

ENVIRONMENT PROTECTION
A CHALLENGE BEFORE
LEGAL SYSTEM

D. B. THENGADI

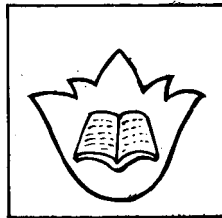
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न्यायः मम धर्मः

Inaugural Address by

SHRI D.B. THENGADI

at all India Delegates Meet of

AKHIL BHARTIYA ADHIVAKTA PARISHAD

at D.A.V. College, CHANDIGARH

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ENVIRONMENT PROTECTION

It is a matter of great satisfaction for all of us to meet here as a General Council of the Akhil Bhartiya Adhivakta Parishad. We are all aware of, and interested and involved in, the activities of the Parishad. We utilise the occasion of such meeting for stock-taking future planning, and in-depth study of some concrete, challenging problem. This time, the problem selected is the law for protection of environment.

In course of my tours, I found that some of us were curious to know why we have selected this particular theme for discussion in this conference. Like the subject of Procedural Reforms taken up earlier, certain topics command wider interest at different levels for different reasons. For example, land laws; Rent control laws; family laws (re-marriage, succession, adoption, guardianship, partition, divorce, etc.); censorship laws (particularly in view of their inability to effectively meet the challenge of cultural invasion through electronic media.

True, the subject is comparatively new. But it is to acquire utmost importance in the immediate future on account of the official policies of globalisation, liberalisation, economic reforms, etc. Presently, people are not aware of the huge, unbearable social costs of these measures. But they will feel the pinch before long, and then the Supreme importance of this topic will be realised by one and all. Hence this choice.

The Government of India is conscious of this fact. That is why they hastened to announce that from the new year no Government Vehicle, including DTC buses, that do not conform to the pollution control norms will be allowed to play on Delhi's roads. Both the Ministry of Power and Coal have been served notices reminding them of the need to conform to the pollution control norms by the thermal plants by the new year. The Thermal plants have been asked only to use washed coal to bring down air pollution to acceptable levels. The Environment Ministry declared that it is in the process of setting up task forces to check pollution with the environment of the community and checking of Government vehicles in Delhi will be carried out from January 3. Similar

action in the case of private vehicles will follow soon. The name of the pollution control board will be changed to Environment Protection Authority.

Why this sudden awakening on the part of the Central Government? It indicates the urgency of the topic, though for us in this country the subject has been almost equally urgent from the Vedic times.

The world was surprised to learn from Srimati Indira Gandhi at Stockholm Conference, 1972, that ecology-consciousness prevailed in India right from the Rig Vedic period. More than foreigners who attended the Conference as delegates, our own self alienated, anglicised intellectuals resented this approach of their Prime Minister. In the past, in keeping with the tradition of the land, legislation for protecting environment formed part and parcel of the Dharma which stood for ever-changing socio-economic order in the light of the unchanging, eternal universal laws. Every smriti has dealt appropriately with the problem of ecology treating it as an integral part of the scheme for Dharma of the Society. It is interesting to note that advocate-authors Chaturvedis have tried to elucidate the Dharma of ecology as suited the requirements of the modern times.

The movement for law on environment gathered momentum after the stockholm declaration. The Bhopal Tragedy, the (swaroopan silent) valley affair, the long-drawn struggles over Narmada and Tehri dam, DDA's Yamuna Plan and some other local agitations have further intensified the popular demand for perfect legislation on environment.

The number of environmentalists is growing. Some of them, like Sunderlal Bahuguna and Medha Patkar are known for their contribution and competence outside the country also. Consequently, there is the recent growth in literature on this subject. For example, books like "Emering Right to Environment" An Indian Experience by G.M. Jariwala; 'Law of Consumer Protection, Principles and Practice' by Vandana Shiva; Journals like "Down to Earth" and speeches made and articles written by environmentalists from time to time.

For lawyers in this country this is not a new subject. The cognisance of this problem was taken by laweven during the

British period and a few of the Acts contained provisions slightly helpful for protection of environment. During the post independence period this trend continued and the law paid greater attention to this aspect even before the Stockholm Conference of 1972. Earlier, the environmental legislations lay scattered in about 40 central and State Acts.

There is an excellent, comprehensive book, "International Law and The Environment" by Brinie and Boyle (1992). "Environmental Law" by Simon Ball and Sthart Bell; "Environment Protection" edited by Paras Diwan; Lal's "Commentaries on Water, Air Pollution of Environment (Protection) Laws"; "Law on Protection of Environment and Prevention of Pollution (Central of State)" by Chaturvedi's (Dr. R.G. and Dr. M.M.; are some of such important books. 'Legal Control of Environmental Pollution' (S. Agarwal ed.); Ramakrishna's 'The Emergence of Environmental Laws in the Developing Countries: A case study of India'; 'Inarrangement of National Parks and Sancturaries in India: A Status Report - such documents are also helpful for proper understanding. Then, they have with them the table of cases on environmental law in India. (over and above these, whenever any legislation is passed, it is customary in our country to bring out expeditiously some bare commentaries on it. Such commentaries are helpful for immediate purpose).

Earlier the American law on noise (The Noise Control Act, 1972 of U.S.A) had already received their attention, and now the comprehensive Environmental Response, Compensation and Liability Act of United States is also available. Not for blind imitation but as the helpful factor in evolving our own policies, European Community's law and history, philosophy and current direction of environmental policy have become important for all third world countries. The "Manual of European Environmental Laws" prepared by professors Alexandre Kess and Dinah Shelton furnishes us with chronological table of International and E C Documents, table of National Laws and cases, list of abbreviations and technical terms, etc.

For evolving a separate law on noise pollution, the American Law can be utilised, but with number of modifica-

tions. Britain was the pioneer in this field; its experience can be valuable for southern countries; but it should be simultaneously borne in mind that the British law on this topic suffers from anachronism because of the domination of conservatism in that country. Environmental laws in third World Countries, China, Japan, South America and Africa have not yet been available. Therefore, it is difficult to assess their relevance and utility under Indian conditions.

One general book "The Crisis of the Indian Legal System" by Upendra Baxi suggests some alternatives in development of law. The same can be helpful to some extent for removing the laeuna in our Environmental Law.

The interested and knowledgeable persons in the country are nowrealising that our law on environment is far from being perfect. The title for Djilas' second book was 'Unperfect Society'. By way of explanation Djilas said that he had deliberately avoided the use of the adjective 'imperfect', because that would have conveyed the impression that, according to him, society could at any time be perfect, that could never be. The implication of the term 'imperfect' was that society could never be perfect, but efforts should be constantly made to minimise its imperfection as far as possible. The same holds good about every legal system also.

People are aware that the law is not the only instrument to achieve the desired goal. There are other useful non-legal measures also. For example, market mechanism for prevention of pollution by sending signals to consumers as to the true environmental cost of their activities, pressures from purchasers, consumers and share-holders, pollution taxes, tax incentives, recycling credits, levies on environmentally unfriendly activities; pressures through the supply chain and through investors and lenders etc. Tax levels, grants, or incentives have an indirect effect.

Most of all, general education of masses on the protection of environment is a must.

Nevertheless, the fact remains that law is the most important if not the only weapon useful for this purpose.

Ecology is the Natural Resources law on Environmental Balance or equilibrium.

In common parlance, environment means surroundings. Einstein said, "The environment is everything that is not me". But in practical life it has specific meaning, physical surroundings common to all of us, including air, space, water, land, plants and wild life.

It is necessary to remind the rules or the ruled that it is fundamental human right to live in an unpolluted environment and that it is fundamental duty of every individual to maintain purity of environment.

In India there is no independent Act to deal with the problem of noise pollution. No doubt the air (prevention and control of pollution) Act, 1981, has defined the expression "air pollutant" to mean "any solid, liquid or gaseous substance (including noise) present in the atmosphere in such concentration as may be or tend to be injurious to human beings or other living creatures or plants or property or environment" the fact remains that there is no comprehensive separate law on the problem of noise pollution. This subject is not taken up with the seriousness it deserves because as justice Krishna Iyer had said, the environmental pollution is still regarded as "a subject of halting legislation, hypocritical implementation and helping interpretation".

Probably time is not yet ripe for setting up special courts to deal with environmental laws, or to create a special funds for environment from the punishment for environmental crimes. But various other measures deserves expeditious implementation.

Presently, damages are payable for injury to the person or lost to one's property. But no provision against injury to environment. Liability for environmental harm should be located and punished, notwithstanding the opposition to such provision by vested interests.

Now it is generally appreciated that there is need to restructure the law and practice on the protection of air, water and land against pollution, and the protection of the eco-system, together with those ancillary issues which help to explain these areas, such as, public participation, access to information, remedies and procedures.

There is a need for a Regulation on Eco-Management,

and auditing which should require a public statement of environmental performance, external verification procedures, and commitment to continuing improvements in environmental performance. (There should be environmental auditing firms and businesses).

Deserving special notice is the absolute absence of a law to tackle the twin problems of pollution, namely, the emission of the gases from the Power Stations, and the concentration of vehicular exhausts.

Attention needs to be given to protection of the cultural heritage. It is necessary to spell out the concept of 'sustainable development' under Indian conditions.

The term "Sustainable development", taken from the report of the World Commission on Environment and Development 'Our Common Future', published in 1987 has led to the creation of an International sustainable development commission.

The people have come to realise that the current criminal law as applied to pollution problem is quite inadequate. To cite a single example, an imprisonment for a couple of months or a fine even if running into thousands, would hardly compensate the aggrieved or the injured.

The law under which stringent penalties have been provided for contravention of provisions which provides for imprisonment upto five years and fine upto Rs.1 lakh and in some cases imprisonment upto 7 years and fine upto Rs.5,000 per day is often ignored by executive authorities.

Wide powers have been conferred on the relevant authorities under these Acts which includes the power of entry and inspection for various purposes as per procedure prescribed in the Acts and power to take samples of effluents, etc., for analysis, prescribed procedure to be followed in connection therewith. Stringent punishment and penalties viz. imprisonment and heavy fine have been provided for contravention of the various provisions of these three Acts. But it is widely known that these powers are often misused or not used at all.

Environmental Law remedies should be of two types -
(1) Remedies that are properly characterised as administra-

tive in nature, and (2) Truly Criminal remedies that are kept for blatant cases of environmental vandalism.

There should be a specific entry in the concurrent list of the seventh schedule of the

Constitution, under the title 'Environment'.

A central law on noise pollution should be enacted.

Appropriate tax deduction incentives be given.

It is advisable to compare definition of 'occupier' in environmental law and that under the Factories (Amendment) Act, 1987.

Professor Chhatrapati Singh, in his Article in "Legal Policy for the control of Environmental Pollution" has outlined the structural framework of various environmental laws under two heads. Chhatrapati Singh has also explained the functional basis of environmental laws. He has enumerated the deeper problems, in the legal policy, which require deeper consideration. His conclusion deserves serious consideration by this conference. General flaws in policy, principles and administration of the current laws-whether criminal or civil, are to be found in the drafting and implementation of environmental laws also, particularly specific-more specific- 'definition' of key terms such as 'air pollutant', 'water pollutant', 'such contamination', 'such concentration', 'nuisance', 'environmental pollution', 'hazardous substance'.

Restitutive justice* is a new branch of interpretative jurisprudence adding a new dimension to the cause of social justice. The Supreme Court has stemmed out of Article 32 a new jurisdiction to award compensation for alleviating, the human suffering by action or omission of Govt. or of Corporate Bodies resulting in violation of the basic or natural rights of individuals.

It is the inalienable and fundamental right of man-good environment. Article 48-A of the Constitution enjoys that the State shall endeavour to protect and improve the environment. But the right to breathe should fall within the scope of right to life guaranteed under Article 21. Purity III of environment necessary to the right to breathe also finds place in the fundamental duties, in clause (g) of Article 51-A Part IV-

A of the Constitution.

Pollution Control is a part of social justice. Directive Principles are only expansion of Article 14.

Public health is a part of social justice. Relevant Articles in Part IV of the Constitution: Article 41; Art.43; Art. 47; Art.48-A; Clause (g) of Article 51-A.

A comprehensive study of the area of action and the powers of executive and judicial authorities and the powers of the authorities created under the Water Act, the Air Act, and the Environment Act would reveal that there are vast areas relating to pollution which may not come within the ambit of the Acts and can, therefore, be dealt with under the general penal or preventive provisions, and allusion, may be relevant to the width of the comprehensive concept of nuisance.

In the wider sense of nuisance, pollution is nothing but species of nuisance.

In its causal genesis, pollution is nuisance-oriented. Pollution is atmospheric nuisance, and, in that sense, it is covered by the larger notion of nuisance. (The terms 'nuisance' is not capable of exact definition Pollock C.B., in 'Banford v. Turney' has observed (31L 23 292).

"I do not think that the 'nuisance' for which an action will lie is capable of any legal definition, which will be applicable to all actions and useful in deciding them.

Speaking generally, nuisance is "the unlawful interference with a person's use or enjoyment of land or some right over, or in connection with it.

Nuisance may however, be distinguished from negligence or trespass. In India Pollution cases can usually be construed as admixture of nuisance and trespass.

Chapter XIV of the Penal Code, 1960, relates to "Offences affecting the public health, safety, convenience, decency and morals". Further, even obscenity whether visible or audible, whether recited or written, will amount to criminal nuisance.

According to experts, Section 290 of the Penal Code has been enacted to provide the punishment for 'public nuisance' in cases not otherwise provided for. The width of the

concept of 'public nuisance' under the Penal Code extends to number of offences, all of which must be taken as species of criminal nuisance. Out of the list of such nuisances, those having affinity with pollution proper are relatable to Section 277, 278, 284, 290 and 291. Section 268 of the Penal Code defines 'Public Nuisance'. But there is no separate penal section prescribing punishment for the commission of 'public nuisance' as defined under section 268. That is why Section 290 has been enacted to provide for punishment for 'public nuisance' in cases not otherwise provided for.

'Nuisance' considered as an offence is much wider in scope than pollution and extends even to cases of abstrusion and a number of other annoyances. 'Nuisance' may be distinguished from 'negligence' and trespass speaking generally, 'nuisance' is the unlawful interference with a person's use or enjoyment of land, or of some right over or in connection with it".

Section 133 of the Code of Criminal Procedure is not repealed by the Air Act.

Nuisance in India is a subject common to civil and criminal Law. Nuisance means, "anything injurious or abnoxious to the community or to the individual member of it, for which some legal remedy may be found'. Any thing done which unwarrantably effect rights of others, endangers life or health, gives offence to the sense, violates the laws of decency, obstructs the comfortable and reasonable use of property, may amount to nuisance. Injury must be real and not fanciful.

Nuisance: i) Public, ii) Private.

while takingh protection of environment into consideration, prevention of harm should be given priority. Greater emphasis should be laid on progressive adoption of laws that set standards for products or the processes by which they are made, rather than on discharges or omissions. The introduction of integrated pollution control, a process-based control, is necessary.

For prevention of future harm, there should be progressive adoption of laws that set standard for products or the processes by which they are made, rather than for discharges

or omissions. Introduction of integrated pollution control, a process - based control is necessary.

Strict cognisance should be taken of sulphurdioxide omissions, the dumping of sewage sludge in the sea and reductions in omissions from vehicles, acid rains.

The cheap option of incineration on dumping sewage sludge in the sea should be phased out.

The policy now is that waste reduction and education is to be preferred to recycling, and, recycling to disposal.

The minimisation of waste should be given priority in future production methods.

The 'wild beast theory' must be applied to (a) fire, (b) gas, (c) electricity (d) explosives, (e) engines, (f) motorcar containing petrol, (g) noxious fumes, (h) other dangerous things, such as, rusty wire or flagpole, poisonous vegetation and chair-o-plate.

Apart from the devastating leakages of lethal gases, from carbide and fertilizer plants, a large quantity of the deadly substance is spewed forth by the main power stations in any town.

The law on town and country planning should take into consideration various means of disposing of waste, sewage disposal, incineration, landfill, discharge to rivers, m discharge to the sea and recycling.

Also the problems such as, abandoned water taps, derelict land, discharges of toxic wastes and untreated sewage into estuaries and the sea, etc.

Protection of environment and protection of people are interlinked like regulation or radio activity.

Protection of environment includes not only pollution control but also other issues, such as, the retention of biological diversity and the preservation of landscape.

Problem of environment protection requires remedies - Legal as well as scientific, technological, social and economic solutions (Environmental law is a separate discipline). Inter-relatedness of problems should be recognised. For example, irrigation facilities produce salinity leading to land pollution. Industrial development causes pollution of land, m air and water. Over exploitation-increases burden on natural

resources like land, forests and water. How cope with the escalated need for shelter involving housing schemes, for fuel, fodder and furniture. 100 million hectares of land, almost one third of total area, stands infected by degradation, erosion, salinity, alkalinity and wind erosion. Automobiles causing air and noise pollution. Deforestation resulting into uneven availability of water, exhibiting an alternating cycle of flood and draughts. Untreated human wastes in urban areas, create health problems.

The decline in environmental quality is evidenced by increasing pollution, loss of vegetal cover and biological diversity, excess concentration of harmful chemicals in the ambient atmosphere and in food chains, growing risks of environmental accidents and threat to the support-systems. All motor vehicles including buses and trucks, three wheelers, etc. are known for smoke commission-level and carbon monoxide level, by contravening rules for test for smoke omission level and carbon monoxide levels for motor vehicles.

Protection of environmental pollution includes water, air, land and soil, forests, lakes, rivers, sea, wild life and other living creatures, and the inter-relationship which exists amongst and in between these elements-vis-human beings and other living creatures, plants, forests, property and micro-organism, etc.

Identity of the polluters- Cars, factories, powerstations, etc. Nature of the pollutant (e.g. radiation, leads, pesticides, CFCs, etc.), the targets being medium in which the threat manifests itself (e.g. air, water, land, etc.). The principle should be 'polluter pays'.

Obligations

It is difficult and inadvisable to disentangle our national policies or environment from global ones.

Environmental pollution is a global problem more on the premises that the atmospheric ocean is shared by the peoples of the nations. As Arthur C. Ster suggests, the aim has to be the welfare and the preservation of health not only

of the nationals of a State but of man throughout the world, with the other objectives of protection of and preservation against damage to plant and animal life, prevention or damage to physical property and interference with the normal use and enjoyment thereof, provisions of visibility required for safe air and ground transportation, ensuring continued economic growth and development, and maintenance of an aesthetically acceptable enjoyable environment.

As L.N. Mathur said, the use of air has to be planned along substantially the same lines as the use of multinational rivers and water channels for the conservation of land water resources.

International issues of Environment are : (a) Global warning; (b) depletion of the Ozone layer; (c) the protection of the rain forest; (d) attempts to save the animals; (e) the control of hazardous substances and processes; (f) the minimisation and management of waste; (g) the conservation of natural resources; and (h) protection of eco-systems.

There should be organised 'watch-dog committees' of citizens to keep constant watch on problems arising from time to time and region to region, for example a significant portion of the 15000 plant species and 75000 animal species found in India are threatened by the pressure of human activity on land and forests. India lost between 1951 and 1972-3.4 million hectares of Forest lands to dams, mining, new crop lands, roads and industries. It means an annual rate of deforestation of about 0.15 million hectares.

Deforestation, floods, famines and other inter-related facts should be taken into consideration in an integrated manner.

Even our sacred rivers like Ganga and Yamuna often appear in the news, under pollution head. It has also now been scientifically established that some kinds of polluted water can also adversely affect the fertility of the soil. Air pollution apart from being a source of various diseases is also threatening the very existence of ancient and historical monuments.

Various such problems should be identified alertly from time to time by such 'watch-dog' committee.

It should be a matter of pride and satisfaction for us that the problem of the protection of environment received attention of the members of the constituent Assembly, at that early stage.

The Indian Constitution is amongst the few in the world that contains specific provisions on environmental protection. The Directive Principles of State Policy and the Fundamental Duties chapters explicitly enunciate the national commitment to protect and improve the environment. But unfortunately, some extraneous psychological factors also played some role in the matter.

The authors of the 'Environmental Law and Policy in India' state:

'The constituent Assembly that framed India's Constitution did not specifically consider the question of whether parliament or the State Legislature should regulate environmental matters. Instead, the distribution of environmental subjects within the three lists was influenced by the Govt. of India Act of 1935 and by the conflict between those who wished to create a strong centre and others who preferred to secure more powers for the States..... The larger question of a decentralised versus a centralised federal structure prevailed over the issue of whether the central or state legislatures were better situated to regulate environmental matters.'

Number of complicated problems intensified such differences of opinion. For instance, floods which cause considerable havoc in the plains may be the result of indiscriminate felling in the catchment areas under the control and jurisdiction of an entirely different province."

When the Forty Second Amendment Act of 1976 with its Article 48-A and Article 51-A was passed, the Lok Sabha rejected several amendments. One of them required the State to "conserve and develop the water, soil and other natural resources", while another proposed to ensure that the State's efforts to protect and improve the environment would not harm tribal forest dwellers." The rejected amendments of the Rajya Sabha proposed that the Article should also mention "mineral wealth" and require the Government to "undertake adequate and effective measures to check environmental

pollution.”

The 42nd Amendment also expanded the list of concurrent powers in the constitution. The amendment introduced a new entry “Pollution control and family planning”. While “forest and “Protection of wild animals and birds” were moved from the state list to the concurrent list.

Article 253 of the Constitution empowers parliament to make laws implementing India’s international obligations as well as any decision made at an international conference, association or other body. The Article apparently gives Parliament the power to enact laws on virtually any entry contained in The State List. Article 253, with its broad language, serves as an adequate handle for a court to uphold Parliaments’ powers to enact environmental laws.

In 1980, the Tiwari Committee recommended that a new entry on “Environmental Protection” be introduced in the concurrent list to enable the Central Govt. to legislate on environmental subjects. The committee’s recommendation was based on a note from the Indian Academy of Environmental Law which observed that there was no direct entry in the 7th schedule enabling parliament to enact comprehensive environmental laws. The note, however, did not consider parliaments’ power under Article 253.

Notwithstanding such difficulties, commendable progress has been made by the country in this respect.

There are many indications; for example, Article 39-A guarantees every citizen the right of access to the court. The right to a clean environment has been included by the Supreme Court in the definition of the right to life guaranteed to all citizens by Article 21. The right to breathe clean air and drink unpolluted water has now become as sacred as the right to life.

The Supreme Court has throughout the last few years expanded the horizon of Article 12 primarily to inject respect for human rights and social conscience in the corporate structure. Any new and innovative expansion of human rights is bound to disturb the status-quoist vested interests, but their arguments should not deter the court from widening the scope of human rights and expanding their ambit.

Article 12 of the Constitution should not be presumed to obstruct this process of expansion. The General public also is srecently becoming aware of the valuable contribution of judiciary to the cause of environment.

In Agra pollution case the Supreme Court pulled up Indian Oil Corporation for not taking steps to control the environmental damages caused by the Mathura Oil Refinery especially to Taj Mahal. Many other important moves such as the Court's directive on the relocation of Delhi's noxious industries, the Court's stem directive in the Delhi Ridge case, have focused the attention of the people on the judiciary's role in this respect.

In fact the environmental matters have been taken up in the Court since the days of Chief Justice P.N. Bhagwati in the early "80s" and other Brother Judges have made further important contributions to this cause.

Various cases mentioned in the Annexure show that our judiciary is alert but the magnitude of this problem. For example, P.N. Bhagwati C.J. impressed upon the Government of India to evolve a national policy for location of chemical and other hazardous industries in areas where population is scare and there is little hazard or risk to the community, and when hazardous industries are located in such area, every care must be taken to see that large human habitation does not grow around them. There should preferably be a green belt of 1 (one) to 5 KM width around such hazardous industries.

Population as base of huge industries conflicts eagerly with employment value of such industries, but as the High Court of Kerala has observed that where a workshop has been responsible for causing nuisance by air pollution and noise pollution, the mere fact that it proves livelihood to some persons, unmindful of consequences, is not a valid ground to justify causation of pollution (Madhavi V. Thilakam, 198).

P.N. Bhagwati, Chief Justice has aptly observed "where science and technology are increasingly employed in producing goods and services calculated to improve the quality of life, there is certain element of hazard or risk inherent in

the very use of science and technology and it is not possible to eliminate such hazard or risk altogether. We cannot possibly adopt a policy of not having any technical or other hazardous industries merely because they pose hazard or risk to the community. If such a policy were adopted it would mean the end of all progress and development. Such industries, even if hazardous, have to be set up since they are essential for economic development and advancement of well-being of the people. We can only hope to reduce the element of hazard or risk to the community by taking all necessary steps for locating such industries in a manner which would pose least risk or damage to the community and maximising safety requirements in such industries".

(M.C. Mehta V. Union of India, AIR 1987 SC 965 (981) etc. many such cases can be cited to prove the point, and their list is given in the Annexure attached herewith.

But of particular importance is the spirit in which this subject should be considered by our law makers, lawyers and the judiciary. It is a matter of great satisfaction that appropriate lead in this matter is given by our judiciary. For the first time the spirit of Swadeshi was introduced in the field of law and jurisprudence, which has been a marked departure from the age-old tradition of our intellectual slavery. Dealing with the problem of hazardous industries, P.N. Bhagwati (C.J.) has declared in un-equivocal term that judgments of the British Courts need not be followed by us blindly, the conditions in our country are different from those in Britain. We should, therefore, have our own law and its interpretation, keeping in view our national scene.

The Supreme Court of India justified itself in departing from the Rule laid down in *Rylands vs. Fletcher* reported in 1868 LR 3 HL 330 for two reasons. Number one is the incapacity of the rule to cope with the liabilities of an industrialised society, and secondly because of the need for a free and native thinking in order to develop an indigeneous law. This remarkable ruling is reported in *M.C. Mehta vs. Union of India*, AIR 1987, SC, Page 1086.

The following passages are in page numbers 1098-99.

"This rule evolved in the 19th Century at a time when

all these developments of science and technology had not taken place cannot afford any guidance in evolving any standard of liability consistent with the constitutional norms and the needs of the present day economy and social structure. We need not feel inhibited by this rule which was evolved in this context of a totally different kind of economy. Law has to grow in order to satisfy the needs of the fast changing society and keep abreast with the economic developments taking place in the country. As new situations arise, the law has to be evolved in order to meet the challenge of such new situations. Law cannot afford to remain static. We have to evolve new principles and lay down new norms which would adequately deal with the new problems which arise in a highly industrialised economy." As to the second reason, the Court held (per Bhagwati, C.J.):

"We cannot allow our judicial thinking to be constricted by reference to the law as it prevails in England or for the matter of that in any other foreign country. We no longer need the crutches of a foreign legal order. We are certainly prepared to receive light from whatever source it comes but we have to build up our own jurisprudence and we cannot countenance an argument that merely because the new law does not recognise the rule of strict and absolute liability in cases of hazardous or dangerous liability or the rule as laid down in *Rylands Vs. Fletcher* as is developed in England recognises certain limitations and responsibilities. We, in India cannot hold our hands back and I venture to evolve a new principle of liability which English Courts have not done. We have to develop our own law and if we find that it is necessary to construct a new principle of liability to deal with an unusual situation which has arisen and which is likely to arise in future on account of hazardous or inherently dangerous industries which are concomitant to an industrialised economy, there is no reason why we should hesitate to evolve such principle of liability merely because it has not been so done in England".

These remarks clearly indicate that though we may benefit from the experience of developed countries, their exact or blind limitation will not help us in finding out

solutions for our own peculiar problems. Fresh and original thinking against the back ground of Indian conditions is necessary.

The following observation of the authors of 'Environmental Law and Policy in India (Cases, Materials and Statistics)' is more specific on this point.

"Unlike the situation in the western countries, Indian environmental law and policy is not a preserve of the affluent middle class interested in resisting growth. In India those most deeply affected by environmental deterioration are the poor. Displaced and dispossessed by deforestation and other natural resource depletion, they are the first victims of poor sanitation, bad air, contaminated water and scarce wood for fuel and fodder".

In this context, I am reminded of a couplet from a Spanish Poet which, as rendered in English runs thus :-

"Traveller, there are no paths,
Paths are made by walking".

Who is competent to accomplish this task? Frankly, lawyers, not legislators. Even in Britain there was a complaint that Parliamentarians could not do justice to this issue because of the tight time-schedule of the Parliament and the incompetence of Parliamentarians to study and grasp the subject thoroughly. Hence the propriety of the Adhivakta Parishad taking up the issue. All of you have preliminary discussion on this problem in course of this conference, and subsequently, I hope, it will be followed by a public debate on the initiative of Adhivakta Parishad activists on different levels throughout the country. Similarly this Conference will have to finalise the programme for the next year. On the eve of the next general elections, I appeal to all political parties to declare in their manifestos that they shall provide fresh water and fresh air to all citizens and living creatures. We know that this is not easy and simple as some one would have us believe. Some authority on practical politics has said that "politics is a gentle art of getting votes from the poor and campaign funds from the rich, by promising to protect each from the other". For this purpose, the parties will have to discard the current concept of 'development', and adopt a new one which requires 'development' to revolve round man, rather than man revolving round 'development'.

MAJOR TREATIES AND AGREEMENTS TO WHICH INDIA IS A PARTY:

INDIA'S TREATY OBLIGATIONS

1. Convention Relative to the Preservation of Fauna and Flora in their Natural State (London, 1936) (S).
2. International Convention for the Regulation of Whaling (Washington, 1946), (S).
3. International Plant Protection Convention (Rome, 1951), (S).
4. The Antarctic Treaty (Washington, 1959), (S).
5. Convention concerning the Protection of Workers Against Ionizing Radiations (Geneva, 1960), (S).
6. Treaty Banning Nuclear Weapons Tests in the Atmosphere, in Outer Space and Under Water (Moscow, 1963), (S).
7. International Convention of Civil Liability for Oil Pollution Damage (Brussels, 1975), (S).
8. Convention of Wetlands of International Importance, Especially as Waterfowl Habitat (Ramsar, 1971), (CP).
9. Convention on the Prohibition of the Development Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons, and on their Destruction (London, Moscow, Washington D.C. 1972), (CP).
10. Convention concerning the protection of the World cultural and Natural Heritage (Paris, 1972) (CP).
11. Convention of International Trade in Endangered Species of Wild Fauna and Flora (Washington DC, 1973) (CP).
12. Protected of 1978 Relating to the International Convention for the Prevention of Pollution from Ships, 1973 (MARPOL), (London, 1978) (CP).
13. Convention on the conservation of Migratory species of Wild Animals (Bonn, 1979) (CP).
14. Convention on the conservation of the Antarctic Marine Living Resources (Canberra, 1980), (S).

15. U.N. Convention on the Law of the Sea (Montego Bay, 1982), (S).
16. International Tropical Timber Agreement (Geneva, 1983).
17. Convention of Early Notification of a Nuclear Accident (Vienna, 1986).
18. Convention on Assistance in the case of Nuclear Accident or Radiological Emergency (Vienna, 1986).

SIGNATORY (S) ; CONTRACTING PARTY (CP)

SELECTIVE LIST OF ENVIRONMENT RELATED LEGISLATION

I. CENTRAL ENACTMENTS

ENVIRONMENT (PROTECTION) ACT 1986.

1. WATER POLLUTION

- 1.1. The River Boards Act, 1956.
- 1.2 The Merchant Shipping (Amendment) Act, 1970
- 1.3 The Water (Prevention and Control of Pollution) Act, 1974.
- 1.4 The Water (Prevention and Control of Pollution) Cess Act, 1977.

2. AIR POLLUTION

- 2.1 The Indian Boiler's Act, 1923.
- 2.2 The Mines and Minerals (Regulations and Development) Act, 1947.
- 2.3 The Factories Act, 1948.
- 2.4 The Industries (Development and Regulation) Act, 1951.
- 2.5 The Air (Prevention and Control of Pollution) Act, 1981.

3. RADIATION

- 3.1 The Atomic Energy Act, 1962.
- 3.2 The Radiation Protection Rules, 1971.

4. PESTICIDES

- 4.1 The Poision Act, 1919.
- 4.2 The Factories Act, 1948.
- 4.3 The Insecticides Act, 1968.

5. OTHERS

- 5.1 The Indian Fisheries Act, 1897.
- 5.2 The Indian Forest Act, 1927.
- 5.3 The Prevention of Food Adulteration Act, 1954.
- 5.4 The Ancient Monuments and Archaeological Sites and Remains Act, 1958.
- 5.5 The Wild Life (Protection) Act, 1972.
- 5.6 The Urban Land (Ceiling & Regulation) Act, 1976.
Vide Dr. Tewar Report on Pollution.
- 5.7 First Conservation Act, 1980.

II. STATE ENACTMENTS

1. WATER POLLUTION

- 1.1 The Orissa River Pollution Prevention Act, 1953 and
- 1.2 The Maharashtra Prevention of Water Pollution Act, 1969.

2. SMOKE CONTROL

- 2.1 The Bengal Smoke Nuisance Act, 1905.
- 2.2 The Bombay Smoke Nuisance Act, 1912.
- 2.3 The Gujarat Smoke Nuisance Act, 1963.

3. PEST CONTROL

- 3.1 The Mysore Destructive Insects and Pests Act, 1917.
- 3.2 The Andhra Pradesh Agricultural Pest and Disease Act, 1919.
- 3.3 The Assam Agricultural Pests and Disease Act, 1954.
- 3.4 The U.P. Agricultural Disease and Pests Act, 1854.
- 3.5 The Kerala Agricultural Pests and Disease Act, 1958.

4. LAND UTILISATION AND LAND IMPROVEMENT

- 4.1 The Bihar Waste Lands (Reclamation, Cultigation and Improvement) Act, 1946.
- 4.2 The Andhra Pradesh Improvement Scheme Act, 1949.
- 4.3 The Acquisition of Land for Flood Control and Prevention of Erosion Act, 1955.
- 4.4 The Delhi Restriction of Uses of Land Act, 1964.

The first law on this subject was "The Shore Nuisance (Bombay and Kolaba) Act of 1853. Other laws inherited from the British period are :

The Fisheries Act, The Merchant Shipping Act, Mines Act, Thr Ports Act, other penal and compensatory provisions. The Indian Boilers Act, 1923, The Floro Act, The Indian Forests Act, 1927, The Indian Easement Act. The Bengal smoke Nuisance Act of 1905; The Bombay Smoke Nuisance Act of 1912; The 1873 Madras Act for the protection of wild elephants; The (Central) Elephants Preservation Act of 1879; Wild Birds and Animals Protection Act, 1912; The hailey National Park Act of 1936.

The workmen's Compensation Act 1923; the Fatal Accidents Act, 1855;

Relevant Sections of Indian Penal Code and Code of Criminal Procedure.

III. RELEVANT RULES

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

The Air (Prevention and Control of Pollution) Rules, 1978.

Air (Prevention and Control of Pollution) Rules, 1982.

The Water (Prevention and Control of Pollution) Rules, 1977.

The Hazardous Micro-Organism Rules.

The Hazardous Wastes Rules.

The Environment (Protection) Rules, 1986.

Hazardous Wastes (Management and Handling) Rules, 1989.

Manufacture, Storage and Import of Hazardous Chemicals Rules, 1989.

Andhra Pradesh Water (Prevention and Control of Pollution) Rules, 1976.

Andhra Pradesh State Board for the Prevention and Control of Water Pollution (Procedure for Transaction of Business) Rules, 1976.

Andhra Pradesh Air (Prevention and Control of Pollution) Rules, 1982.

Gujarat Air (Prevention and Control of Pollution) Rules, 1983.

Kerala Water (Prevention and Control of Pollution) Rules, 1976.

Kerala Water (Prevention and Control of Pollution) Appellate Authority Rules, 1977.

Kerala Air (Prevention and Control of Pollution) Rules, 1984.

Maharashtra Water (Prevention and Control of Pollution) Rules, 1983.

Maharashtra Air (Prevention and Control of Pollution) Rules, 1983.

Uttar Pradesh Water Consent for Discharge of Sewage and Trade Effluents) Rules, 1981.

Uttar Pradesh Air (Prevention and Control) of Pollution Rules, 1983.

West Bengal Air (Prevention and Control) of Pollution Rules, 1983.

Air (Prevention and Control of Pollution) (Union Territories) Rules, 1983.

The Uttar Pradesh Air (Prevention and Control of Pollution) (First Amendment) Rules, 1988.

LIABILITIES

LIABILITIES : 1. Fines, 2. Imprisonment, 3. Variation, suspension or revocation of a licence, 4. Costs to clean up after a pollution incident to be recovered from the pollution or (in some cases) the occupier, 5. Civil liability - including for 'toxic torts', 6. Adverse publicity.

PENALTIES AND PROCEDURE :

Section 20 of the Water Act : Water Act Sec. 32(1) (c); Sec.41(d)(1); Water Act - Sec.41(2); Sec.42; Sec.43; Sec.25; Sec.26; Sec.44; Sec.45; Sec.46; Sec.48; Sec.49; Sec.49(2); Sec.298 and Sec.29 of the Criminal Procedure Code.

Air Act :- Sec.37; Sec.22, Sec.38; Sec.39; Sec.41; Sec.43; Sec.49 of the Waste Act and Sec.43 of the Air Act deal with cognizance of offences, the same provided under section 19 of the Environment Act.

STRAY LEGAL NOTES

Provision under the Factories Act, 1948 and Pollution Control Laws.

Definition of the term 'Occupier'.

Factories Act - obligation on occupier relating to disposal of Waste and effluents.

Provisions relating to hazardous processes.

Penalties and procedure.

(Consult Chapter X of the Factories Act).

A new Part X-B and Part XI-A has been inserted by the Merchant Shipping (Amendment) Act, 1983, (No.12 of 1983) dealing with pollution.

Earlier Analogous Indian Statutory Provisions on Water, land air and noise pollution :-

- a) Shore nuisance (Bombay and Colaba) Act, 1853.
- b) Oriental gas company Act, 1887.
- c) Section 288 and Section 278 of the Penal Code.
(Penalties for pollution) (277+278+279 sec.).
Section 431; Section 432).
Section 284 (Penalty for negligent conduct with respect to section (- do - - do -
Poisonous substances.
Section 430 (Penal Code-IPC)
Section 268 (Penal Code-IPC)
Section 269 (Penal Code-IPC)
Section 290 (Penal Code-IPC)
Section 286 (Penal Code-IPC)
Section 291 (Penal Code-IPC)
Section 336 (Penal Code-IPC)
Section 337 (Penal Code-IPC)
Section 338 (Penal Code-IPC)
Section 279 (Penal Code-IPC)
Section 3904-A (Penal Code-IPC)
Section 425 (Penal Code-IPC)
Section 426 (Penal Code-IPC)
Section 430 (Penal Code-IPC)
- d) The Police Act 1861 refers to Noise Pollution and punishment thereof. Section 30; Section 30-A; Section 31; Section 31; Section 32; Section 33; Section 34;
- e) The Sarais Act, 1867.
- f) Section 70 of the Northern India canal and Drainage Act 1873.
- g) Section 8 of the obstruction in Fairways Act, 1991.
- h) The illustration (f) the Section 7 of the Easement Act 1882.
The illustration (h) of the same section (Repair rights).
On riparian rights - riparian rights.
Section 2 of the Easement Act.
- i) Section 5(1) of the Indian Fisheries Act, 1897.
- j) Section 133 to the 144 (new of the Chapter X of the code of the Criminal Procedure 1973.
- k) Section 6 of the Indian Ports Act, 1909.

- l) Section 54 (b) of the Indian Steam Vessels Act, 1917.
- m) Section 32 of the Forests Act, 1927.
- n) The Motor Vehicles Act, 1939, repealed by the Motor Vehicles Act 1988, particularly section 110 of the new act.
- o) Section 12 of the Factories Act, 1948 (disposal of Waste, etc.).
- p) Section 16 of the Damodar Valley Corporation Act, 1948.
- q) The various Municipalities Acts passed by the State Legislatures and rules, regulations and bye-laws made thereunder.
- r) The Rivers Boards Act, 1956.
Section 356-C of the Part XI-A of said Act also the new part X-B of the said act.
- s) Exclusive economic zone and other maritime zones Act, 1976.

Indian Penal Code:

Sec. 266; Sec. 269; Sec. 277; Sec. 278; Sec. 279; Sec. 248; Sec. 285; Sec. 286;
Sec. 290; Sec. 291; Sec. 336; Sec. 337; Sec. 338;
Sec.304-A; Sec. 425; Sec. 426;
Sec.430; Sec. 431; Sec. 432.

Code of Criminal Procedure, 1973.

Sec. 133 to 144 (new of the Chapter X of the Code of Criminal Procedure, 1973.

Establishment, constitution and functions of Boards
- Established under the two relevant Acts for the prevention and control of water and air pollution. Two kinds of Boards envisaged by both the Acts, the Central Board and the State Boards. Power of the Boards to obtain information and to enter and to inspect. The power of a State Board or any officer empowered in that behalf to take samples. Apprehended pollution of water in stream or wells and legal action, mainly sec. 33, Chapter XXIX of the Criminal Procedure Code, particularly Sec. 372; Sec. 373; Sec. 374; Sec.375; Sec. 376; Sec. 377; Sec.378; Sec. 379; Sec. 380; Sec. 397; Sec. 399; Sec. 401; Sec. 386.

Order XXXIX Rule I, CPC Rule of the same order,
Rule 3-A of the same Order XLIII of CPC.

The constitution (Forty-second Amendment) Act, 1976.
Part IV of the Constitution Directive Principles

Article 47, Article 48-A.

Amendment to the Seventh Schedule of the
Constitution-

-Entry of "17-A Forests" and entry "17-B Protection
of Wild animals and birds" in the concurrent List III.

REMEDIES OPEN TO PUBLIC

Remedies open to Public regarding Pollution and Civil
and Criminal Jurisdictions Inclusive of Injunctions.

1. Right of riparian owner of accustomed flow of water.
2. Easementary right of irrigation.
3. Acquisition of easement over surface water.
4. No right of easement in respect of collected and impounded surface water.
5. Right to change a channel.
6. Easement to draw water from well.
7. Right to discharge water by means of watercourse.
8. Use of nala water for irrigation.
9. Injunction to restrain disturbance of easement.
10. Temporary mandatory injunction in relation to flow of water in the street.
11. Injunction to restrain interference with the use of water of tank.
12. Injunction to restrain interference with the use of water of tank.
13. Injunction to restrain interference with easement of water.
14. Injunction to restrain discharge of roof water.
15. Injunction for restoration of normal supply of water.
16. Injunction to restrain flow of dirty water through private land.
17. Distinction between easementary right and natural right.
18. Cause of action in case of apprehended infringe

ment of natural right.

19. Grant of injunction in case of pollution of water.
20. Injunction directing commissioners of Municipality to construct a suitable pucca drain.
21. Corporation's liability for torte bought about at its instance.
22. Public nuisance created by pollution - Remedies.
23. Promissory estoppel in fixing responsibility to remove pollution.

SOME IMPORTANT CASES

1. State of Himachal Pradesh and Others Versus Ganesh Wood Products and Others.
2. Write Petition (C) No. of 1994. Dairy No. 1716 of 1994, Petitioners - Mr. M.C. Mehta.
3. Rural Litigation and Entitlement Kendra. State of Uttar Pradesh, Air 1988 S.C. 2187. And D.N. Pandey versus Union of India, AIR 1985, S.C. 652.
4. Shriram Foods and Fertilizer Industries case (M.C. Mehta Versus Union of India, AIR 1987, S.C. 965.
5. Shri Sachidanand Pandey Versus, State of West Bengal, AIR 1987, SC 1109.
6. Charanlal Sahu Versus State of West Bengal, AIR 1987, S.C. 1109.
7. Tarun Bharat Singh, Alwar, Versus Union of India, AIR 1992, SC 514.
8. Municipal Commissioner of Ratlam Versus Vardhichand, AIR 1980, SC 1622.
9. Govinda Singh Versus Shanti Swaroop, AIR 1979, SC 143.
10. Krishna Gopal Versus State of Madhya Pradesh, 1986, Cri. L.J. 396 (Madhya Pradesh)
11. The General Public of the Saproo Valey Versus State of Himachal Pradesh, AIR 1993, (M.P.52).
12. M.C. Mehta Versus Union of India, AIR 1992, SC 382.
13. D.D. Vyas Versus Ghaziabad Development Authority, AIR 1993, AIR 57.

14. Attakoya Taangal Versus Union of India (1990), Kerala, L.T. 580.
15. Damodar Rao Versus Municipal Corporation, AIR 1987, A.P. 1971.
16. (Oleum gas leaks case) M.C. Mehta versus Union of India, AIR 1987, SC 965.
17. Subba Rao Versus State of Himachal Pradesh, AIR 1989, S.C. 171.
18. Public Versus State of West Bengal, AIR 1993, Cal. 215.
19. M.C. Mehta Versus Union of India, AIR 1987, SC 965.
20. R.R. Singh Versus State of Bihar, AIR 1992, Patna, 96.
21. The Goa Foundation Versus the Konkan Railway Corporation, AIR 1992, Bombay 471.
22. Calcutta Youth Front Versus State of West Bengal, AIR 1988, SC 436.
23. Smt. Satyavani Versus Andhra Pradesh Pollution Control Board, AIR 1993, A.P. 257.
24. M.C. Mehta Versus Union of India, AIR 1988, SC 1037.
25. AIR 1980, SC 1922.
26. AIR 1992, Pat. 86.
27. A.K. Thangudurai Versus D.F.O. Madurai, AIR 1985, Madras 104.
28. M.C. Mehta Versus Union of India, AIR 1992, SC 382.
29. M.C. Mehta Versus State of Orissa, AIR 1992, Orissa, 225.
30. S.K. Singh Versus State of Bihar, AIR 1991, SC 1042.
31. AIR 1987, SC 359.
32. Daham Taluka Environment Protection Group Versus Bombay Suburban Electricity Supply Co. 1991 (25 Sec., 539).
33. Virendra Gaur Versus State of Haryana, 1995(2) SCC.

COMMON CONVICTIONS IN STOCKHOLM PROCLAMATION

Along with other basic items the Stockholm proclamation also contained certain common convictions of the participant nations and made certain recommendations on development and environment. The common convictions stated include the conviction that the discharge of toxic substances or of other substances and the release of heat in such quantities or concentrations as to exceed the capacity of environment to render them harmless must be halted in order to ensure that serious or irreversible damage is not inflicted upon eco-system, that states shall take all possible steps to prevent pollution of the seas so that hazards to human health, harm to living resources and marine life, damage to the amenities or interference with other legitimate uses of seas is avoided that the environmental policies would enhance and not adversely affect the present and future development potential of development countries, that science and technology as part of their contributions to economic and social development must be applied with identification, avoidance and control of environmental risks and the solution of environmental problems and for the common good of mankind, that states have the responsibility to ensure that activities of exploitation of their own resources within their jurisdiction are controlled and do not cause damage to the environment of other states or areas beyond the limit of national jurisdiction, that it will be essential in all cases to consider the systems of values prevailing in each country and the extent of the applicability of standards which are valid for the most advanced countries but which may be in appropriate and of unwarranted social cost and that man and his environment must be spared the effects of nuclear weapons and all other means of mass destruction. These are only some of the statements of principles proclaimed by the Stockholm Conference.

THE SCOPE

Extracts from — 'Environmental Law'

The Scope of environmental law is continuously expanding. Therefore, to define it at any point of time is like trying to hit a moving target. Certain items we decide upon today may become out of date almost immediately.

The commitments at the United Nations Conference on Environment and Development at Rio De Janeiro.

Regulations on eco-managements and audit and on economic labelling, as well as on environmental information and directives on urban waste water treatment, waste and habitants, with others on intergrated pollution prevention and control and on packing (on the horizan). (The drinking water and Bathing waters directives). Important constitutional changes along the lines of the Meastrient Treaty (on European Union).

Laws on the lines of (British) the Water Act 1989 (the Water Resources Act 1991 and the Water Industry Act 1991), on air pollution (the Clean Air Act 1993) and on radio-active substances (the Radioactive substances Act 1993).

In the town-planning area, a policy that moves us from a 'developer-led' system towards a 'plan-led' one.

Nature conservation; waste and water pollution-including the defence available to sewerage undertakers;

Directions of environmental policy. Integrated pollution control, air pollution, waste management and water pollution, statutory water quality objectives.

There should be a debate over a carbon tax and proposals for directive on bonafide and packaging, and the scope of the subsidiary doctrine.

THE BRITISH SCENE

FROM: ENVIRONMENTAL LAW

Britain had the first national public pollution control agency. The Alkali Inspectorate, established by the Alkali Act 1863 to control atmospheric emissions primarily from the caustic soda industry. Water pollution controls followed in the rivers pollution prevention act, 1876. Britain's first legislation to cover town planning was the flousing, town planning, etc. Act 1909. Britain had also then the law on nuisance.

The deposit of poisonotus wastes Act, 1872.

The wild life and country side Act 1981.

The Control of pollution Act 1974.

The control of pollution (Amendment) Act 1989.

The protection of the birds Act 1954.

Britain the 'Environmental Protection Act, 1990', contains the main bulk of provisions on air pollution from stationary sources, waste management and disposal, the integrated control of the most potentially polluting processes, litter, the environmental impact of genetically modified organisms, noise and statutory control of environmental nuisance. The 'Water Resources Act 1991' contains the law on water pollution and water resources, whilst the 'Water Industry Act, 1991; covers matters relating to water supply and sewerage. The wildlife and country side Act 1981 includes much of the relevant law on nature conservation in Part I and II "The Town and Country Planning Act" 1990 includes in consolidate from most of the relevant statutory law on town and country planning and tree protection. The "Planning 9 Listed Buildings and Conservation Areas) Act" 1990 and "Planning (Hazardous substances) Act" 1990 include separated treatment of listed buildings and hazardous substances. There is also the " 'Planning and Compensation Act" 1991 which made some significant amendments to the 1990 Acts.

The white paper on environment "The Common Inheritance" 1990, underlined the commitment to a planned development of environmental policy.

Institutional coherence - For example The National Rivers Authority.

Her Majesty's inspectorate of pollution, etc.

Controls over stationary sources of pollution are more coherent than those over mobile or non-point sources.

Needed a unified Environmental Agency covering all institutions and laws. Britain's Law on environment suffers from anachronism.

Needed a policy of splitting production from regulation, e.g. separation of waste regulation functions from waste disposal function or separation of the regulation of water pollution from regulation of pollution from sewage works.

FROM:
MANUAL OF EUROPEAN ENVIRONMENTAL LAW
-By A. Kiss and D. Shelton

1. Over View :

Contents - Mainly - Fundamental Concepts, techniques of environmental law, institutions and agencies - National, European, International Institutions.

II. Biodiversity and the Promotion of Nature:

Sectoral protection.

Protection of the soil.

Fresh Water..

Protection of the marine environment.

Atmospheric pollution.

III. Trans-sectoral issues

Regulating sources of environmental harm

Intergranted environmental protection

The role of the public and non-government organisation.

About the legal frame work, the book states —

1. Source of National laws.

(a) Constitution; (b) Legislation; (c) Executive decrees (d) Common law; (e) Administrative agency rules - making; (f) Regional or Local law.

2. The European Community —

(a) Treaty Provisions; (b) Regulations; (c) Directives (d) Action Programmes (e) Implementation.

3. International law —

(a) Treaties; (b) Custom; (c) Other sources.

4. Relationships between the systems of law.

Documents

1. The Stockholm Declaration on the human environment.

2. The Rio-Declaration on environment and development

3. The single European Act, amended.

Issues

1. Hazardous substances
2. Nuclear radiation
3. Hazardous Processes and activities
4. Waters
5. Noise
- A. Urban and Rural Planning - Urban, Rural and Integrated planning.
- B. Environment and Development.
 1. The role of the public -
 - a) The right of information
 - b) Public participation
 2. The role of non-Governmental organisations.
 - a) Delegating management functions to NGOs.
 - b) Using NGO experience.
 - c) Complaining of violations
 - d) Participation in licencing and permit procedures.
 - e) Funding environmental projects.

EDUCATION

(A) In *M.C. Mehta Vs. Union of India*, the Supreme Court observed that "it is the duty of the Central Government to direct all the educational institutions throughout India to teach atleast for one hour in a week lessons relatively to the protection of the improvement of the natural environment including forests, lakes, rivers, and wild life in the first ten classes".

(B) All American and many European Law curricula include atleast one course in environmental law.

(C) Recommendations of the Seminar in 1984 organised by the Deptt. of law, Punjab University.

The Education on :-

- a) Over population and the ways to check its rapid growth;
- b) Afforestation as a prevention to soil erosion and water pollution;
- c) Rules as to the use of water, taking fuel from the woods, and grazing of cattles.
- d) Methods to prevent air pollution, insisting one smokeless cooking;
- e) Discipline in playing radio and television sets and a ban on use of loudspeakers;
- f) Elementary knowledge of the scientific and philosophical basis of man and the environment;
- g) Scientific interpretation of ethics - religious tenents of worshipping the constituents of nature, e.g. the fire, the water, the trees and other objects.
- h) Rules regarding disposal of house hold waste and filth and human exer, etc.
- i) Restraints to be observed while on roads on places of public resort and during journey; and
- j) Other general principles of sanitation.

THE WOUNDED EARTH

In 1971 when Edgar Mitchell flew to the moon on board Apollo 14, his first glimpse of earth from space sent him into rhapsody. "It looks like a sparkling blue and white jewel... Laced with slowly swirling veils of white... Like a small pearl in a thick black sea of mystery." he radioed back effusively to Houston.

Twenty-one year later, if Mitchell was to be sent back into space, this time with special spectacles that allowed him to see the invisible gases of the earth's atmosphere, a vastly different sight would greet him. He would see giant punctures in the protective ozone shields over Antarctica and North America. Instead of a sparkling blue and white jewel he would see a dull, dirty earth filled with dark, swirling clouds of dioxides of carbon and sulphur.

If Mitchell took out his camera and shot images of forest cover of the earth and compared it with those he took in '71, he would be stunned by the amount they have shrunk. And if he opened his special telescope to help him examine the filth in the waters of the earth, he would see ribbons of poison criss-crossing the land masses and dark balls of tar lining much of the ocean floor, "Houston," he would have radioed back, "what on earth have we done?"

Actually, we don't need to go 36,000 km into space to know what we have done. Today, we can drink, breathe, smell and see pollution. Within a 100 years, and more so in the past 30, human beings have brought the earth to the brink of disaster. By spewing an excessive amount of heat-trapping gases into the atmosphere we are rigging debilitating climatic changes. Gases that our refrigerators and air-conditioners use are now responsible for depleting the protective ozone layer, exposing us to skin cancer and altering the gene structures in smaller animals. Meanwhile, we have degraded vast tracks of land, destroyed forests at suicidal rates, dumped tonnes of poison into rivers indiscriminately and poured toxic chemicals into our seas.

Now more than anything else the threat to humanity comes from the destruction of the earth's environment. And it needs a movement of planetary dimensions to arrest the holocaust. It is this realisation that is bringing together heads

of 150 nations for a historic summit at Rio de Janeiro from June 3 to June 14.

While it would send the right message across the earth, it is not enough. As the two years of preparation for the summit have shown, serious rifts between the developed and developing countries over how to tackle the problem have surfaced. So wide has the gulf been that nations have begun forming power blocks quite similar to the erstwhile military alliances. Environment has suddenly become a major foreign policy issue. And as policy makers are increasingly understanding, no longer can the earth's ecological ills be treated as separate from issues such as debt, trade, unemployment and inequality.

Much of the conflict that has arisen is understandable. The solutions have fundamental implications on the economic progress, or lack of it, for every nation. The next few years may call for some radical measures. It may involve nations making major alterations in their patterns of energy consumption. With the burning of fossil fuels like coal, petrol and wood directly linked to the warming of the earth, countries may be forced to explore other options. Even going nuclear in a big way may have to be considered. It may also bring in startling measures like a tax on carbon emissions. Or carbon budgets being imposed on nations. For industry, environmentally sound technology may become a competitive necessity. Good economic management and environment movements could, in fact, go together.

What all this requires is an extraordinary effort by both the rich and poor nations to solve problems. Richer countries would need to reflect on their excessive consumption patterns and realise when how much is too much the poor nations, with some financial assistance, should radically improve their energy efficiency levels, make a serious attempt to limit their population growth, adopt low tech solutions to prevent soil erosion and conserve scarce water resources. The North and South should enter into a constructive partnership, in which technology and finances are used to help poor countries reach sustainable levels of development.

All this must be done without delay. For the threat is no more to your children's future. It is now. And here ■

(Story on Rio Earth Summit. Source: India Today, 15 June, 1992)