



*Subject :*  
**Environmental  
Law**

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**10** YEARS CELEBRATION **+**

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## **ENVIRONMENTAL LAW**

The 'Environment' is very important for us to understand because it constitutes our surroundings and affects our ability to live on the earth. It comprises of the air we breathe, the water that covers most of the earth's surface, the plants and animals around us, and much more. It is therefore, very important to understand and appreciate the importance of 'environment' in our daily life. In recent years, scientists have been carefully examining the various ways by which people affect the 'Environment'. They have found that we are causing air pollution, deforestation, acid rain, and other problems that are dangerous both to the earth and to ourselves. You may have heard of laws, rules and regulations to deal with the above mentioned situations. The Government in the last few decades has shown keen interest in protecting and promoting the environment and consequently enacted various Environmental Laws. This lesson aims at discussing the details about the environment and its degradation with special reference to environmental pollution. The lesson further focuses on the laws pertaining to the protection of environment from pollution and other environmental issues. The discussion is also on other environment related issues.

### **OBJECTIVES**

After completing this lesson, you will be able to: z explain the term 'environment; and its importance in our life; z find out what is 'environmental pollution' and what are the various kinds of 'pollution'; z appreciate the need for protection of environment; z identify the factors responsible for environmental pollution; z know the various laws relating to the protection and promotion of environment; and z understand the functions of Central Pollution Board and the State Pollution Boards.

### **MEANING OF ENVIRONMENT**

The word 'environment' is derived from the French word 'environner', which means 'to encircle' or to surround. The most suitable definition of environment is as follows: It is the sum total of water, air and land and the interrelationships that exist among them with human beings, other living organisms and materials. The geographical meaning of environment is as follows: It is a combination of living and non-living things and their mutual interaction with each other which leads to an ecosystem. The environment encompasses all living and non-living things occurring naturally on earth. The Honourable Supreme Court has the following definition of 'environment': "Environment" is a difficult word to define. Its normal meaning relates to the surroundings, but obviously, that is a concept which is relatable to whatever object it is, which is surrounded. Environment is a polycentric and multifaceted problem affecting the human existence. Today protection of 'environment' is a global issue as it concerns all countries irrespective of their size, stage or development or ideology. Today, the interaction between society and nature is so extensive that the question of environment has assumed large proportions, affecting humanity at large.

### **ENVIRONMENTAL POLLUTION**

The term 'pollution' refers to unfavourable alteration to our surroundings, wholly or largely as a by-product of human's action through direct and indirect effects of changes in energy pattern, chemical and physical construction and abundance of organisms. Thus, it is the addition of any foreign material to water, air or soil, which may change immediately or after some time, the natural properties of these basic constituents further

causing some unfavourable change by making them unfit and injurious. Industrialization, poverty, population explosion, urbanization, over-exploitation of resources, etc. are some of the factors which have contributed to environmental deterioration.

### Water Pollution

Water pollution is the contamination of water bodies (e.g. lakes, rivers, oceans, aquifers and groundwater). Water pollution occurs when pollutants are discharged directly or indirectly into water bodies without adequate treatment to remove harmful compounds.

### Air Pollution

Air contains a mixture of various gases like oxygen, nitrogen, carbon dioxide, argon etc. Air pollution is the introduction into the atmosphere of chemicals, particles, or biological materials that cause discomfort, disease, or death to humans, damage to other living organisms such as food crops, natural environment or built environment. The major sources of air pollution are: z Industrial emissions z Vehicular emissions z Domestic emissions The most common air pollutants in urban areas include Sulphur dioxide (SO<sub>2</sub>), Nitrogen oxides (NO & NO<sub>2</sub>), Carbon monoxide (CO), etc. Apart from this, the gases discharged from refrigerators, air conditioners etc. are responsible for depletion of the Ozone layer.

### Noise Pollution

The word 'noise' originated from the Latin word 'nausea' meaning sea-sickness. 'Noise' is any unwanted sound that disrupts environmental equilibrium. Noise is measured in decibels. A major source of 'noise' is by motor vehicles, aircrafts, fire-crackers, sirens, loud speakers and machinery. According to a survey conducted by the National Physical Laboratory, Delhi, Mumbai and Kolkata are amongst the noisiest cities in the world. Noise pollution has harmful effects on the environment, humans and animals. Some adverse effects of noise pollution on human health are: z Hearing loss or hearing impairment; z Rise in blood pressure; z Cardio-vascular health effects; z Increase in stress level; and z Decrease in efficiency and concentration. Noise pollution is excessively displeasing to humans, animals, or we can say that machine-created environmental noise disrupts the activity or balance of human or animal life. The source of most outdoor noise worldwide is mainly construction and transportation systems, including noise from motor vehicles, noise from aircrafts, and noise from trains and engines. Poor urban planning may give rise to noise pollution, since industrial and residential buildings constructed side-by-side can result in noise pollution in the residential areas.

### Land Pollution

Deforestation, release of toxic substances on the land, throwing of unhygienic waste on earth, dumping of garbage, biomedical waste etc. causes land pollution. Excessive use of pesticides is also a source of land pollution as this affects the potability of water.

### Solid Wastes Pollution

Wastes are the materials that are not needed and are economically unusable without further processing. 'Solid wastes' includes agricultural wastes, ashes, bio-medical wastes, body parts of dead animals, dry or wet garbage from domestic activities which may contain plastics, metals, woods, glass, paper, detergents, industrial wastes, mining wastes etc.

### Food Pollution (Food Adulteration)

All living beings require food to obtain energy from which they carry on their daily activities. If the food consumed is polluted or adulterated it will have injurious effects on the consumer's health. The pollution of food begins by use of chemical fertilizers and various pesticides at different stages of plant growth. These chemicals directly or indirectly affect the quality of food and affects health of the consumer. Food also gets polluted during processing, storage, packaging and transportation.

### Thermal Pollution

Temperature plays an important role in determining the conditions in which living organisms can survive. Any undesirable, harmful change in natural temperature disturbing the natural heat balance of the surroundings is called 'Thermal Pollution'.

### Nuclear (Radioactive) Pollution

One of the most important and dangerous types of pollution is 'nuclear pollution'. 'Nuclear pollution' is produced by nuclear explosion which are carried out for performing nuclear tests and which is further used for making nuclear weapons. Due to these explosions about 15 to 25% of the radioactive particles enter into the atmosphere. Once they enter into the atmosphere they continue to fall on the earth for several years. The best example is the Hiroshima Atomic Bombings.

## **ENVIRONMENT PROTECTION**

Environmental protection is a practice of protecting the natural environment at individual, organizational or governmental levels, for the benefit of the natural environment and humans. Due to the pressures of population and technology, the biophysical environment is being degraded, either partially or permanently. This has been recognized, and governments have begun placing restraints on activities that cause environmental degradation. Since the 1960's, movements for the protection of environment have created awareness about the various environmental issues. There is no agreement on the extent of environmental impact on human activity, and protection measures are occasionally criticized.

Academic institutions now offer courses such as environmental laws, environmental studies, environmental management and environmental engineering, that teach the history and methods of environment protection. Waste production, air pollution, and loss of biodiversity (resulting from the introduction of invasive species and species extinction) are some of the issues related to environmental protection. Environmental protection is influenced by three interwoven factors: environmental legislation, ethics and education. Each of this factor plays its part in influencing national-level environmental decisions and personal-level environmental values and behaviors. For environmental protection to become a reality, it is important for societies to develop each of these areas.

### **NEED FOR PROTECTION OF ENVIRONMENT**

The need for protection of environment can easily be understood from the following facts: z One billion people in the world have no clean water z Two billion people have inadequate facilities of sanitation z One and a half billion people (mostly in large cities of newly industrialized countries) breathe air that is dangerously unhealthy and so on. The human beings as well as animals need clean food and water, and in order to have clean food and water, it is necessary to protect the ecosystem that make survival possible. If we do not stop pollution, it is sure that the world will come to an end.

## **LEGAL MECHANISM IN RELATION TO ENVIRONMENT PROTECTION**

'Environmental Law' is an instrument to protect and improve the environment and to control or prevent any act or omission polluting or likely to pollute the environment. An environmental legal system is essentially a set of laws and administrative rules which regulate the relationships and conflicts between all the people concerned with the environment, as well as defining the relationships between people and the environment itself. The Honourable Supreme Court in *K. M. Chinnappa v. Union of India* defined "Environmental Law" as an instrument to protect and improve the environment and control or prevent any act or omission polluting or likely to pollute the environment. In the Constitution of India, it is clearly stated that it is the duty of the State to "protect and improve the environment and to safeguard the forests and wildlife of the country". It imposes a duty on every citizen "to protect and improve the natural environment including forests, lakes, rivers, and wildlife". Reference to the environment has also been made in the Directive Principles of State Policy (Part IV) as well as the Fundamental Rights (Part III). The Department of Environment was established in India in 1980 to ensure a healthy environment for the country. This later became the Ministry of Environment and Forests in 1985.

### **Ministry of Environment and Forests (MoEF)**

The Ministry of Environment & Forests (MoEF) is the nodal agency in the administrative structure of the Central Government for planning, promotion, coordination and overseeing the implementation of India's environmental and forestry policies and programmes. The primary concerns of the Ministry are implementation of policies and programmes relating to conservation of the country's natural resources including its lakes, rivers, biodiversity, forests and wildlife, ensuring the welfare of animals, and the prevention and abatement of pollution.

The broad objectives of the Ministry are:

- Prevention and control of pollution;
- Protection of the environment; and
- Ensuring the welfare of plants & animals

### **The Constitution of India**

The 'Right to Life' contained in Article-21 of the Constitution of India includes the right to clean and human environment. It means you have the right to live in a clean and healthy environment.

Article-38 of our Constitution requires State to ensure a social order for the welfare of people, which can be obtained by an unpolluted and clean environment only.

Article-48A of the Constitution requires the State to adopt the Protectionist policy as well as Improvinistic Policy. Protectionist policy imposes ban on those things which lead to environmental degradation, e.g. ban on use of leaded petrol, ban on use of plastic bags etc. Improvinistic policy refers to alternatives that can be used for improvement of environment, e.g. use of CNG or low sulphur fuel, tree plantation in industrial areas etc. Article-48A of the Constitution declares "The State shall endeavour to protect and improve the environment and safeguard forests and wildlife of the country." Article-51A(g) of the Indian Constitution says: "It shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures."

### **The Water (Prevention and Control of Pollution) Act, 1974**

The Water (Prevention and Control of Pollution) Act was enacted in 1974 to provide for the prevention and control of water pollution, and for maintaining or restoring of wholesomeness of water in the country. This is the first law passed in India whose objective was to ensure that the domestic and industrial pollutants are not discharged into rivers, and lakes without adequate treatment. The reason is that such a discharge renders the water unsuitable as a source of drinking water as well as for the purposes of irrigation and support marine life. In order to achieve its objectives, the Pollution Control Boards at Central and State levels were created to establish and enforce standards for factories discharging pollutants into water bodies.

### **The Air (Prevention and Control of Pollution) Act, 1981**

The Air (Prevention and Control of Pollution) Act, 1981 was enacted to provide for the prevention, control and abatement of air pollution in India. It is a specialised piece of legislation which was enacted to take appropriate steps for the preservation of natural resources of the earth, which among other things include the preservation of the quality of air and control of air pollution. The prime objectives of the Act are the following: z Prevention, control and abatement of air pollution; z Establishment of central and state pollution control boards to implement the aforesaid purpose; and z To maintain the quality of air.

### **The Environment Protection Act, 1986**

It was the Bhopal Gas Tragedy which necessitated the Government of India to enact a comprehensive environmental legislation, including rules relating to storing, handling and use of hazardous waste. On the basis of these rules, the Indian Parliament enacted the Environment Protection Act, 1986. This is an umbrella legislation that consolidated the provisions of the Water (Prevention and Control of Pollution) Act of 1974 and the Air (Prevention and Control of Pollution) Act of 1981. Within this framework of the legislations, the government established Pollution Control Boards (PCBs) in order to prevent, control, and abate environmental pollution. The objective of the Environment Protection Act is to protect and improve the environment in the country.

**BHOPAL DISASTER** The Bhopal disaster, also referred to as the Bhopal Gas Tragedy, was a gas leak incident in India, considered one of the world's worst industrial disasters. It occurred on the night between 2nd and 3rd December, 1984 at the Union Carbide India Limited (UCIL) pesticide plant in Bhopal, Madhya Pradesh. Over 500,000 people were exposed to methyl isocyanate gas and other chemicals. The toxic substance made its way in and around the shanty-towns located near the plant. Estimates vary on the death toll. The official immediate death toll was 2,259. The government of Madhya Pradesh confirmed a total of 3,787 deaths related to the gas release. According to other estimates, around 8,000 died within two weeks and another 8,000 or more have since died from gas-related diseases. A government affidavit in 2006 stated the leak caused 558,125 injuries including 38,478 partial disabling injuries and approximately 3,900 severe and permanent disabling injuries.

### **The Ozone Depleting Substances (Regulation and Control) Rules, 2000**

The Ozone Depleting Substances (Regulation and Control) Rules have been laid down for the regulation of production and consumption of ozone depleting substances. The main objective of this rule is protection of the Ozone layer. The rule restricts unauthorized sale, purchase, import, export and use of ozone depleting substance. 'Ozone Depleting Substances' (ODS) are the products which lead to the depletion of ozone layer. CFC (CHLOROFLUOROCARBON) is an example of ODS.

## **ORIGIN AND DEVELOPMENT (STOCKHOLM TO RIO)**

Stockholm Declaration,

1972 Global inter-governmental action began with the United Nations Conference on the Human Environment in Stockholm in 1972. This led to the 'Stockholm Declaration' and an action plan with over 100 recommendations on environmental assessment, management, and support measures. The Stockholm slogan was "Only One Earth". The environmental debate centred around the Club of Rome Report on the "Limits to Growth", and talk of economic development (the precursor of Sustainable Development). The Report highlights the consequences of unrestrained growth and the linkages between several global problems. Brundtland Commission 1983 Post Stockholm concerns for the environment continued to grow. There was widespread deforestation, industrial pollution and environmental degradation. The ozone hole, the warming of the earth, increased carbon dioxide in the environment all added to the growing environmental concerns. A need was felt to link environmental concerns with industrial development and growth. With this in mind, the United Nations, in 1983, established the "World Commission on the Environment and Development" or as it is commonly referred to as the "Brundtland Commission". The Brundtland Commission Report – 'Our Common Future' in 1987 defined 'Sustainable Development'. As we have discussed in the earlier sections -"development that meets the needs of the present without compromising the ability of future generations to meet their own needs".

### **Rio Declaration 1992- Agenda 21**

Twenty years after Stockholm, the United Nations Conference on Environment and Development was held in Rio de Janeiro in 1992. 'The Earth Summit', as it was called adopted the 'Rio Declaration' and an action plan of 40 chapters called Agenda 21 was adopted by over 100 Nations. Agenda 21 was geared towards achieving Sustainable Development in the 21st century.

The 'Rio Concept' can be summarised as: z Equal consideration of environment, society and economy; z Intergenerational solidarity keeping in mind the needs of the future generations; z A global consensus and political commitment at the national and international level. Involvement of the Non-Government Organisations (NGOs); z Provides a blueprint for the governments to attain a balance between the environment and the needs of the population; and z A Commission on Sustainable Development (CSD) was established to follow up the Rio agreements, and it monitors the agreements of the Earth Summit at the local, national, regional and international levels. The Rio Summit Follow up The Rio Summit was followed by several other Conferences to focus on 'Sustainable Development'. These include conferences like the "Global Conference on Sustainable Development of Small Island Developing States" in Barbados in 1994: "The World Summit on Social Development" in Copenhagen in 1995: "The Fourth World Conference on Women", Beijing 1995; and the "Second UN Conference on Human Settlements, Habitat II", Istanbul in 1996.

The focus was on following the path of 'Sustainable Development' in all countries in all parts of the ecosystem whether on land, water or air. The effort has also been an all-inclusive development that reaches all sections of the population with a special focus on the vulnerable sections like women, children or the marginalised. A five year review of the progress of the 'Earth Summit' was held in 1997 by the United Nations General Assembly. This was followed by a ten year review in 2002 by the World Summit on Sustainable Development (WSSD). The WSSD was held in Johannesburg, South Africa. It urged the Nations to make progress in the formulation and implementation of strategies for sustainable development and to begin implementing them by 2005.

## **KYOTO PROTOCOL**

Environment protection is not territorial but a global concern and therefore, the effort to protect the environment is going on also at the international level as the environmental policy of any country does not only affects the environment of that country, rather it affects in whatever extent possible, the global environment. 'Kyoto Protocol' is the example of a measure undertaken at the international level under the aegis of the United Nations aimed at curbing the emission of Greenhouse gases (Carbon Dioxide, Methane, Nitrous Oxide, Sulphur Hexafluoride and two groups of gases hydro fluorocarbons & per fluorocarbons) by the industrialised countries, which adversely impacts the global environment. 'Kyoto Protocol' is the part of the United Nations Framework Convention on Climate Change (UNFCCC). UNFCCC sets an overall framework for inter-governmental efforts aimed at tackling the challenges of climate change. Climate Change refers to the fact that due to developmental human activities the original climate of the world is changing and the average temperature of world is rising every year and this will result in climate change which may have very serious consequences for present and future generations. The increase in temperature is primarily because of the emission of greenhouse gases, which are emitted mainly from industries. This also adds to the depletion of the ozone layer which prevents the harmful effects of the sun from reaching the Earth. Therefore, this is a movement to protect the world inhabited by us from becoming a world unsuitable for human existence. The 'Kyoto Protocol' sets binding obligations on industrialised countries to reduce emission of Greenhouse gases. The Protocol was adopted on 11 December 1997 in Kyoto, Japan and entered into force on 16 February 2005. More than 190 countries are the members of the Protocol, significantly though the United States of America is not the member of the Protocol. India is also a member of the Protocol.

Some of the principal concepts of the 'Kyoto Protocol' are:

Under the Protocol 37 industrialised countries and European Union made up of 15 European countries (called Annexure 1 countries) have committed themselves to binding obligations to reduce emission of greenhouse gases.

In order to meet the objectives of the Protocol, Annex I, Parties are required to prepare policies and measures for the reduction of greenhouse gases in their respective countries. In addition, they are required to increase the absorption of these gases.

Accounting, Reporting and Review in order to ensure the implementation of the Protocol.

Establishing a Compliance Committee to enforce compliance with the commitments under the Protocol.

'Kyoto Protocol' is a very important milestone as it is an acknowledgement of the fact that in the name of industrial development the environment cannot be harmed to such an extent that we render it unsuitable for a healthy human existence. Industrialised countries by accepting the binding obligation to reduce the emission of the greenhouse gases have accepted their collective responsibility in making the global environment cleaner and healthier and thereby realizing the goal for a sustainable development. This obviously is a work in progress but what is important is its realisation and the exhibition of a global will to address this menace.

## The Stockholm Declaration, 1972

- Laid the foundation of the modern global environmental law.
- Recognizes that different approaches are required to tackle problems of developed and developing countries.
- Recognizes a healthy environment as an extension to the right of life.
- Introduces the concept of inter-generational equity.
- Calls for balancing the needs of the environment with those of development
- Nations have the sovereign right to exploit their own resources, subject to the responsibility not to cause damage to the environment of other States.

## The Vienna Convention for the Protection of the Ozone Layer, 1985

It is a framework treaty within which member states share research and information, develop technologies, etc, for the protection of the Ozone layer.

## The Montreal Protocol on Substances that Deplete the Ozone Layer, 1987

- Protocol requires parties to reduce the consumption of ozone depleting substances to certain stipulated levels.
- Developing countries given a grace period of 10 years to comply.

## The Rio Declaration on Environment & Development, 1992

- Builds on the principles of sustainable development, inter-generational equity, and sovereign rights in the Stockholm Declaration.
- Expands the concept of sustainable development.

Reaffirms, amongst others, the importance and centrality of:

- The Precautionary Principle,
- The Polluter Pays Principle, and
- Environmental Impact Assessment

## The U.N. Convention on Biological Diversity (1992)

Three main goals:

1. The conservation of biological diversity;
  2. The sustainable use of its components; and
  3. The fair and equitable sharing of the benefits from the use of genetic resources.
- In 2000, a supplementary agreement - the Cartagena Protocol on Biosafety - sought to protect biological diversity of states against risks from living, modified organisms created by biotechnology.
  - In April 2002, the parties to the Convention committed themselves to achieving the target of “a significant reduction in the current rate of biodiversity loss at the global, regional and national level,” by 2010.

## Agenda 21, 1992

Comprehensive road-map of action to be taken at the global, national, and local levels, for the protection of the environment framed at the Rio Summit.

## The United Nations Framework Convention on Climate Change (UNFCCC), 1992

- This sets an overall framework for intergovernmental efforts to tackle the challenge posed by climate change. Under the Convention, governments:
- gather and share information on greenhouse gas emissions, national policies and best practices
- launch national strategies for addressing greenhouse gas emissions and adapting to expected impacts, including the provision of financial and technological support to developing countries z cooperate in preparing for adaptation to the impacts of climate change.
- The Convention entered into force on 21 March 1994. These international instruments clearly reflect the fact that the issue of environment protection has been a matter of grave concern which has attracted international attention. All these instruments also acknowledge the fact that for environmental protection there cannot be a one stop solution; this is a continuous process which must continue incessantly.

## **ROLE OF COURTS IN ENVIRONMENTAL PROTECTION**

The concept 'the right to life' under Article 21 of the Constitution of India was not given an expansive dimension in the beginning but gradually Courts in India started expanding the meaning of this term by playing an active role. The question, how to bring about a balance between the environment and development, poses a great dilemma. The Rural Litigation and Entitlement Kendra v. State of U.P. is the first case where the Supreme Court of India made an attempt to look into this question. In this case, the petitioners, a voluntary organisation, feared that mining activities of the lessees caused ecological disturbance. The lessees had rights given by the Government and on conditions laid down under a specific law. According to a committee of experts, appointed by the Supreme Court, mining of limestone in certain areas was found dangerous and damaging ecological balance. The Supreme Court ordered to close the mining operations in these areas, though it allowed mining operations in certain areas reported as not dangerous. The Court considered the hardship caused to the lessee but thought that 'it is a price that has to be paid for protecting and safeguarding the right of the people to live in healthy environment with minimal disturbance to ecological balance'. What is important is that the case was filed under Article 32 of the Constitution of India and orders were given with emphasis on the need to protect environment. Under Article-32 the Supreme Court of India can only be approached for the violation of fundamental rights and there is no specific fundamental right to environment mentioned as fundamental rights in our Constitution. This means that the Supreme Court treated the right to clean environment as a fundamental right and this can only be done by expanding the meaning of 'the right to life' as it appears in Article 21 of the Indian Constitution as one of the fundamental rights.

The right to humane and healthy environment is seen indirectly approved in the M. C. Mehta group of cases decided subsequently by the Supreme Court. In the first M. C. Mehta (M. C. Mehta v. Union of India) case, the Court had to deal specifically with the impact of activities concerning manufacturing of hazardous products in a factory. The activities were a threat to the workers in the factory, as well as members of the general public living outside. It was alleged that the leakage of Oleum gas from the factory resulted in the death of the person and affected the health of several others. The question was, whether or not the plant should be closed down. Many conditions were laid down under which industries of hazardous products should be allowed to restart. In doing so the Court found that the case raised 'some seminal questions concerning the scope and ambit of Articles-21 and 32 of the Constitution'.

Although the second M. C. Mehta case, (M. C. Mehta v. Union of India) the Court modified some of the conditions, the third M. C. Mehta case, (M. C. Mehta v. Union of India) posed an important question concerning the amount of compensation payable to the victims affected by leakage of Oleum gas from the factory. The Court

held that it could entertain a petition under Article 32 of the Constitution, and laid down the principles on which the quantum of compensation could be computed and paid. This case is significant as it evolved a new jurisprudence of liability to the victims of pollution caused by an industry engaged in hazardous and inherently dangerous activity. Although it did not specifically declare the existence of the right to a clean and healthy environment in Article 21, the Court evolved the principle of 'absolute liability' of compensation through interpretation of the constitutional provisions relating to the right to live and to the remedy under Article 32 for violation of fundamental rights. The basis for this decision is clear and unambiguous – the fundamental right to a clean and healthy environment.

In *Chhetriya Pardushan Mukti Sangharsh Samati v. State of U. P. and Subhash Kumar v. State of Bihar*, the Honourable Supreme Court took a step forward. Chief Justice Sabyasachi Mukerji in *Chhetriya Pardushan* case observed:

“Every citizen has a fundamental right to have the enjoyment of quality of life and living as contemplated in Art. 21 of the Constitution of India.”

Justice K. N. Singh in *Subhash Kumar* case observed: “Right to live.....includes the right to enjoyment of pollution free water and air for full enjoyment of life.”

The decisions of the Courts have widened the scope of the right to life by reading into it, the right to a clean environment. Thus, Courts in India have lived up to the needs of the time and have made significant contributions in evolving new principles and remedies.

### **ROLE OF PUBLIC INTEREST LITIGATION (PIL)**

Contrary to the past practices (strictly as per the locus standi principle) wherein, only a person himself/herself, being aggrieved, could have come knocking the doors of the courts, today a person acting bona fide and having sufficient interest can move the courts for redressing public injury, enforcing public duty or for protecting social and collective rights and interests. This is known as the dilution of the principle of locus standi. The ability to invoke the jurisdiction of the Supreme Court and the High Courts under Articles 32 and 226 of the Constitution of India is a remarkable step forward in providing protection for the environment. Courts have widened the dimensions of the substantive rights to health and a clean and unpolluted environment. In most cases, this progress was made with aid of PIL. The courts by allowing a case to be filed as PIL have shown that the procedure cannot come in the way of ensuring that the justice is done. In *Tarun Bhagat Sangh Alwar v. Union of India*, a social action group challenged the legality of granting a mining license in the protected area of a forest. Upholding the contention, the Supreme Court observed;

“This litigation should not be treated as the usual adversarial litigation. Petitioners are aid of a purpose high on the national agenda. Petitioners concern for the environment, ecology and the wildlife should be shared by the Government”

The observation of the Court is important as it emphasises the rationale of PIL in environmental issues. Any person who raises an environmental issue, whether individual, group or institution is equally concerned with the problem as is the State. Such litigation can never be considered as one of adversarial confrontation with the State. In the 1984 case of '*Bandhua Mukti Morcha v. Union of India*', Justice P. N. Bhagwati stated that if a person was physically or economically unable to approach the Court, he/she “may move the Court even by just writing a letter,” because the legal system would otherwise be inaccessible to some of its citizens.

The range of issues in PILs has been very broad. It extends from compassion to animals and privileges of tribal people and fishermen, to the eco-system of the Himalayas and forests, eco-tourism, land use patterns and problems facing a village due to ecological damage. The cause of environment has been taken up before courts through PIL by a wide spectrum of people in society. Lawyers, association of lawyers, environmentalists, groups and centres dedicated to environment protection and forest conservation, welfare forums, consumer research centres have successfully agitated environmental issues before Courts.

### **LEADING JUDGEMENTS TO PROTECT ENVIRONMENT**

We saw how 'judicial activism' has contributed immensely to the field of environmental protection. There are hundreds of such judgements which have collectively contributed to this cause, yet some of these judgements can be specifically highlighted which have considerably impacted the field of environmental protection. Most of these landmark judgements have also come through the means of Public Interest Litigation (PIL). From making the polluter to compensate for the pollution caused by it to declaring the concept of absolute liability for industries involved in inherently dangerous or hazardous activities, from forest preservation to initiatives for addressing the lack of civic amenities, from pollution of river Ganga to the kind of air people breath in Delhi, from directing the closure of mining operations posing environmental risk to protecting Taj Mahal from losing its shine because of air pollution; all these issues have been taken up by the courts in India to promote the objective of a clean and healthy environment. Some of such landmark cases include.

#### **The Delhi Vehicular Pollution Case**

The PIL was filed by M.C. Mehta, an established environmental activist and lawyer, in 1985. It is a citizen standing case. Mehta expressed his concern about the alarming rise in the levels of air pollutants and suspended particulate matters in the atmosphere over the city of New Delhi and the surrounding region. The result was pollution-related illnesses that included tuberculosis, asthma, and bronchitis and lung cancer. Mehta argued that the respondents, the Union of India and Delhi Administration and the DTC had acted against the common law of India and the environmental legislation. He claimed that he and Delhi residents had a right to live in a clean environment and this right had been breached by the respondents. He prayed that the Court would make an order against the respondents to take action to stop those vehicles that were emitting noxious gases.

The case was filed in 1985 but no action was taken until 1990. Thereafter, a series of directions were passed by the Supreme Court. There was progress, albeit slow. From 1990 to 1992 the Court ordered periodic vehicle emission checks, particularly focusing on public buses, with the power to cancel the registration certificates of faulty vehicles. As the litigation progressed, the Court responded by directing the authorities to introduce and use unleaded fuel in a three-phased manner, starting in Delhi and encompassing all India by 2001; converting Government vehicles to compressed natural gas; ensuring two- and three-wheeler vehicles had catalytic converters and compressed gas or unleaded fuel; and that a body be established to oversee the implementation of the Court's orders. In January 1998, the Supreme Court endorsed the Central Government's proposal to create an expert authority, to be known as the Environment Pollution (Prevention and Control) Authority (EPCA).

However, in July 1998, the Court passed an 'historic' order which became the public battleground for the various stakeholders over an issue which claims more victims than the terrorists' guns. It included the phasing out of all commercial vehicles and taxis which were more than 15 years old as of October 1998; a ban on the supply of 2T oils at petrol stations by December 1998; the increase of public transport to 10,000 buses by April 2001, the stoppage of leaded petrol within NCT Delhi by September 1998; replacement of all pre-1990 auto rickshaws and taxis to new vehicles on clean fuel by 31 March 2000; no eighty-year-old buses to ply except on CNG (Compressed Natural Gas) or other clean fuel by 1 April 2000; entire city bus fleet (DTC and private) be steadily converted to

single fuel mode on CNG by 31 March 2001. The Court further stressed and directed that the authorities must take effective and adequate steps to bring to the notice of the public, both through print and electronic media, the directions issued by the judiciary from time to time. The July 1998 order provided time lines to be adhered to for bringing the change in the city. The judges, while delivering the order, stated: 'This timeframe, as given by EPCA and today by this Court, in consultation with the learned counsel for the parties, shall be strictly adhered by all the authorities. We administer a strong caution to all the concerned that failure to abide by any of the direction would invite action under the Contempt of Court Act against the defaulters.'

The next target of the Supreme Court was diesel vehicles, accounting for 90 per cent of the nitrogen oxide and respiratory suspended particulate matter. The diesel particulate is toxic and chronic exposure to such toxic air would lead to 300 cases of lung cancer per million. In 1999, restrictions were imposed on the monthly registration of diesel driven vehicles. Also, diesel taxis were prohibited in National Capital Region (NCR) Delhi unless they conformed to safety standards.

From 2000-2003, the focus of the Supreme Court was on the implementation of its orders. The Court applied the 'precautionary principle' to the auto fuel policy. The auto fuel policy focused upon the measures to anticipate, prevent and attack the cause of environmental degradation. These efforts eventually meant that all buses now run on CNG. The transport sector, including private vehicles, was given priority over the industrial sector with regard to the allocation of CNG. Thus, the mission embarked upon by the Supreme Court was successfully accomplished. The 'Delhi Vehicular Pollution' case reflects the commitment and dedication shown by the Supreme Court of India to protect the lives of the citizens. Judicial progress was slow, as was the implementation of its directions, but as a consequence of PIL actions Delhi's atmosphere is now relatively clean.

M. C. Mehta v. Union of India,

Ganga Pollution case (AIR 1998 SC 1037) The tanning industries located on the banks of Ganga were alleged to be polluting the river. The Supreme Court issued directions to them to set up effluent plants within six months from the date of the order. It was specified that the failure to do so would entail closure of business. The Court issued directions to the Central Government, U. P. Pollution Control Board and the District Magistrate concerned. The Court concluded that the closure of industries might result in unemployment and loss of revenue- life, health and ecology had greater importance. The Court is still monitoring the task of cleaning the river Ganga.

T. N. Godavarman Tirumulkpad v. Union of India, (AIR 1997 SC 1228)

The idea of 'sustainable development' had its influence on the judiciary in interpreting the provisions of law relating to forest. Various dimensions of the problem came to be examined by the Supreme Court in this case. The decision of the Court can be summarised as follows:

Mining license in forest area without proper approval by the Government is violative of the Forest (Conservation) Act. All on-going activities under, such invalid license must cease. The State Governments have to take necessary remedial measures.

Running saw mills of any kind is a non-forest activity. All saw mills within a distance of 100 kilometres from the border of the State of Arunachal Pradesh are to be wound up.

Responsibility was imposed on each State Government to report on the number of saw mills, actual capacity of mills, proximity to the nearest forest and their sources of timber.

Complete ban on felling of trees in the forests of Arunachal Pradesh. Felling of forests in other States also suspended except in accordance with working plans. Movement of cut trees and timber banned.

Each State Government to constitute expert committees to identify forest areas and forests covered by plantation trees and to assess the sustainable capacity of the forest in relation to saw mills.

In State of Jammu & Kashmir, no private agencies should deal in felled trees or in timber.

## **Public Nuisance**

### **Introduction**

- The term 'nuisance' refers to causing unlawful inconvenience in the peace of another person. It is interference in the life or property of someone else.
- It differs from trespass as trespass is physical interference into another's life or property.
- 'Nuisance' can be inflicted upon a private person's property such an act falls under private nuisance.
- Public nuisance impacts the public at large.

### **Concept**

- Section 3(48) of the General Clauses Act elaborates the concept of public nuisance is as defined under Section 268 of the Indian Penal Code, 1860 (IPC).
- The case of *Malton Board of Health v. Malton Manure Co.*, (1879), affirmed that running a business that is creating noises that are not permissible would invoke 'public nuisance' as the conduct is affecting the public at large or general public.
- 'Public nuisance' does not concern the rights of an individual.
- The word 'public' includes any class of the public, or any community.

### **Essentials**

- Act/omission of nuisance.
- Causing interference in the peace of others or any advantage.
- Affecting life or property.
- Affecting the public at large.

### **Section 268 IPC**

- 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 grounds that it causes some convenience or advantage.

### **Criminality of Public Nuisance**

- *Leanse v. Egerton* (1945):
  - The English Court stated that if the defendant has not done his duty of taking reasonable care or opting reasonable measures then he shall be liable for creating public nuisance in case of any mishap taken place with the public.

- K Ramakrishnan v. State of Kerala (1999):
- The Kerala High Court declared smoking between the public as passive smoking as such a conduct which declared as an act of creating public nuisance under Section 268 of IPC.
- Soltau v. De Held (1851):
- The English Court held that the persistent ringing of the bell in the church was held as an act of public nuisance.
- Sturges v. Bridgman (1879):
- In this case it was opined by the English Court that public nuisance cannot be defended with prescriptive rights. Public nuisance can be defended by an act backed by statutory authority.

### **Punishment**

- Section 290 of IPC contains the punishment for the act of causing a public nuisance. The wrongdoer shall be punished with a fine extendable up to two hundred rupees.
- Section 291 of IPC states the condition where the court has awarded an order of injunction upon the act of a person breaching public peace, but he is continuing to do so. He shall be liable for imprisonment extendable up to 6 months or will be liable to fine or both.

### **Cognizance**

- The Magistrate has been conferred with the power of prohibiting repeated nuisance or continuance of public nuisance under Section 143 of the Code of Criminal Procedure, 1973 (CrPC).
- The provision states that ‘A District Magistrate or Sub-divisional Magistrate, or any other Executive Magistrate empowered by the State Government or the District Magistrate in this behalf, may order any person not to repeat or continue a public nuisance, as defined in the IPC or any special or local law.’
- The court can also take cognizance in stopping the act of nuisance affecting peace of general public. The court can award compensation to compensate the breach of public order and decency.

### **Negligence**

#### **Introduction**

In our regular lives negligence highlights the meaning of carelessness, or the quality or state of being negligent but according to the legal sense negligence leads to the non fulfilment of basic care which a performer should take as a reasonable man in all the situations.

Primary factors to consider in ascertaining whether the person’s conduct lacks reasonable care are the foreseeable likelihood that the person’s conduct will result in harm, the foreseeable severity of any harm that may ensue, and the burden of precautions to eliminate or reduce the risk of harm. Someone who suffers loss caused by another’s negligence may be able to sue for damages to compensate for their harm. Such loss may include physical injury, harm to property, psychiatric illness, or economic loss. The law on negligence may be assessed in general terms according to a five-part model which includes the assessment of duty, breach, actual cause, proximate cause, and damages.

For illustration, A store owner who fails to put up a “Caution: Wet Floor” sign after mopping up a spill.

#### **Definition of Negligence under Law of Torts**

According to **Winfield and Jolowicz** “Negligence is the breach of a legal duty to take care which results in damage, undesired by the defendant to the plaintiff.”

**Lord Wright** states that “Negligence means more than headless or careless conduct, whether in commission or omission; it properly connotes the complex concept of duty, breach, and damage thereby suffered by the person to whom the duty was owed.”

According to **Charlesworth & Percy**, Negligence, in current forensic speech, negligence has three meanings. These are : (i) a state of mind, in which it is opposed to intention; (ii) careless conduct; and (iii) the breach of duty to take care that is imposed by either common or statute law. All three meanings are applicable in different circumstances but anyone of them does not necessarily exclude the other meanings.

In *Blyth v. Birmingham WaterWorks Co.* (1856) ALDERSON, B. defined negligence as, negligence under Law of Torts is the omission to do something which a reasonable man would do, or doing something which a prudent or reasonable man would not do.

According to winfield negligence as a tort is the breach of legal duty to take care which results in damage, undesired by the dependent to the plaintiff.

In *Municipal Corporation of Delhi v. Subhagwanti*, a clock tower situated in the heart of the city, i.e., Chandni Chowk, Delhi collapsed causing the death of a number of persons.

The structure was 80 years old whereas its normal life was 40-45 years. The Municipal Corporation of Delhi, which was having control of the structure, had obviously failed to get the periodical check up and the necessary repairs done. The defendant Corporation was, therefore, held liable to pay compensation for the consequences of the collapse of the structure.

## **Strict Liability in Torts.**

### **Introduction**

The concept of Strict Liability in torts is also referred as “No-Fault Liability”, which can very explain this concept in an obvious manner- “that liability would exist irrespective of any fault”. There exist certain activities which are inherently so dangerous in nature that merely carrying them on poses a duty on the person who does so, to compensate for any damage irrespective of any carelessness on their part. The rationale behind imposing such liability is the foreseeable risk involved in such activities. This principle was first applied by the House of Lord in the case of **Rylands v. Fletcher**.

### **The case of Rylands v. Fletcher:**

In the year 1868, it was laid down by Blackburn, J.-

“The person who for his own purpose brings on his land and collects and keeps there anything likely to do mischief if it escapes must keep it at his peril and if he does not do so is prima facie answerable for all the damage which is the natural consequences for its escape. He cannot escape himself by showing that the escape was owing to the plaintiff’s fault, consequences or his major acts or act of God.”

In order to arrive at this conclusion, it is important to consider the facts of the case. Here defendant who was a mill owner had appointed certain contractors (apparently with requisite skills) to construct reservoirs in his land to provide water in the mill. During the work, the contractors came across certain old shafts in defendant’s land. Such shafts were connected with the plaintiff’s mine but such was not ascertainable as the shafts appeared to be filled with the earth. As soon as the reservoirs were filled, the shafts broke down and thereby flooded the mines of the plaintiff.

The court held that building such a reservoir was at the risk of defendants and in course of it, if any mishap occurred, defendants would be liable for such escape of materials.

## Essentials for Strict Liability in Torts

To prove a case of strict liability, the following ingredients must be fulfilled-

### A. Dangerous thing

A person can be held “strictly liable” only in the cases where a dangerous substance escapes from their land. A dangerous substance is those which are likely to cause some harm or mischief if escape. In Rylands’ case, such dangerous thing was a large body of water. In various other torts cases vibrations, electricity, gas, sewage, explosives, rusty wires, etc were considered to be dangerous things.

### B. Escape

It is also essential that such dangerous thing must escape from the premises of the defendant. In the case of **Crowhurst v. Amersham Burial Board**[3] where the branches of the poisonous tree were spread from defendant’s land to plaintiffs, it was held that such was escaped. Whereas in the case of **Read v. Lyons & Co**[4], where an employee suffered an injury due to an explosion in a shell manufacturing company, it was held such could not be covered under strict liability principle as nothing escaped from the defendant’s premises.

### C. Damage

There must be damage suffered by the plaintiff as a direct consequence of the dangerous thing that escaped. In the case of **Weller v. Foot and Mouth Disease Institute**, where the defendant went out of business due to the Government’s action of closing cattle market, it was held to be sufficient damage.

### D. Non-Natural use of land

In the case of **Richard v. Lothian**, Lord Multon defined non-natural use of land as “some special use bringing with it increased danger to others and not merely the ordinary use of the land or such a use as it proper for the general benefit for the community”.

Such would be decided by the courts after considering all the surrounding circumstances and the prevalent social conditions. For example in Ryland’s case, storing water in huge quantity was considered to be non-natural use of land whereas if such would be stored for an ordinary domestic purpose that would have been natural use of land.

## Absolute Liability

### Introduction

The principle of absolute liability was evolved in India in the case of **M.C Mehta v. Union of India** popularly known as **Oleum gas leak case**. This is one of the landmark judgements of the Indian Judiciary. We have always followed the British rules and regulations even after Independence. Before the evolution of this doctrine, India is been following the strict liability doctrine. But the problem with that doctrine was it has so many exceptions that the guilty one always uses one of the exceptions and was done away with the crime committed.

After the **Bhopal leakage case**, many people have lost their lives, there was havoc in the city of Bhopal after the gas leak as many people have lost their lives and in many people were affected with the fatal diseases that lasted through the generations. So, the Court decided to depart from the strict liability principle and develop a new principle that is an absolute liability (strict liability – exceptions). This rule was laid down by the Supreme Court which is so much wider with respect to the rules that was laid down by the House of Lords in the case of **Ryland**

**v. Fetcher** ( When a defendant is guilty he is not allowed to plead any defence, it is a strict liability with no exception).

## **Concept of Absolute Liability**

**Definition:** If an industry or enterprise is engaged in some inherently dangerous activity from which it is deriving commercial gain and that activity is capable of causing catastrophic damage then the industry officials are liable to pay compensation to the aggrieved parties.

### **Essential Elements of Absolute Liability-**

**1. Dangerous Thing-** The liability will only arise if there is any dangerous thing that has been escaped from the owner's land. And the thing is likely to cause damage and can injure any person or person's property on its escape. In various cases of strict liability, the following things have been held dangerous that is- a large pool of water, electricity, gas, explosives, fumes, rusty wires etc.

**2. Escape-** Any dangerous thing which is escaped from the defendant's control and caused damaged to the plaintiff's property or injured any person will come under the ambit of absolute liability. In the case of *Read vs Lyons and Co-* In this case, the plaintiff was an employee in the defendant's manufacturing company. While doing her duty a piece of manufactured exploded and she suffered severe harm. Here the court held- that the plaintiff was doing her duty and the accident occurred within the premises and course of employment. It was held the defendant cannot escape from his liability and the strict liability principle is not applicable in this case. The defendant was held liable.

**3. Non-Natural use of land-** If water is collected only for domestic use then it is not called as non-natural use but if it is collected in large quantity like in a reservoir then it is termed as non-natural use of land. In the case of *Ryland v. Fletcher* it was held that collecting water in the large quantity amounts to non-natural use of land. The basic line which is drawn between a natural or non-natural use of land is to keep in mind the surrounding and social conditions and will a reasonable person would do? When a person is growing tree in her land that is the natural use of land but when he/she starts growing poisonous tree then it is termed as non-natural use of land.

**4. Mischief-** To make the person liable under this principle, the plaintiff at first needs to show that the defendant had done the non-natural use of land and escaped the dangerous thing which he has on his land which resulted in the injury further.

In the case of *Charing Cross Electric Supply Co. vs Hydraulic Power Co-* The defendant was assigned to supply water at different places. The defendant was also required to hold minimum pressure but the defendant failed to do so which results in the bursting of the pipeline at different places. It caused heavy damages to the plaintiff. The defendant was held liable in this case even was not at fault.

### **Scope of Rule of Absolute Liability**

In almost all the cases the rule of absolute liability is considered as an exception of the law. After the catastrophic accident of Oleum gas leak tragedy, the act of The Public Liability Insurance Act, 1991 was introduced. Its objective was to compensate the victims of the case where the hazardous substances or handling of the dangerous substance is involved. The main motto behind the act was to create public liability insurance fund which will eventually be used to compensate the victims

## **Legal Remedies in Tort**

### **Introduction**

When the aggrieved person is taken back to the position that they were enjoying before their rights were infringed, they are said to have been provided with a legal remedy. There are various types of legal remedies.

For instance, if something that belongs to you has been taken away from you by a party, the court can either ask them to pay you back in money, or ask them to return your belongings as they were, and may also punish the party in some cases.

Remedies in Tort Law are of 2 types

1. **Judicial Remedies:** These are the remedies that the courts of law provide to an aggrieved party.
2. **Extra-Judicial Remedies:** If the injured party takes the law in their own hand (albeit lawfully), the remedies are called extra-judicial remedies.

### **Judicial remedies in tort are of three main types**

1. **Damages:** Damages or legal damages is the amount of money paid to the aggrieved party to bring them back to the position in which they were before the tort had occurred. They are paid to a plaintiff to help them recover the loss they have suffered. Damages are the primary remedy in a cause of action for torts. The word “damages” should not be confused with the plural of the word “damage” which means ‘harm’ or ‘injury’.
2. **Injunction:** Injunction is an equitable remedy available in torts, granted at the discretion of the court. An equitable remedy is one in which the court, instead of compensating the aggrieved party, asks the other party to perform his part of the promises. So, when a court asks a person to not continue to do something, or to do something positive so as to recover the damage of the aggrieved party, the court is granting an injunction.
3. **Specific Restitution of Property:** the third judicial remedy available in the Law of Torts is that of Specific Restitution of Property. Restitution means the restoration of goods back to the owner of the goods. When a person is wrongfully dispossessed of his property or goods, he is entitled to the restoration of his property.

### **Extra-judicial Remedies in Tort**

These are of five main types:

1. **Expulsion of trespasser:** A person can use a reasonable amount of force to expel a trespasser from his property.
2. **Re-entry on land:** In this case, the owner of a property can remove the trespasser and re-enter his property by using a reasonable amount of force.
3. **Re-capture of goods:** In this case, the owner of goods is entitled to recapture his/her goods from any person whose unlawful possession they are in.
4. **Abatement:** In case of a nuisance, be it private or public, a person (the injured party) can remove the object causing nuisance.
5. **Distress Damage Feasant:** Lastly, distress damage feasant. In this case, a person’s cattle/other beasts move to another’s property and his crops are spoiled. The owner of the property is entitled to take possession of the beasts until he is compensated for the loss suffered by him.

## **Injunction**

Injunction is an equitable remedy available in torts, granted at the discretion of the court. An equitable remedy is one in which the court, instead of compensating the aggrieved party, asks the other party to perform his part of the promises. So, when a court asks a person to not continue to do something, or to do something positive so as to recover the damage of the aggrieved party, the court is granting an injunction. A very simple example is that of a court ordering a company of

builders to build on a land near a hospital, for the construction sounds may be creating a nuisance to the hospital. An injunction is an order of a court that restrains a person from continuing the commission of a wrongful act, or orders the person to commit a positive act to reverse the results of the wrongful act committed by him, that is, to make good what he has wrongly done. To receive injunction against a party one must prove damage or the possibility of prospective damage (apprehended damage). An injunction can be temporary or permanent, and mandatory or prohibitory. Let us discuss each of them one by one. Law relating to injunctions is found in the Code of Civil Procedure, 1908 and from Section 37 to Section 42 of the Specific Relief Act (henceforth referred to as the Act), 1963. A suit of injunction can be filed against any individual, group or even the State.

- According to the Section 37 of the Act there are two types of injunctions—Temporary and
- Perpetual (permanent).

### **Temporary Injunction**

A temporary or interlocutory injunction is granted during the pendency of a case, to maintain the status quo and avoid further damage until the court passes a decree. It prevents the defendant from continuing or repeating the breach that he had been doing.

A temporary injunction is granted to prevent the party from suffering through the damages during the court proceedings. They may be granted at any stage during the pendency of the case. Either of the parties can seek an injunction to be granted. The power to grant a temporary injunction is derived from Rule 1 and 2 of Order XXXIX (39) of the Code of Civil Procedure. Certain principles are kept in mind while granting a temporary injunction:

### **Forest Conservation Act, 1980**

The Forest (Conservation) Ordinance, 1980 was enforced by the President of India to conserve forests, which was later repealed by the Forest (Conservation) Act, 1980. For centuries, people living in and around forests have had a symbiotic relationship with their environment. However, during colonial times this relationship shifted from local communities using forests as a resource to State resources for commercial interests. Further, with the increasing human population, forests were being depleted at an alarming rate. These led to the enactment of the Forest Conservation Act, 1980 which ensures their protection and sustainable use.

### **Need for Forest Conservation Act, 1980**

Forests are an important resource that nature can bestow upon mankind. Therefore, it is the duty of every citizen to preserve the ecosystems of forests. However, due to rapid deforestation, the cycle of nature is itself being disrupted. Therefore, the need to bring about a law to ensure the preservation of forests was needed.

One of the first legal drafts to protect forest tracts was the Indian Forest Act, 1865 replaced by a 1927 version of the same act. However, it was more geared towards protecting the commercial interests of the British Empire in India.

The act gave authority to the British to restrict tribal activities by levying taxes on timber and forest services. In other words, it mainly regulated the cutting of timber and the flow of raw materials rather than protecting forests.

Upon independence, the President of India enforced the Forest (Conservation) Ordinance in 1980 which was later repealed by virtue of Section 5 of the Forest (Conservation) Act, 1980. Under the 1980 Act, the restriction was made on the use of forests for non-forest purposes.

### **Objectives of the Forest Conservation Act 1980**

The aim of the Forest Conservation Act 1980 is to preserve the forest ecosystem of India by fulfilling the following objectives:

1. Protect the forest along with its flora, fauna and other diverse ecological components while preserving the integrity and territory of the forests.
2. Arrest the loss of forest biodiversity
3. Prevent forest lands being converted into agricultural, grazing or for any other commercial purposes and intentions.

### **Features of the Forest Conservation Act 1980**

The Forest Conservation Act of 1980 come with the following features:

1. The Act restricts the state government and other authorities to take decisions first without permission from the central government.
2. The Forest Conservation Act gives complete authority to the Central government to carry out the objectives of the act.
3. The Act levies penalties in case of violations of the provisions of FCA.
4. The Forest Conservation Act will have an advisory committee which will help the Central government with regard to forest conservation.

## **OTHER CONSTITUTIONAL AND CENTRAL LEGAL PROVISIONS FOR FOREST CONSERVATION**

### **Constitution of India**

The Constitution of India has significant provisions for environmental protection and environmental rights and duties of the people. Under the Directive Principle of State Policy, Article 48-A of the Constitution, enjoins that the State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country, and Article 51-A (g) which proclaims it to be the fundamental 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. Thus, by raising environmental concerns to the constitutional level, India has provided its citizens with a powerful legal tool to protect wildlife, maintain health standards and curtail government and private sectors including trans- nationals corporations, from degradation of natural resources. The constitutional mandate can certainly be invoked in case of threats to ecosystems or any rich biodiverse region.

## **The Environment Protection Act, 1986**

Another important general framework of environment protection is provided under the umbrella legislation of the Environment Protection Act, 1986 and this law can be of a great value in sustaining legal action for forest conservation. The Environment Protection Act, 1986 was the response to a widely felt need for a general legislation for environment protection. Under the Act, the Central Government is vested with power to take all such measures, as it deems necessary or expedient for the purpose of protecting and improving the quality of environment and preventing, controlling and abating environmental pollution. (Section 3) The Central Government has been empowered to issue directions including the power to direct closure, prohibition and regulation of any industry, operation or process or stoppage or regulation of the supply of electricity or water or any service. (Section 5) Subsequent to the enactment of the Environment Protection Act, the Water and Air Acts were Acts were also amended and the Pollution Control Boards were clothed with powers to direct closure, prohibition or restraining of any.

## **Wildlife Protection Act, 1972**

The Wildlife Protection Act, 1972 (WLPA) is the single most significant statute on wildlife conservation in India. Under it, over five hundred National Parks and Sanctuaries termed protected areas (PAs) in common parlance (though this is not a legal term), have been created or given legal protection. Though there were several laws relating to wildlife prior to 1972, as discussed above, the WLPA was India's first comprehensive legislation, covering the whole country. This law has been explained in detail in another module of the Course.

## **The Wildlife Protection Act 1972**

The Wildlife Protection Act 1972 is a crucial legislation in India that aims to protect and conserve wildlife and their habitats. It provides legal provisions for the prevention of hunting, poaching, and trade of endangered species. The Act includes various schedules that classify different species based on their level of protection and conservation status. It also establishes protected areas, permits the declaration of wildlife sanctuaries and national parks, and regulates activities related to wildlife. The Wildlife Protection Act 1972 plays a crucial role in safeguarding India's rich biodiversity.

## **Background of the Act**

The initial legislation of this kind was introduced during the British Indian Government's rule in 1887, known as the Wild Birds Protection Act 1887. This law aimed to prohibit the possession and sale of specific wild birds killed or captured during their breeding season. A subsequent legal measure, the Wild Birds and Animals Protection Act, was passed in 1912. In 1935, this act was modified by introducing the Wild Birds and Animals Protection (Amendment) Act 1935. During the British Raj, wildlife preservation was not a prominent concern. It was not until 1960 that the issue of wildlife conservation and preventing certain species from becoming extinct gained significant attention.

## **Need for the Wildlife Protection Act 1972**

The Wildlife Act of 1972 protects the country's natural animals, birds, and plants to promote ecological and environmental security. This statute established hunting limitations for a variety of animal species. It also contains provisions relating to harvesting and various other relevant issues. It has six schedules, including a list of endangered species, a list of wild creatures posing a threat to human life, a list of animals designated as vermin, and a list of defined goods, plants, and possessions, among others, that span India. For violations of the laws included therein, various punishments have been established.

## **Constitutional Provisions of the Indian Wildlife Protection Act 1972**

India is the first country in the world to have incorporated provisions related to protecting and conserving wildlife and the environment in the Constitution. Following the United Nations Conference on the Human Environment, commonly called the Stockholm Conference, in 1972, the Indian Government passed the 42nd Constitutional Amendment Act in 1976, through which articles pertaining to environmental protection were included in the Indian Constitution. The provisions of Wild Life Protection Act are as follows:

### **Article 48A**

By the 42nd Constitutional Amendment Act, this article was added under the Directive Principles of State Policy (Part IV). This article deals with the Protection and improvement of the environment and the safeguarding of forests and wildlife. It states, "The State shall endeavor to protect and improve the environment and safeguard the forests and wildlife of the country."

### **Article 51A (g)**

By the 42nd Constitutional Amendment Act, this article was added as the fundamental duty of Indian citizens. It states, "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."

## **Salient Features of Wildlife Protection Act 1972**

Here are the salient features of Wildlife Protection Act 1972:

- Prohibits hunting of wild animals specified in the act schedules unless the hunting is carried out under a valid licence.
- The act empowers the government to declare areas as any one of the following protected areas:
  - National Parks
  - Wildlife Sanctuaries
  - Conservation Reserves
  - Community Reserves
  - Tiger Reserves
- Provides licenses for selling, transferring, and possessing some wildlife species.
- Provides for the establishment of a Central Zoo Authority. It regulates the establishment, maintenance, and management of zoos in India.
- Provides for appointing a Director of Wildlife Preservation to oversee the implementation of the Act. It also provides for appointing a Chief Wildlife Warden and a Wildlife Warden.

- Provides for the punishment of offences under the Act. This includes imprisonment, fines, and confiscation of property.

### **Bodies Established Under the Wildlife Protection Act 1972**

Here are the bodies established under the WPA 1972:

- **National Board for Wildlife (NBWL):** The NBWL is a statutory body that advises the government on wildlife conservation. The Prime Minister chairs it. It has 30 members.
- **State Board for Wildlife (SBWL):** The SBWL is a statutory body. It advises the state government on wildlife conservation. The Chief Minister chairs it. It has 25 members.
- **Central Zoo Authority (CZA):** The CZA is a statutory body that regulates zoos in India. A Director-General heads it, and it has 10 members.
- **National Tiger Conservation Authority (NTCA):** The NTCA is a statutory body set up by the GoI in 2005 on the recommendations of the Tiger Task Force. It coordinates and monitors the conservation of tigers in India. A Director-General heads it, and it has 10 members. The Union Environment Minister chairs it.
- **Tiger and Other Endangered Species Crime Control Bureau (TSECCB):** The TSECCB is a statutory body. It investigates and prosecutes crimes related to the poaching and trafficking of tigers and other endangered species. A Director-General heads it and has 100 officers.

### **Protected Areas Under the Wildlife Protection Act 1972**

The protected areas mentioned in the Wildlife Protection Act of 1972 are discussed below:

#### **Sanctuaries**

The State Government can declare any area other than an area comprising any reserve forest or territorial waters as a sanctuary. For an area to be considered a sanctuary, it should have adequate ecological, faunal, floral, geomorphological, natural, or zoological significance.

The Chief Wildlife Warden controls, manages, and maintains the sanctuaries. He is endowed with the power to take any steps necessary to protect sanctuaries and the wildlife therein. The Chief Wildlife Warden can grant permission to any person to enter or reside in the sanctuary for purposes such as photographing, scientific research, tourism, investigation, or study of wildlife. However, fees are prescribed to carry out such activities.

No person other than the public servant on duty, the person permitted by the CWLW, or the person passing through the sanctuary along the public highway can enter or reside in the sanctuary. The use of chemicals, explosives, or any other substances that may cause injury to the wildlife in the sanctuary is strictly prohibited. Activities such as setting fire or burning any fire in a sanctuary are prohibited. Weapons can be taken only with prior permission from the warden.

#### **National Parks**

The State Government can declare any area that is of high ecological, faunal, floral, geomorphological, natural, or zoological significance can be declared as a national park. Even the areas within the sanctuary can be declared national parks. Destruction, exploitation, or removal of any wildlife (including forest produce) from the national parks is prohibited under the Act. Similarly, no person can destroy, damage, or divert the habitat of the species in the national park.

Removal of wildlife from the national parks and changing the inflow of water into and outside the national parks can be made only with the permission of the Chief Wildlife Warden, and the warden grants such permissions only after receiving acceptance from the concerned State Government. Grazing of any livestock is prohibited in the national park.

### **Conservation Reserves**

The State Government can declare any area owned by the government adjacent to national parks, sanctuaries, and those areas that serve as a link between one or more protected areas as conservation reserves after consultation with the local communities. It aims to protect the landscapes, seascapes, flora, fauna, and habitats in the above-mentioned areas. The State Government constitutes a management committee to assist and advise the Chief Wildlife Warden to conserve, manage, and maintain the conservation reserve.

### **Community Reserves**

When an individual or a community comes forward to volunteer to conserve wildlife and its habitat, then the State Government can declare any private or community land as a community reserve for protecting fauna, flora, and traditional values and practices. For an area to be declared a community reserve, the area should not be within a national park, sanctuary, or conservation reserve. The authority responsible for conserving, maintaining, and managing the community reserve is the community reserve management committee, which the respective State Governments constitute.

### **Initiatives Under the Wildlife Protection Act 1972**

Here are some of the key initiatives and measures implemented under the Wildlife Protection Act of 1972 to safeguard India's wildlife and natural habitats:

- **Legal Protection for Wildlife:** The Act categorizes species into six schedules, providing varying levels of protection, with Schedule I and II species receiving the highest protection and strictest penalties for violations.
- **Habitat Preservation:** Establishment of a network of National Parks, Wildlife Sanctuaries, Conservation Reserves, and Community Reserves to ensure the protection and management of critical habitats.
- **Combat Poaching and Illegal Trade:** Creation of anti-poaching units and special task forces, along with the establishment of the Wildlife Crime Control Bureau (WCCB) in 2007, to coordinate efforts and enforce stringent penalties against poaching and illegal wildlife trade.
- **Project Tiger:** Launched in 1973, Project Tiger aims to maintain a viable population of Bengal tigers in their natural habitats through improved habitat management, anti-poaching strategies, and community involvement.
- **Project Elephant:** Initiated in 1992, Project Elephant focuses on the conservation of elephants and their habitats, mitigating human-elephant conflict, and promoting measures for the welfare of domesticated elephants.
- **Wildlife Corridors:** Identification and creation of wildlife corridors to facilitate the safe movement of animals between fragmented habitats, reducing human-wildlife conflict and ensuring genetic flow between populations.