

# ENVIRONMENTAL LEGISLATION

## Structure

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12.1 Introduction	12.5 Activities
Expected Learning Outcomes	12.6 Summary
12.2 Current Status	12.7 Terminal Questions
National Legislations	12.8 Answers
International Conventions	12.9 Further Reading
12.3 Issues in Enforcement	
Problems and Prospects	
12.4 Institutional Arrangement for Monitoring and Enforcement	

## 12.1 INTRODUCTION

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In this course so far we have covered many environmental issues such as depletion of natural resources, degradation of land, pollution of water and air, impacts of agricultural practices, industrialization, urbanisation and some aspects of environmental management such as sustainable development, and conservation of natural and biological resources. We have also talked about the concept of environmental quality and environmental standards, which needs to be maintained.

As human civilisation progressed, man started altering the natural environment in the pursuit of creating an economic, social and cultural environment of his own choice. This slowly resulted in the depletion of natural resources and degradation of environment. Further, with increased human population, rapid industrialisation and urbanization, and developmental projects have placed a lot of strain on natural resources. Now situation is deteriorating so fast that environmental problems are posing threats to human health and to his very existence. In order to protect human kind and other living beings from environmental problems, and to curtail the activities affecting the environment negatively, numerous agreements have been signed among the countries, and legislations have been enacted at national level. In this unit, we will discuss some important environmental legislations. The coverage includes Indian legislations called Acts, and international legislations in the form of conventions, protocols and treaties.

The success of environmental legislations mainly depends on the way these are enforced. One section of this unit is, therefore, devoted to issues involved in enforcement of environmental legislations. At the end, contribution of people through PIL (Public Interest Litigation) and India's institutional arrangements for monitoring and enforcement have also been discussed.

## Expected Learning Outcomes

After completing the study of this unit you should be able to:

- ❖ state various Acts enacted for the protection of environment at national level;
- ❖ describe various conventions and protocols framed for global environmental issues;
- ❖ explain the difficulties in the enforcement of the environmental legislations; and
- ❖ analyse the contributions of public interest litigation, Ministry of Environment, Forest and climate change, and CPCB in protection of environment.

## 12.2 CURRENT STATUS

In recent past, numerous environmental problems have become critically significant for mankind. These include air, water and land pollution, spread of toxic wastes, deforestation, mass extinction of wild life, problem of human settlement, climate change depletion of ozone layer and over exploitation of natural resources. An important aspect of environmental problems is that these have international repercussions, i.e. their impact is not confined to their source area alone but spills over far and wide. Pollution does not observe political territories and legislative jurisdictions. Thus, environmental problems are intrinsically global in nature. Therefore, to fight with the environmental problems we need not only legislation at national level but also mutually beneficial agreements at international level.

### 12.2.1 National Legislations

At national level a serious effort have been made for the improvement and protection of environment by an amendment to the Constitution of India. Our Constitution, originally, did not contain any direct provision regarding the protection of natural environment. However, after the United Nations Conference on Human Environment at Stockholm, the Constitution of India was amended, to include protection of the environment as a constitutional mandate. The constitution (Forty-Second Amendment) Act, 1976 has made it fundamental duty to protect and improve the natural environment by Clause (g) to Article 51A:

“It shall be duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wild life and have compassion for living creatures.”

There is a directive, given to the State as one of the Directive Principles of State Policy regarding the protection and improvement of the environment. Article 48A states “The State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country”. The Department of Environment was established in India in 1980 to ensure a healthy environment for the country. This later became the Ministry of Environment and Forests in 1985, which was renamed as Ministry of Environment, Forest and Climate Change in May, 2014. This Ministry has the overall responsibility for administering and enforcing environmental legislations and policies.

The constitutional provisions are backed by a number of legislations – Acts and rules. Much of our environmental legislations are enacted as Acts by the Parliament or the State Legislatures. These Acts generally delegate powers to regulation agencies, to make rules for the purpose of their implementation.

Existing Indian environmental legislations can be grouped in following four categories:

- a) Water Acts
- b) Air Acts
- c) Forest and Wildlife Acts
- d) General Acts

To provide an overview of environmental legislations, a few important legislations of each category with brief description are given below:

#### **a) Water Acts**

To provide legislative support for prevention of water pollution, Parliament passed the Water (Protection and Control of Pollution) Act, 1974. The main objective of this Act is to prevent and control water pollution. Some important provision of the Water Act, 1974 and Amendment, 1988 are given below:

#### ***The Water (Prevention and Control of Pollution) Act of 1974 and Amendment, 1988***

- The Act vests regulatory authority in state boards and empowers these boards to establish and enforce effluent standards for factories discharging pollutants into bodies of water. A Central Board performs the same functions for union territories and coordinates activities among the states.
- The boards control sewage and industrial effluent discharges by approving, rejecting or conditioning applications for consent to discharge.
- The state boards also minimise water pollution by advising state governments on appropriate sites for new industry.
- Act granted power to the Board to ensure compliance with the Act by including the power of entry for examination, testing of equipment and other purposes and power to take the sample for the purpose of analysis of water from any stream or well or sample of any sewage or trade effluents.

- The 1988 amendment strengthened the Act's implementation provisions. Now, a board may close a defaulting industrial plant or withdraw its supply of power or water by an administrative order; the penalties are more stringent, and a citizen's suit provision supports the enforcement machinery.

#### ***The Water (Prevention and Control of Pollution) Cess Act of 1977***

The Act creates economic incentives for pollution control and requires local authorities and certain designated industries to pay a cess (tax) for water consumption. These revenues are used to implement the Water Act.

#### **b) Air Acts**

To provide legislative support for prevention and control of air pollution, the Government of India enacted a central legislation called the Air (Prevention and Control of Pollution) Act, 1981 referred to as Air Act, 1981. The act aims at prevention, control and reduction of air pollution. Some details of the Air Act, 1981 and Amendment, 1987 is given below.

#### ***The Air (Prevention and Control of Pollution) Act of 1981 and Amendment, 1987***

- To enable an integrated approach to environmental problems, the Air Act expanded the authority of the central and state boards established under the Water Act, to include air pollution control.
- States not having water pollution boards were required to set up air pollution boards.
- Under the Air Act, all industries operating within designated air pollution control areas must obtain a "consent" (permit) from the State Boards.
- The states are required to prescribe emission standards for industry and automobiles after consulting the Central Board and noting its ambient air quality standards.
- Act granted power to the Board to ensure compliance with the Act include the power of entry for examination, testing of equipment and other purposes and power to take the sample for the purpose of analysis of air or emission from any chimney, fly ash or dust or any other outlet in such manner as may be prescribed.
- The 1987 Amendment strengthened the enforcement machinery and introduced stiffer penalties. Now, the boards may close down a defaulting industrial plant or may stop its supply of electricity or water. A board may also apply to court to restrain emissions that exceed prescribed limits. Notably, the 1987 Amendment introduced a citizens suit provision into the Air Act and extended the Act to include noise pollution.

#### **c) Forest and Wild Life Acts**

India is one of the few countries, which had a forest policy since 1894. To protect forest and wild life following legislations have been enacted.

***The Wild Life (Protection) Act 1972 and Amendment, 1982***

In 1972, Parliament enacted the Wild Life (Protection) Act. The Wild Life Act provides for state wildlife advisory boards, regulations for hunting wild animals and birds, establishment of sanctuaries and national parks, regulations for trade in wild animals, animal products and trophies, and judicially imposed penalties for violating the Act. Harming endangered species listed in Schedule 1 of the Act is prohibited throughout India. Hunting species, like those requiring special protection (Schedule II), big game (Schedule III), and small game (Schedule IV), is regulated through licensing. A few species classified as vermin (Schedule V), may be hunted without restrictions. Wildlife wardens and their staff administer the act.

An amendment to the Act in 1982, introduced a provision permitting the capture and transportation of wild animals for the scientific management of animal population.

India is a signatory to the Convention of International Trade in Endangered Species of Fauna and Flora (CITES, 1976). Under this, export or import of endangered species and their products are governed by the conditions and stipulations laid down therein. Indian government has also started some conservation projects for individual endangered species like Hangul launched in (1970), Lion (1972), Tiger (1973), Crocodiles (1974), and Brown-antlered Deer (1981), and Elephant (1991-92).

***The Forest (Conservation) Act of 1980***

First Forest Act was enacted in 1927. This is one of the many surviving colonial legislations. It was enacted to consolidate the law related to forest, the transit of forest produce and the duty payable on timber and other forest produce. Subsequently, the Forest (Conservation) Act was promulgated in 1980 to make certain reforms over the preceding Act of 1927.

The 1927 Act deals with the four categories of the forests, namely reserved forests, village forests, protected forests and private forests. A state may declare forestlands or waste lands as reserved forest and may sell the produce from these forests. Any unauthorized felling of trees quarrying, grazing and hunting in reserved forests is punishable with a fine or imprisonment, or both. Reserved forests assigned to a village Community is called village forests. The state governments are empowered to designate protected forests and may prohibit the felling of trees, quarrying and the removal of forest produce from these forests. Forest officers and their staff administer the Forest Act.

Alarmed at India's rapid deforestation and resulting environmental degradation, Centre Government enacted the Forest (Conservation) Act in 1980. Under the provisions of this Act, prior approval of the central Government is required for diversion of forestlands for non-forest purposes. An Advisory Committee constituted under the Act advises the Centre on these approvals.

***Biodiversity Act, 2000***

India is one of the twelve mega-biodiversity countries of the world and became a party to the International Convention on Biological Diversity in 1994. The

objectives of the convention are: the conservation of Biological Diversity, the sustainable use of its components, and the fair and equitable sharing of the benefits arising out of the utilization of genetic resources. To achieve these goals, Biodiversity Bill 2000 was introduced in Parliament in May, 2000. This was finally passed only in December 2002. This bill seeks to check bio-piracy, protect biological diversity and local growers through a three-tier structure of central and state boards and local committees. These will regulate access to plant and animal genetic resources and share the benefits. The National Biodiversity Authority (NBA) set up under the Act, deals with all cases of access by foreigners. Its approval will be required before obtaining any intellectual property right on an invention based on a biological resource from India, or on its traditional knowledge. It will oppose such rights given in other countries. The NBA enjoys the power of a civil court. In addition, centre may issue directives to state if it feels a naturally rich area is threatened by overuse, abuse or neglect.

#### **d) General Acts**

The most important legislation in this category is The Environment (Protection) Act of 1986. Through this Act Central Government gets full power for the purpose of protecting and improving the quality of the environment and preventing, controlling and abating pollution. Details of this Act are given below.

##### ***The Environment (Protection) Act of 1986***

In the wake of the Bhopal tragedy, the Government of India enacted the Environment (Protection) Act of 1986. The Act is an “umbrella” legislations designed to provide a framework for Central Government Coordination of the activity of various central and state authorities established under previous Acts, such as the Water Act and the Air Act.

In this Act, main emphasis is given to “Environment” defined to include water, air and land and the inter-relationships which exist among water, air and land and human beings and other living creatures, plants, micro-organisms and property. “Environmental pollution” is the presence of pollutant, defined as any solid, liquid, or gas substance present in such a concentration as may be or may tend to be, injurious to the environment.

“Hazardous substances” include any substance or preparation, which may cause harm to human beings, other living creatures, plants, microorganisms’ property or the environment. The main provisions of this Act are given below:

- Section 3 (1) of the Act empowers the centre to take all such measures as it deems necessary for the purpose of protecting and improving the quality of the environment and preventing, controlling and abating environmental pollution”. Specifically, the Central Government is authorized to set new national standards for the quality of the environment (ambient standards) as well as standards for controlling emissions and effluent discharges; to regulate industrial locations, to prescribe procedures for managing hazardous substances; to establish safeguards preventing accidents, and to collect and dismantle information regarding environmental pollution.

- By virtue of this Act, Central Government has armed itself with considerable powers which include, coordination of action by State, planning and execution of nation wide programmes, laying down environmental quality standards, specially those governing emission or discharge of environmental pollutants, placing restriction on the location of industries and so on.
- The powers claimed are indeed comprehensive, the coverage includes handling of hazardous substances, prevention of environmental accidents, inspection of polluting units, research, establishment of laboratories, dissemination of information, etc.
- The Environment (Protection) Act was the first environmental legislation to give the Central Government authority to issue direct orders, included orders to close, prohibit or regulate any industry, operation or process or to stop or regulate the supply of electricity, water or any other service. Other power granted to the Central Government was to ensure compliance with the Act included the power of entry for examination, testing of equipment and other purposes and power to analyse the sample of air, water, soil or any other substance from any place.
- The Act explicitly prohibits discharges of environmental pollutants in excess of prescribed regulatory standards. There is also a specific prohibition against handling hazardous substances except in compliance with regulatory procedures and standards. Persons responsible for discharges of pollutants in excess of prescribed standards must prevent or mitigate the pollution and must also report the governmental authorities.
- The Act provides provision for penalties in the form of a fine or imprisonment or both.
- The Act provides that any person, in addition to authorized government officials, may file a complaint with a court alleging an offence under the Act.

#### *National Environmental Tribunal Act of 1995*

This act was passed by the Indian Parliament as a consequence of the Rio de Janeiro Conference. In 1995, the Central Government established the National Environment Tribunal under the National Environmental Tribunal Act 1995. This has been created to award compensation for damages to persons, property and the environment arising from any activity involving hazardous substances.

#### *National Green Tribunal (NGT) Act, 2010*

Taking into account the large number of environment cases pending in higher courts and involvement of multidisciplinary issues in such cases, as well as the views of the Supreme Court of India, The Law Commission of India recommended the setting up of environmental Court having both original and Appellant jurisdiction.

The National Green Tribunal was established on 18.10.2010 under the National Green Tribunal Act 2010 for effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other

natural resources including enforcement of any legal right relating to environment and giving relief and compensation for damages to persons and property and for matters connected therewith or incidental thereto. It is a specialized body equipped with the necessary expertise to handle environmental disputes involving multi-disciplinary issues. The Tribunal shall not be bound by the procedure laid down under the Code of Civil Procedure, 1908, but shall be guided by principles of natural justice.

The Tribunal's dedicated jurisdiction in environmental matters shall provide speedy environmental justice and help reduce the burden of litigation in the higher courts. The Tribunal is mandated to make and endeavour for disposal of applications or appeals finally within 6 months of filing of the same. New Delhi is the Principal Place of sitting of the Tribunal and at present there are four zonal benches at Bhopal, Pune, Kolkata and Chennai.

The NGT jurisdictions include all environmental laws on air and water pollution, the Environmental Protection Act, the Forest Conservation Act and Biodiversity Act. The NGT has the authority to provide relief and compensation to the pollution victims.

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## SAQ 1

What are the main objectives of Environment Protection Act, 1986?

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### 12.2.2 International Conventions

Similar to national legislations, there is no international legislation body with authority to pass legislations, nor are there international agencies with power to regulate resources in a global scale. There is an international court at Hague in the Netherlands, but it has no power to enforce its decisions. Powerful nations can simply ignore the court. As a result, international legislation must depend on the agreement of the parties concerned. Certain issues of multinational concern are addressed by collection of policies, agreements, and treaties that are loosely called International Environmental legislations. Most of the international legislations are international agreements to which nations adhere voluntarily. These agreements are generally finalized through international conventions or treaties. Nations that have agreed to be bound by the convention are known as Parties. Convention provides a framework to be respected by each party, which has to adopt its own national legislations to make sure that conventions are implemented at national level. To support the conventions, some time protocols are also framed. A protocol is an international agreement that stands on its own but is linked to an existing convention. United Nations has very important role in developing and implementing conventions.

The United Nations Conference on Environment and Development, 1972, Stockholm, popularly known as the Stockholm Conference, was the first step from the United Nations to address the growing problem of Environmental degradation at international level. It also gave birth to the United Nations



Environment Programme (UNEP). Key international environmental conventions which have been agreed since the Stockholm Conference include the Convention on International Trade in Endangered Species of Wild Fauna and Flora (1973), the Convention for the Prevention of Marine Pollution from Land-Based Sources (1974), the Convention on Long-Range Trans Boundary Air Pollution (1979), the Convention for the Protection of the Ozone Layer (1985), and the Convention on the Control of Trans Boundary Movements of Hazardous Waste and their Disposal (1989).

It was again in UN Conference on Environment and Development (UNCED); also known as “Earth Summit” held in Rio de Janeiro in June 1992 many global environmental issues were taken up. The Declaration is significant in highlighting the concepts of sustainable development, the pre cautionary principle and the polluter pay principle. The key outcomes of this meeting were:

*Agenda 21*: This is a comprehensive, non-binding action plan for sustainable development. The document outlines actions to address the social, economic and environmental dimensions of sustainable development.

*The UN Commission on Sustainable Development (CSD)*: The UN Commission on Sustainable Development was created with the aim of promoting implementation of Agenda 21.

Beside these two important international conventions were agreed at the conference:

- i) *The Framework Convention on Climate Change (UNFCCC), and*
- ii) *The Convention on Biological Diversity (CBD)*

On the advise of the United Nations General Assembly, United Nations organized the conference, called the World Summit on Sustainable Development (WSSD), also known as Rio+10 or Earth Summit 2002 on the ten-year review of progress achieved by the implementation of the outcome of the United Nations on Environment and Development. It was held on Aug. 26 – Sep. 6, 2002, at Johannesburg. At Rio+10, sustainable development was recognized as an overarching goal for institutions at the national, regional and international levels. Some of the set up the summit goals are:

- The establishment of a solidarity fund to wipe out poverty. This fund would be sustained by voluntary contributions; however, developed nations are urged to dedicate 0.7% of their national income to this cause.
- Cutting in half by 2015 the proportion of the world’s population living on less than a dollar a day. This is a reaffirmation of a UN Millennium Summit goal.
- Cutting in half by 2015 the number of people who lack clean drinking water and basic sanitation
- Substantially increase the global share of renewable energy
- Cut significantly by 2010 the rate at which rare plants and animals are becoming extinct

- Restore (where possible) depleted fish stocks by 2015, and
- Halving the number of people suffering from hunger.

Now we will take up few important conventions on some international environmental issues such as chemicals and hazardous wastes, ozone layer, climate change biodiversity and law of the sea.

### **Conventions on Chemicals and Hazards Wastes**

*The Basel Convention* on the Control of Trans boundary Movement of Hazardous Wastes and their Disposal was adopted in 1989 and enforced on 5 may 1992. The Convention is considered the response of the international community to their problem caused by the annual world wide production of 400 million tonnes of wastes which are hazardous to people or the environment because they are toxic, poisonous, explosive, corrosive, flammable, eco-toxic, or infectious.

The main principles of the Basel Convention are:

- 1) Trans boundary movement of hazardous waste should be reduced to a minimum consistent with their environmentally sound management.
- 2) Hazardous waste should be treated and disposed of as close a possible to their source of generation
- 3) Hazardous waste generation should be reduced and minimized at source it self.

The convention is further modified to ban exports of hazardous wastes to developing countries, on the grounds that those countries mostly have neither the expertise nor the facilities to manage such wastes.

*Beside Basel convention, India is also a signatory to two similar type of international conventions:*

*The Rotterdam Convention* on the Prior Informed Consent (PIC) Procedure for Certain Hazardous Chemicals and Pesticides in International Trade. Adopted in 1998, the Rotterdam Convention is intended to protect human health and the environment by prohibiting international trade in certain hazardous chemicals unless the importing state first gives its informed consent, and by facilitating information exchange to promote the safe handling and use of such chemicals.

*The Stockholm Convention* on Persistent Organic Pollutants (POPs). Adopted in 2001, bans or severely restricts production, trade, and use of twelve POPs known as the "u." Most of these chemicals are no longer manufactured or used in industrialized countries; however, the nature of POPs means that people can be seriously impacted by releases of POPs that occur hundreds or even thousands of miles away. The Stockholm Convention contains provisions for the disposal and treatment of POPs wastes and stockpiles. It also establishes procedures for listing additional POPs that may be banned or severely restricted.

### **Conventions on the Ozone Layer**

In Unit 11.3, you have already studied in details the causes and effects of depletion of ozone layer in the stratosphere. The United Nations Environment Programme (UNEP) has been addressing this issue since 1977. Under the

auspices of UNEP, the nations of the world arrived at *The Convention for the Protection of the Ozone Layer* in Vienna in 1985. Through this Convention, nations committed themselves to protecting the ozone layer and to co-operation with each other in scientific research to improve understanding of the atmospheric processes and serious consequences of ozone layer depletion.

To achieve the objectives of the Vienna Convention, *Montreal Protocol on Substances that Deplete the Ozone Layer* was agreed to by nations in 1987. Its control provisions were strengthened through five amendments to the Protocol adopted in London (1990), Copenhagen (1992), Vienna (1995), Montreal (1997) and Beijing (1999). The Protocol aims to reduce and eventually eliminate the emission of man-made ozone depleting substances.

### **Conventions on Climate Change**

UN Framework Convention on Climate Change is the landmark international treaty unveiled at the United Nations Conference on Environment and Development in Rio de Janeiro in June 1992. The UNFCCC commits signatory countries to anthropogenic (i.e., human-induced) greenhouse gas emissions to levels that would prevent dangerous anthropogenic interference with the climate system. Such a level should be achieved within a time frame sufficient to allow ecosystems to adapt naturally to climate change, to ensure the food production is not threatened and to enable economic development to proceed in a sustainable manner.

Pursuant to the objectives of the Convention on Climate Change the *Kyoto Protocol* was agreed by the nations of world in December 1997 in Kyoto, Japan. There are now 196 Parties to the Convention and 192 Parties to the Kyoto Protocol. The Protocol does call on all Parties – developed nations and developing nations – to take a number of steps to formulate national and regional programmes to improve “local emission factors”, activity data, models, and national inventories of greenhouse gas emissions and sinks that remove these gases from the atmosphere. All parties are also committed to formulate, publish and update climate change mitigation and adoption measures, and to cooperate in promotion and transfer of environmentally sound techniques and in scientific and technical research on the climate system. The progress of convention on climate change and Kyoto Protocol was reviewed in twenty one session of the Conference of the Parties (COP 21) to the Climate Change Convention held in Paris, from 30 November to 12 December 2015.

This agreement seeks to accelerate and intensify the actions and investment needed for a sustainable low carbon future. Its central aim is to strengthen the global response to the threat of climate change by keeping a global temperature rise this century well below 2 degrees Celsius above pre-industrial levels and to pursue efforts to limit the temperature increase even further to 1.5 degrees Celsius. The Agreement also aims to strengthen the ability of countries to deal with the impacts of climate change.

During the Convention period, Governments also launched new joint initiatives. India and France led 120 countries in announcing an International Solar

Alliance supporting solar energy deployment in developing countries. More than 20 developed and developing countries launched Mission Innovation, pledging to double public investment in clean energy research and development over five years.

### **Conventions on Biological Diversity**

Although not formally part of the UNCED preparatory process, the Rio Summit provided political impetus for completing the negotiations on the *Convention on Biological Diversity* (CBD). The aim of the CBD is to promote the conservation and sustainable use of biodiversity through commitments relating for example to: promoting scientific and technological co-operation, establishing protected areas, eradicating alien species, respecting and maintaining traditional knowledge and practices, and providing financial resources. In January 2000, the Cartagena Biosafety Protocol was adopted to address potential risks associated with cross-border trade and accidental releases of living modified organisms. Again in the World Summit on Sustainable Development (Johannesburg, 26 August - 4 September 2002), the world's Heads of State recognized the critical role which biodiversity plays in overall sustainable development and poverty eradication, human well-being and in the livelihood and cultural integrity of people. They noted that biodiversity is currently being lost at unprecedented rates owing to human activities and that there is a need to achieve a significant reduction in the rate of biodiversity loss by 2010.

In September 2005, 150 Heads of State, meeting at the World Summit in New York called on all States to fulfill their commitment and significantly reduce the rate of biodiversity loss by 2010.

There are few more Conventions on biodiversity issues: the Convention on Conservation of Migratory Species, the Convention on International Trade in Endangered Species of Wild Fauna and Flora (1975), the International Treaty on Plant Genetic Resources for Food and Agriculture (2004), the Ramsar Convention on Wetlands (1971), the World Heritage Convention (1972) and the International Plant Protection Convention (1952).

### **Conventions on Law of the Sea**

The 1982 United Nations Convention on the Law of the Sea provides, for the first time, a universal legal framework for the rational management of marine resources and their conservation for future generations.

#### **Some of the key features of the Convention are:**

- Coastal States exercise sovereignty over their territorial sea which they have the right to establish its breadth up to a limit not to exceed 12 nautical miles; foreign vessels are allowed "innocent passage" through those waters;
- Ships and aircraft of all countries are allowed "transit passage" through straits used for international navigation; States bordering the straits can regulate navigational and other aspects of passage;
- Archipelagic States, made up of a group or groups of closely related islands and interconnecting waters, have sovereignty over a sea area enclosed by straight lines drawn between the outermost points of the

islands; all other States enjoy the right of archipelagic passage through such designated sea lanes;

- Coastal States have sovereign rights in a 200-nautical mile exclusive economic zone (EEZ) with respect to natural resources and certain economic activities, and exercise jurisdiction over marine science research and environmental protection;
- All other States have freedom of navigation and over flight in the EEZ, as well as freedom to lay submarine cables and pipelines;
- Land-locked and geographically disadvantaged States have the right to participate on an equitable basis in exploitation of an appropriate part of the surplus of the living resources of the EEZ's of coastal States of the same region or sub-region; highly migratory species of fish and marine mammals are accorded special protection.

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## SAQ 2

Fill in the blank with appropriate words

- i) The United Nations Environment Programme (UNEP) was an outcome of the ..... conference.
- ii) To achieve the objectives of the Vienna convention..... was agreed by the nations.

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## 12.3 ISSUES IN ENFORCEMENT

In the earlier section of this unit you have learnt about various Environmental Acts at national level and Environmental legislations at international level. Now we will take up the issues involved in their enforcement.

### 12.3.1 Problems and Prospects

You must be aware that despite so many legislative measures the state of the environment in India continues to be gloomy. The rivers and the lakes continue to be polluted with sewage and industrial waste, bio resources continue to disappear. The air quality in some major cities is at alarming stage. According to the World Health Organization, at present the Capital city of New Delhi is one of the most polluted cities in the world. All these situations force us to know the answers of following questions. Where are the problems? What can be done to reverse the process and restore a balance state of the environment? Let us first, identify the basic problems in enforcement of national environment legislations.

- After an analysis of all enactments and provisions at national level, It is to be noted that nature of most of the existing environmental legislations are essentially punitive not preventive. Only once the chemicals or substances are discharged into the air or water or soil does the act apply. The preventive measures have hardly ever evoked or worked and the concerned agencies have moved into action only after the harm has been done.

- More serious problem in the implementation of environmental legislation is overlapping powers of authorities involved in supervising the safety mechanism and devices of companies, and in granting or refusing No Objection Certificate (NOC). Thus though the water and air pollution board may refuse to grant NOC, the Municipality may grant a license to an industrial unit based on which it may start its manufacturing activity.
- In some cases statutes of environmental legislations do not lay down any guidelines on the nature of the authority and their specific rights and the obligations. For example, Delhi State Government in 2009 has banned the manufacture and use of coloured plastic, without formulating the rule to prosecute defaulters. Because of this 2009 ban did not do too well. Again Delhi State Government amended this bill 2011 and imposed a blanket ban on use, storage, sale and manufacture of plastic bags in the city. This total ban again failed to make any difference in the city largely due to poor implementation and absence of strong rules.
- A common feature with environmental legislation in India is that they exclude peoples' participation in their implementation. The enterprises, which make profits at the expense of the environment, are always well represented and their interests well protected but not those of the common person who suffer the consequences of pollution and degradation.
- Sometime enforcement of legislation is difficult due to shortage of funds. Take for example the case of rivers pollution in India. It is well known that the major source of pollution of rivers is domestic sewage, which municipalities nonchalantly dump in the nearest rivers. The colossal cleaning up operation of rivers will be an exercise in futility if it is not accompanied by a massive effort to prevent the municipalities from dumping their wastes in the river. Everyone knows that the technology for treating municipal wastes exists. But many and most of the municipalities cannot afford it its cost .
- Public opposition also makes the implementation of environmental legislation difficult. As we have seen the difficulty in implementation of the Supreme Court ruling regarding mandatory use of CNG for all public transport vehicles in Delhi. Delhi Government has taken lot of time in implementing this order. Similarly public did not support the order of Supreme Court regarding ban on diesel public vehicles that were more than 10 years old and also complete ban on the registration of diesel vehicles in NCR region.

Nevertheless, despite the existing inadequacy of legislations and the complexity of judicial procedures, some new decisions of the court specially of NGT in recent past have generated a hope that with the passage of these enactments, environmental protection will be controlled to some extent in the country and that the offending companies /agencies will be brought to book by streamlining the enforcement agencies.

Now a day's judiciary is playing a vital role in the growth and development of environmental precedents. As a watchdog it strives to maintain the sanctity

and dignity of the Constitution so that it may not remain a mere paper tiger. But these are very few examples in which people through Public Interest Litigations (PIL) seek judiciary to enforce existing environmental legislations. For highlighting the contribution of PILs, we are giving few notable examples. In year 2000, Supreme Court ordered to shut down polluting factories in residential areas of Delhi. This order was opposed by thousands of workers and factory owners. But this move has and will definitely safe guard the health of many residents who are living nearby to the polluting industries. Due to excess noise during the festival periods, the local court in Kolkata passed strict limits on noise beyond certain limits and ordered its strict enforcement. Similarly, in the capital region of Delhi, all new vehicles from April, 2012 should have pollution prevention mechanism comparable to Euro-IV levels (known as Bharat Stage-IV) prevailing in many European countries.

In recent time, laws on disposal of plastics, packaging, locating and shifting of polluting industries, and common effluent treatment plants for small scale industries and making mandatory the use of CNG in vehicles used for public transport have all become very important and these legislations are being regularly followed by implementing authorities by the order of honourable courts.

Another good example of the success of PIL is case of Taj Mahal. In this famous case, Mahesh Chandra Mehta, a prominent environment lawyer, fought for ten years to persuade the Supreme Court to ban coal-based industries emitting effluents that damaged the soft marble of the Taj Mahal, India's architectural masterpiece. The court shut down 230 factories and directed more than 300 others near the building to install pollution-control devices. For this public service Mehta has won the 1997 Ramon Magsaysay Award. Mehta also campaigned for the introduction of lead-free gasoline in India's four largest cities, which has been done, and for 250 towns and cities near Ganga to install sewage treatment plants. The Supreme Court ordered over 2,000 industries along the Ganga to clean up or close. He also won a Supreme Court decision that forced a fertilizer factory to compensate thousands of people sickened by a 1985 gas leak.

Many of the legislations such as restraining the use of plastic bags can be fully enforced if public consciousness can be raised rather than await a judicial direction. After all, many environmental legislations are essentially "social code of conduct" that should automatically be a part of a better civic sense instead of a legal framework. Thus, public awareness and environmental education together can considerably reduce the needs for multitudes of environmental legislations since enforcement under the Indian context will continue to be difficult in foreseeable future.

Though, legislations and regulations are the foundations of most environmental protection policies. Public interest Litigations and People's Movement have also played very important role in environmental protection.

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## SAQ 3

Fill in the blank with appropriate words

- i) The Delhi State Government banned the use of coloured plastic in the year ..... and amended this in the year .....
  - ii) In Delhi, all new vehicles should have pollution prevention mechanism comparable to ..... level.
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## 12.4 INSTITUTIONAL ARRANGEMENT FOR MONITORING AND ENFORCEMENT

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The Government of India recognizing the severity of environmental problems, in 1972 established a National Committee on Environmental Planning and Coordination (NCEPC) to advise the Government on environmental problems and make recommendation for their improvement. The NCEPC was replaced by a National Committee of Environmental Planning (NCEP) to discharge the following functions:

- Preparation of an annual 'State of Environment Report' for the country,
- Establishing an Environmental information and communication system to propagate environmental awareness through the mass media
- To sponsor environmental research
- Arranging public hearing or conferences and issues of environmental significance

In 1980, the Government appointed Tiwari Committee, which recommended formation of Department of Environment for ensuring environmental protection. On this basis, a full-fledged Department of Environmental was created with effect from November 1<sup>st</sup>, 1980 under the charge of the Prime Minister. Since January 1985, it formed a part of the newly created **Ministry of Environment and Forests**. This Ministry, renamed as Ministry of Environment, Forest and Climate Change (MoEFCC). This is the nodal agency for planning, promotion, coordination and supervising the implementation of the various environmental and forestry programmes. The Ministry has also overall responsibility for administering and enforcing environmental legislations and policies. The Ministry has also been designated as the nodal agency in the country for the United Nations Environment Programme (UNEP), International Centre for Integrated Mountain Development and looks after the follow-up of the United Nations' Conference on Environment and Development (UNCED). MoEFCC also implements in India the provision of the international agreement on biological diversity and on climate change. Within the overall frame work of its mandate, the activities of the Ministry includes

- Conservation and survey of flora fauna, forests and wildlife



- Afforestation and regeneration of degraded area
- Prevention and control of pollution,
- Protection of environment
- Environmental impact assessment
- Dissemination of environmental information
- Eco-regeneration
- Assistance to organization implementing environmental and forestry programmes
- Promotion of environmental and forestry research
- Extension, education and training to augment the requisite man power
- Coordination with Central Ministries, State Government
- Environmental policy and legislation, and
- International cooperation
- Creation of Environmental awareness among all sections of the population.

The Ministry has many Divisions, Departments and Boards to implement its own objectives and environmental legislation such as Botanical Survey of India, Zoological Survey of India, National Museum of Natural History, Indian Council of Forestry Research and Education, Indian Forest Services, Central Pollution and Control Board (CPCB), Forest Survey of India, National Afforestation and Eco-development Board, etc. In next part we will discuss the role of CPCB in environmental protection sketchily.

### **The Central Pollution Control Board (CPCB)**

The Central Pollution Control Board (CPCB) was constituted in September 1974 under the provisions of The Water (Prevention & Control of Pollution) Act, 1974. The main functions of CPCB, as spelt out in The Water (Prevention and Control of Pollution) Act, 1974, and The Air (Prevention and Control of Pollution) Act, 1981, are:

- i) To promote cleanliness of streams and wells in different areas of the States through prevention, control and abatement of water pollution; and
- ii) To improve the quality of air and to prevent, control or abate air pollution in the country.

The CPCB advises the Central Government on all matters concerning the prevention and control of air, water and noise pollution and provides technical services to the Ministry for implementing the provisions of the Environmental (Protection) Act of 1986. Under this Act, effluent and emission standards in respect to various categories of industries have been notified. During 2000-2001 standards for coalmines, standards for effluents from textile industries and primary water quality criteria for bathing water have been finalized and notified in the Gazette.

Board has identified seventeen categories of heavily polluting industries. They

are: cement, thermal power plant, distilleries, sugar, fertilizer, integrated iron and steel, oil refineries, pulp and paper, petrochemicals, pesticides, tanneries, basic drugs and pharmaceuticals, dye and dye intermediates, caustic soda, zinc smelter, copper smelter and aluminium smelter.

CPCB in consultation with State Boards has also identified some critically polluted areas in the country, which need special attention for control of pollution. Action plan have been prepared and are being implemented in these areas.

The CPCB in collaboration with the SPCBs monitor the quality of fresh water resources of the country through a network of 507 monitoring stations located all over the country. Under the National Ambient Air Quality Monitoring Programme, 290 station covering over 90 cities/towns are being monitored by the CPCB.

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## SAQ 4

- i) In which year was the Department of Environment created?
  - ii) State the functions of the Central Pollution Control Board.
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## 12.5 ACTIVITIES

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### Activity 1

Only Central Government legislation is discussed in this unit, prepare a list of environmental legislations of your State and municipality area.

### Activity 2

Discuss the outcome of the U. N. Climate Change Conference in Paris (COP 21) held on Nov 30-Dec.12, 2015.

### Activity 3

Discuss the few path breaking judgements of NGT in recent past.

## 12.6 SUMMARY

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In this unit you have studied that:

- The various national and international legislations, which have been framed to stop environmental degradation.
- India is one of the few countries of the world that have made specific reference in the constitution to the need for environmental protection and improvement. The Central Government State Governments have utilized this provision to pass various Acts in order to protect the environment from destruction.
- There is a great contribution of UN in addressing global environmental challenges. To implement the agenda of UN, there is movement towards

environment protection on a worldwide scale through special conventions, protocols and multilateral agreements.

- Despite of the presence of satisfactory legislative measures and administrative set-up, it is difficult to enforce the legislation due to lack of expertise, shortage of funds, and no seriousness on the part of implementing authority.

## 12.7 TERMINAL QUESTIONS

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1. List the important categories of national legislations.
2. Write the various provisions of Kyoto Protocol.
3. Analyse briefly the issues in the enforcement of environmental legislation.
4. Explain the role of judiciary in Environmental protection.
5. List the important government agencies responsible for environment protection in India.

## 12.8 ANSWERS

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### Self-Assessment Questions

1. Protecting and improving the quality of the environmental and preventing controlling and abating the pollution.
2. i) Stockholm  
ii) Montreal Protocol on substances that deplete the ozone layer.
3. i) 2009, 2011  
ii) BSIV
4. i) 1985  
ii) a) Promote cleanliness of streams and wells.  
b) Improve quality of air and to prevent, control air pollution.

### Terminal Questions

1. Important categories of national legislations are: (i) Water Acts, (ii) Air Acts, (iii) Forest and wild life Acts, and (iv) General Acts.
2. Refer to section 12.2.2
3. Refer to section 12.3.1
4. Refer to section 12.4
5. Important government agencies for environmental protection in India are:  
(i) Ministry of Environment Forest and Climate Change (MOEFCC), (ii) Council of Forestry Research and Education (CFRE), (iii) Central Pollution Control Board (CPCB). (iv) State Pollution Control Boards (SPCB), (v) Botanical Survey of India (BSI), (vi) Geological Survey of India (GSI) etc.

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## 12.9 FURTHER READING

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1. Divan, S. and Rosencranz, A. (2002) *Environmental Laws and Policy in India: Cases, Materials and Statutes*, New Delhi:Oxford University Press.
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