



LEGAL FRAMEWORK ENVIRONMENT AND BIODIVERSITY LAWS- AN INTERACTIVE APPLICATION

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ABSTRACT

The work is an interactive application that aims to cover all present and institutional changes related to environment and biodiversity, as they have evolved from several years until today. The purpose of the work and the creation of the application is to bring awareness about the legal and regulatory mandate in India with respect to environment and biodiversity. This publication serves as information document for businesses providing all the biodiversity and environment laws, rules and regulations in India giving a consolidated idea of the legal mandate relating to biodiversity and environment sector for carrying out business operations. Thereafter, the publication provides the analysis and detailed linkages of biodiversity conservation and law with other laws of the environment legal regime in India focusing on the effect of such linkage on business development and operations (if any). After establishing the linkages the publication would identify the legal connotations for the businesses in case of non-compliance of the legal mandate relating to biodiversity conservation, sustainable utilization of natural and biological resources and environment protection. Having laid the legal connotations for non-compliance the publication suggests the international and national best practices adopted by businesses ensuring conservation and sustainable development thereby mitigating not only biodiversity and environmental degradation but also the risk of legal and financial implications.

1 INTRODUCTION

Living within our environment limits is one of the central principles of sustainable development and the environmental problems require serious attention when the country is going ahead with sustainable development. And for a country like India which is a mega diverse country with abundant biodiversity and various ecosystems it is of prime importance and quiet early itself India gave a led in the direction to control environmental problems by giving a constitutional status. The Indian Constitution is the first constitution in the world which made provision for the protection of environment.

In **1977**, for the first time, **The Constitution (Forty Second Amendment) Act¹** inserted specific provision with the respect to the preservation of environment throughout the country. One of the directive principles added by the 42nd Amendment Act provides for the protection and improvement of environment.

Article 48A^{2 (i)} in The Constitution of India 1949 says "The State shall endeavor to protect and improve the environment and to safeguard the forests and wildlife of the country".

Article 51 A (g)²⁽ⁱⁱⁱ⁾ specifically deals with the fundamental duty with respect to environment. It says, "It shall be 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 creature".

Though the 42nd Amendment Act did not touch up on industries, the central and state legislatures have worked out a legislative framework in order to bring uniformity in the control of pollution and over a period of time various environmental laws and in recent time's biodiversity laws have come into the legal framework of India.

In **1992**, the first international Earth Summit, at **Rio de Janeiro, Brazil**, more than 108 heads of state convened to address urgent problems of environmental protection and socio-economic development.

- A. Agenda 21 — a comprehensive programme of action for global action in all areas of sustainable development;
- B. The Rio Declaration on Environment and Development — a series of principles defining the rights and responsibilities of States;

- C. The Statement of Forest Principles — a set of principles to underlie the sustainable management of forests worldwide.

In addition, two legally binding Conventions aimed at preventing global climate change and the eradication of the diversity of biological species were opened for signature at the Summit, giving high profile to these efforts:

- A. The United Nations Framework Convention on Climate Change
B. The Convention on Biological Diversity

However in India to protect, conserve and sustainably use the natural resources has always been there in its culture as reverence was attached to natural resources in many of its religious practices which kept indiscriminate exploitation of natural resources in check.

Ancient Indian texts highlights that it is the dharma of each individual in the society to protect nature and the term 'Nature' includes land, water, trees and animals which are of great importance to us. In the 'Atharva Veda' the ancient Hindu scripts stated "*What of thee I dig out let that quickly grow over*".

Therefore with the increasing consciousness at the global level to address the problems of environmental pollution India actively brought in legislative frameworks, policies, plans and strategies for conservation and protection of environment. Apart from adopting environmental protection through phased planning and incorporating some of environmental component in most of **the Five Year Plans**, India also consented to the international multilateral agreements that aimed for environmental protection and conservation.

Living its commitment to incorporate the international agreements at the domestic level India enacted:

- **The National Forest Policy, 1988** incorporates the elements of IPF and IFF proposal to achieve sustainability of forests
- **The National Environment Policy, 2006** illustrates the objectives and contents of important international environmental principles, amongst others.
- National Biodiversity Strategy and Action Plan (NBSAP) 2008

In addition to the legislative framework the principles of international summits, conventions and conferences are found embedded in India's National plans, policies and strategies aimed at protection and conservation of environment.

Presently, the **Ministry of Environment, Forest and Climate Change** (MoEFCC) and the **Central Pollution Control Board** (CPCB) and the **State Pollution Control Board** together form the regulatory and administrative core of the environment management in India with **National Board for Wildlife** (NBWL) and **National Biodiversity Boards** adding sector specific expertise, amongst others.

Aim of Work

This work is an interactive application on the brief and consolidated view of the legal and regulatory mandate under the biodiversity conservation laws and other laws of the environment legal regime of India focusing on the effect of such linkage on business development and operations. The aim is to facilitate the user with an easy trusted instrument for tracing and recovering all the materials of interest at one place.

Structure of work

The data pertaining to the various laws, regulations and notifications in relevance to the Environment and Biodiversity that would form a reference for industries with respect to their operations have been studied, searched and formulated into this instrument.

This consists of various laws classified broadly into five (5) categories:

1. Biodiversity Protection and Conservation
2. Ecosystem Protection and Conservation
3. Environment Protection and Conservation
4. Statutory containing provision of Environment protection and Remedies
5. Judicial Mechanism- Environment Jurisprudence instrument

This instrument is accurate, user-friendly and easy understandable presentation of the legal framework in India with respect to protection and conservation of the environment and biological diversity.

Objective

- A. It aims at enriching the knowledge and building awareness about the Indian legislation on environment and Biodiversity.

- B. It provides the facility for users to identify, investigate, use and exploit the various pieces of these legislations at one place
- C. It enables the users to understand the relevance of a specific law or group of laws with respect to their business activities and operations.
- D. It is an effort to provide a holistic view of all the existing environment and biodiversity laws in sink to each other.
- E. It provides an easy, understandable data covering the laws, the regulations and notification under the law, violations and other relevant information available until today in the legal framework.

2 **BIODIVERSITY PROTECTION AND CONSERVATION**

“Biodiversity or ‘biological diversity means the variability among living organisms from all sources and the ecological complexes of which they are part and includes diversity within species or between species and of ecosystem”

Biodiversity is the variability among different living organisms in the world. This variability is important for both the ecosystem and the humankind to encompass crops, livestock and diversity of species which is instrumental for availability of valuable ecosystem services like food, medicines, building materials, amongst many others. India owns varied ecosystems ranging from the evergreen tropical forests, wetlands, deserts, grasslands, coastal and marine ecosystem which is home to immense flora and fauna diversity. It hosts four biodiversity hotspots: the Western Ghats, the Himalayas, Indo-Burma region and Nicobar Islands.

Constitution of laws to protect and conserve the biodiversity, flora and fauna of India have a long history tracing back to the 3rd century B.C. when Ashoka, the king of Maghadha, enacted a law in the matter of preservation of wildlife and environment. The Post-independence a lot of changes were brought in the policies and government with respect to environmental protection. Many enactments were done to protect the forests, environment, water, Air and Bio-diversity. All these acts directly or indirectly give provisions to the protection of the biodiversity which is one of India’s basic and natural resource that satisfies the needs and wants of civilization. Therefore this resource must be conserved, preserved and protected for the existence of mankind.

In the endeavor to conserve its biodiversity India ratified to the Convention on Biological Diversity (CBD) to which India became a party in 1994. India enacted the Biological Diversity Act in 2002 in order to fulfill the three CBD objectives: Conservation of biodiversity, sustainable use of its components and fair and equitable sharing of benefits arising from the use of genetic resources. Further as mandated under the CBD, for implementing the CBD at the national level the National Biodiversity Strategy and Action Plan (NBSAP) 2008 was formulated. NBAP, 2008 is broadly aligned with the Strategic Plan for Biodiversity 2011-2020 and was updated in 2014 by developing 12 National Biodiversity Targets (NBTs) developed in line with the Aichi Biodiversity Targets³. Along the Biodiversity Act, India houses various

laws for protection of species of flora and fauna like the Wildlife Protection Act, 1972 and the Indian Fisheries act, 1897.

2.1 BIOLOGICAL DIVERSITY ACT, 2002

The Biological Diversity Act, 2002 developed with an objective of conservation of biological diversity, sustainable use of its components, and assess to benefits sharing arising out of the use of biological resources and knowledge associated with it.

The salient features of this Act:

1. It provides to safeguard and conserve biological diversity.
2. Guides to conserve and sustainably use biological resources, including habitat and species protection.
3. Provides for protection of indigenous or traditional knowledge, through appropriate laws or other measures such as registration of such knowledge.
4. Provides Measures for sharing of benefits from the use of biodiversity, including transfer of knowledge, monetary returns, joint research & development, joint IPR ownership, etc.

The Biological Diversity Rules, 2004 and the Guidelines on Access to Biological Resources and Associated Knowledge and Benefit Sharing Regulation, 2014 (ABS Guidelines 2014) provides details on the procedures for accessing biological resources and traditional knowledge.

The Biological Diversity Rules, 2004 provides for the procedures for:

1. access to biological resources and associated traditional knowledge;
2. seeking approval for transferring results of research;
3. seeking prior approval before applying for intellectual property protection and lays criteria for equitable benefit sharing .

Basic Principles of Access to Biological Resources and Associated Knowledge and Benefit Sharing:

1. Any access or use of genetic resources must take place with the approval - or “prior informed consent” - of the country providing the resources,
2. The conditions for access or use of genetic resources, including on how any resulting benefits would be shared, must be agreed upon - access and benefit sharing must be based on “mutually agreed terms.”

The Guidelines on Access to Biological Resources and Associated Knowledge and Benefit Sharing (ABS Guidelines 2014) provides modes and procedures for regulating Access to:

1. For foreigners, non-resident Indians, a body corporate, association or organization not incorporated or registered in India, or incorporated or registered in India, which has any non-India participation in the share capital or management.
2. For Indian citizens, companies, associations and other organizations registered in India, access to any biological resource for commercial utilization or bio-survey and bio-utilization for commercial utilization
3. For local people and communities of the area, including growers and cultivators of biodiversity, and vaidas and hakims, who have been practicing indigenous medicine, exemption of prior approval or prior intimation is given.

Implementing Authority:

- National Biodiversity Authority (NBA) -Statutory, autonomous authority that regulates the activities under this Act⁴ at the national level.
- State Biodiversity Board (SBB): State level body
 - Advice state government for this act and guideline implementation, regulate approval under this act, support BMC for their activities.
- Biodiversity Management Committees (BMC) - every local body is required to constitute a BMC within its areas for the purpose of promoting conservation, sustainable use and documentation of biological diversity. An important function of the BMC is to prepare the Peoples' Biodiversity Registers (PBR) in consultation with the local people.

Regulatory Regime under the Act:

- The authority constituted under this act needs to regulate activities of, approve and advice the Government of India on matters relating to the conservation of biodiversity, sustainable use of its components and equitable sharing of benefits.

NBA and SBB are required to consult the BMC before granting of any approval under the Act.

- Prior approvals are to be taken under Sections 3,4 and 6 of Biodiversity Act,2002
- The authority under this act has the right to notify areas of biodiversity importance as biodiversity heritage sites under this act and perform other functions as necessary to carry out the provisions of the Act.
- The act provides the measures to protect biodiversity of the country as well as to oppose the grant of intellectual property rights to any country outside or any biological resources obtained from India.

Punishments:

Failure to take prior permission of the NBA leads to imprisonment for a term upto five years or fine upto 30 lakhs. In case the damage caused due to such inaction is higher than 10 lakh then the fine would be equal to the damage caused.

Violation of the conditions under this act is imprisonment for a term upto five years and fine upto Rs. 5 (five) lakhs.

Measures to Evade or Mitigate Risk of Violation

Any person or organization in regards to this Act requires to refer to:

- Regulations by NBA and SBB
- ABS Guidelines 2014
- Normally traded commodities Notification⁹

Linkage

- *Wildlife Protection Act, 1972*: Imposes certain restrictions on various species of plants and animals which are listed in Schedule I to VI of the Act which need to be looked into while dealing with biological resources under the Biodiversity Act.
- *Indian Forest Act, 1927*: prohibits hunting, grazing, pasturing, farming, quarrying, charcoal, burning, etc.
- *Forest Rights Act 2006*: Use of traditional knowledge and extraction of Non-timer forest produce from forest areas
- The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006: Use of traditional knowledge and NTFP (Non Timber Forest Produce)

under Biological Diversity Act needs to prior approval from tribal community under this act.

2.2 WILD LIFE PROTECTION ACT, 1972

The Wildlife Protection Act (WLPA), 1972 is the major legislation which is specifically enacted for the protection of the wildlife in India. This act aims to protect wild animals, birds and plants and safeguard the natural habitat that sustains the wildlife. It gives high level of protection to an area with adequate ecological, natural or zoological significance for protecting or developing wildlife or its environment. The act empowers the central and state governments to declare any area a wildlife sanctuary, national park and closed area. There is a ban on carrying out any industrial activity inside these areas. The Act prohibits hunting of animals except with permission of authorized officer when an animal has become dangerous to human life or property or as disabled or diseased as to be beyond recovery.

An Amendment to the act in 1982, introduced provisions permitting the capture and transportation of wild animals for the scientific management of animal populations.

1991 amendment: protection of specified plants, the regulations of zoos and welfare of tribal and forest dwellers.

Wildlife Protection Amendment Act, 2002- forfeiture of property derived from illegal hunting and trade; and co-operative management through conservation reserve management committee and community reserve committee.

Authority constituted under the Act:

- National Board for wildlife (NBWL) is a statutory organization which is advisory to the central government on framing policies and measures for conservation of wildlife.

Regulatory Regime under the Act:

Alteration of boundaries within National Park or Sanctuary can be made by the State Government on the recommendation of the NBWL and prior permission of Supreme Court¹⁰ before submitting proposal to Ministry of Environment, Forest & Climate Change.

Offences, Violations and Punishment under the Act:

Offences

The offences under WLPA can be classified into three categories¹¹:

- Offence of hunting or picking, up-rooting, etc., of specified plants

- Offences relating to unauthorized possession, transport and trade for forest resources

Punishment

Hunting in a National Park or Sanctuary or alteration of boundaries is punishable with:

- Minimum of three years of imprisonment extending upto seven years and fine not less than Rs. 10,000/-
- On second or subsequent offence, minimum three years of imprisonment extending upto seven years and fine fo Rs. 25,000/-

Measures to Evade or Mitigate Risk of Violation

- As per Supreme Court orders it is required for any non-forest activity falling within sanctuaries, National Parks and 10 kilometers of their boundaries a prior consultation with the Standing Committee of the National Board for Wild Life to be taken.
- In case the project falls on the migratory corridor of wild animals the comments of the Chief Wildlife Warden of the State is required.

Linkage

- Forest Conservation Act, 1980- preventing the degradation of Forest Land.
- Biological Diversity Act, 2002: Sharing of benefits from commercial utilization for conservation of biodiversity in native habitat.
- Indian forest Act, 1927- regulates the activities in forests/protected lands and for management of forest produce.
- Forest Rights Act, 2006: compliance of various provisions relating to tenurial and community rights need to be ensured for carrying out activities in protected areas
- Prevention of Cruelty to Animals Act, 1960: provide for protection and conservation of wildlife;
- Indian Forest Act, 1927: prohibits hunting in reserved forests, protected areas and sanctuaries.
- Indian Penal Code, 1860: provides for protection to animals by making their maiming and killing as an offence under its provisions.¹²
- EIA Notification 2006: Project listed under EIA notification required NoC and approval under Wildlife Protection act if the project proposed in or within the Eco sensitive zone or 10km radius from National Park or wildlife sanctuaries.

2.3 INDIAN FISHERIES ACT, 1897

India has 7517 kilometers of marine coastline, 3,827 fishing villages, and 1,914 traditional fish landing centers. India's fresh water resources consist of 195,210 kilometers of rivers and canals, 2.9 million hectares of minor and major reservoirs, 2.4 million hectares of ponds and lakes, and about 0.8 million hectares of flood plain wetlands and water bodies.

The need for fisheries legislation was emphasized as long back as in 1873 when the attention of the then Government of India was drawn towards widespread slaughter of fish, fry and fingerlings and the urgency to adopt legislative measures to conserve the fisheries resources. At the time, the Government of India enacted the Indian Fisheries Act, which came into being in 1897.

Salient features of the Act:

- Prevention of destruction of fish by explosives in inland waters and on coasts
- Prevention of destruction of fish by poisoning waters
- Protection of fish in selected waters by rules of State Government
- Arrest without warrant for offences under this Act

Authority constituted under the Act:

According to the constitution the state legislatures have the power to make laws and regulations with respect to Fisheries. There are several specific authorities that would be relevant to this act:

- Aquaculture Authority: Authority created to protect the ecologically fragile coastal areas, sea shore, water front and other coastal areas and specifically to deal with the situation created by the shrimp culture industry in the coastal states/union territories.
- Marine Products Export Development Authority (MPEDA)- acts as a coordinating agency with different central and state government establishments engaged in fisheries production.

Regulatory Regime of the Act:

This act permits the state government to make rules or notifications with respect to implementation of the act underlying the following -

- Prohibition on indiscriminate fishing
- Restriction on types of gear and Mesh
- Restriction on size of the fish to be caught

- Mandatory closure during specific season with no activity being allowed so that fishes are not hampered during their spawning migrations and allowed to breed
- Declaration of sanctuaries or protected waters

The state government by notification under the official gazette suspend the operation of any party or industry in any specified area and may in like manner modify or cancel any such notification.

The conservation and protection regulatory regime are state specific- Few of the State legislations on fisheries:

- Goa Marine Fishing Regulation Act, 1980
- Maharashtra Marine Fishing Regulation Act 1981
- Orissa Marine Fishing Regulation Act 1981

Offences, Violations and Punishments under the Act:

- Use of dynamite or other explosive substance in inland waters or coast to catch or destroy fish - imprisonment for a term which may extend to two months, or with fine which may extend to Rs. 200/-
- Putting poison, lime or noxious material into any water with intent thereby to catch or destroy any fish- imprisonment for a term which may extend to two months, or with fine which may extend to Rs. 200/-
- For offences committed under this Act a person can be arrested without the order of the Magistrate and without a warrant.
- These offences, violations and punishments are in addition to any State specific offence, violation and punishment prescribed under the State laws.

Linkage:

Water (Prevention and Control of Pollution) Act, 1974: The companies and industries required consent under this notification need to ensure compliance of Fishery Act.

Wetland (Conservation and Management) Rules, 2010: Companies working in the lakes notified under this notification

Costal Regulation Zone Notification, 2011: The companies working in CRZ area has to refer Indian Fishery Act along with Water Act 1974.

Industry interested in Aquaculture:

- The ministry of Agriculture issued Guidelines for Sustainable Development and Management of Brackish Water Aquaculture (1995) to assist in formulating appropriate shrimp farming management practices and adopting measures for mitigating the environmental impact for management of shrimp pond wastes and utilization of land/water resources in a judicious manner.
-
- Wildlife (Protection) Act, 1972: Schedule I of the Act list of wild animals (including fish) with a view to ensuring ecological and environmental security.
- The Marine Products Export Development Authority Act, 1972: Authority regulates marine products industry along with conservation and management of offshore and deep-sea fisheries.

3 ECOSYSTEM PROTECTION AND CONSERVATION

An Ecosystem is a dynamic complex of plant, animal, and microorganism communities and the nonliving environment interacting as a functional unit. Everyone in the world depends completely on Earth's ecosystem and the services they provide food, water, disease management, climate regulation, spiritual fulfillment, and aesthetic enjoyment.

Steadily increasing proportion of the population lives in cities, in environments dominated by human built structures and machines. It states that there is a dynamic interaction existing between people and other parts of the ecosystems. The changing human condition drives directly or indirectly changes in ecosystems.¹⁴

A country's ecosystem and its ecosystem services represent a capital asset, but the benefits that could be attained through better management of this asset are poorly understood. When the decline in these "natural capital assets" is factored into the measures of national wealth, the estimates of that wealth decline significantly for countries like India, where the economy is depended on natural resources.

For protection and conservation of the ecosystems and sustainable use of the services the Government of India has declared - a network of protected areas like National Parks, Sanctuaries, Reserved Forests, Marine Reserves, Coastal Zones, Wetlands, etc. along with specific legislation, rules and regulations.

3.1 INDIAN FOREST ACT, 1927

Forestry in India is a significant rural industry and major environmental resources. India is one of the ten most forest-rich countries of the world. Indian forests types include tropical evergreens, tropical deciduous, swamps, mangroves, sub-tropical, montane, scrub, sub-alpine and alpine forests. These forests support a variety of ecosystems with diverse flora and fauna.

In the year 1865, under the British rule the first Indian forest act was asserted which simply established the government's claim over forests. In the year 1927, the first consolidated statute on forest management was enacted-The Indian Forest Act, with aim to put together the law related to forest, the transit of forest produce, and the duty livable on timber and other forest produce.

State government holds the right to make orders with notification under the Official Gazette, in regards with forest-land or waste-land; reserved or village forest.

Regulatory regime under the Act:

The Act categorizes forest into three types (i) Reserved; (ii) Protected; and (iii) Village.

Any forest¹⁵ land or waste land which is owned by or on which the State Government has proprietary rights can be declared to be as **Reserved Forest** by the State Government.

In a reserved forest the rights of the individuals or community over that forest are extinguished and access to the forest or forest products becomes a matter of privilege subject to the permission.

The forest lands or waste lands which the State Government has propriety rights but not Reserve Forest can be declared as **Protected Forests**. The State Government has the authority in Protected Forests to:

- Prohibit activities such as grazing, pasturing, farming, quarrying, charcoal, burning, etc.
- prohibition on cutting certain specific trees and provide penalties for illegal felling, collection or removing forest trees and forest produce without taking a license from the State Government.

Violations, Penalties and Punishment under the Act:

Activities with forest that constitute offence under this Act:

- Quarrying of any stone, or
- Burning of any lime or charcoal, or
- Removal of any forest products;
- Breaking up or clearing for cultivation or any other purpose land in any protected forest;
- Setting fire to forest or trees;
- Felling of any tree or dragging of any timber so as to damage any reserved tree among other things;
- Contravention of any notification issued by the State Government¹⁶ and of the rules made under the Act¹⁷

The penalty prescribed for such offences is imprisonment for a term extending upto six months or with fine upto five thousand rupees or with both.

Linkage:

1. Wildlife Protection Act, 1974:
 - Provide protection to the plant and animals listed under the schedules and companies working in forest areas need to develop an action for wildlife management.
 - In case of picking, uprooting, etc of specific plants used for the purpose of education or scientific research a grant of permit is needed¹⁸;
2. Biological Diversity Act 2002: Sourcing of forest produce for commercial utilization has to follow the rules under Biological Diversity Act 2002.
3. Forest Conservation Act, 1980: Use of forest products and diversion of forest land on which local tribal are dependent for Control degradation of natural forest areas and also provides regulation for diversion of forest land for commercial utilization.
4. The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006: - This Act recognizes and vests the rights to use and conserve forest resources on forest living scheduled tribes and other traditional forest dwellers for their livelihood and survival.

3.2 FOREST CONSERVATION ACT, 1980

Forests help in conservation of soil and moisture. They make a tremendous difference to the micro and macro climates and all good afforested areas are good rainfall zones. The ecological implication of forestry are vaguely felt by everybody but rarely understood completely. Ever after having laws, policies for protection and conservation of the forests was not fully achieved. A very mild attempt to slow the rate of destruction and to keep a check on the damage incurred was made by the establishment of Forest (Conservation) Act of 1980.

Authority constituted under the Act:

The Central Government holds the authority to grant approvals and appoint committees

Regulatory regime under the Act:

- The act provides to stop the rapid decline of forest cover due to deforestation and indiscriminate felling of trees.
- The aim and objective: “to prevent further deforestation”¹⁹
- The Forest (Conservation) Act is an enabling Act which only regulates the transfer of forest land for non-forest purposes, which cannot be done without the approval of the Central Government.
- This Act is a very brief statute having only five sections, however it has proved to be one of the most effective and powerful piece of legislations in protecting the forest from indiscriminate deforestation

Violations, Penalties and Punishment under the Act:

- The Act prohibits the diversion of a reserved forest or forest land for any non-forest purpose and prohibits cutting of forest trees without prior approval of the Central Government.
- Use forest for non-forest purposes-imprisoned for a period which may extent to fifteen days.

Non-forest purpose – breaking up or clearing of any forest land or any portion thereof for cultivation of tea, coffee, spices, rubber, etc. or any purpose other than afforestation.

Judiciary decisions on violation:

- In response to forest conservation the higher judiciary- Supreme Court and High court jointly taken decision on closure of businesses from quarrying of limestone, mining, saw mills, etc., amongst other inside or in the vicinity of forest.
- The Courts have also specified that no State Government can permit or grant license for mining (which has proved to be very detrimental to the environment) without the approval of the Central Government.

Measure to Evade or mitigate the risk of violation:

Forest Clearance - In case a business operations requiring forest land the project proponent must ensure that he duly applies for de-reservation of forest land for non-forest purposes by submitting a proposal/application to the Ministry of Environment, Forest and Climate Change before starting any nature of work on that particular piece of land.

Distinction between Forest (Conservation) Act, 1980 and Indian Forest Act, 1927:

The Indian Forest Act, 1927 provides the framework that governs the forest management regime in our country. The Forest (Conservation) Act, 1980 which is a subsequent Act was brought with the specific aim to prevent the rapid decline of the forest cover.

Linkage:

1. The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006: consent from tribes for diversion of the forest areas and providing financial support for loss of livelihood is to be taken
2. Sector specific Notifications, Guidelines and Clarifications issued by MoEF&CC from time to time with respect to regulation on activities within forest area need to be referred such as:
 - Guidelines for diversion of forest – land for non-forest purposes under the Forest (Conservation) Act, 1980 that are part of National Parks and Wildlife Sanctuaries.
 - Guidelines for collection of Net Present Value
 - Mining leases in National Parks/Sanctuaries etc.
 - Notification constituting Compensatory Afforestation Fund Management and Planning Authority (CAMPA)

- Biological Diversity Act: Indian forests are rich source of biological diversity, the act provides for conservation of biological diversity and sustainable use of the components. Deforestation or diversion of forest land would pertain to violation of this act.

3.3 THE SCHEDULED TRIBES AND OTHER TRADITIONAL FOREST DWELLERS (RECOGNITION OF FOREST RIGHTS) ACT, 2006

India's forests are home to crores of people, including many Scheduled Tribes, who live in or near the forest areas of the country. Nearly 250 million people live in and around forests in India, of which the estimated indigenous Adivasi or tribal population stands at about 100 million.

The Forests Rights Act as it is popularly known as was enacted for preservation and protection of forest rights of tribes or adivasies living in and around the forest area. This Act recognizes and vests the rights to use and conserve forest resources on forest living scheduled tribes and other traditional forest

The Act is one of its kind which recognizes the fact that Scheduled Tribes and other forest dwellers have a primary role to play in sustainability of the environment.

Authority constituted under the Act:

The Gram Sabha is the authority to regulate access to community forest resources and stop any activity which adversely affects the wild animals, forest and the biodiversity.

Regulatory regime under the Act:

- The Act is one of its kind which recognizes the fact that Scheduled Tribes and other forest dwellers have a primary role to play in sustainability of the environment.
- It confers the right to access to biodiversity and community right to intellectual property and traditional knowledge related to biodiversity and cultural diversity to forest dwellers. It also casts the responsibility to protect, regenerate or conserve or manage any community forest resource.

Measure to Evade or mitigate the risk of violation:

- The diversion of forest land for specified activities²⁰ is allowed upto one hectore
- Clearance from Gram sabha is recommended for development projects²¹

Linkage:

- Biodiversity Act 2002: The use of traditional knowledge for research and commercial activity needs prior approval from NBA and SBB.

- Wildlife Protection Act 1974: Forest dwellers cannot be forced to move out of protected forests and even Tiger Reserves in the name of wildlife conservation under WLPA except with the free consent of the Gram Sabha.
- Forest (Conservation) Act, 1980: The Act gives right to forest dwelling Schedule Tribes or other traditional forest dwellers to access to biodiversity and community right to intellectual property and traditional knowledge related to biodiversity and cultural diversity.
- ABS guidelines

3.4 COASTAL REGULATION ZONE NOTIFICATION, 2011

Under the Environment Protection Act, 1986 of India, notification was issued in February, 1991, for regulation of activities in the coastal area by the Ministry of Environment and Forests (MoEF). As per the notification, the coastal land up to 500m from the High Tide Line (HTL) and a stage of 100m along banks of creeks, estuaries, backwater and rivers subject to tidal fluctuations, is called the Coastal Regulation Zone (CRZ). The Coastal Regulation Zones are ecologically very sensitive areas and its geographical features play significant role in maintaining integrity and ecology of the region. Under this coastal areas have been classified as CRZ-1, CRZ-2, CRZ-3, CRZ-4. Therefore it is important to impose certain prohibition and regulations are also deemed necessary to protect certain ecologically sensitive areas such as coastal zones, horticultural belts, hills, etc. The Coastal Regulation Zone Notification, 2011 (CRZ Notification, 2011) controls certain development activities such as tourism, fishing, etc. for protection of ecological balance. Setting up of new industries within 500 m from the sea-shore is strictly prohibited. Similarly, building activities within coastal zone are also restricted.

Authority constituted under this notification:

Every State to which the CRZ Notification applies has its Coastal Zone Management Authority.

Regulatory Regime under the Notification:

- Setting up of new industries and expansion of existing industries is prohibited (exemption is given for specific projects²²)
- Certain projects require clearance of MoEFCC or EIA under CRZ notification ²³

Linkages:

- Environment Impact Assessment Notification, 2006: In case of projects listed under EIA notification, Environmental Clearance in CRZ requires recommendation of the Coastal Zone Management Authority.
- Indian Fisheries Act, 1897: Hatcheries and drawl of ground water for fisheries allowed as specified under CRZ Notification, 2011
- The Coastal Aquaculture Act, 2005: Traditional aquaculture farms require registration under the Act

3.5 WETLAND (CONSERVATION AND MANAGEMENT) RULES, 2010

Wetlands are areas where water is the primary factor controlling the environment and the associated plant and animal life. Wetland is a land area that is saturated with water either permanently or seasonally such that it takes on characteristics of a distinct ecosystem. According to WWF-India, wetlands are one of the most threatened of all ecosystems in India. Loss of vegetation, salinization, excessive inundation, water pollution, invasive species, excessive development and road building, have all damaged the country's wetlands.

The Wetland (Conservation and Management) Rules, 2010 as the name suggests have been enacted to preserve and maintain the ecological character of the Wetlands.

Authority constituted under this rule:

Central Wetland Regulatory Authority constituted by the central government has the power to identify and manage a wetland.

State government is the authority for implementation of regulations with respect to conservation, preservation and wise use of wetlands.

Regulatory Regime under this rule:

1. Prohibited activities under the Rules:

- Reclamation of wetlands,
- Setting up new industries and expansion of new industries,
- Manufacture, handling or storage or disposal of hazardous substances,
- Solid waste dumping, discharge of untreated wastes and effluents from industries, cities or towns;
- Any permanent construction except for boat jetties within fifty meters from the mean high flood level; and
- Any other activity likely to have adverse impact on the ecosystem of the wetland.

2. Activities within wetland which require approval from State Government:

- Withdrawal of water from within the local catchment area of the wetland ecosystem,
- Harvesting of living and no-living organisms,
- Construction of boat jetties,
- Treated effluent discharge from industries, cities or towns,
- Repair of existing buildings or infrastructures, aquaculture, horticulture and agriculture activities within wetlands

Violations, Penalties and Punishment under the Rule:

Provisions of the wetland within

Protected area like National Park/Sanctuary: Wildlife Protection Act, 1972

Protected and notified forest areas: Indian Forest Act, 1927 and Forest (Conservation) Act, 1980

Other areas (Gaps in protected and notified forests and wetlands outside protected and notified forests): Environment Protection Act, 1986

Measure to Evade or Mitigate the Risk of Violation:

Prior approvals are required for respective activities from Central Wetland Regulatory Authority

Linkages:

Environment Protection Act, 1986: Treated effluent discharges from industries, cities or towns, human settlements and agricultural fields falling within the limits laid down by the Central Pollution Control Board or the State Pollution Control Committee.

Environment Impact Assessment: as per the MoEF S.O. number 1533 (E) September 14th, 2006 amended from time to time; to be submitted.

Clearance required: wetlands falling within National Park/Sanctuaries- Wildlife (Protection) Act, 1972; wetlands within protected or notified areas- Indian Forest Act, 1927, The Forest (conservation) Act, 1980.

Biological Diversity Act: prior approvals are required for access for the utilization of biological resources and traditional knowledge for the purpose of research or commercial utilization.

4 ENVIRONMENT PROTECTION AND CONSERVATION

India employs a range of regulatory instruments to preserve and protect its environment. It was the first country to insert an amendment into its Constitution allowing the State to protect and improve the environment for safeguarding public health, forests and wild life.

The ancient Indian religious literature, for example, Vedas, Upanishads, Smritis and Dharmas preach a worshipful attitude towards earth, sky, air, water, plants, trees, and animals and enshrine a respect for nature and environmental harmony and conservation. It regards sun, air, fire, water, earth and forest as God and Goddesses.

Protection of the environment has to be a central part of any sustainable inclusive growth strategy. Population growth, urbanization, and anthropogenic development employing energy-intensive technologies have resulted in injecting a heavy load of pollutants into the environment. In the present times mismanagement, improper handling and disposal of liquid, gas and solid wastes and hazardous residual substances from factories and industries are potential cause of environmental pollution. Though adequate laws have been framed for regulation of polluting emissions and disposal of effluents however their awareness and implementation lacks.

Earth provides enough to satisfy every man's needs, but not every man's greed.

– Mahatma Gandhi

The Ministry of Environment, Forest and Climate Change in its Summary Report (2009) on the State of Environment also observed that developmental activities “...has seriously jeopardized the ecosystem posing a threat to natural environment.”²⁴ The Indian Legislators felt the need to review the environmental position which was heading for a crisis and have evolved with certain positive strategies to strike a balance between economic development and preservation of environment. The National Environment Policy 2006 is based on the cardinal principle of sustainable utilization of natural resources for development activities and preserving the rest of it for the future generation.²⁵

The year 1972 was a landmark in the history of environmental management in India. Prior to 1972, environmental issues such as sewage disposal, sanitation and public health were dealt with independently by the different Ministries without any co-ordination or realization of the interdependence of the issues. The UN Conference on Human Environment held at Stockholm in 1972 exerted major influence on environment legislations in India. In February 1972, a National Committee

on Environmental Planning and Coordination (NCEPC) was set up in the Department of Science and technology, which was established as National Committee on Environmental Planning (NCEP) in April 1981, based on the recommendations of the Tiwari Committee.

The Government of Prime Minister Rajiv Gandhi recognized these deficiencies as well, and shortly after his administration began in 1985 created the Ministry of Environment and Forests (MoEF). The Bhopal gas tragedy in 1984 triggered the passage of comprehensive environment legislation in 1986.

4.1 ENVIRONMENT PROTECTION ACT, 1986

The Act was enacted as an aftermath of the Bhopal gas tragedy in 1984 claiming more than 3000 lives. The statement of objects and reasons of this Act refers to the decisions taken at Stockholm Conference in June 1972. The Environment Protection Act, 1986 is a general law on environment protection which covers gaps in the areas of major environmental hazard. The Act is wide enough to include within it water, air and land and the inter-relation which exists between them vis-a-vis human beings and other living creatures, plants, micro-organisms and property.

The Environment (Protection) Rules, 1986 establish standards for emission or discharge of environmental pollutants, factors to be considered while prohibiting or restricting the location of industries, and sampling procedures.

Authority constituted under this rule:

The nodal agency for implementing various legislations relating to environmental protection at the center is the MoEF. The CPCB and the SPCBs are responsible for implementing legislations relating to prevention and control of pollution.

Regulatory Regime under this rule:

The Central Government has the power to:

- Restrict areas in which any industries, operations or process shall not be carried out or shall be carried out subject to certain safeguards.
- to prescribe and lay down the ambient standards for controlling emissions and effluent discharges, to regulate industrial sites and prescribe procedure for management of hazardous substances, and to establish safeguards for preventing accidents.
- to prohibit or restricts the location of industries and carrying on certain operations or process on the basis of considerations like biological diversity of an area, maximum allowable limits of concentration of pollutants for an area, environmentally compatible land use and proximity

Violations, Penalties and Punishment under the Rule:

- Noncompliance of the provisions of the Act and the Rules and discharges effluents beyond prescribed standard: Imprisonment for a term which may extend to five years or with fine which may extend to one lakh rupees or with both.

- Repeated or continuous violation: an additional fine of five thousand rupees may be imposed for every day during which such failure continues after the conviction for the first such failure.

Measure to Evade or Mitigate the Risk of Violation:

It is required for certain standards, rules, order or notification for sector specific activities to be followed:

- The standards for quality of air, water and soil
- The maximum allowable limits of concentrations of various environment pollutants
- Procedures, safeguards, prohibition and restriction for handling of hazardous substances

Linkages:

This act empowers the Central Government has enacted a number of notifications and rules for environment management:

- Environment Impact Assessment Notification, 2006: As per the S. O. 1533, prior clearance is required for certain industrial projects
- Guidelines for declaration of Eco-sensitive zones around National parks and Wildlife sanctuaries: lands falling within 10Kms of the boundaries of National parks and sanctuaries should be notified as eco-fragile zones.
- Coastal Regulation Zone, 2001: Industrial operations or activities pertaining to coastal regions need to get the environment clearance with respect to state specific notification
- Manufacture, Storage and Import of Hazardous Chemicals Rules, 1989: implies to industrial operations involving hazardous chemical and its storage; a written report regarding the substance need to be submitted
- Bio-Medical Waste (Management and Handling) Rules, 1998: These rules apply to all persons who generate, collect, receive, store, transport, treat, dispose, or handle bio medical waste in any form.
- Noise Pollution (Regulation and Control) Rules, 2000: specific standards and rules related to air quality ambience, noise and activities involving noise are to be followed
- Ozone Depleting Substances (Regulation and Control) Rules, 2000: Regulations for manufacture or shipping of ozone depleting substances
- The Batteries (Management and Handling) Rules, 2001: applicable to any person involving manufacturing or handling batteries or components of it.

- Municipal Solid Waste (Management and Handling) Rules, 2000: Rules lay the compliance criteria for storage, disposal, transportation, processing, managing of municipal solid wastes, amongst other things.

4.2 AIR (PREVENTION AND CONTROL OF POLLUTION) ACT, 1981

Urbanization and Industrialization had led to Air pollution. In the United Nations Conference on the Human Environment held in Stockholm in June, 1972 decisions were taken to take appropriate steps for the prevention of the natural resources of the earth which, among other things, include the preservation of the quality of air and control of air pollution. Following this the government of India enacted the Air (Prevention and Control of Pollution) Act, 1981, the Act provides for the Prevention, control and abatement of air pollution.

Authority constituted under this Act:

The Central board and state board constituted under the Water (Prevention and Control of Pollution) Act, 1974, is the authority for the Air Act.

Regulatory Regime under the Act:

- State government of each state is to notify specific areas within the state as Air Pollution Control Area(s).
- Prior consent from state board for industrial set up at Air Pollution Control area is required.
- The State Board empowers to monitor the emission of air pollutants for industries operating in the Air Pollution Control area.

Violations, Penalties and Punishment under the Act:

Establishment of industrial units without prior permission of the State Pollution Control Board or discharges emissions of any air pollutant in excess of the laid down standards is a violation and punishments under the act are:

- Imprisonment for a term not less than one year and six months and is extendable upto to six years with fine
- Fine may extend to five thousand rupees per day as long as the offence continues.

The State Board also has power to order direct closure of any industry or stop or regulate the supply of water or/and electricity, etc. of the industry if it is found to be violating the provisions of the Act or the conditions imposed by the State Board in its consent to operate.

Measures to Evade or Mitigate Risk of Violation:

- Prior consent before the setting up of industries is required especially in the Air Pollution Control Area and is important to timely apply for the renewal before expiry of its terms
- Ensure submission of environmental statement to the State Pollution Control Board for each financial year

Linkage:

- The Noise Regulation and (Control) Rules 2000: any activity is to follow ambient noise standards (Appendix 6)
- DG set Rules 2002: All DG sets to provide with exhaust muffler with insertion loss of minimum 25 db(A). All DG sets manufactures in or after 1st July 2003 have to comply with these rules.
- The Environmental (Protection) Rules, 1986: Submit environmental statement for each financial year in Form V of the Rules.
- Manufacture, Storage and Import of Hazardous Chemicals Rules, 1989: In case unit dealing with hazardous substance details under these Rules need to be furnished while applying for consent

4.3 WATER (PREVENTION AND CONTROL OF POLLUTION) ACT, 1974

The first important environment law enacted by the parliament of India is the Water (Prevention and Control of Pollution) Act, 1974. The purpose of the Act is to prevent contamination of water caused by industrial, agricultural and household wastewater. It aims to prevent the water pollution and maintain or restore the wholesomeness of water.

Authority constituted under this Act:

The Central Board and State Board are the assigned authorities under this act

Regulatory Regime under the Act:

- The Act empowers the authorities to analyze, regulate and monitor discharge of sewage or trade effluents.
- This Act requires industries, local bodies and agencies engaged in trade business or operation to obtain consent from the State Pollution Control Board for discharge of effluents into the water bodies.
- The Act provides for appeals, revision, minimum and maximum penalties, publication of names of offenders, offences by companies and Government departments, cognizance of offences, water laboratories, analysis etc. It lays down standards for water quality and effluent.

Violations, Penalties and Punishment under the Act:

1. The state board has the power to revoke the consent to operate in case any industry unit does not follow the specifications of the state board.
2. In case one fails to take the “Consent” of the State Board for establishing the industrial unit:
 - Imprisonment for a term not less than one year and six months, extendable to six years in addition to the fine.
 - Repeated offence imprisonment not less than two years extendable to seven years

Measures to Evade or Mitigate Risk of Violation:

Any construction require the State Board consent at two stages:

- Consent to Establish: Before commencement of construction work
- Consent to Operate: After completion of the construction

Linkage:

1. Environment (Protection) Act, 1986:
 - The highly polluting industries are issued show cause notice and/or closure notice by the Central Pollution Control Board under the provisions of Environment Protection Act, 1986.
 - Effluent standards are also prescribed under the EPA, 1986
2. Environment (Protection) Rules, 1986: to submit environmental statement in Form V of the Rules.
3. Water (Prevention and Control of Pollution) Cess Act, 1977:
 - Schedule to the Act lists the categories of industries on which cess on water consumption is levied.
 - Provides 25% reduction on the cess payable to those industries that consume water within the quantity prescribed for that category of industry

4.4 RULES FOR HAZARDOUS SUBSTANCE MANAGEMENT

The Environment Protection Act, 1986 prescribes specific procedure and safeguards which are necessary for anyone who has to handle any hazardous substance to comply. Such procedures and safeguards may be prescribed under the respective rule enacted for that particular hazardous substance.

The management, control and disposal of hazardous substances is regulated under the Environment Protection Act, 1986 which empowers the Central Government to take all measures needed for laying down procedure and safeguards for handling hazardous substances.

Authority constituted under this Act:

Central Government has the authority to take all measures needed

Regulatory Regime of Hazardous Rules:

- The Rules framed in India for the management, regulation, handling and disposal of hazardous and solid substances are as under:
- The Manufacture, Storage and Import of Hazardous Chemicals Rules, 1989
- The Hazardous Micro-Organisms Rules, 1989
- The Chemical Accidents (Emergency Planning, Preparedness and Response) Rules, 1996

These Rules provide for the creation and lays the functions of “group” for management of chemical accidents, amongst other things.

- The Bio-Medical Waste (Management and Handling) Rules, 1998
- The Municipal Solid Waste (Management and Handling) Rules, 2000
- The Ozone Depletion Substances (Regulation and Control) Rules, 2000
- The Batteries (Management and Handling) Rules, 2001
- The Hazardous Wastes (Management, Handling and Transboundary Movements) Rules, 2008
- e-Waste (Management and Handling) Rules, 2011

- These Rules relate to authorization, manufacture, recycling and disposal of the plastic waste, amongst other things.
- These Rules lay the duties and responsibilities of the producer, manufacturer, seller, etc. of the electric and electronic equipments as per Schedule of the rules, amongst other things.

- The Plastic Waste (Management and Handling) Rules, 2011

Violations, Penalties and Punishment for Non Compliance of the Hazardous Rules:

- These Rules draw their power and mandate from the provisions of the EPA and therefore attract the same punishment which is applicable in case of non-compliance of the provisions of the EPA.
- The court has empowerment to order closure of the polluting industries not standing by these rules.

Measures to Evade or Mitigate the Risk of Violation:

Pertaining to the activity one is involved in and the rules that imply respective regulations and consents to be followed.

Linkage:

- Environment Protection Act, 1986: These Rules fall under the wider ambit of the Act
- Water Cess Rules, 1978: Enumerates certain industries which were considered hazardous to water pollution.
- Water (Prevention and Control of Pollution) Act, 1974: provides for stringent punishment for hazardous polluting industries. The Act permits direct closure of the industry violating the rules.

4.5 ENVIRONMENT IMPACT ASSESSMENT NOTIFICATION, 2006

UNEP defines Environment Impact Assessment (EIA) as a tool to identify the environmental, social and economic impacts of a project prior to decision making. The Environment Impact Assessment Notification, 1994²⁶ for the first time brought the EIA mechanism as a safeguard measure to prevent environmental pollution through various industrial activities into the statutory regime mandating a prior environmental clearance from the MoEF&CC before a project or industry is started. The said Notification was amended in 2006 and at present EIA Notification applies to 29 designated projects and industries.

The EIA report for obtaining environmental clearance has specific purpose as regards the possible environmental impact of the proposed project along with recommendations for mitigating measures in respect of the project. It has to cover a wide range of related technical disciplines and should consider the probable impacts if air, water, noise, vibration, ecology, cultural heritage, sustainability, etc. The EIA report should specifically clarify as to how the project can be made environmental friendly.

Authority constituted under this Notification:

- The notification reference to two categories (category A & category B) under which the projects that would require the clearance.
- Category A- Projects require prior clearance from the MoEFCC, central government.
- Category B- Projects require clearance from the State Environment Impact Assessment Authority (SEIAA), State government

Regulatory Regime of Hazardous Rules:

- Environment Clearance is to be obtained in prior to Construction of new projects or activities or the expansion or modernization of existing projects.
- The activities that would require the Clearance are listed in the schedule to this notification

Violations, Penalties and Punishment for the notification:

- As the clearance granted is conditional non-compliance of any of the terms and conditions imposed may attract cancellation of the Environment Clearance.
- The application for the clearance is out-rightly rejected in case it is found that the project proponent has deliberately concealed and/or submitted false or misleading information or data.

Measures to Evade or Mitigate the Risk of Violation:

- Environment Clearance prior to the project start is required
- After clearance, half-yearly compliance report is to be submitted

Linkage:

Prior Environment Clearance is required for any activities under the following acts:

1. Biodiversity Act, 2002: for biodiversity rich areas
2. Wildlife Protection Act, 1972: for National park/ Sanctuary or any scheduled animal
3. Forest (Conservation) Act, 1980: for forest land use
4. Air (Prevention and Control of Pollution) Act, 1981: Consent for activity within air pollution control area
5. Water (Prevention and Control of Pollution) Act, 1974: Consent for setting up drainage system
6. Environment Protection Act, 1986: implies for the standards and safeguards specified with respect to activities that require approvals

4.6 OTHER STATUTORY LAWS CONTAINING PROVISIONS OF ENVIRONMENTAL PROTECTION AND REMEDIES

Prior to specific statutory laws protection of environment was considered important and a number of laws were formulated along with the remedies in case of violation of these laws. They contained provisions dealing with prevention and control of environmental pollution. These laws reflect the ethical values imbibed in the Indian culture, religion and legal deterrents that provide motivation for environmental protection at individual level thus contributing to ecological balance.

The first ever respect to environment and thought of protection began with the vedic age, when the Manusmriti was created. The society at that time respected and worshipped the environment and the components of environment-animals and trees. The concept of Sustainable Development as defined by the Bruntland Commission was the essence of duty imposed upon an individual to protect the environment by the ancient manuscripts in India. These manuscripts had the force of law, so these can be said to be the first phase of Environment Legislation in India.

Most of the laws were codified by the British in the second half of the 19th century. In the Constitution of India, all natural resources except forests were given to states for management and forests were kept in the concurrent list.

The final legislation established is the concept of filing a public interest litigation for environment related causes, where anyone could approach the courts to stop an activity causing environmental degradation.

The laws other than specific environmental laws which extend protection, relief and remedies against pollutant of environment are briefly discussed here under:

4.6.1 Protection under the Factories Act, 1948

The first regulatory law for labor in factory, commenced on the 1st April, 1949. Its amendment in 1987 emphasized on environmental focus and expanded its application to hazardous processes. The term “occupier” under this Act has the same meaning under the Environment Protection Act, 1986. It is the duty of the owner of the factory to make effective arrangements for treatment of effluents and prevention of emissions from factory so that they do not cause pollution or health problems.

It specifies the standards and conditions of the environment and equipment's or processes workers would interact with.

4.6.2 The Merchant Shipping Act, 1970

An Act to foster the development and ensure the efficient maintenance of an Indian mercantile marine in a manner best suited to serve the national interests and for that purpose to establish a National Shipping Board and a Shipping Development Fund, to provide for the registration of Indian ships and generally to amend and consolidate the law relating to merchant shipping.

Following the International Conference on Pollution of the Sea by the Oil, 1954, India decided to take action by common agreement to prevent pollution of the sea by oil discharged from ships. In order to give effect to this Convention, this act regulates and controls the discharge of oil or oil mixture by an Indian tanker or ship within any of the prohibited zones or by a foreign tanker or other ship within the prohibited zone adjoining the territories of India.

4.6.3 The Motor Vehicles Act, 1988

The first enactment relating to motor vehicles in India was the Motor Vehicles Act in 1914, which was subsequently replaced by the Motor Vehicles Act 1939. The Act bill received the assent of the President on 14th October, 1988. It came into force on the 1st day of July 1989. The act has been amended several times for a comprehensive legislation keeping in view the changes in transport technology and road network development.

The act implies for vehicles carrying dangerous and hazardous goods/substances to be insured as per the Public Liability Insurance Act.

The Act empowers the Central Government to formulate Rules for up-keeping of motor vehicles noise standards and for construction, equipment and maintenance of motor vehicles in relation to emission smoke.

4.6.4 Public Liability Insurance Act, 1991

The act provides for public liability- insurance for the purpose of providing immediate relief to the persons affected by accident occurring while handling any hazardous substance and for matters connected therewith or incidental thereto. The central government can constitute a Advisory committee on the matters related to the insurance policy under this act.

Linkage: The term “hazardous substance’ defined under this Act is taken to mean any substance or preparation which is defined as ‘hazardous’ under the Environment Protection Act, 1986. The liability under this Act is on the owner and in favour of any other person excluding the workmen . The liability to

pay under this Act does not take away the right of the person affected or his dependent to claim higher compensation under any other law.

5 JUDICIAL MECHANISM IN INDIA FOR PROTECTION, CONSERVATION AND IMPLEMENTATION OF BIODIVERSITY AND ENVIRONMENT LAWS

The judiciary has played vital role in evolution of environmental management regime in our country by filling in the limitations of the legislations. The judiciary while awarding damages for the harm caused to the environment has also pronounced and applied significant principles and doctrines based on International Agreement and Conventions such as Doctrine of Absolute Liability²⁷, Polluter Pays Principle, Precautionary Principle, Public Trust Doctrine and Doctrine of Sustainable Development and implemented them in principle. These principles and doctrines have now evolved to be cardinal in environmental jurisprudence.

5.1 INDIAN CONSTITUTION AND STANDING OF ENVIRONMENTAL ISSUES

Our Constitution is amongst the few in the world to have specific provisions regarding environmental protection. The directive principles of state policy and fundamental duties enumerated in the construction clearly casts duty on the State as well as the citizens to protect and conserve the environment. This duty of the State and citizen was incorporated through the Forty-Second Amendment to our Constitution in 1976 by adding Article 48-A and 51-A(g) to the Constitution specifically for protection of environment. Article 48-A directs state to make an endeavor to protect and improve the environment and to safeguard forests and wildlife of the country. Article 51-A(g) mandates duty upon every citizen to protect environment from pollution. It is these two constitutional provisions that have laid the foundation for development of environmental laws in India.

5.2 SUPREME COURT & HIGH COURTS POWER ON ENVIRONMENTAL ISSUES

Environmental Pollution being directly related to human health and well-being of the people, the Supreme Court and the High Courts under Article 32 and 226 of the Constitution have power to entrain a writ petition for protection and improvement of environment. Apart from its power under Article 32 the Supreme Court also has power under Article 142 to pass such decree or order as it may deem necessary for doing 'complete justice' in any cause or matter pending before it.

5.3 NATIONAL GREEN TRIBUNAL – AN EXPERT COURT TO DEAL WITH ENVIRONMENTAL ISSUES

The National Green Tribunal (Tribunal) is a specialized forum with necessary expertise established under the provisions of the National Green Tribunal (NGT) Act, 2010 to handle environmental disputes invoking multidisciplinary issues. The Act entrusts the Tribunal to effectively and expeditiously dispose of cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment and grant of relief and compensation. The Tribunal has both original as well as appellate jurisdiction. The Tribunal can be approached to resolve substantial questions of law relation to environmental justice and implementation of various environmental issues and legal rights arising out of Water (Prevention and Control of Pollution) Act, 1974, Water (Prevention and Control of Pollution) Cess Act, 1977, Forest (Conservation) Act, 1980, Air (Prevention and Control of Pollution) Act, 1981, Environment Protection Act, 1986, Public Liability Insurance Act, 1991 and Bio-diversity Act, 2002.

The Tribunal has extensive powers to award compensation and grant relief in deciding cases of environment.

The cases adjudicated upon by the Tribunal are beyond the jurisdiction of the civil courts because of the overriding effect of the NGT Act over environmental issues. An appeal against the order of the Tribunal lies with the Supreme Court.

The Tribunal has the power to impose punishment of imprisonment for a term which may extend to three years or with fine which may extend to ten crores rupees for non-compliance of its order. It may be noted that where a company is guilty of such offence it may be fined to an extent of twenty five crore rupees. In addition the Tribunal also has power to impose costs on the polluters and paid to the victims or for restoration of the normal environmental conditions.

Reference:

- 1 http://14.139.60.114:8080/jspui/bitstream/123456789/1273/1/008_The%20Constitution%2042nd%20Amendment%20Act.pdf ,
- 2 (i) & (ii) <http://www.environmentallawsofindia.com/the-constitution-of-india.html>
- 3 <https://www.cbd.int/doc/world/in/in-nbsap-v3-en.pdf>
- 4 See section 18 of the Biodiversity Act, 2002
- 5 See section 22 of the Biodiversity Act, 2002
- 6 See Rule 16 of the Biodiversity Rules, 2004
- 7 This excludes publication of research papers or dissemination of knowledge in any seminar/workshop.
- 8 As per BDA this includes persons who are not citizens of India; a non-resident –Indian; a body corporate, association or organization which is either not incorporated or registered in India or is incorporate or registered in India but has any non-Indian participation in its share capital or management.
- 9 http://nbaindia.org/uploaded/pdf/Notification_of_Normally_Tradeded_Commidities_dt_7_April_2016.pdf
- 10 In terms of Supreme Court Order dated 13.11.2000
- 11 Refer to sections of the wildlife protection act
- 12 Section 428 and 429 of the Indian Penal Code.
- 13 The economics of ecosystems and biodiversity India Initiative Report
- 14 Millennium Ecosystem Assessment Report- Ecosystems and Human Well-being: Biodiversity Sysesis-2005
- 15 The word forest has not been defined in the Act.
- 16 Under Section 30 of the Act
- 17 Under Section 32 of the Act
- 18 Such permit is granted by the Chief Wildlife Warden with the previous permission of the State Government.
- 19 The Statement of Objects and Reasons of the Forest (Conservation) Act, 1980
- 20 Schedule tribes and other traditional dwellers act chapter II section 3 (2)
- 21 Schedule tribes and other traditional dwellers act chapter II section 3 (2)
- 22 CRZ-notification 2011-section3
- 23 CRZ-notification 2011-section 4 (ii)
- 24 State of Environment Report (MoEF), Government of India, 2009-Executive Summary

- 25 http://envfor.nic.in/sites/default/files/annual_report/nep2006e.pdf
- 26 Issued under Environment Protection Act, 1986
- 27 Union Carbide Corporation vs. UOI (AIR 1990SC 273) known as the Bhopal Gas Tragedy Case

Abbreviations:

National Board for Wildlife (NBWL)

Ministry of Environment, Forest and Climate Change (MoEFCC)

Central Pollution Control Board (CPCB)

Convention on Biological Diversity (CBD)

National Biodiversity Strategy and Action Plan (NBSAP)

National Biodiversity Targets (NBTs)

National Biodiversity Authority (NBA)

State Biodiversity Board (SBB)

Biodiversity Management Committees (BMC)

Coastal Regulation Zone (CRZ)

Environment Impact Assessment (EIA)

United Nations Environment program (UNEP)

National Green Tribunal (NGT)