
BLOCK 1 ENVIRONMENTAL LEGISLATIONS IN INDIA

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- Unit 3 Environmental Policy Deliberations
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COURSE INTRODUCTION

The course "Environmental Legislations" deals with the national legislations on environmental protection, environmental pollution control laws, conservation laws and global environmental laws.

Objectives

After studying this course, you will be able to:

- explain the traditional wisdom and indigenous practices related to environmental protection;
- identify the constitutional provisions about the environment in the Indian constitution;
- explain the features of the Wild Life (Protection) Act, 1972;
- explain the features of the Water (Prevention and Control of Pollution) Act, 1974;
- explain the features of the Air (Prevention and Control of Pollution) Act, 1981;
- discuss the features of the Forest Conservation Act, 1980;
- explain the salient features of the Environment (Protection) Act, 1986;
- explain the features of Environmental Impact Assessment Notification, 2006;
- explain the provisions of the Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016;
- explain the provisions of the Bio-Medical Waste (Management and Handling) Rules, 1998 and the Bio-medical Waste Management Rules, 2016;
- explain the features of the Solid Waste Management Rules, 2016;
- discuss the features of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006;
- explain the features of the Biological Diversity Act, 2002;
- explain the features of the National Mission for Clean Ganga;
- recognize the outcome of the Ramsar Convention, the Stockholm Conference, the Rio Conference, and the World Summit on Sustainable Development, 2002;
- explain the salient features of the CITES, MARPOL, UNCLOS, the Convention for the Conservation of Antarctic Seals and the Paris Agreement on Climate Change; and
- explain the legislation on biosafety.

We hope that you would enjoy reading the self-learning material.



BLOCK 1

ENVIRONMENTAL LEGISLATIONS IN INDIA

THE PEOPLE'S
UNIVERSITY

BLOCK 1 ENVIRONMENTAL LEGISLATIONS IN INDIA

Block 1 “Environmental Legislations in India” aims to provide detailed information on environmental policy in pre-independent India, constitutional provisions and environmental protection acts.

Unit 1 “Environmental Policy in Pre-independent India” discusses the traditional wisdom and indigenous practices related to environmental protection and laws and policies related to environmental protection in British India.

Unit 2 “Constitutional Provisions” emphasises the constitutional provisions regarding the environment in India.

Unit 3 “Environmental Policy Deliberations” reflects on the various committees constituted by the Government of India, their outcomes and recommendations for the protection of the environment.

Unit 4 “Environmental Protection Acts” will give you an overview of the Environment (Protection) Act, 1986. The unit will also deal with the policy statement for abatement of pollution (1992), the national conservation strategy and policy statement on environment and development and provisions of the National Green Tribunal Act, 2010.

Objectives

After studying this block, you will be able to:

- explain the traditional wisdom and indigenous practices related to environmental protection;
- explain various laws and policies related to environmental protection in British India;
- identify the fundamental rights and fundamental duties provisions about the environment in the Indian constitution;
- describe the constitution of committees in India on environment protection;
- explain the salient features of the Environment (Protection) Act, 1986;
- explain the policy statement for abatement of pollution (1992);
- explain the national conservation strategy and policy statement on environment and development; and
- explain the features of the National Green Tribunal Act, 2010.

We hope that after studying this block, you will acquire an understanding of the environmental legislation in India.

Wishing you success in this endeavour!

UNIT 1 ENVIRONMENTAL POLICY IN PRE-INDEPENDENT INDIA

Structure

- 1.1 Introduction
- 1.2 Objectives
- 1.3 Traditional Wisdom and Indigenous Practices
- 1.4 The Indian Penal Code, 1860
- 1.5 The Indian Forest Act, 1865
- 1.6 The Indian Forest Act, 1878
- 1.7 Forest Policy, 1894
- 1.8 The Indian Fisheries Act, 1897
- 1.9 The Indian Ports Act, 1908
- 1.10 The Indian Forest Act, 1927
- 1.11 Let Us Sum Up
- 1.12 Key Words
- 1.13 Suggested Further Reading/References
- 1.14 Answers to Check Your Progress

1.1 INTRODUCTION

If you analyse Indian culture and traditions, you will find living in harmony with nature has been an integral part of daily life. It can be easily testified in a variety of daily life practices, religious beliefs, traditional arts and rituals since time immemorial. The Indian values consider the earth a living entity of reverence rather than an object of exploitation. The variety of cultural practices and sound relationship with nature in India is unparalleled in the world.

Therefore, environmental conservation in India is not a new concept rather it is integrated into daily life. Many plants and animals have been considered a matter of religious importance. Usually, peepal, neem, banyan trees and stone apple (bael) are revered and protected through religious practices. Also, many plants and trees are traditionally planted and worshipped on the temple premises by various communities in India. Though, these practices are rooted in religious belief however it has a significant contribution to the protection of forest and wildlife. Likewise, many animals are considered sacred by the communities and never killed or sacrificed. Through this unit, we would be discussing the traditional wisdom and indigenous practices related to environmental protection and laws and policies related to environmental protection in British India. Further, the unit discusses the impact of forest laws and policies on local communities.

1.2 OBJECTIVES

After studying this unit, you should be able to:

- explain the traditional wisdom and indigenous practices related to environmental protection;
- explain various laws and policies related to environmental protection in British India; and
- explain the impact of forest laws and policies on local communities.

1.3 TRADITIONAL WISDOM AND INDIGENOUS PRACTICES

Traditionally, the Indian environment protection practices carry huge social, religious and moral values. It makes the customary protection system of India unparalleled in the world. Indian civilisation maintained a sustainable relationship with nature. We call it civilisation because environmental protection is an integral part of the Indian value system and lifestyle. The typical Indian lifestyle gives valuable insights into traditional knowledge and wisdom. The knowledge practised, observed and refined based on their validation and utility over thousand of years could provide a better solution to today's environmental crisis.

The subsequent laws imposed by the colonial powers considered forests as a source of revenue and alienated the community from the overall protection of the forest. The law failed in maintaining the continuity of community-centred forest protection working successfully since time immemorial.

Apart from the forest, wildlife protection is also reflected in rituals, religious beliefs and myths of the local communities. It is well-known fact that India has sustained its forest resource for a very long period. The inhabitant has been residing in close vicinity or within the forest in a symbiotic relationship with each other. The mutual dependence between residents and the forest was premised on the optimal use and protection of the forest resources together. The ancient wisdom helped in refining the protection of forests from overuse/exploitation. This ancient wisdom took the help of various symbols which are part of the day-to-day unwritten protocols. If you see indigenous religious practices, you will find that nature is at the centre of worship. For example, tribal festivals of *Karma* and *Sarhul* are prevalent among central Indian tribes nothing but worship of nature. For example, if you observe the Indian religious god and goddesses, you will find every god or goddess has some animal attached to it as a symbol. It finds very high respect within Indian values. You cannot find Lord Shiva without a snake rounding in the neck. Likewise, Laxmi, a goddess of wealth and prosperity is closely attached to the owl. Additionally, you will hardly find any photograph of Saraswati, a goddess of knowledge without a lotus and swan. Therefore, the ancient wisdom and traditional knowledge of protection and optimum use of the forest are part and parcel of Indian values and culture.

They understood very well that their common well-being is dependent on the maintenance of a symbiotic relationship with nature. The common wisdom of protection and optimal use has sustained forest resources so far for a long time even in the absence of comprehensive forest protection laws. To understand the development of environmental laws and policies coherently, we will study environmental protection in different periods— ancient, medieval and British India.

By the passage of time, the issue of forest protection was taken up by the ancient rajas. In the later phase and with the civilisational development, the forest became a matter of state concern. However, there was no codified law and prescriptions for forest and environment protection. Later, the forest became a matter of governance for the states. However, there was no prohibition for the residents on the usage of forest resources. In the successive medieval period, there was hardly any concern for the protection of forests and wildlife. However, it remained a subject of governance for the emperors. The advent of British India saw the enactment of laws and policies related to forest protection. Moreover, wildlife protection emerged as a major concern due to scientific advancement, the emergence of the food chain theory and the overall decreasing population of the wildlife.

In this unit, we are going to learn about the successive emergence of the modern legal system for forest and environmental protection. In this regard, we will discuss major pre-independence legislation connected directly or indirectly with environmental protection.

Now, when we talk about documentary evidence on forest protection in India Agni Purana mentions if a man protects trees, he may have material and religious gain (<http://edugreen.teri.res.in/explore/forestry/history.htm>). When explored further, we find that the environment in Vedas is closer to the modern and holistic understanding rather than only focusing on the forest. Therefore, it focuses on co-existence and symbiotic inter-relationship with various aspects of nature. Another distinguishing feature of Vedas is optimal use and enjoyment of nature. Another significant point is that: the wealth of nature is for everyone therefore sharing and caring for nature is a common concern. It took a long time for modern environmental jurisprudence to evolve and adopt this concept.

Later, Kautilya's Arthashastra provides a detailed account of the duties of the ruler relating to forest protection. It says the ruler must protect the existing forest and set up new forest areas. It also prescribes the responsibility of the king to facilitate the appropriate use of forest resources. It elaborately provides methods to protect and sustainably use forest resources. It also dwells upon punishment for damage to trees and forests. It prescribes a dedicated forest for each forest produce. In addition, it also has provision for the special class of forest for wild animals. Kautilya's Arthashastra also has provisions for the protection of some wild animals. Some classes of animals were prohibited from hunting. The non-compliance to it was meted with punishment (Divan and Rosenkranz 2001).

King Ashoka, the Great in his famous fifth pillar edict provides an elaborate list of animals which are prohibited from hunting. Its elaborate provision also prohibits the killing of animals by setting the forest on fire and castrating animals. Overall, the fifth pillar edict shows huge concern for the protection of wildlife.

In his fifth pillar edict, the great king Ashoka forbade the killing of certain animals. This edict was issued in the 26th year of his reign. It provides an elaborate list of animals which are forbidden. Capons must not be made. Chaff which contains living things must not be set on fire. Forest should not be burned to kill living beings even for good reasons. On certain occasions, the edict forbids the catching and selling of fish. It also prescribes not to castrate animals on certain occasions which indicates sensitivity towards the wildlife.

In Medieval India, a large number of people took refuge in the forest to avoid the attack of Muslim invasions. Due to this, a large tract of land was cleared to make the settlement. The emperors were interested in hunting and their interest was limited to the protection of these forests as such. Moreover, Mughals had more interest in the establishment of gardens than the overall protection of the forest (<http://edugreen.teri.res.in/explore/forestry/history.htm>).

The advent of Britishers in India caused the imposition of a different system of forest protection. The forest protection policy and law were meant to provide a continuous supply of timber for Great Britain and other colonies. After finishing their indigenous Oak reserve in England, Britishers were in search of a regular supply of timber for laying railway tracks, making coaches and shipbuilding for the navy. India due to its diverse forest reserve could fulfil the requirement. Besides, timber was also required for the expansion of railways, and the construction of hill station settlements and cantonments.

1.4 THE INDIAN PENAL CODE, 1860

After the first war of independence in 1857, the British government enacted a comprehensive penal system for India which is known as the Indian Penal Code, 1860. The objective of this law was to control people and maintain law and order for smooth administration. The Indian Penal Code is a comprehensive document covering various law and order issues along with punishment provisions. It also includes some of the provisions which are directly or indirectly connected to forest protection (Gadgil and Guha 2013).

Chapter XIV of the Indian Penal Code, 1860 ranging from section 268 to 294-A is titled "Of Offences affecting the public health, safety, convenience, decency and morals". Directly it does not talk about the forest or environmental protection however it makes nuisance and polluting the environment punishable (<https://blog.ipleaders.in/indian-penal-code-encompass-environmental-pollution/>).

Section 268 defines the term public nuisance as "*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. A common nuisance is not excused on the ground that it causes some convenience or advantage.*"

Section 290 of the Indian Penal Code (IPC) 1860 provides punishment for the nuisance. Section 290– “Punishment for public nuisance in cases not otherwise provided for. –Whoever commits a public nuisance in any case not otherwise punishable by this Code, shall be punished with a fine which may extend to two hundred rupees."

Section 291 of IPC enhances the punishment in case of continuation of a nuisance even after the injunction to discontinue by the competent authority. Section 291– “Continuance of nuisance after injunction to discontinue. — Whoever repeats or continues a public nuisance, having been enjoined by any public servant who has lawful authority to issue such injunction not to repeat or continue such nuisance, shall be punished with simple imprisonment for a term which may extend to six months, or with fine, or with both.”

It is important to discuss some cases decided by the Supreme Court of India which relate to nuisance. In the famous *Ratlam Municipality v/s Vardhichandra & others* case (1980 AIR 1622, 1981 SCR (1) 97), the supreme court observed that pollutants being discharged by the big factories are a nuisance and go against the rule of law. The judgment also noted that the municipality cannot shy away from the responsibility by assigning a lack of funds as a reason because there is a statutory obligation in this regard.

Section 277– “Fouling water of public spring or reservoir. — Whoever voluntarily corrupts or fouls the water of any public spring or reservoir, 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.”

Section 278– “Making atmosphere noxious to health. —Whoever voluntarily vitiates the atmosphere in any place to make it noxious to the health of persons in general dwelling or carrying on business in the neighbourhood or passing along a public way, shall be punished with a fine which may extend to five hundred rupees."

Check Your Progress 1

Note: i) Use the space given below for your answers.

ii) Check your answers with those given at the end of the unit.

1. What is the role of traditional wisdom and indigenous practices in the protection of the environment in India?

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2. Do you agree that some indigenous practices have been integrated into your daily life?

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3. Ancient India testifies to a rich tradition of a symbiotic relationship between humans and the environment. Explain.

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1.5 THE INDIAN FOREST ACT, 1865

As discussed, the forest has been an integral part of Indian culture. The life and livelihood of a significant number of people were directly connected to the forest resource. The continuity and sustainability of the forest resource in India happened even without an organised set of laws. The reason was the active involvement of the communities in the sustainable use and management of the forest. However, colonial rule in India considered forests as a source of revenue and subject to state ownership.

Therefore, Britishers made a deliberate attempt to regulate and govern the forest. Initially, the forest was controlled by the military. Later forest administration was shifted to the revenue department for better extraction of forest resources to maximise the revenue. A separate imperial forest department was established in the year 1864. It was established by Dietrich Brandis (1824-1907) a German botanist at Bonn University. After the establishment of a scientific forest department, the role of the forest department changed from pruning and removal of dead trees to ensure overall protection and regeneration of the forest. The establishment of a dedicated

imperial forest department helped in infusing a systemic approach to the forest administration in India for the first time.

Just after the creation of a separate department in 1864, a serious attempt was made by the colonial government to establish an imperial monopoly over the forest in the name of conservation of forest in the year 1865.

Salient features of the Indian Forest Act 1865 include–

- It established the state's monopoly over forest resources.
- It caused the alienation of forest and tribal communities from accessing forest resources.
- It visualized forest as a source of revenue for the government by undermining the sustainable and unhindered use for the local communities.
- It was also enacted to help in the acquisition of forest areas for railways expansion.

1.6 THE INDIAN FOREST ACT, 1878

The Indian Forest Act 1865 being the first concerted attempt to legislate forest as a subject matter of governance by British powers had many flaws.

Based on the outcome and challenges faced by the implementation of the Indian Forest Act of 1865, British civil servants B. H. Bedan Powel and D. Brandis prepared a draft of comprehensive forest legislation which later emerged as the Indian Forest Act 1878 (Mathew, 2022). The 1878 Forest Act was more repressive than 1865. The essential features included the establishment of absolute state property rights over forests in India at the cost of customary rights. It was the first comprehensive forest legislation in India.

The salient features of the act include:

- It established the state's right to dispose of and retain waste and forest areas for public use.
- It asserted imperial ownership over the forest and waste.
- It ended the customary rights of the forest dwellers and tribals. Also established the new rights and privilege regime vis-à-vis the use and accessibility of forest resources.
- In the name of conservation and to maintain the monopoly over the forest resource, the forest administration extended punitive sanctions.
- It also established a regulatory mechanism for the extraction and transit of forest produce.

The Indian Forest Act 1878 divided forests into three types. The classification of the forest was premised on the idea of maximisation of revenue through timber trade.

- Reserved Forest**– It is the most restrictive and protected type of forest. The type of forest enjoys total state control emanating from the permanent settlement by extinguishing private rights.

- ii) **Protected Forest**– The protected forest is also controlled by the state although rights were recorded but not settled. As local communities were highly dependent on the forest resource at that given point in time therefore these types of forest were gradually converted into the reserved forest category.
- iii) **Village Forest**– The village forest is a special category where the government hands over the forest to the local community staying nearby the forest to take care of it without anything in return. The villagers were responsible for protecting and maintenance of this type of forest however they were not entitled to take anything from the forest for personal use.

1.7 FOREST POLICY, 1894

The formulation of the first forest policy in India happened as early as 1894. This shows strong concern for forest resources in India by British rulers. However, their concern was more oriented toward satiation of industrial needs, strategic demand and colonial expansion. Since then there have been gradual changes in the policy to accommodate the need of the local populations. The policy was the outcome of the Voelcker Report in 1893 on Indian agriculture (<https://geographyandyou.com/forest-policy-in-india-since-independence/>). It emphasised state control over the forest to increase the revenue. The policy also played a pivotal role in bureaucratising the Indian forest system. It also classified forests into protection, commercial production, minor forest and pasture lands. For the first time, the policy recognised the importance of adequate forest cover for maintenance of a minimum climatic standard for the need of the people. It was a departure from earlier acts and priorities the need of the local population over revenue from the forest resource. However, it stressed that after satisfying the local need of the communities, maximisation of revenue must be prioritised. Although, the policy prescribed satisfying the need of the local community but forests became a subject matter of revenue maximisation in practice (Ghidiyal, 2000).

1.8 THE INDIAN FISHERIES ACT, 1897

The need for fisheries legislation was emphasized way back in 1873 when the attention of the colonial government was drawn to the widespread availability of fisheries resources in India. It was an attempt to conserve and regulate fisheries resources in India. It is a brief act which contains only 7 sections.

Some Important Definitions are:

Private Waters– “Private Water” means water which is the exclusive property of any person or in which any person has for the time being an exclusive right of the fishery whether as owner, lessee or in any other capacity.
Explanation– Water shall not cease to be “private water” within the meaning of this definition by reason only that other persons may have by custom a right fishery therein.

Provisions:

Section 4– Destruction of fish by explosives in inland waters and on coasts–If any person uses dynamite or other explosive substance in any water including sea with an intent to catch or destroy the fish, he shall be punishable with a term extending up to two months or with fine which may extend to two hundred rupees.

Section 5– Destruction of fish by poisoning waters– punishable with a term extending up to two months or with a fine which may extend to two hundred rupees.

Section 6– Protection of fish in selected waters by the rules of State Government– It covers the protection of fish with the rules enacted by the state government.

Section 7– Prescribes penal provisions for the violation of provisions under sections 4, 5 & 6. Any specially empowered police officer may arrest without an order of Magistrate or warrant.

1.9 THE INDIAN PORTS ACT, 1908

The establishment and management of ports for the colonial powers were of immense importance. It helped Britishers in exporting raw materials from India and exporting processed goods from Great Britain. Seeing the importance of ports in the expansion of the British empire, exchange of goods and strategic coastal security, they decided to regulate ports in India. Indian Ports Act of 1908 is comprehensive legislation dealing with the regulation of ports in India. It covers a wide range of issues associated with the management and operation of ports in India. It also provides a power-sharing framework for central and state governments.

Indian Ports Act of 1908 contains 8 chapters and 69 sections. The objective of the act includes management and operation of the port along with regulation of port charges. It aims to consolidate Act XXII of 1855 (for the Regulation of Ports and Port-dues) or to the Indian Ports Act, 1875 (12 of 1875), or the Indian Ports Act, 1889 (10 of 1889). It has been amended from time to time to maintain its suitability for the changing requirements.

Chapter I of the Indian Ports Act, 1908 act provides preliminary information and important definitions applicable under the act. Chapter II talks about the power of the government under the act. The power of the government includes extension and withdrawal of the act from certain areas (Section 4), alterations of limits of ports (Section 5) and power to make ports rules (Section 6). Chapter III deals with the power and duties of port officials including the appointment of a conservator of ports (Section 7) and its power (Section 8 to 16). Besides, section 17 deals with the appointment and power of health officers and Section 18 limits the liability of the government. Chapter IV deals with the rules for the safety of shipping and the conservation of ports. The chapter is divided into two parts: (i) General Rules

(Section 19 to 30) and (ii) Special Rules (Section 31 & 32). These rules relate to the general administration and management of ports.

Chapter V of the act deals with a crucial aspect of port dues, fees and other charges (Section 33 to 50). Chapter VI is all about hoisting of the signals for both inward and outward vessels and the penalty thereof in case of non-compliance. Chapter VII deals with penalties, jurisdiction and convictions for the offence committed under this act. Chapter VIII is titled Supplemental Provisions. Apart from miscellaneous provisions, it includes new addition related to the defence of the ports, duties of authorities in an emergency, application of the certain provision of the act to the Aircraft in case of making use of any port and maritime security.

1.10 THE INDIAN FOREST ACT, 1927

Indian Forest Act of 1927 is divided into 13 chapters and 86 sections. Chapter I of the act deals with title, definition and jurisdiction. Chapter II deals with the state's power to declare and manage the reserve forest (Section 3 to 27). Chapter III deals with the state government's power to form and manage village forests (Section 28). Chapter IV deals with the declaration and management of protected forests (Section 29 to 34). Chapter V related to the control over forests and land not being the property of the government (Section 35 to 38). Chapter VI was a new addition after Indian Forest Act 1878 which relates to the duty on timber and other forest produce (Section 39 & 40). Chapter VII talks about the control of timber and other forest produce in transit and penalties (Section 41 & 44). Chapter VIII talks about the collection and management of drift and stranded timber (Section 45 to 51). Chapter IX is on the Offences, penalties and procedures associated with it (Section 52 to 69 A). Chapter X deals with the specific issue of cattle trespass in the reserve forest. Merely trespass by cattle is considered as damage to the forest and a fine is levied for the same. Chapter XI deals with the power and duties of forest officers (Section 72 to 75). Chapter XII titled Subsidiary Rules assigns power to the state governments to make rules, regulations and penalties thereof (Section 76 to 78). Chapter XIII deals with miscellaneous provisions and makes the user of protected or reserve forests bound to assist forest and police officers. Later, it also added a penalty for unauthorizedly posing reserved or protected forests, and recovery of dues to the government. (Section 79 to 86).

Indian Forest Act of 1927 was an attempt to consolidate and emphasize the state's monopoly over forest and forest produce. It is a re-enactment of the previous version. It re-emphasized the revenue maximization through timber. Therefore, it contains provisions related to the transit and levy on timber and other forest produce. The act dislodges the community from forest land even if forefathers lived there for centuries. It is important to note that the act is still in force in different forms as amended by various state governments from time to time. The act of 1927 retains strict provisions from the previous law like the prohibition of unauthorized activities in the reserved forest.

Under this act, state governments are empowered to declare any area as a protected forest and may restrict certain activities.

Check Your Progress 2

Note: i) Use the space given below for your answers.
ii) Check your answers with those given at the end of the unit.

1. Enlist two salient features of the Indian Forest Act of 1865.
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2. Discuss the salient provisions of the Indian Forest Act of 1878.
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3. What is the role of traditional wisdom and indigenous practices in protecting the environment in India?
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4. Discuss the intent and impact of successive Forest Laws enacted by Britishers in India.
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5. Explain the significance of the Indian Fisheries Act of 1897 and the Indian Ports Act of 1908 concerning environmental protection?

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6. What is the relevance of the classification of forests under the Indian Forest Act of 1878?

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1.11 LET US SUM UP

Environmental protection is integral to the daily life activities of the indigenous people in India. Government across the globe is trying to make the environment, a shared concern of the people. Though, it is a common practice in India since time immemorial. The concern for environmental protection across the globe at a juncture when we are facing the imminent threat of climate change forces us to adapt and reflect the traditional Indian values and practices.

We have seen the result of the departure from the customary mode of environmental protection and the imposition of the British model of forest law which led to deforestation. The law caused a perpetual conflict between the people and the forest department due to the huge dependency of the community on the forest and forest produce.

The exclusion of local communities in the management and protection by establishing absolute rights of the state over the forest caused immense damage. The enactment of forest law was based on the learning of the 'tragedy of commons' endorsed by the western experiences which undermined the traditional community life of Indian villages.

The importance of environment and wildlife protection was understood by our ancestors comprehensively and holistically. The efficient and optimal use of natural resources shunning the western utilitarian approach was understood by Indians much before other parts of the world.

1.12 KEY WORDS

Traditional Wisdom: Traditional wisdom can be defined as knowledge gained through experience of living in a particular place regarding human relations with their natural environment.

1.13 SUGGESTED FURTHER READING/REFERENCES

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Ghidiyal, M. C. (2000). *Forest Acts, Policies and Land Settlements*. Kathmandu: International Centre for Integrated Mountain Development.

Legislations/Acts

Indian Penal Code, 1860

Forest Act, 1865.

The forest policy statement, 1894.

Indian Fisheries Act, 1897.

Indian Ports Act, 1908.

Forest Act, 1927.

1.14 ANSWERS TO CHECK YOUR PROGRESS

Check Your Progress 1

1. Please refer to section 1.3
2. Please refer to section 1.3
3. Please refer to section 1.3

Check Your Progress 2

1. Please refer to section 1.5
2. Please refer to section 1.6
3. Please refer to section 1.3
4. Please refer to sections 1.5, 1.6 and 1.7
5. Please refer to sections 1.8 and 1.9
6. Please refer to section 1.6

UNIT 2 CONSTITUTIONAL PROVISIONS

Structure

- 2.1 Introduction
- 2.2 Objectives
- 2.3 Preamble
- 2.4 Division of Legislative Powers in Environmental Matters
- 2.5 Fundamental Rights
- 2.6 Right to Live in a Healthy Environment
- 2.7 Right to Livelihood and Environment
- 2.8 Right to Know and Environment
- 2.9 Right to Equality and Environment
- 2.10 Freedom of Speech and Expression and Environment
- 2.11 Freedom of Trade and Commerce and Environment
- 2.12 Fundamental Duties
- 2.13 Duties of the State toward Environmental Protection
- 2.14 Let Us Sum Up
- 2.15 Key Words
- 2.16 Suggested Further Reading/References
- 2.17 Answers to Check Your Progress

2.1 INTRODUCTION

Environment-related rights are found in the constitutions of most countries. Generally, to describe these rights, the following terms have been used: the right to human development, favourable, healthy and balanced environment and the duty to conserve it. Environment-related rights in different constitutions can be described as follows:

- Right to live in a healthy environment (Constitution of the Republic of Azerbaijan, 1995 Article 39)
- Right to a pleasant environment (Constitution of the Republic of Belarus, 1994 Article 46)
- Everyone shall have the right to live a life with self-respect and prestige and this right, among others, shall also include the right to conserve and use a healthy environment and to fulfil cultural and social needs (Constitution of the Kingdom of Belgium, 1994 Article 23)
- Right to a healthy and favourable environment in accordance with established standards (Constitution of the Republic of Bulgaria, 1991)
- Right to a human, healthy, balanced environment (Constitution of the

Republic of East Timor, 2002 Article 61)

- All have the right to an environment not detrimental to health (Constitution of the Republic of South Africa, 1997 Article 24)

In the constitutions of most countries, it has been mentioned that it shall be the duty of all to abide by the constitution. In almost all constitutions with the guarantee of environment-related rights, duties of the state and citizens concerned about these rights have also been specified. Environment-related duties in different constitutions have been described as follows:

- It shall be the duty of all to defend and conserve a healthy, balanced environment (Constitution of the Republic of Cape Verde, 1992 Article 69)
- It shall be the duty of the state to conserve natural diversity and integrity as well as sites of environmental importance (Constitution of Colombia, 1991 Article 79)
- It shall be the duty of all citizens to defend the environment (Constitution of the Republic of the Congo, 1992 Article 46)
- While using rights and carrying activities, all shall be bound to pay special attention to public health, nature and the environment (Constitution of the Republic of Croatia, 2001 Article 69)
- Article 55 - It shall be the duty of the state to protect the right to live in a pollution-free environment and to promote nature (Constitution of the Republic of Chile, 1980)
- It shall be the duty of all to conserve the environment for the future generation (Constitution of the Republic of East Timor, 2002 Article 61)
- It shall be the responsibility of all to conserve nature and its diversity, environment and national heritage (Constitution of Finland, 1999 Article 20)
- It shall be the duty of all to conserve the environment for present and future generations (Constitution of Kenya, 2005 Article 30)
- It shall be the duty of the state and all citizens to make efforts to conserve the environment (Constitution of South Korea, 1948 Article 35)
- It shall be the duty of all citizens as well as of the state to conserve the environment and promote the standard of life (Constitution of the Republic of Mali, 1992 Article 15)
- It shall be the duty of all to conserve nature and the environment and take care of natural heritage (Constitution of the Russian Federation, 1993 Article 58)
- The environment shall have to be conserved for the benefit of present and future posterity (Constitution of the Republic of South Africa, 1997 Article 24)

- It shall be the responsibility of all to conserve and promote the environment and cultural heritage (Constitution of the Republic of Slovak, 1992 Article 44)
- It shall be the duty of all to conserve the environment (Constitution of the Kingdom of Spain, 1978 Article 45)

It appears that every society has accepted the importance of the environment. When the Indian constitution was drafted, it did not contain any specific provisions on the environment. However, today the concern for environmental protection has not only been raised to the status of fundamental law of the land but it is also wedded with the human rights approach and it is now well established that, it is the basic human right of every individual to live in a pollution free environment with full human dignity. Because of the various constitutional provisions and other statutory provisions contained in various laws relating to environmental protection, the Supreme Court has even held that the essential feature of "sustainable development" such as the "precautionary principle" and the "polluter pays principle" are part of the environmental law of the country (*Vellore Citizens Welfare Forum v. Union of India* (1996) 5 SCC 647 at 659-660). In this unit, the emphasis will be on the constitutional provisions regarding the environment in India and to understand how the judiciary in India has not only interpreted these constitutional provisions but also, how in the process of interpretation, it has expanded the scope of environmental protection.

2.2 Objectives

After studying this unit, you should be able to:

- identify the fundamental rights provisions about the environment in the Indian constitution;
- identify fundamental duties provisions about the environment in the Indian constitution which lay down duty on the citizens for the preservation of the environment;
- explain how the Indian judiciary has interpreted these provisions and expanded their scope of environmental protection by such interpretation; and
- explain how the Indian judiciary has responded to the international developments in the field of environmental protection.

2.3 PREAMBLE

The preamble of our Constitution provides that our country is based on a "Socialistic" pattern of society, where the State pays more attention to the social problems than to any individual problems. Environmental pollution which has emerged as one of the biggest social problems is being regarded as a real problem affecting society at large and thus the state is under an obligation to fulfil the basic aim of socialism, that is, to provide a decent

standard of living to all which can be made possible with a pollution free environment.

The preamble further declares that the great rights and freedoms which the people of India intended to secure for all citizens include justice, social, economic and political. Justice also includes environmental justice. Although the particular word 'environment' does not find a place here, we can very well interpret this to include environmental justice. Environment as a subject matter has entered our day-to-day life in such a way that we cannot ignore deliberations on environmental matters when discussing the socio-economic or socio-political scene of the country.

2.4 DIVISION OF LEGISLATIVE POWERS IN ENVIRONMENTAL MATTERS

Under the Indian federal system, governmental power is shared between the Union and the State governments. Part XI of the Constitution governs the legislative and administrative relations between the union and the states. Parliament has the power to legislate for the whole country, while the State Legislatures are empowered to make laws for their respective states. Article 246 of the Constitution divides the subject areas of legislation between the union and the states. The union list (List I) in the seventh schedule to the Constitution contains subjects over which parliament has exclusive power to legislate. This includes defence, foreign affairs, atomic energy, inter-state transportation, shipping, major ports, regulation of air traffic, regulation and development of oil fields, mines and mineral development and inter-state rivers. The State Legislatures have exclusive powers to legislate concerning subjects in the State List (List II), such as public health and sanitation, agriculture, water supplies, irrigation and drainage and fisheries. Under the Concurrent list (List III) both Parliament and State Legislatures have overlapping and shared jurisdiction over some subject areas including forests, the protection of wildlife, mines and mineral developments not covered in the union list, population control and family planning, minor ports and factories. 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 after the Central Law will prevail, if it has received Presidential assent under Article 254.

The 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 legislatures. Thus, the Water (Prevention and Control of Pollution) Act of 1974 was enacted by the Parliament pursuant to a consent resolution passed by the State Legislatures. The division of legislative powers shows that there are ample provisions to make laws dealing with environmental problems at the local level as well as at the national level, but under the federal system, the Central Government controls the finances largely. It may happen that when an industrial project is allocated to a particular state, it may have some

environmental impact in that state and thus it may be opposed by the environment and planning department of the state concerned. On the other hand, the Central Government may threaten to withdraw the project from the State if its implementation is opposed and resulting in a conflict between development and the environment. This conflict is being taken care of by the Environmental Impact Assessment (EIA) which is an effort to anticipate measure and weigh the socio-economic and ecosystem changes that may result from the proposed project.

2.5 FUNDAMENTAL RIGHTS

Article 21 of the Constitution reads:

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

The right to life as guaranteed by Article 21 of the Constitution is a basic human right and the concept of the right to life and personal liberty have been transformed into positive rights by active judicial interpretation. A new era ushered in the post-*Maneka* period the concept of the right to life witnessed new developments and new dimensions were added to the interpretation of fundamental rights embodied in Article 21. Before this, all the fundamental rights guaranteed in Part III of the Constitution were considered to be negative and imposed only negative obligations on the State. For the first time, thus Supreme Court transformed these rights into positive rights and imposed an affirmative duty on the State to enforce them.

This view of the Supreme Court was also reflected in *Francis Carolie Mullin v. Administrator Union Territory of Delhi* (1981 AIR 746) where Justice Bhagwati observed that “the right to life enshrined in Article 21 cannot be restricted to mere animal existence. It means something more than just physical survival”. Further, he added:

“Right to life includes the right to life with human dignity and that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter over the head and facilities for writing and expressing oneself in diverse forms with fellow human beings. Of course, the magnitude and contents of the components of this right would depend upon the extent of the economic development of the country but it must, in any view of the matter include the right to basic necessities of life”.

Again, the Apex Court in *Chameli Singh v. State of UP* (AIR 1996 SC 1051) held that the need for a decent and civilized life includes the right to food, water and a decent environment. In the same sentiment, the Court believed that:

"In any organized society, the right to live as a human being is not ensured by meeting only the animal need of men. It is secured only when he is assured of all facilities to develop himself and is freed from restrictions which inhibit his growth. All human rights are designed to achieve this subject. The right to

live guaranteed in any civilized society implies the right to food, water, a decent environment, education, medical care and shelter. These are basic human rights known to any civilized society. All civil, political, social and cultural rights enshrined in the Universal Declaration on Human Rights or Convention or under the Constitution of India cannot be exercised without these human rights”.

Observing the stand taken by the apex court and considering the relation between fundamental rights and environmental protection, it was pointed out by Shyam Divan and Armin Rosencranz as:

“Encouraged by an atmosphere of freedom and articulation in the aftermath of the emergency, Supreme Court entered one of its most creative periods. Especially, the court fortified and expanded the fundamental rights enshrined in Part III of the Constitution. In the process, the boundaries of the Fundamental right to life and personal liberty guaranteed in Article 21 were expanded to include environmental protection”.

2.6 RIGHT TO LIVE IN A HEALTHY ENVIRONMENT

Article 21 guarantees the right to life, a life of dignity, to be lived in a proper environment, free of the danger of disease and infection. It is an essential fact that there exists a close link between life and the environment. The right to life would become meaningless if there is no healthy environment.

The right to live in a healthy environment as a part of Article 21 was evident from the case of *Rural Litigation and Entitlement Kendra, Dehradun v. State of U.P.* (AIR 1985 SC 652) that the Rural Litigation and Entitlement Kendra, Dehradun and a group of citizens wrote to the Supreme Court against the progressive mining which denuded the Mussoorie Hills of trees and forests cover and accelerated soil erosion resulting in landslides and blockage of underground water channels which fed many rivers and springs in the valley. The Court ordered the registry to treat this letter as a writ petition under Article 32 of the Constitution. Initially, the Court appointed an expert committee to advise the bench on technical issues. Based on the report of the committee, the Court ordered the closure of the limestone quarries. The Court observed:

"This is the first case of its kind in the country involving issues relating to the environment and ecological balance and the questions arising for consideration are of great moment and significance not only to the people residing in the Missouri Hill range but also in their implications to the welfare of the generality of people, living in the country”.

It is also stated that the disturbance of ecology and pollution of water, air and environment because of quarrying operation definitely affects the life of the person and thus involves the violation of the right to life and personal liberty under Article 21 of the Constitution.

In *M.C. Mehta v. Union of India* (AIR 1987 SC 1086, Popularly Known as *Oleum Gas Leakage Case*), the Supreme Court once again impliedly treated the right to live in pollution-free environment as a part of the fundamental right to life under Article-21 of the Constitution.

In *A.P. Pollution Control Board (II) v. Prof. M.V. Nayadu* (2001 2 SCC 62) the Supreme Court stated that the rights to a healthy environment and sustainable development are fundamental human rights implicit in the right to life. Our Supreme Court was one of the first Courts to develop the concept of a "healthy environment" as part of the right to "life" under Article 21 of the Constitution.

Thus, from the perusal of all the above-mentioned cases, it is evident that there has been a new development in India and the right to live in a healthy and pollution-free environment is considered the fundamental right under Article 21, without this, right to life and livelihood would become meaningless and it is evident that the judiciary has certainly prevented the flagrant violation of the right to a safe environment.

2.7 RIGHT TO LIVELIHOOD AND ENVIRONMENT

The judiciary has further broadened the scope and ambit of Article 21 and now "right to life" includes the "right to livelihood". The right to earn a livelihood is also considered a part of the right to life under Article 21 of the Constitution. This broad interpretation of the right to life is very helpful in checking the governmental action which has an environmental impact that threatens the poor people of their livelihood by dislocating them from their place of living or otherwise depriving them of their livelihood.

The right to livelihood as a part of the right to life under Article 21 was recognised by the Supreme Court in *Sodan Singh v. N.D.M.C.* (1989) 4 SCC 155; *Ahmedabad Municipal Corporation v. Nawab Khan Gulab Khan* (1997) 11 SCC 121; *Ramesh Chander v. Imtiaz Khan* (1998) 4 SCC 760. In *Olga Tellis v. Bombay Municipal Corporation* AIR 1986 SC 180, the petitioners, a journalist and two pavement dwellers challenged the governmental scheme by which the pavement dwellers were being removed from the Bombay pavements. The main argument advanced on behalf of the petitioners was that evicting a pavement dweller or slum dweller from his habitat amounts to depriving him of his right to livelihood. It was further argued that no person can be deprived of his life except according to the procedure established by law which has to be "just, fair and reasonable" (*Maneka Gandhi v. Union of India*, AIR 1978 SC 597). The petitioners also contended that the State is under an obligation to provide citizens with the necessities of life and in appropriate cases, the Courts have the power to issue orders directing the State by affirmative action. The court observes:

"If the right to livelihood is not treated as a part of the constitutional right to life, the easiest way of depriving a person of his right to life would be to

deprive him of his means of livelihood to the point of abrogation. Such deprivation would not only denude the life of its effective content and meaningfulness but it would make life impossible to live”.

The court further directed the Municipal Corporation to provide alternate sites or accommodation to slum and pavement dwellers within a reasonable distance of their original sites and earnestly pursue housing schemes for the poor and provide basic amenities to slum dwellers.

When there is any conflict between environment and development, the question to be considered in the larger dimensions of national complexities is that on the one hand for the national progress and growth, the construction of dams, thermal power plants and exploitation of natural resources is a must. On the other hand, these actions may infringe the fundamental rights of the people in the area where that project is undertaken.

Judiciary in India has been very cautious in reconciling the environmental interests with the developmental process and avoiding any kind of conflict between the two. In *Banwasi Seva Ashram v. the State of U.P.* (AIR 1987 SC 374) the main grievance of the petitioner was that *Adivasis* and other backward people (tribal forest dwellers) were using the forest as their habitat and means of livelihood. Part of the land was declared reserved forest and in respect of the other part, acquisition proceedings were initiated as the government had decided that a Super Thermal Plant of the National Thermal Power Corporation Ltd., (NTPC) was to be located there. The Supreme Court gave directions safeguarding and protecting the interests of the *Adivasis* and backward people who were being ousted from their forest land by NTPC. The Court permitted the acquisition of land only after NTPC agreed to provide certain facilities to the ousted forest dwellers. In this case, the court impliedly treated the right of the *Adivasis* under Article 21 and observed that “it is common knowledge that *Adivasis* and other backward people living within the jungle used the forest area as their habitat and for generations. They had been using jungles around for collecting the requirements for their livelihood, fruits, vegetables, fodder, flowers, timber, and animals by way of sport and fuel wood. At the same time, the Court highlighted that for industrial growth as also for provisions of improved living facilities there is a great demand in this country for energy such as electricity”.

In *Karjan Jalasay Y.A.S.A.S. Samiti v. State of Gujarat* (AIR 1987 SC 532), the Supreme Court also passed the interim orders under Article 32 requiring the state agencies to resettle and rehabilitate the tribal people who were being displaced by dams.

In *Pradeep Krishen v. Union of India* ((1996) 8 SCC 599) the Madhya Pradesh Government issued an order permitting the collection of *tendu* leaves from sanctuaries and national parks by villagers/tribal living around the boundaries thereof with the object of maintenance of their traditional rights including the right to livelihood. This order was challenged by public interest litigation for the protection of ecology, environment and wildlife in sanctuaries and

national parks. The Supreme Court in the circumstances of this case refused to squash the order and held that if one of the reasons for the shrinkage of the forest cover is the entry of these villagers/tribes urgent steps must be taken to prevent any destruction or damage to the environment, wildlife, *flora* and *fauna*. The Supreme Court in the above case protected the right to livelihood of the tribal on the one hand and showed its concern for the protection of the ecology on the other hand. In *Animal and Environmental Legal Defence Fund v. Union of India* ((1997) 3 SCC 549) the petitioner, an association of lawyers and other persons who were concerned with the protection of the environment, filed public interest litigation challenging the order of the chief Wildlife Warden, Forest Department, granting 305 fishing permits to tribal villagers formerly residing within the National Park area for fishing in the reservoir situated in the heart of the National Park.

The Supreme Court once again showed its concern for the right to livelihood of the tribal villagers and observed that it could have been more desirable, had the tribal's been provided with suitable fishing areas outside the National Park or if the land had been given to them for cultivation.

In *M.C. Mehta v. Union of India* ((1996) 4 SCC 750) public interest litigation was filed to protect Delhi from the environmental pollution caused by hazardous/noxious/heavy/large industries operating in Delhi. The Court held that such industries are liable to be shifted /relocated to other towns of the National Capital Region (NCR) as provided under the Master plan for Delhi Perspective 2001. The Court directed 168 industries, which were identified as such to stop functioning/operating in the city of Delhi and they could shift or relocate themselves to any other industrial estate in NCR. The Supreme Court to mitigate the hardship to the employees of such industries due to their closure/shifting/relocation specified the rights and benefits to which workmen employed in these 168 industries were entitled on relocation/shifting of these industries. Subsequently, the Supreme Court has also issued a package of compensation for workmen employed in industries which are not relocating/ shifting or closing down as per earlier directions of the Supreme Court. Thus, the Supreme Court protected the right to livelihood of the workmen and tried to balance industrial development and environment protection.

In *M.C. Mehta v. Union of India* ((1997) 2 SCC 353, popularly known as *the Taj mahal case*) the Supreme Court once again followed the path of sustainable development and directed that the industries operating in *Taj Trapezium Zone* (TTZ) use coke/coal as industrial fuel must stop functioning and they could relocate to the alternate site provided under the Agra Master Plan. In this case, also the Supreme Court specified the rights and benefits to which the workmen of such industries were entitled and thus, protected their right to livelihood and followed the guiding principle of sustainable development.

From the various decisions of the Supreme Court, it is evident that development is not antithetical to the environment. However, thoughtless development can cause avoidable harm to the environment as well as deprive the people of their right to livelihood.

2.8 RIGHT TO KNOW AND ENVIRONMENT

The right to know is also implicit in Article 19(1) (a) and it has a close link with Article 21 of the Constitution, particularly in environmental matters where the secret government decision may affect the health, life and livelihood of the people. The right to know or access to information is the basic right for which the people of a democratic country like India aspire. Secrecy erodes the legitimacy of elected governments.

On the other hand, the right to know strengthens participatory democracy. The right to know plays a very important role in environmental matters. Any governmental plan of construction of a dam or information on the proposed location of nuclear power stations or thermal power plants and hazardous industries, which directly affect the lives and health of the people of that area, must be widely published.

The Judiciary has broadened the scope of the right to know in *S. P. Gupta v. Union of India* (AIR 1982 SC 149) the Supreme Court recognized the right to know to be implicit in the right to free speech and expression. The Supreme Court observed:

"This is the new democratic culture of an open society towards which every liberal democracy is moving and our country should be no exception. The concept of open government is the direct emanation from the right to know which seems to be implicit in Article 19 (1) (a). Therefore, disclosures of information regarding the functioning of the government must be the rule and secrecy exception justified only where the strictest requirements of public interest so demand".

In *L.K. Koolwal v. State* (AIR 1988 Raj 2) the Rajasthan High Court held that a citizen has a right to know about the activities of the State, the instrumentalities, the departments and agencies of the State. The Court further held that,

"the State can impose and should impose reasonable restrictions in the matter like other fundamental rights where it affects the national security and other matter affecting the nation's integrity. But this right is limited and particularly in the matter of sanitation and other allied matter every citizen has a right to know how the state is functioning and why the state is withholding such information in such matters".

In *R.P. Ltd., v. Proprietors, Indian Express Newspapers, Bombay Pvt. Ltd.*, (AIR 1989 SC 190) the Supreme Court held that "we must remember that the people at large have a right to know to be able to take part in participatory development in the industrial life and democracy. Right to know is a basic

right to which citizen of a free country aspires in the broadening horizon on the right to life in this age on our land under Article 21 of the Constitution".

In *F.B. Taraporawala v. Bayer India Ltd.*, ((1996) 6 SCC 58) where the question before the court was regarding the relocation/shifting of chemical industries from the populated area of Thane in Mumbai, the Court felt that it has neither the expertise nor is it in possession of various information which was required to decide one way or the other so far as the question of relocation is concerned. The Court also directed the Constitution of an "authority" under section 3(3) of the Environment (Protection) Act, 1986, which was required to examine the entire matter. Such an authority would have the power to examine and know various aspects of development and environment protection and take action accordingly.

In *Research Foundation for Science Technology and Natural Resource Policy v. Union of India* ((2005) 10 SCC 510) the Supreme Court has stated that the right to information and community participation necessary for the protection of the environment and human health is an inalienable part of Article 21 and is governed by the accepted environment principles. Accordingly, the government and the authorities have to motivate public participation by formulating necessary programmes.

2.9 RIGHT TO EQUALITY AND ENVIRONMENT

The Indian Constitution guarantees the "right to equality" to all persons without any discrimination. This indicates that any action of the 'State' relating to the environment must not infringe upon the right to equality as mentioned in Article 14 of the Constitution.

The Stockholm Declaration, 1972, also recognized this principle of equality in environmental Management and it called up all the world's nations to abide by this principle. The judiciary, on various occasions, has struck down the arbitrary official sanction in environmental matters on the basis that it was violative of Article 14. The right to equality is generally resorted to in urban development where permission for construction is granted by the authorities arbitrarily under its discretionary powers without evaluating the public interest and without application of mind and considering the environmental impacts.

In *Bangalore Medical Trust v. B.S Muddappa* ((1991) 4 SCC 54) the Supreme Court prevented an attempt to convert a public park site into a nursing home. The City Improvement Board of Bangalore had prepared the Development scheme for the extension of the City of Bangalore. Under the scheme, an area was kept for being developed as a low-level park. Subsequently, under the direction of the Chief Minister of the State, the area kept for laying a park was converted into a civic amenity site where a hospital was to be constructed by the appellant. When the construction activity was noticed, the resident of the area approached the High Court

which allowed the petition. The Appellant came in appeal before the Supreme Court contending that the decision to allot a site for a hospital rather than a park is a matter within the discretion of the development authority and thus, the diversion of the user of the land for that purpose is justified under the Act. The Supreme Court dismissed the appeal and highlighted the importance of public parks and open space in Urban Development as follows:

"Protection of the environment, open spaces for recreation and fresh air, playgrounds for children and other conveniences are matters of great public concern and are vital interest to be taken care of in a development scheme. The public interest in the reservation and preservation of open spaces for parks and playgrounds cannot be sacrificed by leasing or selling such sites to private persons for conversion to some other user; it would be in direct conflict with the Constitutional mandate".

Judge R. M. Sahai in his judgment observed that public park as a place reserved for beauty and recreation is associated with the growth of the concept of equality and recognition of the importance of the common man it is a "gift from people to themselves". Its importance has multiplied with emphasis on the environment and pollution. He further pointed out that "discretion is an effective tool of administration". When affecting the public interest, it should be exercised objectively, rationally, intelligibly, and fairly and authority cannot act whimsically or arbitrarily.

It was held that the decision taken at the instance of the Chief Minister of the State to convert an open space reserved for a public park into a site for constructing a hospital and to allow the site to a private person was vitiated by non-application of mind and was arbitrary, hence *ultra vires* and violation of Article 14 of the Constitution. In *D.D. Vyas v. Ghaziabad Development Authority* (AIR 1993 All 57), the grievance of the petitioner is that the respondents had not taken any steps to develop the area reserved for a park. On the other hand, respondents were marking time to carve out plots on such open space dedicated for Public Park in the plan and alienate the same to earn huge profits. The Allahabad High Court followed the dictum of the Supreme Court in *the Bangalore Medical Trust* case and held that the authority or the State cannot amend the plan in such a way to destroy its basic feature allowing the conversion of open spaces meant for Public Park. The Court was of the view that the respondents have failed to develop the park, and have reminded grossly negligent in discharging their fundamental duty under Article 51-A (g) of the Constitution.

In *State of Himachal Pradesh v. Ganesh Wood Products* (AIR 1996 SC 149) the Supreme Court held that a decision-making authority must give due weight and regard to ecological factors such as the environmental policy of the government and the sustainable use of natural resources. A government decision that fails to take into account relevant considerations affecting the environment is invalid.

The Court also used Article 14 to justify the Government policy in certain cases. In *Kholamuhana Primary Fisherman Cooperative Society v. State* (AIR 1994 Ori 191) the government had framed a policy regarding fishing in Chilka Lake to protect the traditional rights of fishermen. The Court held that the said policy was neither arbitrary nor ambiguous and hence not violative of Article 14 of the Constitution. Further, the Court pointed out that the adoption of extensive and intensive prawn culture to earn "prawn dollars" in disregard to ecology was not proper.

The Court has also struck down the action of the authorities if it was taken arbitrarily. In *Mandu Distilleries Pvt. Ltd., v. M.P. Pradushan Niwaran Mandal* (AIR 1995 MP 57) the Pollution Control Board issued direction for stoppage of production by the industry on the ground that it was causing water pollution. However, the Court found that there was a serious flaw in the "decision-making process". The decision was taken arbitrarily. The Court quashed the order passed by the board as violative of Article 14 of the Constitution.

In *Ivory Traders and Manufacturers Association v. Union of India* (AIR 1997 Del 267) the Delhi High Court justified the ban on the business in animal species on verge of extinction. The Court held that the ban on trade in imported ivory and articles made, therefrom is not violative of Article 14 of the Constitution. Article 14 can also be invoked to challenge the government action where permission for mining and other activities with high environmental impact is granted arbitrarily.

2.10 FREEDOM OF SPEECH AND EXPRESSION AND ENVIRONMENT

Article 19(1) (a) guarantees every citizen fundamental freedom of speech and expression. In India, most of the environmental jurisprudence has been developed by judicial activism. Most of the cases came before the Court as a result of public interest litigations (PILs) in which the people exercised their freedom of speech and expression sometimes by writing letters to the court or otherwise by filing petitions before it, highlighting the violation of the rights of the people to live in a healthy environment in one way or the other. Freedom of speech and expression under Article 19(1) (a) also includes freedom of the press (*Indian Express Newspapers (Bombay) Pvt ltd. v. Union of India* AIR 1986 SC 515). In India, public opinion and media have played an important role in moulding the public perception of environmental issues.

In Kerala, Kerala Sastra Sahitya Parishad (KSSP), non-governmental organizations and influential environmentalists within and outside the government and the role of the media compelled the government to abandon "the Silent Valley Project". In this case, the legal battle played only a peripheral role. Again, in the Tehri Dam project, the public opinion and media compelled the government to make a proper Environment Impact Assessment (EIA) of the proposed dam and consider all the aspects of safety

of the project. The decision of the government to construct Tehri Dam was scrutinized by the Supreme Court in *Tehri Virodhi Sangarsh Samiti v. State of Uttar Pradesh* ((1990) SCR Supl. (2) 606). In this case, the main grievance of the petitioners was that the safety aspect have not been taken into consideration by the government in the Tehri Dam Project. The Court on the perusal of the various recommendations of the committees and factual matrix concluded that the government has applied its mind and considered the relevant aspects of safety and finally dismissed the petition.

In *P.A. Jacob v. The Superintendent of Police, Kottayam* (AIR 1993 Ker 1) the Kerala High Court held that freedom of speech under Article 19 (1) (a) does not include freedom to use loudspeakers or sound amplifiers. Thus, noise pollution caused by loudspeakers can be controlled under Article 19(1) (a) of the Constitution.

In *Moulana Syed Md. Noorur Rehman Barkati v. State of West Bengal* (AIR 1999 Cal 15) the Calcutta High Court observed that excessive noise is certainly pollution in society. Under Article 19(1) (a) read with Article 21 of the Constitution of India, the citizens have a right to a decent environment and the right to live peacefully, the right to sleep at night and to have right to leisure which all are necessary ingredients of the right to life guaranteed under Article 21 of the Constitution. There are various other sources where the noise is created or generated but which offends citizen's rights guaranteed under Articles 19(1) (a) and 21 of the Constitution.

2.11 FREEDOM OF TRADE AND COMMERCE AND ENVIRONMENT

Article 19(1) (g) guarantees all citizens the right “to practice any profession or to carry on any occupation, trade or business”. This right of the citizens is not absolute. It is subject to Article 19(6) under which “reasonable restrictions” in the “interest of the general public” can be imposed. Thus, environmental interest from the hazards of any trade or business can be protected.

The Gujarat High Court in *Abhilash Textiles v. Rajkot Municipal Corporation* (AIR 1988 Guj 57) made clear that "the petitioners cannot be allowed to reap profit at the cost of public health". In this case, petitioners conducting the business of dyeing and printing works in the Rajkot area were discharging dirty water from the factory on the public road and in public drains without purifying the same, thereby causing damage to public health. The petitioners claimed that they were carrying on the business for the last 20 to 25 years and the industry was employing twenty to thirty thousand families. Notice to close would be very harsh as they would be compelled to close down the factory and would also be violative of Article 19(1) (g). The Court held that one cannot carry on the business in the manner by which the business activity becomes a health hazard to the entire society. By discharging of effluent water on a public road or in public drainage system

the entire environment of the locality gets polluted. No citizen can assert his right to carry on business without any regard to the fundamental duty under Article 51-A (g) to protect and improve the natural environment. The Court further directed that if the petitioners wish to carry on the business, then they must provide for a purification plant before discharging the effluents on public roads or in a public drainage system. The petitioner had no right under Article 19(1) (g) to carry on business without complying with the Municipal Law and other environmental statutes.

In *M.C. Mehta v. Union of India* (AIR 1988 SC 1037) where tanneries were discharging effluents from their factories in the holy river Ganga resulting in water pollution and not setting up a primary treatment plant despite being asked to do for several years. It was held that an order directing them to stop working their tanneries should be passed as effluent discharge from tanneries is ten times noxious when compared with the domestic sewage water which flows into the river and the court passed the following order:

"We are, therefore, issuing the directions for the closure of those tanneries which have failed to take the minimum steps required for the primary treatment of industrial effluent. We are conscious that closure of tanneries may bring unemployment, loss of revenue, but life, health and ecology have greater importance to the people".

In *M.C. Mehta v. Union of India* ((1994) SCC Suppl. (3) 717) the Supreme Court directed those certain industries which were not showing any progress regarding the installation of the air pollution controlling system in compliance with the Supreme Court's earlier order, should be closed. In this case, the Supreme Court did not refer Article 19 (1) (g) however it is implied that while passing the order it had in its mind Article 19 (1) (g) read with Article 19 (6) and 21 of the Constitution.

In *S. Jagannath v. Union of India* ((1997) 2 SCC 87) the Supreme Court held that the sea beaches and sea coasts are gifts of nature and any activity polluting the same cannot be permitted. The intensified shrimp (prawn) farming culture industry by a modern method in coastal areas was causing degradation of mangrove ecosystem, depletion of the plantation, discharge of highly polluting effluents and pollution of portable as well as groundwater. Therefore, it was held that the said activities of the industries are violative of Constitutional provisions and various other environmental legislations. While delivering the Judgment, Court had in mind that, before any shrimp industry is permitted to be installed in the ecologically fragile coastal area, it must pass through a strict environmental test in other words "reasonable restriction" can be put to regulate the right under Article 19(1) (g) of the Constitution. Accordingly, the Supreme Court suggested that there must be an Environmental Impact Assessment (EIA) before permission is granted to install commercial shrimp farms. It must take into consideration the inter-governmental equity and compensation for those who are affected and prejudiced.

In *Burrabazar Fire Works Dealers' Association v. Commissioner of Police, Calcutta* (AIR 1998 Cal 121) the Court held that Article 19(1) (g) of the Constitution of India does not guarantee the fundamental right to carry on trade or business which creates pollution or which takes away that community's safety, health and peace. The Court was of the view that there is no inherent or fundamental right in a citizen to manufacture, sell and deal with fireworks which will create sound beyond permissible limits and which will generate pollution which would endanger the health and public order. A citizen or people cannot be made captive listeners to hear the tremendous sound caused by bursting out from noisy fireworks.

In *Ashwin Jajal v. Municipal Corporation of Greater Mumbai* (AIR 1999 Bom 35), public interest litigation was filed by a resident against the municipal corporation seeking direction to prohibit the display of illuminated advertisements by use of neon lights in residential areas and also to revoke the permission granted to the respondents for the display of advertisements on the buildings. It was argued that the neon light sign boards created environmental and health hazards and were of nuisance value as the bright light is deterrent to peaceful sleep. On the other hand, the respondents said that they have a fundamental right under Article 19 (1) (g) to have free trade. The court held that keeping in view the environmental and health hazard and nuisance value it is always open to the authorities to regulate the advertisement reasonably to the extent permissible and this does not result in the violation of the fundamental right of free trade.

In *Baleshwar Singh v. the State of U.P.* (AIR 1999 All 84), the U.P. State rule prohibited the operation of a sawmill within 80 kilometres of any reserved or protected forests. This was challenged by the owners of the sawmill on the ground that it violates the fundamental freedom under Article 19 (1) (g) of the Constitution. The Allahabad High Court dismissed the petition and held that this is a reasonable restriction imposed to stop the uncontrolled cutting of green trees resulting in a disturbing ecological balance. The existence of a sawmill in, near or around any forest is prohibited for the maintenance of the forest wealth and ecological balance and the social and national interest.

In *Obayya Pujari v. Member Secretary, K S P C B, Bangalore* (AIR 1999 Kar157), the Court held that a licence in favour of stone crushing units does not confer on them absolute rights to carry on commercial activities of trade or occupation without limitation. The rights are subject to reasonable restrictions and can be regulated by Court direction as are necessary for controlling pollution from such units.

In *A.P. Gunnies Merchants Association, Hyderabad v. Government of A.P.* (AIR 2001 AP 453) the High Court held that the right to carry on business in old and used gunny bags is not absolute. The trade carried on involving the activity of dusting and cleaning gunny bags creates air and environmental pollution. Hence, the direction given by the State Government to shift the

business from the thickly populated area to an environmentally safer place is valid and not violative of Article 19(1) (g) of the Constitution.

2.12 FUNDAMENTAL DUTIES

Before the Forty-Second Amendment, the Fundamental Law of the land attached more importance to rights. The makers of the Constitution were concerned about moral and natural rights. The intention behind it was that the citizens and the State would shoulder the responsibility to protect the Constitutional order as their moral duty. As time passed, the citizens became conscious of their rights and thereby neglected their duties. Rights and duties are very important elements of Law. They correlated to each other in such a way that one cannot be conceived without the other. A right is always against someone upon whom the correlative duty is imposed.

The Constitution (Forty-Second Amendment) Act, 1976 added a new part IV-A dealing with "Fundamental Duties" in the Constitution of India. Article 51-A (g) specially deals with fundamental duty concerning the environment: "It shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures". Article 51-A (g) refers to the fundamental duty of every citizen to protect and improve the "natural environment". But in the present days, pollution is caused not only by exploiting the "natural environment" but otherwise also. Nature has given us the gift of a pollution-free environment. The fundamental duty imposed on every citizen is not only to "protect" the environment from any kind of pollution but also to "improve" the environment quality if it has been polluted. So every citizen has to preserve the environment in the same way as nature has gifted it to all of us.

In *Rural Litigation and Entitlement Kendra v. the State of UP* (AIR 1987 SC 359), Justice R.N. Mishra opined that "preservation of the environment and keeping the ecological balance unaffected is a task which not only the government but also every citizen must undertake. It is a social obligation and let us remind every Indian citizen that it is his fundamental duty as enshrined in Article 51-A(g) of the Constitution".

In *Kinkari Devi v. State* (AIR 1988 HP 4), Justice P.D. Desai remarked: "There is both a constitutional pointer to the state and constitutional duty of the citizens not only to protect but also to improve the environment and to preserve and safeguard the forest, the flora and fauna, the rivers and the lakes and all other water resources of the country. The neglect or failure to abide by the pointer or to perform the duty is nothing short of a betrayal of the fundamental law which the state and indeed every Indian is bound to uphold and maintain".

In *L. K. Koolwal v. State of Rajasthan and Ors* (AIR 1988 Raj 2), Mr L.K. Koolwal moved the High Court under Article 226 and highlighted that the Municipality has failed to discharge its "primary duty" resulting in the acute sanitation problem in Jaipur which is hazardous to the life of the citizens of

Jaipur. The Court explained the true scope of Article 51-A in the following words: "We can call Article 51-A ordinarily as the duty of the citizens, but in fact, it is the right of the citizens as it creates the right in favour of the citizens to move to the court to see that the State performs its duties faithfully and the obligatory and primary duties are performed in accordance with the law of the land. Omissions or commissions are brought to the notice of the court by the citizen and thus, Article 51-A gives a right to the citizens to move the court for the enforcement of the duty cast on the state, instrumentalities, agencies, departments, local bodies and statutory authorities created under the particular law of the state.

The court pointed out that "right and duty co-exist. There cannot be any right without any duty and there cannot be any duty without any right". Insanitation leads to slow poisoning and adversely affects the life of the citizens and hence it falls within the purview of Article 21 of the constitution. Every citizen must see that the rights which he has acquired under the constitution are fulfilled (*M.C. Mehta v. the State of Orissa*, AIR 1992 Ori 225).

The Court directed the Municipality to remove dirt, filth etc., from the city within six months. The Court made it clear that it is not the duty of the court to see whether the funds are available or not. The administration and municipal council must see that primary duties are fulfilled. The Court concluded the judgment by observing, "If the Legislature or the State government feels that the law enacted by them cannot be implemented, then the Legislature has the liberty to scrap it, but which remains on the statutory books will have to be implemented, particularly when it relates to primary duty (*Ratlam Municipality v. Vardhichand*, AIR 1980 SC 1622).

In *Goa Foundation v. State of Goa* (AIR 2001 Bom 318), the Bombay High Court examined the question of *locus standi* from the premises of the fundamental duties under the constitution of India. In this case, the petitioner was a society registered under the law relating to the registration of societies and their members were citizens of India having a fundamental duty under Article 51-A to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures. The question before the Court was whether such a society also has the same duty. The Court answered this question in the affirmative and held that such a society also has the same duty. Based on this the petitioner society was held to have a *locus standi* to move to the Court to prevent ecological degradation, formulate and implement a programme for the rehabilitation of the environment and restore ecological balance.

In *Sitaram Chhaparia v. State of Bihar* (AIR 2002 Pat 134), public interest litigation was filed by five persons, residents of a locality seeking directions from the court for closure of tyre re-treading plant in the residential area as the said industry was emitting carbon dioxide gas and other obnoxious gases from its furnaces causing harm to the environment of the locality. The Patna

High Court held that protecting the environment is now a fundamental duty under Article 51-A of the Constitution and accordingly the respondents were directed to wind up their industry and the State respondents were obliged to ensure that.

2.13 DUTIES OF THE STATE TOWARD ENVIRONMENTAL PROTECTION

Article 47 of the Constitution reads:

“The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medical purposes of intoxicating drinks and drugs which are injurious to health”.

The basic principle embodied in the Article very clearly denies the statement to some of the learned authors that initially our Constitution was environmentally blind and the environment as a subject has been left out of the Constitution. Article 47 calls upon the State to perform the basic duty to look after the health of the citizen and also take necessary and effective steps to improve their standard of living and also raise their level of nutrition. Improvement of public health forms the core of the environment because due to various environmental hazards it is the health of the general people which comes under severe threat. To protect health, the framers of the Constitution emphasized the improvement of public health which is more vital for the existence of mankind. In the present times, several factors account for the pollution hazards which is going beyond control. The pollution of water and air spoils nature and affects our health. Therefore, taking into consideration, the Constitution very aptly recognized the right to health and casts a responsibility upon the State making it obligatory to work for improving the health of the citizens.

In *Talcher Swasthya Surakshya Parishad v. Chairman-Cum-MD Mohanadi Coal Fields Ltd., and Others* (AIR 1996 Ori 195) it was alleged that due to the operation of the collieries in the Talcher area, the people of Talcher town and nearby areas have been affected as there is no pure air to breathe and pure water to drink. They are forced to inhale such air being exposed to dust and effluent material and also are forced to take contaminated water which has become unsuitable for drinking purposes due to such dust and effluent articles.

It was also alleged that due to extraction done from underneath the ground surface, the land is becoming loose and there have been several instances of seepage of water and subsidence of earth, thereby endangering human life and property. In this case, the High Court observed that:

"It is needless to say that all concerned, i.e., the governments, the government agency like the Pollution Control Board, the coal-mines owners operating in

the area have to ensure that at the altar of industrial development, environment and consequentially health of the people do not get sacrificed. It is the function of the Pollution Control Board to ensure that the rigid guidelines required to be followed in the matter of air and water pollution. Statistics may not always reflect the correct state of affairs. In the maze of figures, let the welfare of people is not lost".

The Pollution Control Board was directed to take strict steps after determining the consequences of such pollution and see that there is no reoccurrence. It was further directed by the Court that, "for industrial development, the people should not become ill on account of the collapse of buildings, surface erosion and water pollution.

In India, the judicial attitude toward protecting and improving the environment provides a testimony to the fact that directive principles are not mere "guiding principles" of policy but they have to be given effect.

In *Shri. Sachidanand Pandey v. State of West Bengal* (AIR 1987 SC 1109) the Supreme Court pointed out that whenever a problem of ecology is brought before the court, the court is bound to bear in mind Articles 48-A and 51-A (g) of the Constitution, the Court further observed:

"When the Court is called upon to give effect to the directive principles and the fundamental duty, the court is not to shrug its shoulders and say that priorities are a matter of policy. The least the Court may do is to examine whether appropriate considerations are borne in mind and irrelevancies excluded. In appropriate cases, the Court may go further, but how much further must depend on the circumstances of the case. The Court may always give necessary directions. However, the Court will not attempt to nicely balance relevant considerations. When the question involves a nice balancing of relevant considerations, the court may feel justified in resigning itself to acceptance of the decision of the concerned authority".

In *T. Damodhar Rao. v. S. O Municipal Corporation, Hyderabad* (AIR 1987 AP 171) the court pointed out that because of Articles 48-A and 51-A(g), it is clear that the protection of the environment is not only the duty of every citizen but it is also the "obligation" of the State and all other State organs including courts. In *M.C. Mehta v. Union of India* ((2002) 4 SCC 356, popularly known as *the CNG case*) the court observed that Articles 39 (e), 47 and 48-A by themselves and collectively cast a duty on the State to secure the health of the people, improve public health and protect and improve the environment.

The cumulative effect of Articles 48-A and 51-A(g) appears to be that the 'State' as much as the 'Citizens' both are now under a constitutional obligation to conserve, preserve, protect and improve the environment.

Check Your Progress 1

Note: i) Use the space given below for your answers.

ii) Check your answers with those given at the end of the unit.

1. Write a short note on the division of legislative powers in environmental matters.

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2. Explain the “Right to live in a healthy environment”.

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3. Explain the “Right to livelihood and environment”.

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4. Explain the duties of the state towards environmental protection.

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2.14 LET US SUM UP

In this unit, the constitutional provisions and the related cases have been presented. It demonstrates the active role of the Supreme Court and the High Courts. In fact, during the last decade, the court has exhibited its legal scholarship in the development of environmental jurisprudence. *The Ratlam*

Municipality Case, Delhi Gas Leakage Case, the Ganga Pollution Cases, Dehradun Quarrying Case, and Calcutta Taj Hotel Case are some of the examples where the Court, not only by liberalizing the traditional rule of *locus standi* but has evolved the concept of public interest litigation. The role of the higher judiciary as is witnessed from a majority of the cases decided by it has been worth appreciating. The Court has successfully done its job, fulfilled its obligation and performed its duty. It is our submission, that judiciary is not the only effective form to resolve the environmental problem which can be effectively solved only through public awareness and political will rather than judicial will. Thus, the judiciary can and does play the role of catalyst and thereby speed up and gear up the process, but it has to be initiated by and from the public.

Further, the environmental issues are complex and need to dwell on points of scientific and technical relevance. The Courts in such situations find it difficult to form their own independent opinion and take recourse to the help of expert committees which is a long and time-consuming exercise. To overcome such difficulties, it is submitted that the suggestion made by the Supreme Court in the *Delhi Gas Leakage Case* for the setting up of environmental courts for speedy disposal of environmental cases, if implemented will be a right step in the right direction. Accordingly, there is an urgent need that citizens, as well as the State, must sit up and take notice of environmental degradation and take appropriate steps to improve it.

2.15 KEY WORDS

Environmental Law System: The environmental law system is an organized way of using all of the laws in our legal system to minimize, prevent, punish, or remedy the consequences of actions that damage or threaten the environment, public health, and safety.

2.16 SUGGESTED FURTHER READING/REFERENCES

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2.17 ANSWERS TO CHECK YOUR PROGRESS

Check Your Progress 1

1. Please refer to section 2.4
2. Please refer to section 2.6
3. Please refer to section 2.7
4. Please refer to section 2.13



UNIT 3 ENVIRONMENTAL POLICY DELIBERATIONS

Structure

- 3.1 Introduction
- 3.2 Objectives
- 3.3 Pitamber Pant Committee
- 3.4 National Committee on Environmental Planning and Co-ordination (1972)
- 3.5 Tiwari Committee
- 3.6 National Conservation Strategy (1983-84)
- 3.7 Conservation and Monitoring Bodies
- 3.8 Let Us Sum Up
- 3.9 Key Words
- 3.10 Suggested Further Reading/References
- 3.11 Answers to Check Your Progress

3.1 INTRODUCTION

The term 'Environment' has a broader connotation. In the classical sense, it is referred to as the 'surroundings' i.e., all which surrounds human beings the atmosphere, soil, and wildlife among others. In this regard, section 2(a) of the Environment (Protection) Act, 1986 provides a comprehensive definition of 'environment' to include "water, air and land and the interrelationship which exists among and between water, air and land, and human beings, other living creatures, plants, micro-organism and property". Thus, it encompasses not just the human system but also includes all sorts of life and their interrelationship with the water, air and land. Balancing this interrelationship holds key to the sustainability of life and the ecosystem. Any imbalances generated threaten the life of flora and fauna and in particular human life. Under such circumstances, the policy intervention, participation of the civil society organizations, and institutional responses both at the national and international levels appeared crucial in placing concerted efforts. As the environment shares no limited jurisdiction, hence repercussions are widespread. For instance, the rise in temperatures due to carbon increase triggers the temperature which further impacts the sea surface temperature which in turn impacts the monsoon rainfall. El Nino is the best example. Everything is interconnected, an outcome of the interrelationship that exists between the land, air, water, humans, organisms and property. The intervention of law for instance the Environment (Protection) Act 1986 plays a key role to overcome the breaches and maintain a standard interrelationship. As there are varied environmental issues, the grip of law

has its limitations. Also, to get hold of emerging environmental challenges, deliberations on environmental issues between all nation states are inevitable.

Since 1972, enormous deliberations are taking place both at the international and national levels. Much of the credit goes to the international forums for initiating these deliberations. But the major key to implementing the outcomes of the deliberation rests with the respective nations. These deliberations in recent times focused on climate change. Climate change has received global attention as it is an imminent threat to the ecosystem. They reflect on the drastic changes witnessed in recent times due to climate change. The rise in temperatures, a direct impact of the carbon increase in the environment and one of the key factors of climate change, have signalled the short-term and long-term repercussions. For instance, the Intergovernmental Panel on Climate Change, established by the United Nations Environment Programme (UNEP) in its report has suggested that the global temperature will increase by 1.5 degrees Celsius due to an increase in the carbon dioxide in the atmosphere.

There is a background and prelude to the contemporary climate change deliberations which dates back to 1972, a Stockholm conference. This 1972 conference laid down the foundation of the environmental policy deliberations. It sought reports from all the member countries on the status of the environment in their respective country. This prompted member states including India to provide an environment status report on the environmental policy and regulations. Nevertheless, India too unequivocally expressed its intent to align development with environmental protection. This is evident from the approach of the Indian government to the prelude of the 1972 Stockholm conference. Since then, the development and environment have been on the Indian agenda. But to what extent that has been fulfilled is a question of analysis and deep reflection. But the environmental deliberations placed development and environment from 1972 onwards. This unit provides insights into the Indian approach to environmental deliberation. It reflects on the various committees constituted by the Government of India, their outcomes and recommendations for the protection of the environment.

3.2 OBJECTIVES

After studying this unit, you should be able to:

- describe the constitution of committees in India on environment protection;
- discuss the trajectory of the policy deliberations in India;
- describe the key agenda of the policy deliberations; and
- identify the major reforms initiated by the various committees.

3.3 PITAMBAR PANT COMMITTEE

The Pitamber Pant Committee was constituted after the 24th United Nations General Assembly decided to hold the first world conference on the human environment in 1972. The General Assembly was deeply concerned with the "importance and urgency of the human environment". It identified the purpose of the world conference was "to serve as a practical means to encourage, and to provide guidelines for, action by Governments and international organizations designed to protect and improve the human environment and to remedy and prevent its impairment, through international co-operation, bearing in mind the particular importance of enabling developing countries to forestall the occurrence of such problems". As a result, the UN General Assembly convened all its member states to submit a status report on the nature, and scope of the work done in the areas related to the human environment.

India as a member of the UN was bound to submit the report. In February 1972, to pursue the task, the Government of India constituted a committee under the chairmanship of Pitambar Pant. Mr Pant was well-known for his immense contribution to the Planning Commission. His role in developing the metric system and establishing Central Statistical Institute which was later renamed as Central Statistical Organization and Perspective Planning Division (PPD) is highly appreciated. After he retired from Planning Division in 1970, the Government of India found him the most suitable person to prepare the background paper for India's participation in the Stockholm conference in 1972. This assignment turned out to be last, as he passed away in Feb 1973, but he left a significant mark on his noted efforts. This is well documented by his fellow office bearers of that time who paid tribute to his contribution in the following words, they remarked—

“But it was characteristic of the man that he brought great zeal and enthusiasm to his new assignment as chairman of the newly-created National Committee on Environment. Despite failing health, he brought together, in a remarkably short time, a team of young professionals and put the nascent organisation in high gear. This group was able to produce quickly a set of background papers for India's participation in the Stockholm Conference on Human Environment in 1972. Illness prevented him from attending the Conference. He was quick to place the environmental problem in India in its correct perspective. Controlling pollution, important as it was in some areas, was not the critical problem. The problem was to improve the living environment of the masses by giving them proper sanitation, protected water supply and better housing all of which was an integral part of economic development.”

In February 1972 he became the chairman of the ‘National Committee on Environmental Planning and Coordination (NCEPC)’, which was previously known as the National Committee on Environment (NCE). Though Pitambar Committee merely set the background stage for India's approach to the

Stockholm conference, it was the most challenging task as the beginning sets the tone for the future. The committee holistically asserted the participation of every section of the society, but the access and distribution of the basic amenities of life to all individuals were observed as crucial for the development and the protection of the environment and the same was asserted at the Stockholm conference in 1972. The major object of the NCEPC was to plan and coordinate the programs and policies relating to the environment and also to advise the ministries. The NCEPC later in 1985 was converted into the Ministry of Environment and Forest.

3.4 NATIONAL COMMITTEE ON ENVIRONMENTAL PLANNING AND CO-ORDINATION (1972)

“Human Environment” received global attention at the Stockholm Conference in 1972. India was determined to integrate development with the environment and the tone was set with the constitution of NCEPC, a high-level advisory body of the Government of India in 1972. It included a full-time chairman and other members who were experts, government officials, members of voluntary organizations, and representatives of the citizenry groups. It further included sub-committees in the areas of “Human Settlements”, environmental education, nature and resource conservation, Industry and Environment, and Rural Environment.

The major functions of the NCEPC were as follows: firstly, to promote research in environmental areas; secondly, to review, formulate and promote policies and programs relating to environmental projects, legislations on the environment, and administrative procedures in improving the environmental quality. Appraisal of the projects in selected sectors such as wetlands and aquatic weeds were initiated by the NCEPC. It also constituted the Environment Boards in various States and Union Territories.

During its formidable years, the NCEPC received technical assistance from the Department of Science and Technology. The creation of NCEPC led to the beginning of rationale and scientific basis for the environmental issues. NCEPC brought development and environment as mutual entities, the Fifth five-year plan (1974-1979) further stitched these collaborations. It maintained that NCEPC will assess the environmental issues in sanctioning the developmental projects. However, the Sixth five-year plan (1980-85) further strengthened the role of NCEPC as it had a special section on "environment and development" which focused on environmental management through governmental instrumentalities in the areas such as human settlement, wildlife, forestry, agriculture, air, water, marine environment and renewable energy resources.

NCEPC performed the following tasks: 1. Coordinating environmental and economic policies, and reviewing development activities from an environmental perspective. 2. Reviewing government policies and programs

which significantly affect environmental quality. 3. Recommending legislative and regulatory changes. 4. Promoting environmental education in schools and increasing public awareness of environmental problems. 5. Working with the United Nations and other international agencies on global environmental issues.

Later in 1981, the NCEPC became part of the Department of Environment and was titled 'National Committee on Environmental Planning (NCEP)'. The NCEPC later in 1985 was converted into the Ministry of Environment and Forest.

3.5 TIWARI COMMITTEE (1980)

In 1980, the Government of India constituted a committee under the chairmanship of N D Tiwari. The task of this committee had impacted by the Stockholm Conference of 1972 which set new standards for the member countries. As a result, the Central Government assigned Tiwari Committee with the task to review and recommend legislative measures and administrative machinery for environmental protection. On September 15, 1981, the Committee submitted its report.

The committee assessed the legislative and administrative standing in land use management, environmental degradation, environmental impact assessment, environmental literacy and human settlement. One of the significant contributions of the committee was the review of environmental laws. The committee reviewed both the central and state laws relating to environmental protection and observed that both centre and state laws were not adequately framed to overcome environmental degradation. Also, the committee observed that the laws presented inherent inconsistencies lacked policy objectives and procedural anomalies which installed the efficient application of the laws. The committee suggested the constitution of central and state-level environment departments. The recommendations of the committee were as follows:

Firstly, to review and reform the central and state laws, for instance, the Insecticides Act 1968, The Water (Prevention and Control of Pollution) Act 1974, and the Indian Forest Act 1927. All three laws possessed inherent inconsistencies.

Secondly, the laws did not address the emerging environmental issues. Specialized laws presented a narrow approach to the problems of the environment. The committee demanded a broader approach to frame the environmental code encompassing legal solutions to all forms of environmental degradation.

Thirdly, the committee recommended that 'environment protection' should be inserted in the concurrent list of the Seventh Schedule of the Constitution of India. The concurrent list allows both the Parliament and State legislature to make laws on the subjects. Moreover, Entry 17A and 17B were inserted in

the Concurrent List of the Seventh Schedule of the Constitution of India by the Constitution (Forty-second Amendment) Act, 1976. Entry 17A and 17B related to Forests and the Protection of Wild Animals and Birds respectively.

Fourthly, the Committee recommended the constitution of specialized environment courts at all district headquarters across India. The major premise behind this recommendation was to seek accountability from the specialized and effective treatment from the courts against all forms of environmental degradation. Though the idea then was very advanced but non-feasible due to administrative constraints but certainly now we could see the effective role played by the National Green Tribunal. The committee also recommended the establishment of the Central Land Commission.

Fifthly, the committee also recommended the government incentivize industrial efforts to reduce environmental pollution. It suggested the government offer concession in the taxes, to promote eco-friendly products and, manufacture and use clean technology.

As a result of this committee's recommendations, the Government of India established the Department of the Environment in 1980. Later in 1985, the Department of Environment was subsumed into the Ministry of Environment and Forests.

3.6 NATIONAL CONSERVATION STRATEGY (1983-84)

The Department of Environment 1983-84 formulated the National Conservation Strategy for the conservation of natural resources. After the recommendations of the Indian Board of Wildlife, the Government of India adopted the strategy in October 1983. As a part of this strategy, a task force was constituted to "elicit public support for wildlife conservation". Additionally, the strategy adopted the "Biosphere Action Plan" or "National Wildlife Action Plan". Major inputs were drawn from the World Conservation Strategy (1980), the Bali Action plan of 1982 and the United Nations World Charter for Nature (1983). While commenting on the need for a conservation strategy in 1992, the Government of India report "National Conservation Strategy and Policy Statement on Environment and Development" stated the reasons for the strategy as "... Nevertheless, over the years, there has been progressive pressure on the environment and the natural resources, the alarming consequences of which are becoming evident in increasing proportions. These consequences detract from the gains of development and worsen the standard of living of the poor who are directly dependent on natural resources. It is in this context that we need to give a new thrust towards conservation and sustainable development." The report further identified the rationale behind having a national strategy on conservation as "... The National Conservation Strategy and the Policy Statement on Environment and Development are in response to the need for laying down the guidelines that will help to weave environmental

considerations into the fabric of our national life and our development process. It is an expression of our commitment to reorienting policies and action in unison with the environmental perspective." Apart from the external factors, two internal factors were pointed out by the report viz., the gains of development effectively realized by all sections of the society and secondly inculcation of the environmental values in nation building.

The World Conservation Strategy was launched in 1980 by the International Union for Conservation of Nature and Natural Resources (IUCN), an organization situated in Gland, Switzerland. It felt the need for—conservation, maintenance and management systems for the economic and social welfare of prospective generations. It had three objectives namely, to protect processes and systems that supported life and ecology, to preserve genetic diversity, and to maintain sustainable use of the species and ecosystem. To secure the above objectives, World Conservation Strategy called for an immediate declaration of national and sub-national environmental strategies to preserve the ecology. This included the review of legislation concerning living resources. As a result, IUCN called for a national strategy prepared by every country on the framework of the World Conservation Strategy.

As a part of this action plan and also 1982 marked the completion of ten years after the Stockholm Conference of 1972, the States were informed to develop conservation strategies, organize interaction between the private and governmental organizations in identifying and realizing the conservation strategies and also periodic interactions were seen as a crucial element of the conservation strategy. In the light of the World Conservation Strategy, India in 1984 modelled its conservation strategy and it included a review of forest and wildlife laws.

In the 1992 report, the committee identified the tasks that were undertaken by the government to maintain the conservation. The actions taken by the Government of India for the conservation of the environment are as follows (<https://moef.gov.in/wp-content/uploads/2017/07/introduction-csps.pdf>):

Legal

- The Wildlife (Protection) Act, 1972, amended in 1983, 1986 and 1991.
- The Water (Prevention and Control of Pollution) Act, 1974, amended in 1988.
- The Water(Prevention and Control of Pollution) Cess, Act, 1977, amended in 1991.
- The Forest (Conservation) Act, 1980, was amended in 1988.
- The Air (Prevention and Control of Pollution) Act, 1981, amended in 1988.
- The Environment (Protection) Act, 1986.
- The Motor Vehicle Act, 1938, was amended in 1988.

- The Public Liability Insurance Act, 1991.
- A Notification on Coastal Regulation Zone, 1991.

Institutions

- Department of Environment in 1980 and the integrated Ministry of Environment & Forests in 1985, Department of Science and Technology, Department of Agriculture and Cooperation, Department of Biotechnology, Department of Ocean Development, Department of Space, Department of Non-Conventional Energy Sources, Energy Management Centre, Council of Scientific and Industrial Research etc. at the Centre, Departments of Environment at the State and Union Territory level.
- Central Pollution Control Board and State Pollution Control Boards.
- Central Forestry Board.
- Indian Council of Forestry Research and Education with specialized institutions for research in forestry, moist and deciduous forests, wood technology, genetics and tree breeding and deciduous forests.
- Forest Survey of India (FSI) and the Wildlife Institute of India in addition to the existing organizations like Botanical Survey of India (BSI) and Zoological Survey of India (ZSI).
- National Land-use and Wasteland Development Council.
- National Wastelands Development Board.
- Indian Board of Wildlife.
- National Museum of Natural History, Centre for Environmental Education, Institute for Himalayan Environment and Development and Centres of Excellence in specialized subject areas are among the various institutions set up.

Prevention and Control of Pollution

- Water and air quality monitoring stations in selected areas.
- Use-based zoning and classification of major rivers.
- Notification and enforcement of standards for polluting industries through the Central and State Pollution Control Boards.
- Rules for manufacture, storage, transportation and disposal of hazardous substances.
- On-site and off-site emergency plans for preparedness against chemical accidents.
- Fiscal incentives for the installation of pollution control devices.
- Ganga Action Plan to prevent pollution of the river and restore its water quality which could be expanded to cover other major river systems

subject to the availability of resources.

- Identification of critically polluted areas and highly polluting industries.

Conservation of Forests and Wildlife

- Adoption of a new Forest Policy (1988) with the principal aim of ensuring ecological balance through conservation of biological diversity, soil and water management, increase of tree cover, meeting the requirements of the rural and tribal population, increase in the productivity, efficient utilization of forest produce, the substitution of wood and people's involvement for achieving these objectives.
- Under the Forest (Conservation) Act, 1980 stringent provisions for preventing diversion of forest land for any other purpose.
- Setting up of the National Wastelands Board to guide and oversee the wastelands development programme by adopting a mission approach for enlisting people's participation, harnessing the inputs of science and technology and achieving interdisciplinary coordination in programme planning and implementation.
- Formulation of a National Wildlife Action Plan.
- An exercise for preparation of a National Forestry Action Programme.
- Establishment of National Parks and Sanctuaries covering about 4% of the country's area.
- Eco-development plans for sanctuaries and National Parks.
- Identification of biogeographical zones in the country for establishing a network of protected areas including seven Biosphere Reserves set up so far.
- Management Plans for identified wetlands, mangrove areas and coral reefs.
- Formulation of a National River Action Plan.

Land and Soil

- Surveys by the All-India Soil, and Land-Use Survey Organization.
- Treatment of catchment in selected river valley projects and integrated watershed management projects in the catchment of flood-prone rivers.
- Assistance to States to control shifting cultivation.
- Assistance for reclamation and development of ravine areas.
- Drought-prone areas programme.
- Desert development programme.

Environmental Impact Assessment

- Establishment of procedures for environmental impact assessment and clearance with regard to selected types of projects requiring approval of

the Government of India.

- Prior clearance of projects requiring diversion of forests for the non-forest purpose under the Forest (Conservation) Act 1980
- Formulation of Environmental guidelines for projects in various sectors.
- Other Activities
- Eco-Task Forces of ex-servicemen for ecological restoration through afforestation and soil conservation.
- National Environmental Awareness Campaigns for creating environmental awareness through non-governmental organizations.
- Surveys and research studies.
- Training programmes, workshops and seminars for building up professional competence and for the creation of awareness.

3.7 CONSERVATION AND MONITORING BODIES

Besides framing the National Conservation Strategy in the 1980s, the Government of India has established conservation and monitoring bodies for the protection of the environment.

Table 1: Conservation and Monitoring Bodies of the Government of India

S.No.	Conservation and Monitoring Bodies	
	Name of the Agency/Body	Origin, Role and Functions
1	Ministry of Environment, Forest and Climate Change	It is a nodal administrative agency of the Government of India. It oversees all the planning, promotion, coordination and execution of policies and programmes relating to the environment and forests. The Ministry deals with international organizations such as the United Nations Environment Programme (UNEP), South Asian Association for Regional Co-operation (SAARC) on environment-related matters.
2	Central Pollution Control Board and State Pollution Control	Central Pollution Control Board is a statutory organization established in 1974. At the state levels, the appropriate

	Boards	governments have constituted the State Pollution Control Boards under the Water (Prevention and Control of Pollution) Act, 1974. It is also entrusted with air quality maintenance powers under the Air (Prevention and Control of Pollution) Act, 1981. The boards have to prevent water pollution and maintain the quality of air. In undertaking these functions, the boards can collect, assess and publish data on the status of water and air pollution in India. It also advises the appropriate governments to take measures to improve the quality of air and prevent water pollution. Both Central Pollution Control Boards (CPCB) and State Pollution Control Boards (SPCB) coordinate the activities. However, the state boards are bound to follow policies determined by the Central Boards.
3	National Board for Wildlife	National Board for Wildlife (NBW) is established under the Wildlife (Protection) Act, 1972. It was constituted in 2003. It is a nodal agency relating to wildlife matters. It promotes the conservation of wildlife and advises the central government on the framing of wildlife policies. The Board gives clearances for the projects which are around the national parks, and wildlife sanctuaries. Section 5C of the Wildlife (Protection) Act 1972 states the functions of the National Board as - (a) framing policies and advising the Central Government and the State Governments on the ways and means of promoting wildlife conservation and effectively controlling poaching and illegal trade of wildlife and its products; (b) making recommendations on the setting up of and management of national parks, sanctuaries and other protected areas and matters relating to the restriction of activities in those areas; (c) carrying out or causing to be carried but impact assessment of various projects and activities on wildlife or its habitat; (d) reviewing from time to time, the progress

		in the field of wildlife conservation in the country and suggesting measures for improvement thereto; and (e) preparing and publishing a status report at least once in two years on wildlife in the country.
4	National Biodiversity Authority and the State Biodiversity Boards	The National Biodiversity Authority (NBA) and the State Biodiversity Boards are established under the Biodiversity Act 2002 to regulate and conserve the sustainable use of the resources. The NBA advises the Central Government on the sustainable utilization and conservation of biodiversity resources and equitable sharing of the outcome of the biodiversity resources. The State Biodiversity Boards advise the state governments to follow the guidelines issued by the Central Government on the conservation of biodiversity. At the local level, the Biodiversity Management Committees are constituted who are responsible for the preservation and conservation of biodiversity.
5	Central Zoo Authority	The Central Zoo Authority is constituted under the Wildlife (Protection) Act 1972 through an amendment in 1992. Section 38 (c) lays down the functions of the Authority as - (a) specify the minimum standards for housing, upkeep and veterinary care of the animals kept in a zoo; (b) evaluate and assess the functioning of zoos with respect to the standards or the norms as may be prescribed; (c) recognise or derecognise zoos; (d) identify endangered species of wild animals for purposes of captive breeding and assigning responsibility in this regard to a zoo; (e) co-ordinate the acquisition, exchange and loaning of animals for breeding purposes; (f) ensure maintenance of studbooks of endangered species of wild animals bred in captivity; (g) identify priorities and themes with regard to display of captive animals in a zoo; (h) co-ordinate training of zoo personnel in India and outside India; (i) co-

		<p>ordinate research in captive breeding and educational programmes for the purposes of zoos; (j) provide technical and other assistance to zoos for their proper management and development on scientific lines; (k) perform such other functions as may be necessary to carry out the purposes of this Act with regard to zoos.</p>
6	National Tribunal Green	<p>To address the multi-disciplinary issues relating to the environment, the Parliament in 2010 established the National Green Tribunal through the National Green Tribunal Act, 2010. The Preamble of the 2010 Act identifies three important factors responsible for the enactment of this law. Firstly, the Act expresses the commitment of India toward the Stockholm Conference 1972 objectives i.e., to take appropriate steps for the protection and improvement of the human environment. Secondly, to ensure liability in the environmental damage as maintained under the United Nations Conference on Environment and Development, 1992. Thirdly, to fulfil the judicial pronouncement of the right to life under article 21 includes the right to a healthy environment. All these three tasks were to be fulfilled by establishing the National Green Tribunal.</p> <p>The object of the tribunal as laid down in its preamble is "to provide for the establishment of a National Green Tribunal for the effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to the environment and giving relief and compensation for damages to persons and property and matters connected therewith or incidental thereto."</p> <p>The tribunal is a quasi-judicial body that decides environment-related matters.</p>

7	Animal Welfare Board of India	<p>Section 4 of the Prevention of Cruelty to Animals Act, 1960 established the Animal Welfare Board in India in 1962. Section 9 of the Act details the functions of the Board as - (a) to keep the law in force in India for the prevention of cruelty to animals under constant study and advise the Government on the amendments to be undertaken in any such law from time to time; (b) to advise the Central Government on the making of rules under this Act with a view to preventing unnecessary pain or suffering to animals generally, and more particularly when they are being transported from one place to another or when they are used as performing animals or when they are kept in captivity or confinement; (c) to advise the Government or any local authority or other person on improvements in the design of vehicles so as to lessen the burden on draught animals; (d) to take all such steps as the Board may think fit for amelioration of animals by encouraging, or providing for, the construction of sheds, water-troughs and the like and by providing for veterinary assistance to animals; (e) to advise the Government or any local authority or other person in the design of slaughter-houses or in the maintenance of slaughter-houses or in connection with slaughter of animals so that unnecessary pain or suffering, whether physical or mental, is eliminated in the pre-slaughter stages as far as possible, and animals are killed, wherever necessary, in as humane a manner as possible; (f) to take all such steps as the Board may think fit to ensure that unwanted animals are destroyed by local authorities, whenever it is necessary to do so, either instantaneously or after being rendered insensible to pain or suffering; (g) to encourage, by the grant of financial assistance or otherwise the formation or establishment of pinjrapoles, rescue homes, animal shelters, sanctuaries and the like where animals and birds may</p>
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		<p>find a shelter when they have become old and useless or when they need protection; (h) to co-operate with, and co-ordinate the work of, associations or bodies established for the purpose of preventing unnecessary pain or suffering to animals or for the protection of animals and birds; (i) to give financial and other assistance to animal welfare organizations functioning in any local area or to encourage the formation of animal welfare organizations in any local area which shall work under the general supervision and guidance of the Board; (j) to advise the Government on matters relating to the medical care and attention which may be provided in animal hospitals and to give financial and other assistance to animal hospitals whenever the Board thinks it necessary to do so; (k) to impart education in relation to the humane treatment of animals and to encourage the formation of public opinion against the infliction of unnecessary pain or suffering to animals and for the promotion of animal welfare by means of lectures, books, posters, cinematographic exhibitions and the like; (l) to advise the Government on any matter connected with animal welfare or the prevention of infliction of unnecessary pain or suffering on animals.</p>
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Check Your Progress 1

Note: i) Use the space given below for your answers.

ii) Check your answers with those given at the end of the unit.

1. Write a short note on the Pitamber Pant committee.

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2. Write a short note on the Tiwari committee.

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3. Write a short note on National Conservation Strategy (1983-84).

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3.8 LET US SUM UP

The key points of this unit are listed below:

- The policy deliberations on the environment began after the Stockholm Conference in 1972.
- Initially, the deliberation focused on the conservation of the environment by controlling different kinds of pollution.
- A collaborative approach was followed to align development with the protection of the environment.
- International Union for Conservation of Nature and Natural Resources's (IUCN) World Conservation Strategy provided guidelines for the nations to draw up their local strategies.
- India's policy conservation began with the establishment of the Pitambar Committee (1972).
- Many laws have been passed for the conservation of the environment.
- Research and administrative agencies are constituted to understand the environmental issues at their core.

3.9 KEY WORDS

Environment: Environment includes water, air and land and the inter-relationship which exists among and between water, air and land, and human beings, other living creatures, plants, micro-organisms and property.

3.10 SUGGESTED FURTHER READING/REFERENCES

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Web Links

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3.11 ANSWERS TO CHECK YOUR PROGRESS

Check Your Progress 1

1. Please refer to section 3.3
2. Please refer to section 3.5
3. Please refer to section 3.6

UNIT 4 ENVIRONMENTAL PROTECTION ACTS

Structure

- 4.1 Introduction
- 4.2 Objectives
- 4.3 The Environment (Protection) Act, 1986
 - 4.3.1 Salient Features
- 4.4 Policy Statement for Abatement of Pollution (1992)
 - 4.4.1 Preamble
 - 4.4.2 Environmental Problem
 - 4.4.3 Future Directions and Objectives
 - 4.4.4 Critically Polluted Areas
 - 4.4.5 Assistance for Adoption of Clean Technologies by Small-scale Industries
 - 4.4.6 Standards
 - 4.4.7 Fiscal Measures
 - 4.4.8 Integration
 - 4.4.9 Environmental Audit
 - 4.4.10 Environmental Statistics
 - 4.4.11 Public Partnership
- 4.5 National Conservation Strategy and Policy Statement on Environment and Development (1992)
 - 4.5.1 Preamble
 - 4.5.2 Environmental Problem: Nature and Dimensions
 - 4.5.3 Actions Taken
 - 4.5.4 Constraints and Agenda for Action
 - 4.5.5 Priorities and Strategies for Action
 - 4.5.6 Development Policies from Environmental Perspectives
 - 4.5.7 International Cooperation
 - 4.5.8 Support Policies and Systems
- 4.6 The National Green Tribunal Act, 2010
- 4.7 Mining Policies
 - 4.7.1 National Mineral Policy (NMP), 1993
 - 4.7.2 National Mineral Policy 2008
- 4.8 Let Us Sum Up
- 4.9 Key Words
- 4.10 Suggested Further Reading/References
- 4.11 Answers to Check Your Progress

4.1 INTRODUCTION

The environment has been divided into lithosphere, hydrosphere, atmosphere and biosphere. These four components are interconnected among themselves for sustaining the ecological system and living organism derives maximum benefits from the environment. Due to increasing population, industrialisation, globalisation and liberalisation put the environment under severe degradation, especially in developing and underdeveloped countries. The over-exploitation of environmental resources led to environmental degradation and pollution as well. Hence, there is an important need to have environmental legislation to regulate natural resource use as well as to reduce the pollution load and sustain the environment. This unit will give you an overview of the Environment (Protection) Act, 1986. We would be discussing the policy statement for abatement of pollution (1992) and the national conservation strategy and policy statement on environment and development. We would also discuss the features of the National Green Tribunal Act, 2010.

4.2 OBJECTIVES

After studying this unit, you should be able to:

- explain the salient features of the Environment (Protection) Act, 1986;
- explain the policy statement for abatement of pollution (1992);
- explain the national conservation strategy and policy statement on environment and development; and
- explain the features of the National Green Tribunal Act, 2010.

4.3 THE ENVIRONMENT (PROTECTION) ACT, 1986

After the Bhopal gas tragedy, India enacted Environment (Protection) Act in 1986 to provide protection and improvement of the total environment.

- To implement the decision made at the United Nations Conference on the Human Environment held in Stockholm in June 1972 (Stockholm Conference), in which India had participated, to take appropriate steps for the improvement of the human environment.
- To enact a general law on the areas of environmental protection, which were not covered in the existing law of Water (Prevention and Control of Pollution) act, 1972 and Air (Prevention and Control of Pollution) act 1981.
- To coordinate activities of the various regulatory agencies under the existing law.
- To establish authorities charged with the mandate of preventing environmental pollution in all its forms and to tackle specific environmental problems that are peculiar to different parts of the

country.

- To provide deterrent punishment to those who endanger the human environment, safety and health.
- The Act is one of the most comprehensive legislations with a pretext for protection and improvement of the environment.

The roots of the enactment of the Environment (Protection) Act in 1986 lie in the Indian constitutional provisions. The act was enacted under Article 253 of the Indian Constitution, which provides for the enactment of legislation for giving effect to international agreements. Article 48A of the Constitution specifies that the State shall endeavour to protect and improve the environment and safeguard the forests and wildlife of the country. Article 51A further provides that every citizen shall protect the environment.

4.3.1 Salient Features

I. Powers of the Central Government:

1. The Central Government shall have the power to take all such measures as it deems necessary or expedient for protecting and improving the quality of the environment in coordination with the State Governments.
2. The Central government is also empowered
 - a. To plan and execute a nationwide programme for the prevention, control and abatement of environmental pollution in India.
 - b. Lay down standards for the quality of the environment in its various aspects.
 - c. Lay down standards for emission or discharge of environmental pollutants from various sources to air, water and soil.
 - d. The restriction of areas, in which any industries, industrial operations or processes or class of industries, operations or processes shall not be carried out subject to certain safeguards.
3. The Central Government can appoint officers under this Act for various purposes and entrust them with the corresponding powers and functions.
4. The central government as per the Act has the power to direct:
 - a. the closure, prohibition or regulation of any industry, operation or process.
 - b. the stoppage or regulation of the supply of electricity or water or any other service.

II. Restriction on Pollutant Discharge:

No individual or organisation shall discharge/emit or permit to discharge/emit any environmental pollutant above the prescribed standards.

III. Compliance with Procedural Safeguards:

No individual shall handle or cause to be handled any hazardous substance except in accordance with the procedure and after complying with the safeguards, as prescribed.

IV. Powers of Entry and Inspection:

Any person empowered by the Central Government shall have a right to enter (with the assistance deemed necessary) at any place:

- For the inspection of compliance of any orders, notifications and directions given under the Act.
- "for the purpose of examining and testing any equipment, industrial plant, record, register, document or any other material object or for conducting a search of any building in which he has reason to believe that an offence under this Act or the rules made thereunder has been or is being or is about to be committed and for seizing any such equipment, industrial plant, record, register, document or other material objects if he has reason to believe that it may furnish evidence of the commission of an offence punishable under this Act or the rules made thereunder or that such seizure is necessary to prevent or mitigate environmental pollution."

V. Establishment of Environmental Laboratories:

The central government and state government are entitled to

- Establish environmental laboratories.
- Recognise any laboratory or institute as an environmental laboratory to carry out the function of environmental laboratories as per the EPA 1986 guidelines.

VI. Appointment of Government Analyst:

A Government Analyst is appointed by the Central Government to analyse the samples of air, water, soil or other substance sent to a recognised environmental laboratory.

VII. Penalties for Offences:

Non-compliance or Contravention to any of the provisions of the Act is considered an offence. Any offences under the EPA are punishable with imprisonment of up to five years or a fine of up to one lakh rupees or both.

Offences by Companies: If an offence under this Act is committed by a company, every person directly in charge of the company, at the time of the commitment of the offence, is deemed to be guilty unless proven otherwise.

Offences by Government Departments: If an offence under this Act has been committed by any Department of Government, the Head of the Department (HoD) shall be deemed to be guilty of the offence unless proven otherwise.

- Any officer, other than HoD, if proven guilty, shall also be liable to be proceeded against and punished accordingly.

Cognizance of offences:

No Court shall take cognizance of any offence under this Act except on a complaint made by:

- The Central Government or any authority on behalf of the former.
- A person who has approached the Courts after a 60-day notice has been furnished to the Central Government or the authority on its behalf.

National Environment Appellate Authority (NEAA) and National Green Tribunal (NGT)

- It was established by the Central Government under the National Environment Appellate Authority Act, 1997.
- NEAA was established to hear appeals regarding the restriction of areas in which any industries, processes or operations shall be/shall not be carried out subject to certain safeguards under the Environment (Protection) Act, 1986.
- The NEAA along with National Environment Tribunal was not effective to deal with environmental cases for an institution, hence the National Green Tribunal (NGT) was established in 2010 under the National Green Tribunal Act 2010 for effective and expeditious disposal of cases relating to environmental protection
- Along with the Environment (Protection) Act, 1986, NGT also deals with civil cases under six other laws.

4.4 POLICY STATEMENT FOR ABETMENT OF POLLUTION (1992)

4.4.1 Preamble

The commitment of the Government to abatement of pollution for preventing deterioration of the environment is stated here. The policy elements seek to shift emphasis from defining objectives for each problem area towards actual implementation, but the focus is on the long term because pollution particularly affects the poor. The complexities are considerable given the number of industries, organizations and government bodies involved. To achieve the objectives maximum use will be made of a mix of instruments in the form of legislation and regulation, fiscal incentives, voluntary agreements, educational programmes and information campaigns. The emphasis will be on increased use of regulations and an increase in the development and application of financial incentives.

4.4.2 Environmental Problem

1. There is an increasing trend in environmental pollution. Water is polluted by four kinds of substances: traditional organic waste, waste generated from industrial processes, chemical agents for fertilisers and pesticides for crop protection and silt from degraded catchments. While it is estimated that three-fourths of the volume of the wastewater generated is from municipal sources, industrial waste, though small in volume, contributes over one-half of the total pollutant load, and the major portion of this is coming from large and medium industries. For class-I cities of the Country, less than five per cent of the total wastewater generated is collected and less than one-fourth of this is treated.
2. Ambient air quality trends in the major cities indicate that levels of suspended particulate matter are higher than the prescribed standards or limits, especially in the summer months. Levels of nitrogen dioxide are increasing in urban centres with growing vehicle emissions.
3. Environmental problems are becoming larger in scale. The chemical industry generates an increasing quantity of substances every year; adversely affecting essential aspects of the composition of the atmosphere, soil and water. In the industrial high-density areas, in addition to the effects on local health and impact on nature, we are confronted with damage to the social and economic functions of the environment.
4. With restrictions on releases to air and wastewater, hazardous chemical wastes are getting diverted to land for their disposal. Earlier concerns with the pollution that was visible and degradable are giving way to new types of pollution with very small quantities of synthetic chemicals that are not so visible and are injurious to health and damage the environment because of widespread use, persistence and toxicity. Reducing the hazards from toxic chemicals is now a primary public concern.
5. Human activities are also influencing the composition of the atmosphere. Despite uncertainties and insufficient knowledge, political and scientific decisions concerning environmental change will increasingly be necessary.
6. The state of the environment continues to deteriorate. The growth in scientific and technical knowledge has made it possible to use an ever-increasing quantum of natural resources. The increase in population is further enhancing the pressure on the environment. The depletion of forests has been accompanied by the increasing amount of pollution affecting the atmosphere, soil and water. Some of the damage is irreversible. In seeking a higher quality of life while developed countries need to focus on changing the composition of their processes and products, developing countries will need to obtain the benefits of

economic growth. The policy statement on Abatement of Pollution thus complements the Forest Policy Statement. The Government seeks to ensure that its policies in every sector are based on a set of principles that harmonise economic development and environmental imperatives.

4.4.3 Future Directions and Objectives

1. It is not enough for the Government to notify laws which are to be complied with. A positive attitude on the part of everyone in society is essential for the prevention of pollution and wide consultation has been held with those who will ultimately implement the policy.
2. A comprehensive approach is taken to integrate environmental and economic aspects in development planning; stress is laid on preventive aspects for pollution abatement and promotion of technological inputs to reduce industrial pollutants, and through reliance upon public cooperation in securing a clean environment to respond to the coming challenges.
3. The objective is to integrate environmental considerations into decision-making at all levels. To achieve this, steps have to be taken to:
 - prevent pollution at the source;
 - encourage, develop and apply the best available practicable technical solutions;
 - ensure that the polluter pays for the pollution and control arrangements;
 - focus protection on heavily polluted areas and river stretches; and
 - involve the public in decision-making.

4.4.4 Critically Polluted Areas

1. Mechanisms will be evolved to reduce the local concentration of pollutants in complex industrial sites. Strategies will be developed for areas with high pollution loads where the accumulative effect of the various types of pollutants would be taken into account including pollution of groundwater. Existing units in these areas will be targeted for effective action. New units in these areas will be required to comply with location-specific standards for stringent environmental quality objectives. These will include matching waste generators with waste buyers, to solve waste disposal.
2. Setting up of industrial estates, and clusters of small industrial units in rural areas will include pollution abatement measures as an essential component of the infrastructure. In the past, the absence of adequate provision of space for installing treatment facilities and arrangements for disposal of wastes has led to severe pollution of agricultural land and rivers.

3. There has been a steady increase in the amount of wastewater produced from urban communities and industries. In the coming years, due to rapid growth in population, urbanisation, industrial development and better water supply, the amount of wastewater may increase manifold. Generally, these waters are discharged into lagoons or dumped on low-lying areas without any pre-treatment, thereby creating sewage pools, contaminating ground waters, salinizing good quality lands around cities, acting as a source of foul smell and breeding grounds for mosquitoes and other pathogens. In many places, this wastewater is discharged into drains and rivers causing serious water pollution. However, awareness has now grown and more attention is being paid to developing systems to treat sewage waters. For a country like India, conventional treatment plants are costly. These are beyond the financial means of many small towns. Biological wastewater treatment, on land disposal using suitable vegetative cover and resource recovery technologies, cannot only be an attractive alternative but also economical, safe and socially acceptable.
4. Mining operations will not ordinarily be taken up in ecologically fragile areas. Every mining project shall be accompanied by a mining plan, including an environmental management plan and a time-bound reclamation programme for controlling the environmental damage and for restoration of mined areas.

4.4.5 Assistance for Adoption of Clean Technologies by Small-scale Industries

1. Small-scale industries are a special feature of our economy. The government is implementing a scheme for assisting in promoting combined facilities for the treatment of effluents and solid wastes generated in clusters of small-scale units. This scheme will be extended to provide necessary technical support as well.
2. While the large and medium industrial units will remain responsible for the control of their pollution, assistance will be provided to small-scale industrial units, particularly those located in rural areas, to aid the implementation of pollution control measures. This will be achieved by promoting the development and adoption of cleaner technologies, including environmentally friendly biotechnology.

4.4.6 Standards

1. The present standards are based on the concentration of pollutants in effluents and emissions. The norms will be revised to lay down mass-based standards, which will set specific limits to encourage the minimisation of waste, promote recycling and reuse of materials, as well as conservation of natural resources, particularly water. Since the standards will be source related, they will require for the most polluting industrial processes, particularly those using toxic substances,

application of the best available technological solutions, and also be an instrument for technological upgradation.

2. To act against potential problems in the future, new units will have to conform to stricter standards. They will need to select technologies that produce no or low quantities of waste and recycle or reuse waste products. Progressively, more strict vehicle emission standards will also be evolved to deal with environmental hazards caused by vehicular traffic.
3. Standards will not merely be a regulatory tool but will be a mechanism to promote technological upgradation to prevent pollution, conserve resources and regulate waste. For this purpose, codes of practice and guidelines will be evolved for specific processes.
4. The environmental effects, from production to disposal of products that are hazardous and toxic will be taken into account in the regulations. Chemicals will be reviewed according to the level of risk, and where safer alternatives have become available, restrictions will be imposed. Regulations for liability and compensation for damages will supplement standards, to promote greater care and caution, particularly in the management of hazardous waste and remedial action in case of contamination of soil and groundwater.

4.4.7 Fiscal Measures

1. While regulatory measures remain essential for the effectiveness of the policy, new approaches for considering market choices will be introduced. The aim is to give industries and consumers clear signals about the cost of using environmental and natural resources. The expectation is that market-oriented price mechanisms will influence behaviour to avoid excessive use of natural resources.
2. There are at present several fiscal incentives for the installation of pollution control equipment and for shifting polluting industries from congested areas. The items for which excise and customs rebates are allowed will be reviewed. This will stimulate the advancement of abatement technologies and create increased demands for the products.
3. Economic instruments will be investigated to encourage the shift from curative to preventive measures, internalise the costs of pollution and conserve resources, particularly water. A direct economic signal is offered by an effluent charge based on the nature and volume of releases to the environment. The level will be based on the cost of treatment and the flow discharged, to provide an incentive to set up treatment plants. The scope of the charges will also be extended to emissions and solid waste. Charges provide a continuing incentive toward optimal releases.
4. These instruments will also have a distributive effect as the revenues will be used for enforcement, collective treatment facilities, research and

promoting new investment.

5. The precise choice of economic instruments adopted will be determined by the ease with which releases can be measured, as well as prospective changes in technology and market structures. To deal with the range of pollution problems a mix of regulatory and economic measures will be adopted.

4.4.8 Integration

1. Critical policy areas for control of pollution come under different departments and levels of Government. Sectoral Ministries, State Governments, local bodies and agencies responsible for planning and implementation of development projects will be required to integrate environmental concerns more effectively in all policy areas. Local authorities play a key role in the abatement of pollution and environmental concerns need to be built into the way they operate. Steps will have to be taken to strengthen governmental and institutional structures dealing with environmental management, especially within the ministries dealing with the sectors of energy, industry, water resources, transport and agriculture and who would develop specific programmes regarding pollution prevention.
2. Policymaking, legislation and law enforcement influence each other. The increase in the number of regulations increases difficulties in enforcement. Legislation regulating particular activities will be amended to incorporate and eliminate clashes with environmental criteria. Traditional instruments for monitoring compliance and investigation of offences are becoming over-burdened. An integrated overview and organisational structure for decentralized environmental impact assessments and environmental law enforcement based on cooperation with local authorities will be sought.
3. While pollution from specific sources including towns and industries has been addressed, non-point pollution from the run-off of agricultural inputs such as pesticides, insecticides, fertilisers, etc. has not been dealt with. Non-point pollution is polluting not only our water bodies but even sub-soil water resources and would affect the health of human beings. A long-term policy for pesticide use, including the introduction of environmentally acceptable pesticides, particularly biopesticides and non-persistent biodegradable ones, and integrated pest management together with the phasing out of the proven harmful toxic and persistent ones, would be formulated in collaboration with the concerned Ministries and infrastructure involved for its effective implementation. A similar policy for fertiliser use will also need to be formulated.
4. Plant and vegetation in general play a vital role in controlling pollution by regulating the climate and atmospheric equilibrium, protecting the

soil and maintaining the hydrological regime. Hence, existing forests and natural vegetation should be fully protected. The forest and vegetal cover should be restored and increased wherever possible, especially on hill slopes, in catchment areas of rivers, lakes and reservoirs, ocean shores, semi-arid and arid tracts, around urban centres and industrial establishments. It is necessary to encourage the planting of trees alongside roads, rail lines, canals and on other unutilised lands under State/ corporate, institutional or private ownership. Green belts should be raised in urban and industrial areas. Such a programme will also check erosion, and desertification as well as improve the micro-climate.

5. The Annual Administration Reports of the Ministries will include a chapter on the action taken to follow up on the policy statement, and other environmental initiatives they have taken or are proposing.

4.4.9 Environmental Audit

1. Industrial concerns and local bodies should feel that they have a responsibility for the abatement of pollution. The procedure of an environmental statement will be introduced in local bodies, statutory authorities and public limited companies to evaluate the effect of their policies, operations and activities on the environment, particularly compliance with standards and the generation and recycling of waste. An annual statement will help in identifying and focusing attention on areas of concern, practices that need to be changed and plans to deal with adverse effects. This will be extended to an environmental audit. The measures will provide better information to the public.

4.4.10 Environmental Statistics

1. Authoritative statistical data on the environment is vital for developmental decision-making. Resource accounting will be used to give an idea of how economic policies are affecting the environment. Current economic accounts are concerned mainly with the volume of economic activity; they ignore expenditures to protect the environment and encourage inefficient use of resources.

The collection and integration of environmental, economic and health data will be done to determine the status and to develop a concise set of environmental indicators for monitoring the effects of pollution. Information and access to the public are essential so that everyone knows what is happening to the environment.

4.4.11 Public Partnership

1. The public must be made aware to be able to make informed choices. A high governmental priority will be to educate citizens about environmental risks, the economic and health dangers of resource degradation and the real cost of natural resources. Information about the

environment will be published periodically. Affected citizens and non-governmental organisations play a role in environmental monitoring and therefore allowing them to supplement the regulatory system and recognise their expertise where such exists and their commitments and vigilance, will also be cost-effective. Access to information to enable public monitoring of environmental concerns will be provided.

2. Public interest litigation has successfully demonstrated that responsible non-governmental organisations and public-spirited individuals can bring about significant pressure on polluting units for adopting abatement measures. This commitment and expertise will be encouraged and their practical work supported.
3. Householders, as consumers, make a large number of relatively small individual contributions, whose cumulative effect is considerable. A system of certification of goods that are "environmentally friendly" will be set up to make available information to encourage environmental consciousness amongst consumers. This advice will also encourage manufacturers to produce goods that are environmentally more friendly as well as encourage recycling and adequate waste management. Consumer awareness would also be encouraged by the involvement of consumer organisations in cooperative testing, and dissemination of information relating to the environmental friendliness of these products.
4. As the present system of jurisprudence does not provide compensation to individuals for environmental damage, including effects on health and environmental damage caused by pollution, it is proposed to set up special legal institutions to redress this deficiency and also make adequate arrangements for interim relief.
5. Greater emphasis will be placed on promoting awareness, undertaking and competence in schools, colleges, and training institutions. Professional and non-governmental bodies will be encouraged to be more active in environmental training and building awareness.
6. Society has accepted many practices which cause pollution. Reckless use of loudspeakers, dumping in water bodies, and scattering of wastes are common. Noise nuisance requires specific devices as well as greater consideration for neighbours and there is growing concern that litter has increased in recent years. Social action in these matters by voluntary organisations and individuals will be promoted through knowledge, education, training camps and public information campaigns.

This statement is based on considerations of effectiveness, efficiency and availability of financial resources. The responsibility for abatement of pollution is not a duty of the Government alone, it is an obligation of all. The approach mentioned above should indicate how everyone can help in achieving a safe and environmentally appropriate environment in our country.

4.5 NATIONAL CONSERVATION STRATEGY AND POLICY STATEMENT ON ENVIRONMENT AND DEVELOPMENT (1992)

4.5.1 Preamble

The National Conservation Strategy and the Policy Statement on Environment and Development are in response to the need for laying down the guidelines that will help to weave environmental considerations into the fabric of our national life and our development process. It is an expression of our commitment to reorienting policies and actions in unison with the environmental perspective.

4.5.2 Environmental Problem: Nature and Dimensions

Environmental problems in India can be classified into two broad categories:

- a. those arising as negative effects of the very process of development; and
- b. those arising from conditions of poverty and under-development.

The first category has to do with the impact of efforts to achieve rapid economic growth and development and continuing pressures of demand generated by those sections of society who are economically more advanced and impose great strains on the supply of natural resources.

The second category has to do with the impact on the health and integrity of our natural resources (land, soil, water, forests, wildlife, etc.) as a result of poverty and the inadequate availability, for a large section of our population, of the means to fulfil basic human needs (food, fuel, shelter, employment, etc.). Needless to say, the two problems are interrelated.

1. Population is an important resource for development, yet it is a major source of environmental degradation when it exceeds the threshold limits of the support systems.
2. Even today, over 250 million children, women and men suffer from under-nutrition.
3. A growth in the domesticated animal population has been accompanied by a loss of area under grasslands and pastures.
4. Out of the total area of India of about 329 million hectares, 175 million hectares of land require special treatment to restore such land to productive and profitable use. The degradation is caused by water and wind erosion (150 million ha), salinity and alkalinity (8 million ha) and river action and other factors (7 million ha).

5. Our forest wealth is dwindling due to over-grazing, over-exploitation both for commercial and household needs, encroachments, and unsustainable practices including certain practices of shifting cultivation and developmental activities such as roads, buildings, and irrigation and power projects. The biological impoverishment of the country is a serious threat to sustainable advances in biological productivity. Gene erosion also erodes the prospects for deriving full economic and ecological benefits from recent advances in molecular biology and genetic engineering.
6. Our unique wetlands, rich in aquatic and bird life, providing food and shelter as also the breeding and spawning ground for the marine and freshwater fishes, are facing problems of pollution and over-exploitation.
7. Coral reefs are the most productive marine ecosystems and provide habitat for diverse flora and fauna. These ecosystems are adversely affected by indiscriminate exploitation of coral for the production of lime, recreational use and ornamental trade.
8. Global atmospheric changes resulting in altered temperature and precipitation and rising ocean levels, are no longer within the realm of mere theoretical possibilities. A combination of local subsidence, greenhouse gas-induced sea-level rise and coastal environmental degradation may lead to periodic floods, an incursion of salt water, melting of glaciers and river flooding. Local changes in average rainfall will severely affect agriculture and water supply, especially in semi-arid areas.
9. Compounding these human-inflicted wounds on natural ecosystems and life-support mechanisms, we are facing serious problems of pollution and unsanitary conditions, especially in urban areas. Pollution arising from toxic wastes and non-biodegradable consumer articles is tending to increase.
10. Lack of opportunities for gainful employment in villages and the ecological stresses are leading to an ever-increasing movement of resource-poor families to towns. Megacities are emerging and urban slums are expanding. Illiteracy and child labour are persisting. There has been substantial urban growth in the last four decades. The man-made heritage in India has been often gravely and even irrevocably damaged.
11. A large number of industries and other development projects have been incorrectly sited, leading, on the one hand, to over-congestion and over-pollution in our urban centres and on the other hand, to diversion of population and economic resources from the rural areas.
12. It is difficult to delineate the causes and consequences of environmental degradation in terms of simple one-to-one relationships. The causes and effects are often interwoven in complex webs of social, technological

and environmental factors.

13. The overriding impact of adverse demographic pressures on our resources and ecosystems due to poverty and overpopulation of man and livestock has to be highlighted.
14. Thus, we are faced with the need for accelerating the pace of development to alleviate poverty which is, to a great extent, responsible for many of our environmental problems. On the other hand, we have to avoid proceeding along paths with environmental costs so high that these activities cannot be sustained. Development has to be sustainable and all round, whether for the poor or the not-so-poor or the village folk or the town people. The development models followed so far need to be reviewed.

4.5.3 Actions Taken

In recognition of the felt need for environmental protection, various regulatory and promotional measures have been taken in our country over the past twenty years. The actions taken by the Government of India have been mentioned in unit 3 of this course.

4.5.4 Constraints and Agenda for Action

1. The modest gains made by the steps taken during the past few years leave no room for complacency when viewed in the context of enormous challenges. We can meet the challenges only by redirecting the thrust of our developmental process so that the basic needs of our people are fulfilled by making judicious and sustainable use of our natural resources. Conservation, which covers a wide range of concerns and activities, is the key element of the policy for sustainable development. Framing a conservation strategy is, therefore, an imperative first step. Development requires the use and modification of natural resources; conservation ensures the sustainability of development for the present and in the future. The conservation strategy is to serve as a management guide for integrating environmental concerns with developmental imperatives.
2. The primary purpose of the strategy and the policy statement is to include & reinforce our traditional ethos and to build up a conservation society living in harmony with nature and making frugal and efficient use of resources guided by the best available scientific knowledge.
3. The agenda for action in this regard will include the following
 - to ensure sustainable and equitable use of resources for meeting the basic needs of the present and future generations without causing damage to the environment;
 - to prevent and control future deterioration in land, water and air

which constitute our life-support systems;

- to take steps for restoration of ecologically degraded areas and environmental improvement in our rural and urban settlements;
 - to prevent further damage to and conserve natural and man-made heritage;
 - to ensure that development projects are correctly sited to minimize their adverse environmental consequences;
 - to ensure that the environment and productivity of coastal areas and marine ecosystems are protected;
 - to conserve and nurture the biological diversity, gene pool and other resources through environmentally sustainable development and management of ecosystems, with special emphasis on our mountain, marine and coastal, desert, wetlands, riverine and island ecosystems; and,
 - to protect the scenic landscapes, areas of geomorphological significance, unique and representative biomes and ecosystems and wildlife habitats, heritage sites/structures and areas of cultural heritage importance.
4. To address the above-stated agenda, the instruments for action will include the following:
- to carry out an environmental impact assessment of all development projects right from the planning stage and integrate it with their cost-benefit considerations. Appropriate costs of environmental safeguards and regeneration would continue to form an integral part of the projects;
 - to ensure that all projects above a certain size and in certain ecologically sensitive areas should require compulsory prior environmental clearance;
 - to incorporate environmental safeguards and protection measures, in policies, planning, site selection, choice of technology and implementation of development projects like agriculture, water resource development, industry, mineral extraction and processing, energy, forestry, transport and human settlements;
 - to encourage research, development and adoption of environmentally compatible technologies; and to promote the application of the modern tools of science and technology for conservation, bridging large gaps in supply and demand as well as control and monitoring of natural resources;
 - to elicit and ensure participation of people in programmes for environmental improvement and for integrating the environmental concerns in the planning and implementation of development programmes;

- to create environmental consciousness through education and mass awareness programmes;
- to aim at the moderation of the process of demand unleashed by the developmental process itself by taking measures to recycle waste materials and natural resources, conserve energy, conserve the use of natural resources in industrial products by measures like wood substitution and generally try to reach moderations in lifestyles consistent with sustainability and human dignity;
- to develop appropriate organizational structures and a pool of professional manpower to serve as the cadre for environmental management service; and,
- to effectively implement the various environmental laws and regulations for environmental protection through the creation or strengthening of the requisite enforcement machinery.

4.5.5 Priorities and Strategies for Action

- Population Control
- Conservation of Natural Resources
- Land and Water
- Atmosphere
- Biodiversity
- Biomass

4.5.6 Development Policies from Environmental Perspectives

Implementation of the aims and objectives of conservation and sustainable development will require integration and internalization of environmental considerations in the policies and programmes of development in various sectors.

Curtailment of consumerism and shift towards the use of environment-friendly products and processes, and low waste generating technologies through conscious efforts and appropriate economic policies including pricing of natural resources as well as fiscal incentives and disincentives will be the guiding factors for ensuring the conservation and sustainable development.

4.5.7 International Cooperation

A major threat to sustainable development has been visualized, in recent years, from environmental problems of a global nature -ozone layer depletion, global warming and climate change, destruction of biological diversity, transboundary air pollution, marine pollution and land-based marine pollution, transboundary movement of hazardous substances. On a philosophical plain, the scientific proof of such problems provides an

opportunity to reconsider the development path ushered in by the industrial revolution, and the blinkered pursuit of lifestyles which place extreme pressures on the natural resource base. But at a practical level, it means pressures on developing countries to take measures which they can ill-afford.

4.5.8 Support Policies and Systems

Implementation of the aims and objectives of environmental policy will need support policies and systems for filling up the gaps in the existing institutional set-up, legislative instruments and enforcement mechanisms, research and development, mobilization of financial resources, creation of public awareness and training of professionals.

- Strengthening of Institutions and Legislation
- Natural Resource Accounting
- Training and Orientation Programmes
- Promoting Environmental Awareness
- Promoting Appropriate Environmental Technologies
- Rehabilitation of Project Outsees
- Role of Non-Governmental Organizations
- Women and Environment

It is only through such initiatives the contours of which have been highlighted in preceding paragraphs, that we will be in a position to resolve the conflicts which often arise between the environmental concerns and developmental pursuits that have a direct bearing on the very fabric of our society and lifestyles. The task before us would be daunting if it were not for the many positive factors that are emerging: people's movements to conserve their environment, greater public and media concern for environmental issues and the spread of environmental awareness among children and youth. It is up to us, as State and citizens, to undertake the development process in keeping with our heritage and the traditional conservation ethos and harmony with the environmental imperatives of this land.

4.6 THE NATIONAL GREEN TRIBUNAL ACT, 2010

The National Green Tribunal Act, 2010 came into force on 18th October 2010 for the effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to the environment and giving relief and compensation for damages to persons and property and matters connected therewith or incidental thereto. The objectives of the tribunal are:

- Effective and expeditious disposal of cases that are related to the protection and conservation of the environment, forests, and other natural resources.
- To give relief and compensation for any damages caused to persons and properties.
- To handle various environmental disputes that involve multi-disciplinary issues.

The national green tribunal act, 2010 has five chapters and 38 sections. The National Green Tribunal (NGT) comprises the Chairperson, the Judicial Members and the Expert Members. There should be a minimum of 10 and a maximum of 20 full-time Judicial as well as Expert members in the NGT. All these members are required to hold the office for five years and are not eligible for reappointment. The Chairperson of the National Green Tribunal (NGT) is appointed by the Central Government of India in accordance with the Chief Justice of India. A Selection Committee is formed by the central government of India for the appointment of Judicial Members and Expert Members.

Powers of NGT

Over the past few years, the National Green Tribunal (NGT) developed as an important body for regulation of the environment and passing strict orders on issues related to pollution, deforestation, waste management, etc. Some of the major powers of the National Green Tribunal include:

- NGT provides a way for the evolution of environmental jurisprudence through the development of an alternative dispute resolution mechanism.
- It helps in the reduction of the litigation burden on environmental matters in the higher courts.
- NGT provides a faster solution for various environment-related disputes that are less formal and less expensive.
- It curbs environment-damaging activities. NGT ensures the strict observation of the [Environment Impact Assessment \(EIA\)](#) process.
- NGT provides reliefs and compensations for any damages caused to persons and properties.
- The National Green Tribunal resolves various civil cases under the following seven laws that are related to the environment:
 1. Water Act (Prevention and Control of Pollution), 1974
 2. Water Cess Act (Prevention and Control of Pollution), 1977
 3. Forest Act (Conservation), 1980
 4. [Air Act \(Prevention and Control of Pollution\), 1981](#)
 5. Environment (Protection) Act, 1986
 6. Public Liability Insurance Act, 1991
 7. [Biological Diversity Act, 2002](#)

4.7 MINING POLICIES

4.7.1 National Mineral Policy (NMP), 1993

In pursuance of the reforms initiated by the Government of India in July 1991 in fiscal, industrial and trade regimes, the National Mineral Policy was announced in March 1993. The National Mineral Policy recognized the need for encouraging private investment including Foreign Direct Investment (FDI), and for attracting state-of-art technology in the mineral sector. The policy stressed that the Central Government, in consultation with the State Governments, shall continue to formulate legal measures for the regulation of mines and the development of mineral resources to ensure basic uniformity in mineral administration so that the development of mineral resources keeps pace, and aligns with the national policy goals.

4.7.2 National Mineral Policy 2008

The new National Mineral Policy enunciates measures like the assured right to next stage mineral concession, transferability of mineral concessions and transparency in allotment of concessions, to reduce delays which are seen as impediments to investment and technology flows in the mining sector in India. The Mining Policy also seeks to develop a Sustainable Development Framework for optimum utilization of the country's natural mineral resources for industrial growth in the country and at the same time improving the lives of people living in the mining areas, which are generally located in the backward and tribal regions of the country.

Other features of the National Mineral Policy 2008, inter alia, are:

- a) NMP recognizes that minerals are valuable natural resources being the vital raw material for infrastructure, capital goods and basic industries and development of the extraction and management of minerals has to be integrated into the overall strategy of the country's economic development.
- b) The exploitation of minerals has to be guided by long-term national goals and perspectives which are dynamic and responsive to the changing global economic scenario.
- c) The NMP, also, recognizes that the country is blessed with ample resources of several minerals and has the geological environment for many others being a part of the ancient Gondwanaland, which includes parts of Australia, South Africa, and Latin America.
- d) NMP lays out that the guiding strategy for the development of any mineral should naturally keep in view its ultimate end uses in terms of demand and supply in the short, medium and long terms and this would be market-oriented. However, a disaggregated approach in respect of each mineral will be adopted and a mineral-

specific strategy will be developed to maximise gains from the comparative advantage that the country enjoys and mineral development will be prioritized in terms of import substitution, value addition and export, in that order.

- e) Conservation of minerals shall be construed not in the restrictive sense of abstinence from consumption or preservation for use in the distant future but as a positive concept leading to augmentation of reserve base through improvement in mining methods, beneficiation and utilisation of low-grade ore and rejects and recovery of associated minerals.

Check Your Progress 1

Note: i) Use the space given below for your answers.

ii) Check your answers with those given at the end of the unit.

- 1. Explain the salient features of the Environment (Protection) Act, 1986.

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- 2. Write a short note on the policy statement for abatement of pollution (1992).

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- 3. Explain the national conservation strategy and policy statement on environment and development.

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4. Explain the features of the National Green Tribunal Act, 2010.

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4.8 LET US SUM UP

The environment which is not inherited from our ancestors is being borrowed from the future generation. Hence, we need to use the natural resources in such a way that they should be made available to the future generation also. Due to increasing population, sophistication and technological development is forcing us to over-exploit natural resources. This action leads to lots of environmental degradation including the emission of pollutants. Hence, there is an urgent need to protect our environment and keep things for our future use. In this regard, each country is enacting acts, rules and regulation are being made to safeguard its environment. In India, we have enacted many numbers of acts, rules and regulations to conserve our environment. In this unit, we have discussed the features of the Environment (Protection) Act, 1986 and the National Green Tribunal Act, 2010. We have also discussed the policy statement for abatement of pollution (1992) and the national conservation strategy and policy statement on environment and development. India has to ensure the proper implementation of Environmental laws, acts, rules and regulations for a healthy environment for all.

4.9 KEY WORDS

National Green Tribunal: The National Green Tribunal is a specialised judicial body equipped with expertise solely to adjudicate environmental cases in the country.

4.10 SUGGESTED FURTHER READING/REFERENCES

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4.11 ANSWERS TO CHECK YOUR PROGRESS

Check Your Progress 1

1. Please refer to section 4.3
2. Please refer to section 4.4
3. Please refer to section 4.5
4. Please refer to section 4.6

