.
significant development to national interest by providing employment and earning much needed foreign exchange. Rejecting the writ, the High Court observed: The sentimental aversion of a group of persons cannot be the criterion to judge the correctness of decisions affecting the fundamental rights of others. If fundamental rights are pitted against sentimental objections, choice of the Courts can only be in favour of the former. The High Court recalled the observation of the Supreme Court in Sachidanand Pandey V. State of West Bengal that where an administrative action or order involved the problem of environmental pollution, the Court should not interfere in the absence of malafides. Judicial intervention is justified only if the government had failed to take into account relevant considerations.

D.D. Vyas V Ghaziabad Development Authority shows how a statutory object to secure preservation of environment and development of residential colonies shown in the master plan can be defeated by the authorities due to lack of dynamism, aestheicism and enthusiasm for development, though assigned the development duties. The allegation through a public interest writ petition was that the authorities had kept the public park undeveloped for unduly long time with the sinister motive to convert that either wholly or partially into plots of land for being sold at exorbitant rates. The Allahabad High Court referring to Article
1. AIR 1987 SC 1109, 1114.
2. AIR 1993 All 57.
48 A of our Constitution observed:

"Right to live is a fundamental right under Article 21 of the Constitution and it includes the right of enjoyment of pollution free water and air for full enjoyment of life. If anything endangers or impairs that quality of life in the derogation of laws, a citizen has a right to have recourse to Article 32... for removing the pollution of water or air, which may be detrimental to the quality of life".

It is very much interesting to note that in the aforesaid statement the High Court of Allahabad mentioned Article 32 and not Article 226 of the Constitution, when the Court was handling the above public interest litigation case under Article 226.

In Executive Engineer A.V.I. Project, Agali v. E and E Protection Samity¹, the Kerala High Court considered the question of the maintainability of a public interest litigation filed at a belated stage and also the scope of the jurisdiction of the courts in environmental litigation. The Kerala High Court referring to the Taj Bengal Case, observed:

"Environmental protection cases coming under the class of public interest litigation must be handled carefully by the courts both at the stage of granting interim orders and when the matters are finally disposed of. If stay is granted against the State or other

¹. AIR 1993 Ker 320.
public bodies, care must be taken to see that public monies or public funds or public property is not put in jeopardy. Nor can the private parties whose rights are affected be made to suffer. If possible, conditional orders could be issued and if there was no alternative, the main case could itself be taken up. The Court must ensure that... public interest litigation is a bonafide litigant really interested in public welfare and not a mere busybody seeking publicity. Courts must see that there are proper pleadings and that adequate facts are set out in the petition".

The experience in discharging the responsibilities of the Supreme Court of India and the various High Courts reflect the activeness exerted by them in protecting the environment of our country. They played a tributary role in safeguarding the environmental interest of the people by widening the scope of fundamental rights. It is worthwhile to mention here that the Supreme Court and the High Courts always kept in mind the interest of our country while disposing of environmental cases. The Supreme Court specially in recent times, maintained its independency and its impartiality as a separate and innovative organ through judicial activism in public interest litigation cases and thus paved the way for the lower courts to preserve a conducive environment for the development of the States.